

IN THE SUPREME COURT
STATE OF NORTH DAKOTA
Supreme Court No. 201800191

Eric Lance Sabot,)
)
 Plaintiff/Appellant,)
)
 v.)
)
 The State of North Dakota,)
)
 Defendant/Appellee,)

.....
BRIEF OF APPELLEE
.....

Appeal from the Civil Judgment
South Central Judicial District
Burleigh County Civil No., 08-2018-CV-00315
The Honorable Dann Greenwood Presiding

Ladd R. Erickson (ID #05220)
McLean County State's Attorney
Attorney for Plaintiff-Appellant
P. O. Box 1108
Washburn, ND 58577
(701) 462-8541
Eservice: 28SA@nd.gov

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TABLE OF AUTHORITIES

<u>STATE CASES:</u>	<u>Paragraph</u>
<u>Morel v. State</u> , 2018 ND 141 [¶7)	9
<u>State v. \$3260.00</u> , 2018 ND 112	9
 <u>OTHER AUTHORITIES:</u>	
N.D.R.Crim.P 52(a)	9
N.D.R.Crim.P 56(a)	9

¶ 1

STATEMENT OF THE CASE

¶ 2 This is an appeal from a trial court order granting the State’s motion for summary judgment on a petition for post-conviction relief.

¶ 3

STATEMENT OF FACTS

¶ 4 The State concurs with the petitioner’s statement of facts.

¶ 5

ISSUE

¶ 6 Whether The Trial Court Properly Granted The State’s Motion For Summary Judgment?

¶ 7

LAW AND ARGUMENT

¶ 8 In its order granting the State’s motion for summary judgment, the trial court crystallized the problems within both the petition for post-conviction relief and response to the State’s motion for summary judgment:

[2] Both in the initial Application of Post-Conviction Relief and in the response to the State’s motion for summary disposition, Eric Lance Sabot sets forth what the Court would characterize as conclusory allegations. In the Application for Post-Conviction Relief pursuant, Sabot merely states verbatim the language of N.D.C.C. § 29-32.1-01(1) (a , d, e, & h) and adds reference to the Fourteenth Amendment, i.e. equal protection. In addition, he asserts ineffective assistance of counsel. It should be noted both generally and in the context of his claim that evidence not previously presented exists, that Sabot speaks to that in a general sense only. However, he has not provided any affidavits or other admissible evidence in support of his application or in support of his response to the motion for summary disposition. Furthermore, many of Sabot’s arguments were, or could have been, raised in his unsuccessful appeal to the North Dakota Supreme Court in State v. Sabot, 2017 ND 280, 904 N.W. 2d 469. (App. 39-40)

.....

[6] Whereas Sabot claims in his application that his attorney failed to call witnesses about whom he’d been advised, there are no affidavits which provide evidence about which those witnesses might have testified. Whereas Sabot claims the Court and counsel made statements or took actions depriving him of a fair trial, no affidavits about the substance of such statements or actions, or transcripts of the proceedings to support such, are provided.

[7] What this Court recalls about the underlying criminal action, without benefit of a transcript, is that the State moved the court, in limine, to preclude the admission of certain testimony and/or evidence in the jury trial. However, the State offered to waive its objections to such evidence, and give Sabot full and unrestricted opportunity to present any evidence he wished to offer if Sabot would waive his right to a jury and agree to a bench trial. It is the Court's recollection that Sabot accepted that offer, waived his right to jury trial, and agreed to a bench trial.

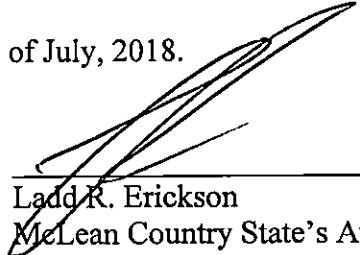
[8] Based upon Sabot's failure to support his application with competent, admissible evidence, the Court concludes that Sabot did not meet his minimal burden and failed to raise an issue of material fact such that an Order for Summary Disposition is appropriate. (App. 41-42)

¶ 9 In his appeal, Sabot relies on State v. \$3260.00, 2018 ND 112. In that case, the Court addressed summary judgment procedures as they relate to a forfeiture statute that contained its own procedures. In this case, there are no such rule/statute conflicts for the Court to resolve. Instead, under Rule 56(a) N.D.R.CivP. the State was authorized to motion for summary judgment without filing attested facts. In response, Sabot offered no support for what the trial court had found as evidence devoid bare boned conclusions. As Sabot cited in his brief, "In post-conviction relief proceedings, a district court's findings of fact will not be disturbed unless they are clearly erroneous under N.D.R.Civ.P 52(a)." Morel v. State, 2018 ND 141 [¶7]. Sabot does not argue factual findings of the trial court in this case were erroneous.

¶ 10 CONCLUSION

¶ 11 The State respectfully requests the Court affirm the trial courts granting of summary judgment in this case.

¶ 12 Respectfully submitted this 16 day of July, 2018.



Ladd R. Erickson
McLean Country State's Attorney

P. O. Box 1108
Washburn, ND 58577
Telephone: 701 462-8541
lrerickson@nd.gov; malbers@nd.gov

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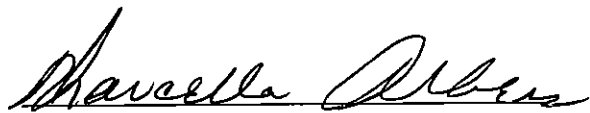
State of North Dakota)
) ss:
 County of McLean)

Marcella Albers, being first duly sworn, deposes and says she is more than 18 years of age and that on the 16th day of July, 2018, she served the following:

BRIEF OF APPELLEE

by electronic mail addressed as follows:

Benjamin Pulkrabek
Attorney for Plaintiff-Appellant
pulkrabek@lawyer.com


Marcella Albers

Subscribed and sworn to before me this 16th day of July, 2018.

KARISSA K RITTENBACH
Notary Public
State of North Dakota
My commission expires Dec 10, 2021


Notary Public