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IN THE SUPREME COURT

STATE OF NORTH DAKOTA

FILED
IN THE OFFICE OF THE
CLERK OF SUPREME COURT

SUPREME COURT NO. 20150145

SEP 14 2015

STATE OF NORTH DAKOTA

Matthew Alan Eagleman,

Petitioner and Appellant,

vs.

State of North Dakota,

Defendant and Appellee.

APPEAL FROM THE CIVIL JUDGMENT

NORTHEAST JUDICIAL DISTRICT

RAMSEY COUNTY NO.36-2014-CV-0177

BRIEF OF APPELLEE

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Paragraph

Cases:

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STATEMENT OF THE ISSUES

¶1 ISSUE: Whether the District Court could summarily dismiss a post conviction relief action in which ineffective assistance of counsel was alleged against a prior post conviction relief counsel.

STATEMENT OF FACTS

¶2 The underlying criminal charge was filed in Ramsey County District Court in May of 2002. Matthew Eagleman was charged with Gross Sexual Imposition, a Class A felony, and Harboring a Runaway Minor, a Class A Misdemeanor. Eventually, a plea agreement was entered on September 19, 2002 wherein the defendant entered guilty pleas to both charges, and was sentenced on the felony to five years in the DOCR, with credit for time served, and the remaining time was suspended for four years, to be on supervised probation. A petition to revoke probation was filed within several weeks, when the sex offense victim went missing and was found with the defendant, in the defendant's apartment. The years since then have been filled with numerous and voluminous pro se and represented appeals, post-conviction relief actions, and various motions.

¶3 More recently, this Court heard an appeal of an Order of Correction of Illegal Sentence, in which this Court affirmed the order of the District Court correcting an illegal sentence. State v. Eagleman, 2013 N.D. 101, 831 N.W.2d 759.

¶4 After the case was decided, Mr. Eagleman filed a very long and detailed Motion for Post Conviction Relief which argued ineffective assistance of counsel. App at pages 5 to 32. The Defendant argued that the attorneys appointed to represent him at the resentencing provided ineffective assistance, specifically starting at App, page 16 and continuing through page 32. In fact, the Defendant gets very detailed in his allegations at

1 App page 22 through 29. This Motion was summarily dismissed by the District Court.
2
3 App at 37. The Defendant appealed. App at 48. This Court dismissed that appeal. App
4 at 49.

5 ¶5 A pro se Motion to Correct Illegal sentence was filed on June 13, 2014. App at 45.
6 The Motion was summarily dismissed by the District Court on April 20, 2015. App at 56.
7 Thereafter, a “Motion for New Trial” was filed, again alleging ineffective assistance of
8 counsel, was filed on May 7, 2015. App at 61. That motion was summarily dismissed on
9 June 16, 2015. App at 68. The defendant now appeals.
10

11 LAW AND ARGUMENT

12 ¶6 The Uniform Post-conviction Procedure Act, N.D.C.C., Chapter 29-32.1, as
13 amended in the 2013 legislative session, provides the mechanism for criminal relief after
14 conviction. This matter, for all intents and purposes, is an appeal of a post-conviction
15 relief action. While the most recent motion is entitled “Motion for New Trial”, citing Rule
16 59 of the North Dakota Rules of Civil Procedure, ineffective assistance of counsel is a post
17 conviction relief issue, and N.D.C.C., Chapter 29-32.1 applies in the present case.
18

19 ¶7 Pursuant to the 2013 language of the Act, an application for post-conviction relief
20 must be filed within 2 years of the date of conviction. N.D.C.C., Section 29-32.1-01(2).
21 The original conviction was in 2002, some 12+ years prior to the most recent motion filed
22 in the District Court. While the original conviction was prior to the effective date of the
23 current version of the Act, the Defendant’s “Motion for New Trial“ is clearly after the
24 2013 effective date.
25

26 ¶8 The next step in the analysis of this matter pertains to the date of the
27 “unprofessional” conduct of the trial attorney. The most recent Motion alleges that trial
28

1 counsel at the resentencing did not require an updated presentence investigation report at
2 the October 16, 2012 resentencing hearing. It was further alleged that counsel did not put
3 up enough of a defense at the hearing, such as presenting witnesses or offering exhibits.
4

5 ¶9 It is important to note the date at which the Defendant filed his “Motion for New
6 Trial”. It was filed on May 7, 2015, far more than two years after the alleged ineffective
7 assistance of counsel on October 16, 2012. Clearly, the Defendant’s most recent motion,
8 the subject of this appeal, is outside the two year statute of limitations.
9

10 ¶10 The “illegal” sentence which the Defendant claims needed correction pertained to
11 the District Court giving the Defendant too many chances at community based corrections,
12 contrary to this Court’s decisions in State v. Stavig, 2006 N.D. 63, 711 N.W. 2d 183 and
13 State v. Perales, 2012 N.D. 158, 820 N.W. 2d 119, which limited the District Court to
14 issue only two periods of probation.
15

16 ¶11 A large portion of the Defendant’s argument was that counsel, at the resentencing,
17 failed to demand an updated presentence investigation report. That same issue has been
18 decided in this Court at State v. Wardner, 2006 N.D. 256, 725 N.W. 2d 215. Wardner
19 argued that he was entitled to have a new presentence investigation prepared for his
20 revocation and resentencing for a Gross Sexual Imposition charge. This Court ruled that
21 Wardner was not entitled to an updated presentence investigation report at a resentencing
22 hearing. State v. Wardner, 2006 N.D. 256, 725 N.W. 2d 215, Paragraph 13. Likewise,
23 Eagleman was not entitled to an updated presentence investigation report at his
24 resentencing.
25

26 ¶12 The 2013 version of the Act further provides that the District Court may, on its
27 own motion, dismiss any grounds of an application that allege ineffective assistance of
28

1 post-conviction relief counsel. The District Court issued an Order Dismissing Petitioners
2 Post-conviction Relief on April 20, 2015, citing both N.D.C.C., Section 29-32.1-01(2) and
3 Section 29-32.1-09, authorizing the trial court to dismiss successive petitions and merit
4 less petitions. App at 55. The District Court later cited N.D.C.C., Section 29-32.1-09(2)
5 in the Order Dismissing Motion for New Trial. App at 68. With all the post-conviction
6 relief actions filed by the Defendant over the past 13 years, it is easy to see how that
7 happened.
8

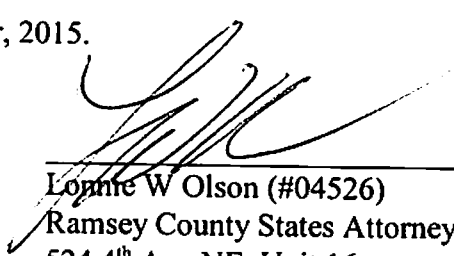
9 ¶13 It is very important to note that the Defendant had already filed a Motion for
10 Post-conviction Relief, alleging ineffective assistance of counsel, against the attorneys
11 who represented him at the resentencing. App at 5 through 32. It was filed on June 13,
12 2014. The District Court dismissed that action. App at 47. The Defendant appealed
13 that order. App at 48. That appeal was dismissed. App at 49. The District Court again
14 dismissed the action on April 20, 2015, on its own motion. App at 56. The Defendant,
15 soon thereafter, filed another motion, this time called it a "Motion for New Trial", but
16 again alleging ineffective assistance of counsel at the resentencing. That entire matter had
17 been litigated by the Defendant acting pro se. He lost. He appealed. This Court
18 dismissed the appeal. The Motion for New Trial filed on May 7, 2015 is clearly res
19 judicata on its face. Even if the District Court misquotes N.D.C.C. section 29-32.1-09(2)
20 as the reason for the dismissal in its order, that issue was already litigated in 2014.
21
22
23

24 CONCLUSION

25 ¶14 The State requests that the decision of the District Court be affirmed. The Motion
26 for New Trial was filed after the two year statute of limitations on Post-conviction relief
27 had run. The Motion for new Trial, on its face, had already been alleged before the
28

1 District Court, litigated, appealed, and dismissed by this Court.
2

3 Dated this 14th day of September, 2015.
4

5 
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IN THE SUPREME COURT OF THE STATE OF NORTH DAKOTA

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6 State of North Dakota,)
7 Appellee.)

Supreme Ct. No. 20150145

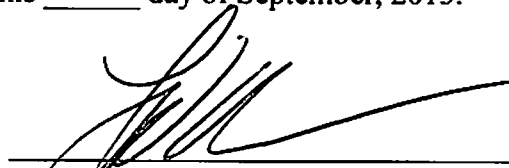
**AFFIDAVIT OF SERVICE BY
ELECTRONIC MEANS**

8
9 Connie Jones, being first duly sworn, deposes and says that on the 14th day of
10 September, 2015, she served the attached copy of Brief of Appellee
11 regarding the above reference matter upon Benjamin C. Pulkrabek
12 pulkrabek@lawyer.com from crjones@nd.gov, Devils Lake, North Dakota. I
13 emailed 9 pages including this page.

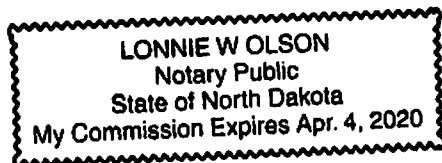


Connie Jones

16
17 Subscribed and sworn to before me this 14th day of September, 2015.

18
19 
20 _____
Lonnie W. Olson, Notary Public
Ramsey County, North Dakota

21 (SEAL)



RAMSEY COUNTY STATES ATTORNEY
DEVILS LAKE, NORTH DAKOTA