

**Filed 4/10/18 by Clerk of Supreme Court**  
**IN THE SUPREME COURT**  
**STATE OF NORTH DAKOTA**

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2018 ND 88

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Tanner Thorstad, Petitioner and Appellant

v.

State of North Dakota, Respondent and Appellee

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No. 20170427

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Appeal from the District Court of Morton County, South Central Judicial District, the Honorable Cynthia M. Feland, Judge.

AFFIRMED.

Per Curiam.

Mark C. Sherer, Dickinson, ND, for petitioner and appellant; submitted on brief.

Gabrielle J. Goter, Assistant State's Attorney, Mandan, ND, for respondent and appellee; submitted on brief.

**Thorstad v. State**  
**No. 20170427**

**Per Curiam.**

[¶1] Tanner Thorstad appealed from the district court’s order summarily dismissing his application for post-conviction relief. Thorstad argues the court erred in summarily dismissing his application because he received ineffective assistance of counsel. He claims his attorney failed to properly present his plea agreement to the court and his sentence was harsher than the sentence he agreed to. The district court granted the State’s motion to summarily dismiss, concluding Thorstad failed to present competent and admissible evidence to raise an issue of material fact and establish both prongs of the two-prong test for ineffective assistance of counsel from *Strickland v. Washington*, 466 U.S. 668 (1984). We summarily affirm under N.D.R.App.P. 35.1(a)(6) and (7). See *Leavitt v. State*, 2017 ND 173, ¶¶ 7, 16, 898 N.W.2d 435 (holding a post-conviction applicant must present competent and admissible evidence on both prongs of the *Strickland* test to avoid summary dismissal of an ineffective assistance of counsel claim).

[¶2] Gerald W. VandeWalle, C.J.  
Jerod E. Tufte  
Daniel J. Crothers  
Lisa Fair McEvers  
Jon J. Jensen