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IN THE SUPREME COURT

DEC 01 2016

STATE OF NORTH DAKOTA

Dylan Saari,)	STATE OF NORTH DAKOTA
)	
Petitioner/Appellant,)	Supreme Ct. 20160263
)	
vs.)	Dist.Ct.No. 36-2015-CV-73
)	
State of North Dakota,)	
)	
Respondent/Appellee.)	

APPEAL FROM THE ORDER DENYING APPELLANT'S APPLICATION
FOR POST-CONVICTION RELIEF, DATED JUNE 21, 2016, BY THE
HONORABLE LEE A. CHRISTOFFERSON

BRIEF OF APPELLEE

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RAMSEY COUNTY STATES ATTORNEY
DEVILS LAKE, NORTH DAKOTA

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TABLE OF CONTENTS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PARAGRAPH

Table of Authorities	i
Statement of the Issues.....	1
Statement of Facts.....	3
Law and Argument.....	6
Conclusion.....	12

RAMSEY COUNTY STATES ATTORNEY
DEVILS LAKE, NORTH DAKOTA

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF AUTHORITIES

CASES	PARAGRAPH
<u>Broadwell v. State</u> , 2014 ND 6, ¶5, 841 N.W.2d 750..	6
STATUTES	
N.D.C.C., Section 12.1-03-01.....	7
N.D.C.C., Section 12.1-24-01.....	8

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DEVILS LAKE, NORTH DAKOTA

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STATEMENT OF THE ISSUES

¶1 Whether the Ramsey County District Court abused its discretion in determining that the Appellant committed the offense of Accomplice to Forgery.

¶2 Whether Ramsey County District Court abused its discretion in determining that the Appellant's trial attorney was not ineffective.

STATEMENT OF THE FACTS

¶3 The Appellant, Dylan Saari, was a boyfriend to a girl named Dru Lunday. (Transcript on Appeal, Evidentiary Hearing, June 6, 2016, page 5, hereafter Tr. P.5.) The Appellant's girlfriend, Dru, lives with her mother and her mother's boyfriend, who is the victim of the forgery. (Tr. P.5.) The Appellant was in Lake Region Law Enforcement Center jail for a petition for revocation of probation. (Tr. P.4.) While the Appellant was in jail, Detective Sue Schwab of the Devils Lake Police Department investigated a matter pertaining to the forgery of a check belonging to Dru's step-father. (Tr. P.42.) It began when the Law Enforcement Center received \$3,000 cash from Dru to bond out the Appellant. Id. There was some suspicions as to where she would have come up with the \$3,000 cash bond, so Detective Schwab was asked to investigate. Id. Detective Schwab found that Dru had received the money by passing the forged check at a local bank and had gone through the drive-thru window. (Tr. P.44.) Detective Schwab began listening

1 to the recorded phone calls between the Appellant and his
2 girlfriend, Dru. The Court, in its findings, included the
3 verbatim telephone calls between Mr. Saari and Dru Lunday
4 that took place on October 21m 2014, in its order, found at
5 the Appendix, pages 31-40. The Appellant had been telling
6 Dru to practice her autograph. (Tr. P.46.) He was telling
7 her to "make sure your handwriting is exact, you know". Id.
8 In a later call, it was noted that the Appellant and Dru
9 were on the phone while Dru was passing the forged check at
10 the bank, wherein the Appellant was telling her things to do
11 and say with the teller. (Tr. P.48.)

12 ¶4 After reviewing the conversations between the Appellant
13 and his girlfriend Dru, the District Court found that "If
14 ever there was a case of coercion by an inmate, this is it.
15 The defendant talked this naive eighteen year old girlfriend
16 into the forgery on his behalf. He gave aid with intent
17 that the offense be committed or would be committed. The
18 conversations over the telephone establish intent by the
19 Petitioner". Clearly, based upon a review of the facts
20 presented to it, the District Court made a factual
21 determination that there was sufficient evidence to prove
22 that Dylan Saari committed the offense of Accomplice to
23 Forgery.

24 ¶5 Attorney Scott Thompson had been appointed to represent
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1 the Appellant in regard to the Accomplice to Forgery charge.
2 (Tr. P.24.) He received copies of the reports on November
3 3, 2014, and met with the Defendant at the Law Enforcement
4 Center. (Tr. P.25.) Mr. Thompson negotiated another charge
5 of Possession of a Firearm by a Felon, to be dismissed.
6 (Tr. P.26.) Shortly after Mr. Thompson represented the
7 Appellant on a probation of revocation hearing, he got a
8 message to get in contact with the Appellant at the jail.
9 (Tr. P.28.) In his assessment of the facts, the police
10 report, and the recorded phone calls, Mr. Thompson was of
11 the opinion that it was clearly an appropriate charge of
12 Accomplice to Forgery against the Appellant. (Tr. P.29.)
13 Mr. Thompson noted things such as the Appellant telling Dru
14 what to say to the tellers in order to get bonded out of
15 jail. (Tr. P.29.)
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18 LAW AND ARGUMENT

19 ¶6 The Standard of Review for post-conviction relief
20 proceedings is well established. The trial court's finding
21 of fact in a post-conviction relief trial will not be
22 disturbed on appeal unless the findings of the trial court
23 are clearly erroneous. Broadwell v. State, 2014 ND 6, ¶5,
24 841 N.W.2d 750. Further, a finding is clearly erroneous
25 only if it is induced by an erroneous view of the law, if it
26 is not supported by any evidence, or if there is some
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1 evidence to support it, a review in court is left with a
2 definite and firm conviction that a mistake has been made.

3 Id.

4 ¶7 An accomplice is defined as being a person who may be
5 convicted of an offense based upon the conduct of another
6 when; a) acting with the kind of culpability required for
7 the offense, he causes the other to engage in such conduct;
8 b) with intent that an offense be committed, he commands,
9 induces, procures, or aids the other to commit it ...

10 N.D.C.C., §12.1-03-01.

11
12 ¶8 Forgery is defined as a person is guilty of a forgery
13 ..., if with intent to deceive or harm another ... the
14 person a) knowingly and falsely makes, completes, or alters
15 any writing, or b) knowingly utters or possesses a forged
16 ... writing. N.D.C.C., §12.1-24-01.

17
18 ¶9 In reviewing the facts, the trial court heard the
19 testimony, and reviewed the evidence presented at trial.
20 The Appellant claimed an absence of intent to commit
21 forgery. The Court did review the evidence and the phone
22 calls between the Appellant and his girlfriend. Upon an
23 exhausted review of the evidence, the Court specifically
24 found that this was clearly an intent that a crime be
25 committed, that crime being forgery. Considering the
26 exhausted review of the evidence reviewed by the Court, the
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1 trial court made a clear finding that the Appellant did have
2 the requisite intent, and did commit the offense of
3 accomplice, that by Saari commanded an individual, he
4 procured or aided his girlfriend to pass the forged check.
5 The Appellant has the burden to prove to show that the trial
6 court's finding was clearly erroneous. Based upon the
7 facts, the trial court was correct in it's assessment of the
8 facts, and the intent of the Appellant to command, procure
9 or aid in the forgery of the \$3,000 check.

11 ¶10 The facts are quite clear that Dylan Saari wanted to
12 get bonded out of jail. That his only way of getting out of
13 jail was through his girlfriend bonding him out. So he was
14 telling her to forge the check, how to forge the check, and
15 how to pass the check at the bank. The facts all clearly
16 establish that Dylan Saari did, in fact, commit the offense
17 of Accomplice to Forgery.


19 ¶11 The Brief of Appellant does not make any argument of
20 ineffective assistance of counsel on the part of Mr.
21 Thompson, Dylan Saari's trial attorney. Mr. Thompson gave
22 testimony at trial, and came to the opinion, based upon his
23 review of the evidence, that Mr. Saari would clearly be
24 guilty of accomplice. That is the same opinion that the
25 trial court found in it's review of the evidence. Clearly,
26 Mr. Thompson's representation did not fall below the
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1 threshold of ineffective assistance of counsel.

2 CONCLUSION

3 ¶12 As the Appellant failed to show that the trial court
4 was clearly erroneous in determining that the Appellant was
5 properly convicted of Accomplice to Forgery, and that trial
6 counsel was not ineffective, the State requests that this
7 Court affirm the District Court order.
8

9 Dated this 30th day of November, 2016.

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Supreme Ct. No. 20160263

AFFIDAVIT OF SERVICE BY MAIL

Connie Jones, being first duly sworn, deposes and says that on the 1st day of

December, 2016, she served the attached copy of Brief of Appellee regarding the above reference matter upon Samuel A. Gereszek by placing a true and correct copy thereof in an envelope addressed as follows:

Samuel A. Gereszek
HAMMARBACK & SCHEVING, P.L.C.
308 DeMers Avenue
East Grand Forks, MN 56721

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 1st day of December, 2016.



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

(SEAL)
LONNIE W OLSON
Notary Public
State of North Dakota
My Commission Expires Apr. 4, 2020