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## **ABBREVIATIONS**

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

**STATEMENT OF THE ISSUES**

[¶1] ISSUES:

**I. Did the trial judge err he granted the State's Motion for Summary Judgment of Mr. Sabot's Post Conviction Relief Application?**

## **NATURE OF THE CASE**

[¶2] Defendant/Appellant Eric Lance Sabot was convicted of terrorizing in Case No. 08-206-CR-001385.

[¶3] He is now asking the court to review a denial of his post-conviction relief action which he filed on 2/1/2018.

[¶4] The State filed a response to Mr. Sabots application for post-conviction relief on 2/5/2018.

[¶5] On 4/4/2018 the State filed a Motion for Summary Disposition. Mr. Sabot responded to the Motion for Summary Disposition on 4/4/2018.

[¶6] The Court granted the State's Summary Disposition of Mr. Sabot's post-conviction relief application.

[¶7] Mr. Sabot filed a Notice of Appeal on 5/15/2018.

[¶8] The Notice of Filing the Notice of Appeal was filed on 5/15/2018.

[¶9] No court hearings were ever held in the case, so no transcript has been ordered.

[¶10] This case is now before the North Dakota Supreme Court.

## **STATEMENT OF FACTS**

[¶11] Defendant/Appellant Eric Lance Sabot filed an Application for Post-Conviction Relief on 2/1/2018 with the Burleigh County District Court in Bismarck, North Dakota in Case No. 08-2018-CV-00315. In Mr. Sabots Post Conviction Application he listed 11 grounds as reasons for the application.

[¶12] The State made a Motion for Summary Disposition that was filed on 4/4/2018. Mr. Sabot responded to the Motion for Summary Disposition and filed it on 4/4/2018 with a request to transport.

[¶13] ON 4/6/2018 the court granted Summary Judgment. This Judgment was followed by cancellation of the Post Conviction Hearing which was filed on 4/11/2018.

[¶14] Mr. Sabot then filed a Notice of Appeal on 5/5/2018.

### **ISSUES**

[¶15] **I. Did the trial judge err when he granted the State's Motion for Summary Judgment of Mr. Sabot's Post Conviction Relief Application?**

### **ARGUMENT**

[¶16] According to Morel v State, 2018 ND 141 [¶7] The standard of review for an

application for post-conviction relief is well-established:

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). A finding of fact is clearly erroneous if it is induced by an erroneous view of the law, if it is not supported by the evidence, or if, although there is some evidence to support it, a reviewing court is left with a definite and firm conviction that a mistake has been made. Questions of law are fully reviewable on appeal of a post-conviction proceeding.

[¶17] In the case now before the court the trial judge granted the States Motion for Summary. According to State vs \$3260.00 United States Currency, 2018 ND 112:

(¶5) On appeal, the State argues the district court erred by not holding an evidentiary hearing on the forfeiture and granting Newhauser's

motion for summary judgment. This Court reviews orders on motions for summary judgment as follows:

In determining whether summary judgment was appropriately granted, we must view the evidence in the light most favorable to the party opposing the motion, and that party will be given the benefit of all favorable inferences which can reasonably be drawn from the record. On appeal, this Court decides whether the information available to the district court precluded the existence of a genuine issue of material fact and entitled the moving party to judgment as a matter of law.

[¶18] In Defendant/Appellant, Eric Lance Sabot's Application for Post-Conviction Relief he stated 11 grounds as reasons why he filed his Application for Post Conviction Relief.

[¶19] After Mr. Sabot made out his Application for Post-Conviction Relief he applied for and was given a court appointed attorney. That attorney was well aware of the State's Motion for Summary Disposition. When he wrote Mr. Sabot's response he didn't make or file any affidavits. All he put in his response were the claims Mr. Sabot is claiming in paragraphs (2)(3)(4)(5)(6)(7) and (8) App.P. 36

[¶20] What signed pleading represent to the court is set out in NDR of Civ.P. 11(a)(b)(1)(2)(3)(4).

**Rule 11. Signing of pleadings, motions and other papers; representation to court; Sanctions.**

(a) **Signature.** Every pleading, written motion, and other paper must be signed by at least one attorney of record in the attorney's name or by a party personally if the party is self-represented. The paper must state the signer's address, electronic mail address for electronic service, and telephone number. If the signer is an attorney, the paper must contain the attorney's State Board of Law Examiners identification number. Unless a rule or statute specifically states otherwise, a pleading need not be verified or accompanied by an affidavit. The court must strike an unsigned paper unless the omission is promptly corrected after being called to the attorney's or party's attention.

(b) **Representations to the court.** By presenting to the court a pleading, written motion, or other paper, whether by signing, filing, submitting, or later advocating it, an attorney or self-represented party certifies that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances:

(1) it is not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation;

(2) the claims, defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law;

(3) the factual contentions have evidentiary support or will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and

(4) the denials of factual contentions are warranted on the evidence or are reasonably based on belief or a lack of information.

[¶21] According to Mr. Sabot's court appointed attorney in paragraph [¶10], Mr. Sabots claims standing alone are sufficient to warrant an evidentiary hearing on Mr. Sabot's Application for Post-Conviction Relief. Such a conclusion, is supported by Rule 11 NDR of Civ.P. because all his claims were signed by Mr. Sabot and according to Rule 11(b)(3) of the NDR of Civ.P. the factual contentions have evidentiary support or will likely have evidentiary support after a reasonably opportunity for further investigation or discovery. Therefore the trial judge should not have summarily dismissed Mr. Sabot's Post Conviction Petition for Relief.

### **CONCLUSION**

[¶22] For the above and foregoing reasons the trial court should have denied the State's Motion for Summary Judgment.

DATED this 20<sup>th</sup> day of June, 2018.

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

**CERTIFICATE OF SERVICE BY MAIL**

[¶23] 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 June 20<sup>th</sup>, 2018, she served, by e-mail and mailed a copy of the following:

**APPELLANTS APPENDIX AND BRIEF**

to: Marina Spahr  
Asst. States Attorney  
marispahr@nd.gov

Mailed to: Eric Lance Sabot  
JRCC  
2521 Circle Dr.  
Jamestown, ND 58401

The undersigned further certifies that on June 20<sup>th</sup>, 2018, she served electronically on the Clerk, North Dakota Supreme Court, the APPELLANTS APPENDIX AND BRIEF.

/s/ Sharon Renfrow  
Sharon Renfrow, Admin. Legal Assistant  
Pulkrabek Law Office

**CERTIFICATE OF SERVICE BY MAIL**

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 June 26<sup>th</sup> , 2018, she served, by e-mail and mailed a copy of the following:

**CORRECTED BRIEF**

to: Marina Spahr  
Asst. States Attorney  
[marspahr@nd.gov](mailto:marspahr@nd.gov)

The undersigned further certifies that on June 26<sup>th</sup> , 2018, she served electronically on the Clerk, North Dakota Supreme Court, the APPELLANTS CORRECTED BRIEF.

/s/ Sharon Renfrow  
Sharon Renfrow, Admin. Legal Assistant  
Pulkrabek Law Office