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IN THE SUPREME COURT

STATE OF NORTH DAKOTA MAY 8 2015

John Willard Greywind, Jr.)	)	STATE OF NORTH DAKOTA
Petitioner/Appellant,)	)	
vs.	)	Supreme Ct. No. 20150070
State of North Dakota,	)	
Respondent/Appellee. )	)	

ON APPEAL FROM POST-CONVICTION FROM  
THE DISTRICT COURT OF NORTH DAKOTA  
NORTHEAST JUDICIAL DISTRICT

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BRIEF OF RESPONDENT/APPELLEE

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RAMSEY COUNTY STATES ATTORNEY  
DEVILS LAKE, NORTH DAKOTA

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STATEMENT OF THE CASE

[¶1] On May 7, 2013, the Ramsey County District Court, in Devils Lake, North Dakota, the Defendant, John Willard Greywind, Jr., entered a guilty plea to the charge of Robbery. The case had been scheduled as a preliminary hearing with co-defendant, Johnson Tollefson. At the beginning of the preliminary hearing, Mr. Greywind, through his attorney, informed the Court that he wished to waive his preliminary hearing and enter a guilty plea on the charges that day. Appendix, page 000010, hereafter, App.pg.10, lines 18-20. The co-defendant, Tollefson, also waived his preliminary hearing. App. pg.11, line 11. At that time, the Court arraigned both defendants. The Court advised the defendants that they were charged with Robbery, a Class B Felony, that on March 31, 2013 they did hold a knife and told the Royal Lanes employee that "we can do this the easy way or the hard way". The proceeded to take several deposit bags containing at least \$1,800. App. pg.11, lines 16-22. The Court advised counsel and the defendants of the maximum penalties, along with the fact that there was a minimum mandatory of four years without parole due to the weapon involved. App. pg.12, lines 1-8. After the Court went through an extensive period of time advising the defendants of their constitutional and statutory rights, John Greywind entered a guilty plea. The counsel for the Defendant did make mention that, again, that there was a four year minimum mandatory, and informed the Court that the plea agreement was for ten years to serve four, with the remainder

1 suspended for five years. App. pg.14, lines 22-24. The co-  
2 defendant, Johnson Tollefson, entered a not guilty plea at  
3 that time. App. pg.15. Several pages of the transcript went  
4 through the impact of being an armed offender in the robbery  
5 in the dialogue between the Court, defense counsel, and the  
6 defendants. App. pgs.19-21.

7 [¶2] In taking the factual basis, the Defendant admitted that  
8 he held a knife during the robbery. App. pg.24, line 24 .  
9 With knife in hand, John Greywind admitted that he told the  
10 clerk during the robbery "we can do this the easy way or the  
11 hard way". App. pg.25, line 25. The Court commenced to have  
12 an extensive dialogue in the taking of the factual basis.

13 [¶3] On September 11, 2013, the co-defendant, Johnson  
14 Tollefson, entered a guilty plea to the charge of robbery. At  
15 that time, a plea agreement was entered wherein the allegation  
16 of the dangerous weapon was eliminated due to the fact that  
17 John Greywind was the individual holding the knife during the  
18 robbery. App. pg. 41. Thereafter, the Court took an  
19 extensive factual basis from Mr. Tollefson, heard arguments of  
20 counsel, and pronounced sentence. The Court, after hearing  
21 argument, sentenced the co-defendant, Johnson Tollefson to six  
22 years with the Department of Corrections, with four years  
23 suspended for five years from his date of release. App. pg.  
24 54, line 1-4.

25 [¶4] The Defendant eventually filed an application for post-  
26 conviction relief, which was dated November 16, 2014. It  
27 appears to have been filed with the Clerk of District Court on  
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1 November 20, 2014. The application basically alleged three  
2 grounds for relief. Number one ineffective assistance of  
3 counsel, number two harsher sentence than his co-defendant,  
4 and three prosecutorial misconduct. App. pg. 3-4.

5 [¶5] The District Court ruled against the Petitioner without  
6 a hearing, after review of the record before the District  
7 Court. See Order Denying Post-Conviction Relief, dated  
8 January 15, 2015. App. pgs. 5-6. The Court took note that the  
9 Petitioner did not receive ineffective assistance of counsel  
10 by virtue of the fact that counsel did not inform the  
11 Defendant of the 85% rule. The Court cited State v. Raulston,  
12 2005 ND 212, 707 N.W.2d 464 and Sambursky v. State, 2008 ND  
13 133, 723 N.W.2d 241. In light of those cases, it is clear  
14 from the face of the allegation that it is without merit.

15 [¶6] The Court then addressed the second part of the first  
16 ground of ineffective assistance of counsel by claiming that  
17 his attorney failed to inform him that the co-defendant  
18 received a two year sentence. This again was dismissed  
19 summarily by the District Court, due to the fact that the  
20 Defendant Greywind was sentenced on May 7, 2013, and the co-  
21 defendant, Johnson Tollefson, was sentenced four months later.  
22 Thus from the face of the petition, this is likewise without  
23 merit.

24 [¶7] The third part of ineffective of assistance of counsel  
25 claim argued that his attorney didn't zealously represent him.  
26 This was merely a conclusory statement, without any specific  
27 allegations. The Court took note that the incriminating  
28

1 evidence against the Defendant was strong, and the Defendant  
2 had admitted to being the "muscle" to the robbery and admitted  
3 to holding the knife during the robbery. Likewise, the Court  
4 found this to be without merit on its face.

5 [¶8] The District Court then addressed the second ground for  
6 the post-conviction relief, which was sort of a reiteration of  
7 one of the first grounds, that being that he received a  
8 harsher sentence than the co-defendant. Again, after  
9 reviewing the transcripts, the District Court found this to be  
10 without merit on its face, due to the fact that the Defendant  
11 Greywind held the knife, and the co-defendant Tollefson did  
12 not have a weapon or make any threats with a weapon. This was  
13 likewise summarily dismissed.

14 [¶9] The Court then addressed the third allegation of the  
15 Defendant's post-conviction relief, arguing that the  
16 prosecuting authority violated his due process rights. The  
17 Court took particular note that the prosecution in a criminal  
18 case has great discretion and initiating criminal charges and  
19 negotiating plea agreements, which was done four months later.  
20 Again, the State agreed during the sentencing of Johnson  
21 Tollefson to the fact that the four year minimum mandatory did  
22 not apply, due to the fact that John Willard Greywind, Jr.  
23 held the knife during the robbery, and not Johnson Tollefson.  
24 Likewise, the Court summarily dismissed as it was without  
25 merit on its face. Thereafter, counsel for Defendant moved  
26 for a reconsideration solely on the issue of ineffective  
27 assistance of counsel. The District Court then dismissed the  
28

1 petition for reconsideration, due to the fact that the  
2 Defendant Greywind made no specific allegations in his  
3 petition as to the facts causing the alleged ineffective  
4 assistance of counsel or failing to zealously represent him.

5 **LAW AND ARGUMENT**

6 [¶10] An appeal from summary dismissal of the application for  
7 post-conviction relief is to be reviewed in a manner similar  
8 to the review of an appeal of a summary judgment motion.

9 Decoteau v. State, 1998 ND 199, 586 N.W.2d 156. The Court  
10 applies a clearly erroneous standard in reviewing the trial  
11 court's findings. State v. Foster, 1997 ND 8, 560 N.W. 2d 194.

12 {¶11} N.D.C.C., §29-32.1-09(3) provides that court may  
13 grant a motion by either party for summary disposition if the  
14 application, pleadings, or any previous proceeding, discovery,  
15 or matters of record, show that there is no genuine issue as  
16 to any material fact and the moving party is entitled to a  
17 judgment as a matter of law. In the case at hand, the  
18 District Court reviewed the transcript of the preliminary  
19 hearings and sentencings of both the defendant and his co-  
20 defendant. From the information given to the Court from both  
21 of those hearings, the trial court found that there was no  
22 genuine issue of material fact, and found that the petition in  
23 its entirety was without merit.

24 [¶12] The Defendant has failed to show that the district court  
25 decision was clearly erroneous, standard set forth in  
26 N.D.R.Civ.P., Rule 52(a). The Defendant is apparently taking  
27 the position that since he used the magic words "ineffective  
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1 assistance of counsel", that the Court is mandated to give him  
2 a trial on the matter. The District Court was well aware of  
3 the facts of the case, and the arguments of both defense  
4 counsel, and found that the allegation of ineffective  
5 assistance of counsel was without merit.

6  
7 **CONCLUSION**

8 [¶13] Based upon the foregoing, the State/Appellee requests  
9 that the Court affirm the District Court decision.

10 Dated this 12<sup>th</sup> day of May, 2015.

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IN THE SUPREME COURT OF THE STATE OF NORTH DAKOTA

John Willard Greywind, Jr., )  
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 Appellant, )  
 )  
 vs. )  
 )  
 State of North Dakota, )  
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 Appellee. )

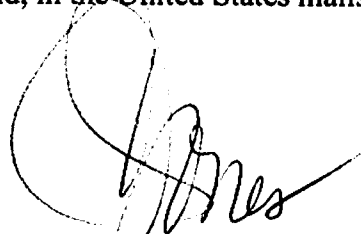
Supreme Ct. No. 20150070

**AFFIDAVIT OF SERVICE BY MAIL**

Connie Jones, being first duly sworn, deposes and says that on the 12<sup>th</sup> day of  
May, 2015, she served the attached copy of Brief of Respondent/Appellee  
regarding the above reference matter upon Travis W. Finck  
by placing a true and correct copy thereof in an envelope addressed as follows:

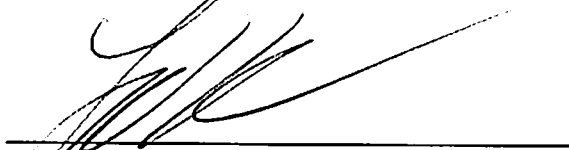
Travis W. Finck  
410 E. Thayer Ave., Ste. 201  
Bismarck, ND 58501

and depositing the same, with postage prepaid, in the United States mails in Devils Lake,  
North Dakota.



\_\_\_\_\_  
Connie Jones

Subscribed and sworn to before me this 12 day of May, 2015.



\_\_\_\_\_  
Lonnie W. Olson, Notary Public  
Ramsey County, North Dakota

(SEAL)

