

IN THE SUPREME COURT

STATE OF NORTH DAKOTA

Robert Duane Beeter,)	Supreme Court No. 20160041
)	
Petitioner and Appellant,)	Civil No. 51-2015-CV-00398
)	
vs.)	
)	
State of North Dakota,)	
)	
Respondent and Appellee.)	

BRIEF OF PETITIONER-APPELLANT ROBERT DUANE BEETER

Appeal from Judgment Entered on January 20, 2016

In District Court, Ward County, State of North Dakota

The Honorable Gary H. Lee

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STATEMENT OF THE ISSUES

¶1 Whether the District Court erred in denying Petitioner's application for post conviction relief?

STATEMENT OF THE CASE

¶2 This is an appeal of the North Central Judicial District Judgment dated January 20, 2016, denying Robert Beeter's ("Beeter") petition for post conviction relief. (App. 32.) Beeter's petition for post conviction relief was for three separate cases consisting of the following charges: two counts of possession of methamphetamine with intent to deliver; two counts of possession of drug paraphernalia; possession of a schedule II substance; possession of a schedule IV substance; bail jumping; escape; possession of marijuana by a driver; and possession of marijuana. Case Nos. 51-2013-CR-03019, 51-2013-CR-02320, and 51-2013-CR-03021. Beeter pled guilty to each charge. A sentencing hearing was held on May 14, 2015. Beeter was sentenced to serve twenty years, all sentences concurrent. (App. 4-13.)

¶3 Beeter applied for post conviction relief on the basis of ineffective assistance of counsel. (App. 14.) The application for post conviction relief was denied. (App. 32.) Beeter filed his notice of appeal on January 28, 2016. (App. 45-47.)

STATEMENT OF FACTS

¶4 On October 9, 2013, the State of North Dakota filed a criminal complaint charging Beeter with the following: 1. Unlawful possession of methamphetamine with intent to manufacture or deliver; 2. Unlawful possession of a controlled substance-schedule II; 3. Unlawful possession of a controlled substance-schedule IV; 4. Unlawful possession of drug paraphernalia; and 5. Unlawful possession of marijuana. Case No. 51-2013-CR-02320, Doc #13. On December 23, 2013, the State of North Dakota filed a criminal complaint charging Beeter with failure to appear

– bail jumping. Case No. 51-2013-CR-02319, Doc #1. On January 22, 2014, the State of North Dakota filed a criminal complaint charging Beeter with the following: 1. Unlawful possession of methamphetamine with intent to manufacture or deliver; 2. Unlawful possession of drug paraphernalia; 3. Unlawful possession of marijuana by a driver; and 4. Escape. Case No. 51-2013-CR-03021, Doc. ID #11.

¶5 Robert Martin (“Martin”) was appointed to represent Beeter in all three cases. However, Martin motioned the court to withdraw, as Martin would be a witness for the charge of Failure to Appear/Bail Jumping. Case No. 51-2013-CR-02320, Doc. ID #36. On February 20, 2014, the three cases were reassigned to William Hartl (“Hartl”). Case No. 51-2013-CR-02320, Doc. ID #39.

¶6 On May 14, 2014, Beeter pled guilty to all charges. Beeter was sentenced to twenty years, to be served concurrently, on the two counts of possession of a controlled substance with intent to deliver methamphetamine; five years to be served concurrently on the escape, failure to appear/bail jumping, possession of a schedule II controlled substance, and possession of a schedule IV controlled substance charges; and one year on the possession of marijuana by a driver charge and thirty days on a possession of marijuana charge. (App. 4-13.)

¶7 On March 5, 2015, Beeter applied for post conviction relief on the basis of ineffective assistance of counsel, the conviction was unlawfully induced by plea bargain, and the plea bargain was not made voluntary with the understanding and the consequences of the plea bargain. (App. 14.)

¶8 A post conviction hearing was held on December 22, 2015. During the hearing, Beeter contended that Hartl failed to maintain communications with him in the discussions of a plea agreement until immediately prior to the pretrial conference on May 14, 2014. Immediately

prior to the pretrial conference hearing, Beeter was informed that the State would offer twenty years consecutive for all three cases. (App. 19-20; Tr. p.18 ln. 25; p. 19, ln. 1-22, December 22, 2015.) Beeter was informed that the plea agreement could be removed and each of the three cases be split and the State would attempt to charge Beeter as a habitual offender. (App. 21; Tr. p. 20, ln. 7-13, December 22, 2015.) Beeter contends that due to the lack of time in the proposal of the plea agreement that he had little to no time to consider this and that he did not have enough information to make the decision on whether to go to trial or not. (App. 22; Tr. p. 21, ln. 12-19, December 22, 2015.) Beeter also contended that Hartl failed to provide him with all discovery and he did not pursue pretrial investigations. (App. 18; Tr. p. 12, ln. 13-20, December 22, 2015.)

¶9 However, at the post conviction hearing, Hartl testified that on March 19, 2014, he had court with Beeter regarding a different matter. (App. 23; Tr. p. 36, ln. 1-3, December 22, 2015.) On that date, Hartl testified he would have shown and discussed with Beeter the State's position of twenty years with all three cases running concurrent. (App. 23; Tr. p. 36, ln. 5-7, December 22, 2015.) Hartl also indicated he informed Beeter of the possibility of being charged as a habitual offender, but does not recall if Beeter was informed of this prior to the day of the hearing or not. (App. 23, 26-27; Tr. p. 36, ln. 16-25; p. 47, ln. 24-25; p. 48, ln. 1-25, December 22, 2015.) Hartl also testified that through his assessment of the case, suppression motions were not going to be successful. (App. 24; Tr. p. 40, ln. 20-25, December 22, 2015.) However, Hartl does not recall having a discussion regarding the likelihood of success in bringing a suppression motion with Beeter. (App. 31; Tr. p. 59, ln. 8-14, December 22, 2015.)

¶10 Judge Lee denied the post conviction relief application. (App. 32.) Judge Lee deemed Hartl's credibility is worthy of belief, that Beeter failed to prove he would be successful on a

motion to suppress evidence, and the fact that Beeter now has second thoughts regarding his decisions does not warrant post conviction relief. (App. 32.)

LAW AND ARGUMENT

I. The Standard of Review.

¶11 This Court has explained the law when claiming ineffective assistance of counsel through post conviction relief:

The Sixth Amendment of the United States Constitution, made applicable to the states through the Fourteenth Amendment, and Article I, § 12 of the North Dakota Constitution guarantee a criminal defendant effective assistance of counsel. In accord with the test established by the United States Supreme Court in Strickland v. Washington, 466 U.S. 668 (1984), a defendant claiming ineffective assistance of counsel has a heavy burden of proving (1) counsel's representation fell below an objective standard of reasonableness, and (2) the defendant was prejudiced by counsel's deficient performance. Effectiveness of counsel is measured by an objective standard of reasonableness considering prevailing professional norms. The defendant must first overcome the strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance. Trial counsel's conduct is presumed to be reasonable and courts consciously attempt to limit the distorting effect of hindsight. The prejudice element requires a defendant to establish a reasonable probability that, but for his counsel's errors, the result of the proceeding would have been different. Not only does a criminal defendant have the heavy, demanding burden of proving counsel's assistance was ineffective, a defendant claiming ineffective assistance of counsel must specify how and where trial counsel was incompetent and the probable different result. A reasonable probability is a probability sufficient to undermine confidence in the outcome.

Heckelsmiller v. State, 2004 ND 191, ¶ 3-4, 687 N.W.2d 454 (internal citations and quotations omitted).

¶12 In the present case, at the post conviction hearing, Beeter contends the following: 1. That his trial counsel failed to provide him with all discovery; 2. That his trial counsel did not pursue pretrial investigation; and 3. That his trial counsel did not adequately advise him of his options as Beeter lacked information to make an informed and intelligent decision to plea.

¶13 This Court has established the following as standards for post conviction relief

proceedings:

Proceedings on applications for post-conviction relief are civil in nature and governed by the North Dakota Rules of Civil Procedure. The petitioner has the burden of establishing grounds for post-conviction relief. The district court's findings of fact in a post-conviction proceeding will not be disturbed on appeal unless they are clearly erroneous under N.D.R.Civ.P. 52(a). A finding of fact is clearly erroneous if induced by an erroneous view of the law, if no evidence exists to support it, or if the reviewing court is left with a definite and firm conviction a mistake has been made. Questions of law are fully reviewable on appeal in post-conviction proceedings.

Tweed v. State, 2010 ND 38, ¶ 15, 779 N.W.2d 667 (internal citations omitted).

II. Beeter's Trial Counsel's Conduct Fell Below The Standard Of Reasonableness That Is Expected And Constitutionally Ensured.

¶14 "Effectiveness of counsel is measured by an 'objective standard of reasonableness' considering 'prevailing professional norms.'" DeCoteau v. State, 2000 ND 44, ¶ 8, 608 N.W.2d 240 (citing Lange v. State, 522 N.W.2d 179, 181 (N.D. 1994), quoting Strickland, 466 U.S. at 688). Beeter's allegations of ineffective assistance of counsel in the present case is the trial counsel did not provide all discovery to Beeter, that he should have pursued pretrial discovery, including suppression motions, and that trial counsel failed to properly inform Beeter of his options allowing Beeter to make an informed and intelligent decision to plea.

¶15 Beeter's trial counsel admitted that he did not recall having any face to face contact with Beeter from the pretrial conference in an unrelated matter up until his sentencing hearing in this case. (App. 25; Tr. p. 45, ln. 2-4, December 22, 2015) Beeter's trial counsel also admitted that he failed to inform Beeter of the possibility of the habitual offender status until when Beeter and his trial counsel met minutes before the pretrial conference where Beeter pled guilty. (App. 26, 27; Tr. p. 47, ln. 24-25; p. 48, ln. 1-25, December 22, 2015.) Additionally, trial counsel admitted that Beeter raised the concerns about a prescription that was in a different name and the title of the mobile home that was searched was in a different name. (App. 28-29; Tr. p. 51, ln. 15-25; p.

52, ln. 1-16, December 22, 2015.) However, trial counsel does not recall visiting with Beeter as to what his were thoughts on the non-likelihood of success regarding these concerns. (App. 31; Tr. p. 59, ln. 8-14, December 22, 2015.) Trial counsel also failed to provide any discovery received on discs to Beeter. (App. 18, 30; Tr. p. 12, ln. 13-20; p. 58, ln. 9-17, December 22, 2015.) Therefore, Beeter was not clearly informed on his case to even know of any weaknesses, and thus was unable to make an informed and intelligent decision to plea.

III. Beeter Was Prejudiced By His Trial Counsel's Lack Of Diligence And Poor Preparation.

¶16 This Court stated in Tweed v. State, that “[t]he prejudice element requires a defendant to ‘establish a reasonable probability that, but for his counsel's errors, the result of the proceeding would have been different.’” 2010 ND 38, ¶ 26, 779 N.W.2d 667 (quoting Syverson v. State, 2000 ND 185, ¶ 22, 620 N.W.2d 362). “[T]he Defendant must specify how and where trial counsel was incompetent and the probable different result.” Middleton v. State, 2014 ND 144, ¶ 6, 849 N.W.2d 196 (citing Murchison v. State, 2011 ND 126, ¶ 8, 799 N.W.2d 360 (quoting State v. Myers, 2009 ND 141, ¶ 15, 770 N.W.2d 713)). “A reasonable probability is a probability sufficient to undermine confidence in the outcome” Id.

¶17 The “reasonable probability” of errors in the present case is the pure lack of information Beeter was provided. Beeter was never visited in jail to inform him or provide him with discovery, nor was any discussion had regarding Beeter's evidentiary concerns. (App. 18, 28-29, 30-31; Tr. p. 12, ln. 13-20, p. 51, ln. 15-25, p. 52, ln. 1-16, p. 58, ln. 9-17, p. 59, ln. 8-14, December 22, 2015.) Beeter was not provided the necessary foundation to make an informed decision as to whether or not to proceed with trial or take a plea agreement, but was coerced into a decision minutes before his pretrial conference. Given all the evidence, Beeter would have reviewed the evidence, made pretrial motions, and then evaluated the decision to go to trial or

take a plea agreement.

CONCLUSION

¶18 Beeter's trial counsel admittedly did not provide Beeter with discovery, failing to inform Beeter of all possibilities and providing little to no notice on plea options prior to Beeter's plea.

Beeter respectfully requests that this Court reverse and remand.

Dated 21st day of March, 2016.

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CERTIFICATE OF SERVICE

A true and correct copy of BRIEF OF APPELLANT and APPENDIX OF APPELLANT

was e-mailed to the following this 21st day of March, 2016:

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OF THE STATE OF NORTH DAKOTA

APR 25 2016

Robert Duane Beeter,)
)
 Petitioner/Appellant,)
)
 vs.)
)
 State of North Dakota,)
)
 Respondent/Appellee.)

STATE OF NORTH DAKOTA
Supreme Court No. 20160041
Civil No. 51-2015-CV-00398

[¶36] AMENDED AFFIDAVIT OF SERVICE BY MAIL

Lynnae Rudland, being first duly sworn, deposes and says:

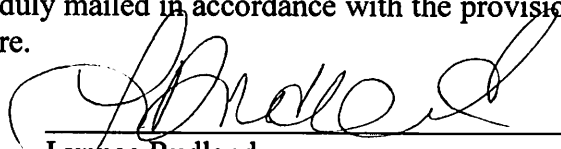
That she is a citizen of the United States of America, over the age of twenty-one years, and is not a party to nor interested in the above entitled action; that on the 20 day of April, 2016, this Affiant deposited in the mailing department of the United States Post Office at Minot, North Dakota, a sealed envelope with postage thereon duly prepaid, containing a true and correct copy of the following document in the above entitled action:

BRIEF OF RESPONDENT - APPELLEE and
APPENDIX OF RESPONDENT- APPELLEE

That said envelope was addressed to the following person at his address as follows:

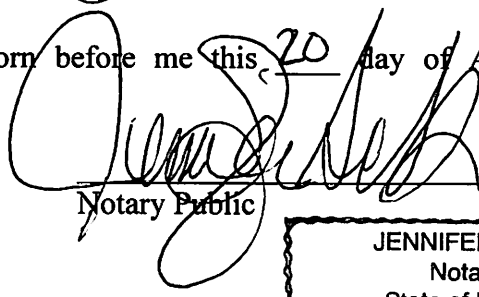
LAURA C RINGSAK
ATTORNEY FOR APPELLANT
103 SOUTH 3RD ST SUITE 6
BISMARCK ND 58501

That the above document was duly mailed in accordance with the provisions of the North Dakota Rules of Civil Procedure.



Lynnae Rudland

Subscribed and sworn before me this 20 day of April, 2016 by Lynnae Rudland.



Notary Public

JENNIFER SCHLECHT
Notary Public
State of North Dakota
My Commission Expires April 14, 2021