

**IN THE SUPREME COURT  
STATE OF NORTH DAKOTA**

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Adam Scott Hamilton,	)	Supreme Court No. 20160276
	)	
Petitioner/Appellant,	)	
	)	District Court No. 18-2015-CV-01190
vs.	)	
	)	
State of North Dakota,	)	
	)	
Respondent/Appellee.	)	

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ON APPEAL FROM DENIAL FROM CIVIL JUDGMENT  
FROM THE DISTRICT COURT  
FOR THE NORTHEAST CENTRAL JUDICIAL DISTRICT  
GRAND FORKS COUNTY, NORTH DAKOTA  
THE HONORABLE LOLITA G. HARTL ROMANICK PRESIDING

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**BRIEF OF APPELLEE**

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**STATEMENT OF THE ISSUE**

- I. Whether the district court properly denied Hamilton's request for transport?**

## STATEMENT OF THE FACTS

[¶1] Hamilton was convicted on October 1, 2012, of Continuous Sexual Abuse of a Child and sentenced to 30 years in prison. A post-conviction relief petition was filed on July 14, 2015. Post-Conviction Relief Application, July 14, 2015. Hamilton was appointed counsel on July 24, 2015. Appointment of Mark Beauchene, July 24, 2015. Hamilton filed a request for transport citing no legal support or argument on July 16, 2016. Request for Transport, January 6, 2016. The request was denied on January 25, 2016. Order Denying Request for Transport, January 25, 2016. Hamilton's attorney filed an affidavit and exhibit from the North Dakota Department of Corrections on February 5, 2016. The district court issued an order permitting Hamilton's testimony by telephone to comply with the North Dakota Department of Corrections' policy on February 8, 2016. Order for Adam Hamilton to Testify Telephonically. There was no request made for Interactive Video testimony. An evidentiary hearing was held on February 10, 2016. Hamilton testified telephonically. During his telephonic testimony his attorney learned of "medical" documents Hamilton felt were relevant. Post-Conviction Relief Hearing Tr. pp. 42-43. The court permitted Hamilton's attorney to obtain these documents post-hearing and to file them with the district court review subject to the State's objections. Post-Conviction Relief Hearing Tr. p. 43. The exhibit was filed on February 19, 2016. Exhibit 1, Part One, Exhibit 1, Part Two. The State/Respondent objected to the document on February 29, 2016. Respondent's Objection to Petitioner's Exhibit 1, February 29, 2016. Written closings were filed on March 24, 2016. Subsequently the district court issued an order denying post-conviction relief on June 13, 2016. Memorandum Decision and Order Denying Petitioner's

Application for Post-Conviction Relief, June 13, 2016. Hamilton appeals the order denying his request for transport.

## LAW AND ARGUMENT

### **I. The district court properly denied Hamilton's request for transport.**

[¶2] Post-conviction relief hearings are civil in nature and are governed by the North Dakota Rules of Civil Procedure. Patten v. State, 2008 ND 29, ¶8, 745 N.W.2d 626. A trial court's findings of fact in a post-conviction relief proceeding will not be disturbed unless clearly erroneous. Id. In the case at hand, Hamilton appeals an order denying transportation from the North Dakota Department of Corrections to the civil post-conviction relief evidentiary hearing. Hamilton does not appear to be appealing the order denying post-conviction relief. This Court has stated that questions of law are reviewed under a de novo standard, findings of fact under a clearly erroneous standard, and discretionary rulings under an abuse of discretion standard. Dunnuck v. Dunnuck, 2006 ND 247, ¶6, 724 N.W.2d 124. In this case, there was no controlling legal precedent provided to the district court related to the request for a transport order. Instead, the decision by the district court fell within its reasoned discretion as to the scope and length of the evidentiary hearing. This Court has stated that the district courts have wide discretion over the mode and order of presenting evidence. State v. Klein, 1999 ND 76, ¶12, 593 N.W.2d 325. Therefore, the district court's order denying Hamilton's request for a transportation order should be reviewed under an abuse of discretion standard. An abuse of discretion only occurs when the district court acts in an arbitrary, unreasonable, or unconscionable manner, or when its decision is not the product of a rational mental process leading to a reasoned determination. Flattum-Riemers v. Flattum-Riemers, 2003 ND 70, ¶7; 660 N.W.2d 558. An abuse of discretion by the district court is never assumed, and the burden is on the party seeking relief affirmatively to establish it. Id.

¶3] Hamilton's complaint is that the district court improperly denied the request for a transport order. The district judge issued an order denying Hamilton's request for a transport order on January 25, 2016, indicating that Hamilton cited no authority establishing a right for personal appearance, nor could the court find such authority. The court indicated that there were means in which Hamilton could testify, through interactive video television. Order Denying Request for Transport, January 25, 2016. Subsequently, Hamilton's attorney, Mark Beauchene, submitted an affidavit and Exhibit from the North Dakota Department Corrections. No request was made by Hamilton for interactive video testimony. Hamilton testified by telephone. On appeal Hamilton claims that "he tried to put into evidence a 290 page exhibit". Further, Hamilton asserts that had he been able to consult with his attorney privately during the hearing, they could have presented the exhibit in a manner that would have been it relevant and admissible. To the contrary, the exhibit was filed in Odyssey February 19, 2016. Further, Hamilton and his attorney had extensive time to discuss the case prior to the hearing as Mr. Beauchene was appointed on July 24, 2015, and the hearing was not held until February 10, 2016. Additionally, Hamilton was given time to specifically discuss the relevance and admissibility of the document with his attorney after the hearing and prior to the time written closings were filed on March 24, 2016. Any important argument with respect to the exhibit could have been included in Hamilton's written closing. Finally, it is important to note that the district court specifically referenced the exhibit in her order denying post-conviction relief. Memorandum Decision and Order Denying Petitioner's Application for Post-Conviction Relief, ¶¶18, 23-24, June 13, 2016. As such, it is apparent that the exhibit was admitted over the State's written objection.

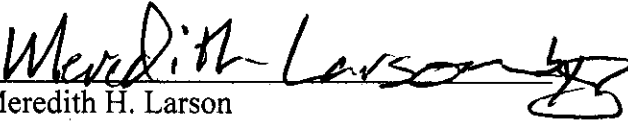


[¶4] On appeal, Hamilton must establish that the district court's order denying his request for transportation was an abuse of discretion, meaning arbitrary, unreasonable, or unconscionable manner, or not being the product of a rational mental process leading to a reasoned determination. However, Hamilton never cited any legal support or argument for a right to transportation at the district court level or on appeal. This Court has repeatedly stated that courts are not ferrets and it will not consider an argument that has not been adequately articulated, supported, and briefed. Holden v. Holden, 2007 ND 29, ¶ 7, 728 N.W.2d 312. Upon being provided with no legal authority or argument with a request for transport, and after finding no legal authority herself, the district court judge exercised her discretion for the mode, scope, and length of the evidentiary hearing and testimony. Further, complained of prejudice is non-existent. The exhibit was entered, considered, and Hamilton did, in fact, have ample time before the hearing and prior to written closing arguments being filed to discuss the persuasiveness and relevance of the exhibit and to provide that information to the court. Therefore, the district court's decision should be affirmed.

**CONCLUSION**

[¶5] For the above-stated reasons, Hamilton's appeal should be denied.

DATED this 10<sup>th</sup> day of November, 2016.

  
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AFFIDAVIT OF SERVICE  
BY EMAIL  
SA#120328

STATE OF NORTH DAKOTA )  
 ) SS  
COUNTY OF GRAND FORKS)

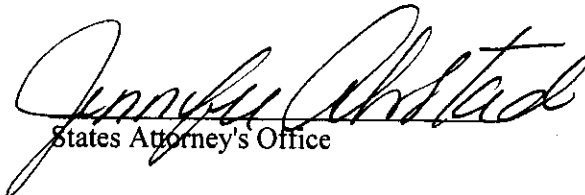
The undersigned, being of legal age, being first duly sworn deposes and says that on the 10<sup>th</sup> day of November, 2016, she served a true and correct copy of the following documents:

**BRIEF OF APPELLEE**

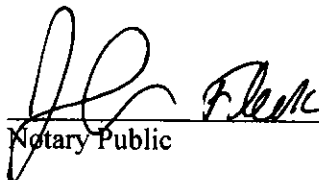
Via electronic mail to:

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At the office of the Grand Forks County States Attorney's Office.

  
States Attorney's Office

Subscribed and sworn to before me this 10 day of November, 2016.

  
Notary Public

