

IN SUPREME COURT
STATE OF NORTH DAKOTA

State of North Dakota,

Plaintiff and Appellee

v.

Cody Michael Atkins,

Defendant and Appellant

SUPPLEMENTAL STATEMENT OF INDIGENT DEFENDANT

Case No. 20180411

TRIAL COURT NO. 18-2014-CR-01844



Cody Michael Atkins # 41930
2521 Circle Drive
Jamestown, ND 58401

LAW&ARGUMENT

I. Supplemental Statement of Indigent Defendant.

[¶1] Mr. Atkins raises that there was a conflict of interest with Rhiannon Gorham. Atkins has just found out that his alleged victim's attorney works in the same law firm. (See Exhibit 1). Atkins further just found out that the Grand Forks Public Defender's office has a conflict of interest with Atkins case because they "represented several witnesses listed for the state, in Mr. Atkins case." (See Exhibit 2)

Atkins argues he was prejudiced by this:

- Ms. Gorham refused Charlene Atkins to testify about the messages she sent with Casey Ellis;
- Ms. Gorham failed to argue that this was a motion not a post-conviction; (March 23rd, 2018 Tr. pp. 3-4, lines 23-25, 1-6)
- Ms. Gorham failed to call out the Judge's Bias and prejudice because he had already set his mind that I didn't set forth a "Manifest Injustice" without even hearing any arguments. (See March 23rd, 2018 Tr. pp. 11-12 lines 23-25, 1-2)
- Ms. Gorham also failed to further push the argument when the District Court asked if she had anything. (See August 10, 2018, Tr. p. 51, lines 19-25)
- Further I asked Ms. Gorham how to do a post-conviction on my post-conviction attorney's and she sent me a post-conviction at the Grand Forks County Jail. I told her that they failed to bring up issues that I needed brought up as the Supreme Court can see there is a pending appeal asserting Mr. Atkins receiving ineffective assistance of Counsel.

[¶2] Mr. Atkins asserts that the North Dakota Rules of Professional Conduct Rule 1.7 states:

- (a) A lawyer shall not represent a client if the lawyer's ability to consider, recommend, or carry out a course of action on behalf of the client will be adversely affected by the lawyer's responsibilities to another client or to a third person, or by the lawyer's own interests.
- (b) A lawyer shall not represent a client when the lawyer's own interests are likely to adversely affect the representation.
- (c) A lawyer shall not represent a client if the representation of that client might be adversely affected by the lawyer's responsibilities to another client or to a third person, or by the lawyer's own interests, unless:
 - (1) The lawyer reasonably believes the representation will not be adversely affected; and
 - (2) The client consents after consultation. When representation of multiple clients in a single matter is undertaken, the consultation shall include explanation of the implications of the common representation and the advantages and risks involved.
- (d) Except as required or permitted by N.D.R. Prof. Conduct 1.6, a lawyer shall not use information relating to representation of a client to the disadvantage of a client unless a client who would be disadvantaged consents after consultation.

First Atkins argues that Ms. Gorham should have gotten written consent from him to represent him at the very least. Or Atkins argues that she could have put in for a conflict of interest on his case. Atkins argues that Ms. Gorham had 4 months 18 days between the 2 motion hearing to find or consult with other attorney's in the law firm to see if there was a conflict of interest. Atkins states that she requested the whole file on Atkins on April 3, 2018. Exhibit 1 or 2 should have been in there.

[¶3] Atkins argues that all these issues was critical and would have changed the outcome. First Atkins argues if Charlene Atkins could testify about the messages between Casey Ellis and Charlene Atkins. Atkins could have exceeded the burden but because of this conflict of interest Ms. Gorham knew this would prove his innocence and knew this was very critical testimony because first because it showed Atkins did not commit the alleged crime. Second showed an alternative suspect. Third showed Atkins wasn't present with Casey or Thomas at the alleged time showed Casey's parents would testify that Thomas was by her parents at this alleged time and Cody wasn't with them. Atkins argues that no reasonable juror would have convicted him with all evidence Atkins provided.

[¶4] Mr. Atkins further argues that because of this conflict of interest Atkins was prejudiced because Ms. Gorham didn't argue that this was a Motion not a Post-Conviction. Atkins asserts that this would have changed the outcome because Atkins argues that he met the manifest injustice standard but the court didn't use that standard they used the post-conviction standard of res judica which prejudiced Mr. Atkins from making a fair argument. Further Meredith Larson admitted that there is a different procedure to follow via a violation of Rule 11 then a Post-Conviction. (See Motion Hearing, March 23, 2018 p.3 lines 23, 25)

[¶5] Mr. Atkins further argues that because of this conflict of interest Atkins was prejudiced because the judge had his mind set forth before the hearing even got started with the arguments. (See Motion Hearing March 23rd, 2018 Tr. pp. 11-12 lines 23-25, 1-2) First Atkins brought this up to Ms. Gorham on multiple occasions and she stated that it would not affect the outcome which Atkins argues that the judge is to be open minded per his Rules (See Cannon 2.3 (A,B)) . Atkins argues that if Gorham would have asked the judge to be open-minded because the client was feeling like he wasn't, the judge could have be able to ask Mr. Atkins further questions before the hearing to make Mr. Atkins comfortable instead of him feeling like the judge is working with the prosecution.

[¶6] Atkins argues that Ms. Gorham should have made a final closing argument just arguing that Atkins Motion should not be looked at as a post-conviction. Which caused Atkins prejudice a big conflict of interest.

[¶7] Lastly Atkins argues that Ms. Gorham and Atkins talked about the ineffective assistance of counsel before the August 10, 2018 hearing and just advised the court of the claims further advise the court that Atkins did try to bring up the Rule 11 violation but his post-conviction attorney's wouldn't allow him. Atkins argues that he can't be hybrid counsel therefore can't make any arguments when represented by counsel. (City of Fargo v. Rockwell, 1999 ND 125, ¶ 8, 597 N.W.2d 406.) So Ms. Gorham has an obligation to bring up to the court all argument Atkins has now made.

CONCLUSION

[¶8] Atkins ask this court to take into consideration his supplemental statement and that this conflict of interest created a manifest injustice and a miscarriage of justice.

Cody Atkins

Cody Michael Atkins #41930
2521 Circle Drive
Jamestown, ND 58401

IN THE SUPREME COURT

STATE OF NORTH DAKOTA

State of North Dakota)
Appellee,)
v.)
Cody Michael Atkins)
Appellant,)

SUPREME COURT NO. 20180411
CERTIFICATE OF SERVICE

The undersigned, being of legal age, being first duly sworn deposes and says that on 13 day of February, 2019 he served true and correct copies of the following document(s):

- Supplemental Statement of Indigent Defendant.

And said copies were served upon:

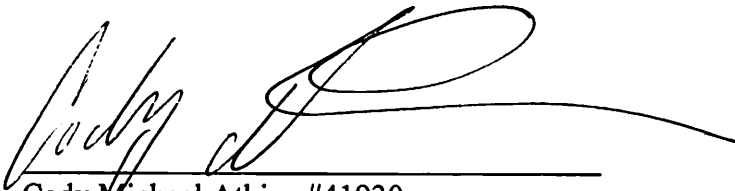
Scott Diamond
3523 45th Street. South Ste 100
Fargo, ND 58104

State's Attorney
124 South 4th Street
Grand Forks, ND 58201

Clerk of Supreme Court
600 E. Boulevard Ave
Bismarck, ND 58505

By placing in an envelope a true and correct copy of each document and depositing the envelope, with sufficient postage, in the U.S. Mail.

Dated this 13 day of February, 2019



Cody Michael Atkins #41930
2521 Circle Drive
Jamestown, ND 58401

RECEIVED

**GRAND FORKS COUNTY
STATES ATTORNEY**

PETER D. WELTE

GRAND FORKS COUNTY COURTHOUSE

Justin T. Breitwieser
Carmell F. Mattison
Jacqueline A Gaddie
Dale Rivard
Faye A. Jasmer
Haley L. Wamstad

M. Jason McCarthy
Andrew C. Eyre
David T. Jones
Nancy D. Yon
Meredith H. Larson

April 22, 2014

Jessica J. Ahrendt
Grand Forks Public Defender's Office
405 Bruce Avenue
Grand Forks, ND 58201

Kid's Attorney

Donald Maggert
42879 County Road 199
Belgarde, MN 56312

RE: In the Interest of [REDACTED]
Court No. 18-2014-JV-00061
SA#129589 *201400905*

Dear Ms. Ahrendt and Mr. Maggert:

As you are aware, a Pretrial Hearing is currently scheduled with respect to the matter involving [REDACTED]. A Pretrial Hearing is scheduled for May 1, 2014, at 9:00 a.m. before the Honorable David H. Vigeland. At that time, the Court seeks inquiry as to whether this matter may be resolved without the necessity of proceeding to trial. It is the position of Grand Forks County Social Services that [REDACTED] remain in the care, custody and control of Grand Forks County Social Services for a period of up to one year from the date of removal. During that time, the parents would be required to participate in services to allow for the safe return of the child to the home. If you are in agreement with this outcome, please contact my office immediately so we may resolve this matter at the Pretrial.

Should this matter proceed to trial, the hearing is scheduled for May 6, 2014 at 9:00 a.m. before Magistrate Vigeland. At the time of trial, the State would intend to call the following witnesses:

Lacy Hartman, Child Protection Worker, Grand Forks County Social Service Center. It is anticipated that Ms. Hartman would testify as an expert in the area of child deprivation as to her investigation of the Report of Abuse/Neglect regarding [REDACTED]. Additionally, it is anticipated that Ms. Hartman would render her opinion with respect to the deprivation of the child.

Kim Anderson, Foster Care Case Manager, Grand Forks County Social Service Center. It is anticipated that Ms. Anderson would testify as an expert in the area of child deprivation as to her work with the family since the child came into foster. Additionally, it is anticipated that Ms. Anderson would render an opinion with respect to deprivation in this matter.

Exhibit 1

SCANNED

Page 2

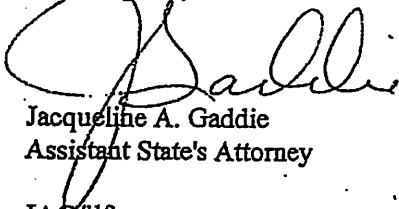
In the Interest of [REDACTED]
April 22, 2014

Detective Steve Conley, Grand Forks Police Department. It is anticipated that Detective Conley will testify with respect to his investigation of the criminal activity that led to the placement of this child into foster care.

Diane Schull, Guardian ad Litem. It is anticipated that the guardian would render an opinion as to her recommendations in this matter in the best interest of the child.

Please advise how you intend to proceed.

Best Regards,



Jacqueline A. Gaddie
Assistant State's Attorney

JAG/jlf

cc: Lacy Hartman, GFCSSC
Kim Anderson, GFCSSC
415 Detective Conley, GFPD
Diane Schull, GAL

26 1400905

NOTICE OF ELIGIBILITY FOR APPOINTED COUNSEL
(CONFLICT RE-ASSIGNMENT)

Name of Attorney: Jay Knudson

Phone: 795-3910

Defendant Information:

Name: Cody Atkins Address: 1108 Dyle Avenue, GF, ND 58203

Phone: (H) 741-0009 (B) _____

County of Case: Grand Forks

Case Number (s) - Offense - Severity: 18-2014-CR-01844 - Gross Sexual Imposition (FAA)

Co-Defendant(s): _____

Victim(s): _____

In Custody: YES NO _____

REASON FOR

CONFLICT: Our office has represented several witnesses listed for the state, in Mr. Atkins' case.

GRANTED

DENIED

By: A. Janssen
(Lead Counsel/Commission Personnel)

Date: 9/19/14



ASSIGNMENT OF COUNSEL - NOTICE-CONFLICT RE-ASSIGNMENT
(Completed by Lead Contractor or Commission Personnel)

NEW Attorney Assigned: Tyler Morrow Address: Tyler Morrow

Phone: 775-0654 Rosenquist & Arnason
301 N 3rd St, 2nd Floor, Ste 300
Grand Forks ND 58201

Date Assigned: 9/19/14

Faxed to: T. Morrow - 772-0055
(FAX to Conflicted Attorney, New Assigned Attorney and Clerk of Court/Court Personnel)

This is to certify that notification has been faxed, mailed or emailed to the Defendant on

9/19/14

Date Closed _____ Case Hours _____ Travel Hours _____

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