

IN SUPREME COURT

STATE OF NORTH DAKOTA

State of North Dakota,)	
)	
Plaintiff and Appellee,)	
)	Supreme Court No. 20180127
v)	District Court No. 27-2017-CR-00673
)	
Falesteni Ali Abuhamda,)	
)	
Defendant and Appellant.)	

APPELLANT’S PETITION FOR REHEARING

APPEAL FROM DISTRICT COURT ORDER DENYING MOTION TO DISMISS
AND SUPPRESS EVIDENCE ENTERED ON OCTOBER 18, 2017
MCKENZIE COUNTY JUDICIAL DISTRICT
THE HONORABLE ROBIN A. SCHMIDT, PRESIDING

Dated this 7th day of March, 2019.

/s/ Deanna F. Longtin
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**ATTORNEY FOR DEFENDANT/
APPELLANT**

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[¶1.] Statement of Issues Presented for Review

[¶2.] Whether this Court should grant the Appellant's Petition for Rehearing.

[¶3.] Argument

[¶4.] a. This Court should grant the Appellant’s Petition for Rehearing because there was no dispute as to the order being appealed through the conditional plea and the Appellant was not required to provide the transcript from the change of plea hearing.

[¶5.] The Appellant, Falesteni Ali Abuhamda, files this Petition for Rehearing. This Petition is timely under N.D.R.App.P. 40(a)(1) as the Opinion and Judgment were entered on February 21, 2019. This Petition for Rehearing pertains only to the affirmation of Count 4.

[¶6.] The Opinion of the Supreme Court affirmed Count 4 because the Order Deferring Imposition of Sentence does not state the plea is conditional and did not specify the issues reserved for appeal. State v. Abuhamda, 2019 ND 44, ¶ 11.

[¶7.] North Dakota Rules of Appellate Procedure 40(a)(4)(C) grants this Court the power to “issue any other appropriate order.” The Appellant is asking this Court to grant his Petition for Rehearing and issue an appropriate order allowing him to supplement the record with a transcript from the change of plea hearing held on March 2, 2018.

[¶8.] The Appellant is asking that he be allowed to supplement the record in this case because the State did not dispute the Appellant’s statement that the conditional plea on Count 4 was meant to appeal the Order Denying the Motion to Dismiss and Suppress entered on October 18, 2017 and make any claim that the Appellant’s statement was not the agreement. There was no dispute on brief or at oral argument.

[¶9.] The Appellant believed the facts presented on brief and at oral argument were sufficient because there was no dispute or argument from the State regarding his statements indicating the bases of the plea agreement conditions, and that

therefore, the change of plea hearing transcript was not necessary. However, the Opinion of this Court has made the transcript a necessity as the absence of the terms of the conditional plea is what lead the Supreme Court to affirm the order on Count 4.

[¶10.] The Appellant further states that there was no requirement for him to provide the transcript from the change of plea hearing as it was not an evidentiary hearing. N.D.R.App.P. 10(b)(1). “If an appeal is taken in a case in which an evidentiary hearing was held, the appellant must order a transcript of the proceedings” Id. The Appellant did order the transcript of the evidentiary hearing as required but did not order one for the change of plea hearing as it was not required under this rule.

[¶11.] Furthermore, N.D.R.App.P. 10(h) states as follows,

“Correction or Modification of Record.

(1) If any difference arises about whether the record truly discloses what occurred in the district court, the difference must be submitted to and settled by the district court and the record conformed accordingly.

(2) If anything material to either party is omitted from or misstated in the record by error or accident, the omission or misstatement may be corrected and a supplemental record may be certified and forwarded:

(A) on stipulation of the parties; or

(B) by the district court before or after the record has been forwarded.

The supreme court, on proper suggestion or of its own initiative, may direct that an omission or misstatement be corrected, and, if necessary, that a supplemental record be certified and transmitted. All other questions as to the form and content of the record must be presented to the supreme court.”

[¶12.] There was no difference between the statements of the Appellant and the State as to what occurred during the change of plea hearing. However, a material omission has been made as the Order Deferring Imposition of Sentence failed to recite the order to be appealed. Therefore, the Appellant is asking that the record be supplemented by the transcript from the change of plea hearing as that hearing and transcript are a part of this record. This is not additional evidence that is not a part of the record before the District Court. This is a transcript that is very much a part of the record but was not required to be submitted on appeal.

[¶13.] Conclusion

[¶14.] As per the foregoing law and argument, the Appellant respectfully requests the Court grant his Petition for Rehearing and issue an appropriate order to supplement the record with the transcript from the change of plea hearing held on March 2, 2018, so that the Court can make a determination on the entire recorded facts of this case, including the oral representations made in District Court.

Respectfully submitted, this 7th day of March, 2019.

/s/ Deanna F. Longtin

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CERTIFICATE OF SERVICE

Deanna F. Longtin, attorney at law, being of legal age, being first duly sworn certifies that on the 7th day of March, 2019, she served true and correct copies of the following documents:

1. APPELLANT’S PETITION FOR REHEARING

Electronically through email to:

Ty Skarda, State’s Attorney
mcsa@co.mckenzie.nd.us

Dated this 7th day of March, 2019.

/s/ Deanna F. Longtin

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