

IN THE SUPREME COURT

STATE OF NORTH DAKOTA

SUPREME COURT NO.: 20180078

Jason Wayne Oien,)
 Petitioner/Appellant,)
)
 vs.)
)
State of North Dakota,)
 Respondent/Appellee)

APPEAL FROM THE CRIMINAL JUDGMENT
EAST CENTRAL JUDICIAL DISTRICT
CASS COUNTY CRIMINAL. NO. 09-2017-CR-02758
THE HONORABLE THOMAS R. OLSON PRESIDING

BRIEF

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 |
| Abbreviations | iii |
| Statement of the Issues | ¶1 |
| Nature of the Case | ¶2 |
| Statement of Facts | ¶13 |
| Issue Presented: | |
| I. Did the trial judge err when he denied Plaintiff, Jason Wayne Oien’s Petition for Post Conviction Relief? | ¶1, 18 |
| Argument | ¶19 |
| Conclusion | ¶25 |
| Certificate of Service | ¶26 |

TABLE OF CASES, STATUTES AND OTHER AUTHORITIES
TABLE OF CASES

| | |
|--|--------|
| Blackcould v. State | |
| 2018 ND 50, 907 NW2d 758 [5] | ¶19,20 |
| Flanagan v. State | |
| 2006 ND 76, ¶9, 712 NW2d 602. | ¶19 |
| Klose v. Roe | |
| 2005 ND 192, ¶10, 705 N.W.2d 809 | ¶19 |
| Heckelsmiller v. State | |
| 2004 ND 191, ¶5, 687N.W.2d 454 | ¶19,20 |
| Roe v. State | |
| 2017 ND 65, ¶¶ 4-5 , 2891 N.W.2d 745. | ¶19 |
| Clark v. State | |
| 2008 ND 234, ¶11, 758 N.W.2d 900 | ¶19 |
| Strickland v. Washington | |
| 466 U.S. 668, 697, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984) | ¶20 |
| | |
| NDR of Crim.P.Rule 35 | ¶13 |
| North Dakota Rules of Civil Procedure | ¶19 |
| N.D.R.Civ.P. 52(a) | ¶19 |

ABBREVIATIONS

N.D.R.Civ.P: North Dakota Rules of Civil Procedure
NDR of CrimP: North Dakota Rules of Criminal Procedure

Transcript - T.
Appendix - App.
Page - P.
Pages - Pgs.
Line - L.

STATEMENT OF THE ISSUES

[¶1] ISSUES:

I. Did the trial judge err when he denied Plaintiff, Jason Wayne Oien's Petition for Post Conviction Relief?

NATURE OF THE CASE

[¶2] On September 18, 2017 Petitioner/Appellant Jason Wayne Oien (Mr. Oien) filed an application for Post Conviction Relief.

[¶3] The judge assigned to his case was the Honorable Thomas R. Olson.

[¶4] The Respondent/Appellee State of North Dakota filed an answer on the 27th of September, 2017.

[¶5] Mr. Oien applied for court appointed counsel and court appointed counsel was appointed for him.

[¶6] The Post Conviction Hearing was held on February 9, 2018.

[¶7] The Court issued a Memorandum and Order denying Mr. Oien Post Conviction Relief on February 13, 2018.

[¶8] Judgment was entered denying Post Conviction Relief on February 22, 2018.

[¶9] A Notice of Appeal was filed on February 26, 2018 and a Notice of Filing the Notice of Appeal was filed on the same date.

[¶10] A Second Notice of Appeal was filed on March 19, 2018 and a Notice of Filing the Notice of Appeal was filed on the same date.

[¶11] The Clerk's Certificate of Appeal was filed on April 13, 2018.

[¶12] This matter is now before the North Dakota Supreme Court.

STATEMENT OF FACTS

[¶13] Petitioner/Appellant Jason Wayne Oien (Mr. Oien) filed a Post Conviction Application in the district court in Cass County, North Dakota on September 21, 2017. That application stated that he had a prior conviction in Case No. 09-2015-CR-01669 for

manslaughter and two separate convictions for criminal conspiracy he had also made a Rule 35 NDR of CrimP to correct his sentence.

[¶14] The post conviction application was heard on February 9, 2018 before Thomas R. Olson, District Judge. At that hearing Mr. Oien called two witnesses Rhiannon Lorraine Gorham and Jessica Ahrendt. They were attorneys that had represented him in the district court. Both testified about what they had done in their representation of Mr. Oien when his case was in the district court.

[¶15] The State cross examined both of these witnesses. Then it came time for the State to call witnesses and the State decided not to call any.

[¶16] When the hearing ended, the trial judge took the matter under advisement and said he was going to decide the matter as soon as he could.

[¶17] Judge Olson's Order for Judgment and Judgment denying Mr. Oien any post conviction relief were entered February 15, 2018.

ISSUES

[¶18] **I. Did the trial judge err when he denied Plaintiff, James Wayne Oien's Petition for Post Conviction Relief?**

ARGUMENT

[¶19] According to *Blackcloud vs State* 2018 ND 50, 907 NW2d 758 [5] The standard of review for a claim of ineffective assistance of counsel in a post-conviction proceeding is well established:

Post-conviction relief proceedings are civil in nature and governed by the North Dakota Rules of Civil Procedure. *Flanagan v. State*, 2006 ND 76, ¶9, 712 N.W.2d 602. Whether a petitioner received ineffective assistance of counsel is mixed question of law and fact and is fully reviewable on appeal. *Klose v. State* 2005 ND 192, ¶10, 705 N.W.2d 809. Under N.D.R.Civ.P. 52(a), the district court's findings

of fact will not be disturbed on appeal unless clearly erroneous. “A finding of fact is clearly erroneous if it is induced by an erroneous view of the law, if it is not supported by any evidence, or if, although there is some evidence to support the finding, a reviewing court is left with a definite and firm conviction a mistake has been made.” Heckelsmiller v. State, 2004 ND 191, ¶5, 687 N.W.2d 454.

Roe v. State, 2017 ND 65, ¶¶ 4-5, 891 N.W.2d 745 (quoting Clark v. State, 2008 ND 234, ¶ 11, 758 N.W.2d 900).

[¶20] Blackcloud states that:

An applicant for post-conviction relief who claims ineffective assistance of counsel must demonstrate: (1) his counsel’s representation “fell below an objective standard of reasonableness”; fell below an objective standard of reasonableness”; and (2) he was prejudiced by his counsel’s representation. *Id.* A district court should dispose of an ineffective assistance of counsel claim without reaching the merits of the first prong if the applicant fails to establish prejudice. Heckelsmiller v. State, 2004 ND 191, ¶4, 687 N.W.2d 454 (quoting Strickland v. Washington, 466 U.S. 668, 697, 104 S.Ct. 2052, 80 L.Ed2d 674 (1984)).

[¶21] At Mr. Oien’s Post Conviction Hearing in the district court, he called two witnesses Rhiannon Gorham and Jessica Ahrendt. These two witnesses were two of the attorneys that represented Mr. Oien during the investigatory stages of his case and during his Alford Hearing.

[¶22] Attorney Ahrendt’s representation of Mr. Oien dealt mainly with the States dangerous special offender filing against him. Attorney Gorham’s representation of Mr. Oien dealt with all the other issues in Mr. Oien’s case. These issues included investigation and interviewing State’s witnesses, reviewing police reports, finding weaknesses in the State’s case, and the fact that State’s witness statements not only contradicted what others said about the facts in his case but also contradicted what that witnesses had said in his or her prior statements about this case.

[¶23] Ms. Gorham's statements about her conversations with Mr. Oien prior to convincing him to do an Alford Plea indicate Mr. Oien didn't want to plead and wanted to go to trial.

[¶24] Ms. Gorham's testimony about the problems with the State's case indicate that she couldn't and didn't know what the result would be if Mr. Oien had gone to trial.

CONCLUSION

[¶25] Mr. Oien's attorneys talked and convinced him into agreeing to an Alford Hearing and not going to trial. Had he gone to trial there is a good possibility he would have been found not guilty.

DATED this 7th day of May, 2018.

/s/ Benjamin C. Pulkrabek
Benjamin C. Pulkrabek, ID #02908
Attorney at Law
402 - 1st St. NW
Mandan, ND 58554
701-663-1929
Pulkrabek@lawyer.com

