

IN THE SUPREME COURT
STATE OF NORTH DAKOTA

SUPREME COURT NO.: 20160276

Adam Scott Hamilton,

Petitioner and Appellant

-vs-

State of North Dakota,

Defendant and Appellee.

APPEAL FROM THE CIVIL JUDGMENT
NORTH EAST JUDICIAL DISTRICT
GRAND FORKS COUNTY CIVIL. NO. 18-2015-CV-01190
THE HONORABLE LOLITA G. HARTL ROMANICK PRESIDING

PETITION FOR REHEARING

BENJAMIN C. PULKRABEK

ATTORNEY AT LAW
402 - 1st ST. NW
MANDAN, ND 58554
701-663-1929
N.D. State Bar ID No. 02908
PULKRABEK@LAWYER.COM

TABLE OF CONTENTS

Table of Contents	I
Table of Cases	ii
Statement of the Issue	¶1
Nature of the Case	¶2
Issue Presented:	
I. Did the district court’s error in construing North Dakota Supreme Court Admin. R. 52 § 2 (D)(E) effect Mr. Hamilton’s substantial rights?	¶1
Argument	¶3
Conclusion	¶6
Certificate of Service	¶7

TABLE OF CASES, STATUTES AND OTHER AUTHORITIES
TABLE OF CASES

North Dakota Supreme Court Admin. Rule 54 § 2 (D) and (E) . ¶1, 3, 4, 6

STATEMENT OF THE ISSUE

[¶1] ISSUE:

I. Did the district court's error in construing North Dakota Supreme Court Admin. R. 52 § 2 (D)(E) effect Mr. Hamilton's substantial rights?

NATURE OF THE CASE

[¶2] This is a petition to rehear the North Dakota Supreme Courts opinion in the above matter that was filed on March 7th, 2017.

ARGUMENT

[¶3] In this case the Petitioner/Appellant Adam Scott Hamilton's attorney decided to file an "affidavit" requesting relief consistent with the Department of Corrections Guidelines. Mr. Hamilton never agreed with his attorney's request for relief consistent with the Department of Corrections Guidelines. This fact is apparent by his objection in the start of his post-conviction hearing which requested that the hearing comply with North Dakota Supreme Court Admin. R. 52 § 2 (D) and (E).

[¶4] Hamilton didn't receive the precise relief he requested he got the relief over his objection that his attorney requested. Hamilton's objection requested precise relief that is required by North Dakota Supreme Court Admin. R. 52 § 2 (D) and (E). This objection didn't open any door or invite any error. His objection was timely and properly made and should be fully reviewable.

CONCLUSION

[¶5] Rules of Court are supposed to be followed and not broken by judges of that court. The way the North Dakota Supreme Court treat rules now is that the lower courts can disregard any rule and no error is committed unless the Defendant can show beyond a reasonable doubt that the trial would have ended differently.

[¶6] In this case Mr. Hamilton requested at the start of the hearing that the court follow the procedure set out in North Dakota Supreme Court Admin. R. 52 § 2 (D) and (E). That request should have been granted by the district judge.

[¶7] If Mr. Hamilton is at his post conviction hearing appears by telephone during the entire hearing he will be able to ask questions and get answers. After a post conviction trial hearing, where he has missed all but his direct and cross examination he can think of questions he would have asked and then only speculate as to what he believes the witnesses answers would be. Speculated answers will never get him a new trial.

[¶8] For the above and foregoing reasons Mr. Hamilton's Petition for Rehearing should be granted and he should be given a new trial.

DATED this 20th day of March, 2017.

_____/s/Benjamin C. Pulkrabek_____
Benjamin C. Pulkrabek, ID #02908

CERTIFICATE OF SERVICE BY MAIL

[19] The undersigned hereby certifies that she is an employee in the office of Pulkrabek Law Firm and is a person of such age and discretion as to be competent to serve papers.

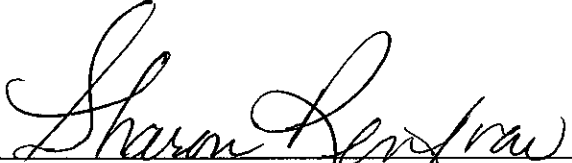
That on March 20th, 2017, she served, by e-mail and mailed a copy of the following:

APPELLANTS PETITION FOR REHEARING

to: Meredith Larson
Grand Forks County States Attorneys Office
Meredith.larson@gfcounty.org

Mailed to: Adam Scott Hamilton
NDSP
P.O. Box 5521
Bismarck, ND 58506

The undersigned further certifies that on March 20th, 2017, she served electronically on the Clerk, North Dakota Supreme Court, the APPELLANTS PETITION FOR REHEARING


Sharon Renfrow, Admin. Legal Assistant
Pulkrabek Law Office