

IN THE SUPREME COURT

STATE OF NORTH DAKOTA

|                            |   |                            |
|----------------------------|---|----------------------------|
| Julie Roubideaux Lavallie, | ) |                            |
|                            | ) |                            |
| Petitioner/Appellee,       | ) |                            |
|                            | ) |                            |
| vs.                        | ) | Supreme Court No. 20180362 |
|                            | ) |                            |
| State of North Dakota,     | ) |                            |
|                            | ) |                            |
| Respondent/Appellant.)     | ) |                            |

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**APPELLEE'S BRIEF**

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APPEAL FROM THE FINDINGS AND ORDER FOR POST-CONVICTION  
RELIEF ENTERED ON JULY 30, 2018  
BURLEIGH COUNTY DISTRICT COURT  
IN BISMARCK, NORTH DAKOTA  
THE HONORABLE BRUCE HASKELL PRESIDING

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## TABLE OF CONTENTS

|  | Paragraph |
|--|-----------|
| TABLE OF AUTHORITIES   | ii        |
| ISSUES PRESENTED   | iii       |
| STATEMENT OF THE CASE  | 1         |
| STATEMENT OF THE FACTS   | 6         |
| LAW AND ARGUMENT   | 8         |
| I. WHETHER THE COURT ERRED IN GRANTING POST-<br>CONVICTION RELIEF? | 8         |
| CONCLUSION   | 11        |

## TABLE OF AUTHORITIES

### NORTH DAKOTA STATE CASES:

State v. Cummings, 386 N.W.2d 468 (N.D. 1986) 9, 10

### STATUTES:

Section 29-32.1-01(f) N.D.C.C. 6, 8

## **ISSUES PRESENTED**

- I. WHETHER THE COURT ERRED IN GRANTING POST-  
CONVICTION RELIEF?

## **STATEMENT OF THE CASE**

[¶1] On May 8, 2017, a Criminal Judgment was entered against Julie Roubideaux Lavallie (“Lavallie”) wherein she was sentenced to a mandatory twenty (20) year sentence for a third delivery offense of methamphetamine.

[Appendix 3; hereinafter A. 3].

[¶2] On March 19, 2018, Lavallie filed an application for post-conviction relief. [A. 5].

[¶3] On July 30, 2018, the Court issued findings and order granting post-conviction relief. [A. 9].

[¶4] On August 27, 2018, the Court denied a Motion to Reconsider filed by the State. [A. 10].

[¶5] A Notice of Appeal was filed on October 1, 2018 by the State. [A. 11].

## **STATEMENT OF THE FACTS**

[¶6] On or about May 8, 2017, Lavallie was convicted for a third offense delivery of methamphetamine requiring a twenty (20) year mandatory sentence. The charge stemmed from June 26, 2012 through July 9, 2012. The offense occurred prior to the legislature amending the twenty (20) year minimum mandatory sentence to a ten (10) year mandatory sentence for a third offense. On March 19, 2018, Lavallie filed for post-conviction relief under NDCC § 29-32.1-01(f) arguing that a significant change in the substantive or procedural law has occurred which, in the interest of justice should be applied retrospectively.

[¶7] The State opposed the application for post-conviction relief and a hearing was held on July 19, 2018. The Court entered a Findings and Order for Post-Conviction Relief on July 30, 2018, granting post-conviction relief reducing the sentence from a twenty (20) year minimum mandatory sentence to a ten (10) year minimum mandatory sentence subsequent to a significant change in the substantive law that has occurred and in the interest of justice should be applied retrospectively. The State filed a Motion to Reconsider on August 1, 2018 and the Court denied the Motion to Reconsider on August 27, 2018. Consequently, the State filed a Notice of Appeal on October 1, 2018.

## **LAW AND ARGUMENT**

### **I. WHETHER THE COURT ERRED IN GRANTING THE POST-CONVICTION RELIEF?**

[¶8] Lavallie argues that the decision from the District Court should be affirmed. Under NDCC § 29-32.1-01(f) the legislature created a significant change in the substantive or procedural law has occurred which, in the interest of justice should be applied retrospectively. Reducing the mandatory sentence for a third offense delivery of methamphetamine charge from a twenty (20) year minimum mandatory sentence to a ten (10) year minimum mandatory sentence constitutes a significant change in the substantive law that has occurred and in the interest of justice should be applied retrospectively.

[¶9] In the present case the Court stated that “. . . obviously in this case the legislative intent was to reduce the mandatory minimum, and there seems to be a general movement . . . throughout the country to either decriminalize completely or reduce the penalties for drug-related offenses.” [Transcript at

6]. The Court further cited, “we conclude that, unless otherwise indicated by the Legislature, an ameliorating amendment to a criminal statute is reflective of the Legislature’s determination that the lesser punishment is the appropriate penalty for the offense.” State v. Cummings, 386 N.W.2d, 468, 472 (N.D. 1986).

[¶10] “That the Legislature had such an intent seems obvious; nothing is gained by imposing a more severe punishment after the Legislature has determined that a lighter penalty is appropriate. The excess in punishment can serve no other purpose than to satisfy a desire for vengeance . . .” Cummings at 472.

### **CONCLUSION**

[¶11] WHEREFORE, for the reasons stated herein, the Appellee respectfully requests that the Court affirm the District Court’s Order granting Lavallie’s application for post-conviction relief.

Respectfully submitted this 28th day of January, 2018.

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| Julie Roubideaux Lavallie, | )     | Supreme Court No. 20180362        |
|                            | )     |                                   |
| Petitioner/Appellee,       | )     | District Court No. 08-2018-CV-776 |
|                            | )     |                                   |
| vs.                        | )     | <b>CERTIFICATE OF SERVICE</b>     |
|                            | )     |                                   |
| State of North Dakota,     | )     |                                   |
|                            | )     |                                   |
| Respondent/Appellant.      | )     |                                   |
|                            | )     |                                   |
| STATE OF NORTH DAKOTA      | )     |                                   |
|                            | ) ss. |                                   |
| COUNTY OF BURLEIGH         | )     |                                   |

Thomas Glass, the attorney for Petitioner/Appellee in the above action, hereby certifies under N.D.R.Civ.P. 5(f), that on January 28, 2019, he served the attached:

**Appellee’s Brief and Appellee’s Appendix**

upon the following person(s) by emailing a copy of the same to:

Burleigh County States Attorney  
bc08@nd.gov

upon the following person(s) by mailing a copy of the same to:

Julie Roubideaux Lavallie  
% DWCC  
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