

IN THE SUPREME COURT
STATE OF NORTH DAKOTA

SUPREME COURT NO.: 20190004

Abdulrahman Ibrahim Ali,)
 Petitioner/Appellant,)
)
 vs.)
)
State of North Dakota,)
 Respondent/Appellee)

APPEAL FROM THE CIVIL JUDGMENT
EAST CENTRAL JUDICIAL DISTRICT
CASS COUNTY CIVIL. NO. 09-2018-CV-2465
THE HONORABLE THOMAS R. OLSON PRESIDING

BRIEF

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STATEMENT OF THE ISSUE

[1] ISSUE: Was Ali's mental health during the legal proceeding in this case in such a state that he could not understand the proceeding?

NATURE OF THE CASE

[¶2] Defendant/Appellant Abdulrahman Ibrahim Ali (Ali) in a bench trial in the District Court was found guilty of the following offenses: Gross Sexual Imposition, Kidnapping, Aggravated Assault, and two (2) count of Terrorizing.

[¶3] After judgment was entered on the above offenses, Ali appealed the judgment to the North Dakota Supreme Court.

[¶4] The North Dakota Supreme Court in the State v. Ali, 2018 N.D.87,909N.W.2d112 summarily affirmed the District Court Judgment.

[¶5] On July 30, 2018, Ali files in the District Court a Post Conviction Relief Application.

[¶6] On August 6, 2018, Ali applied for and got an attorney assigned to help him with the Post Conviction Relief Application.

[¶7] The State responded to Ali's Post Conviction Application on August 28, 2018.

[¶8] A Post Conviction Hearing in the District Court was held on November 8, 2018.

[¶9] The District Court on November 16, 2018, entered an Order denying Ali's Request for Post Conviction Relief.

[¶10] Ali on January 2, 2019, filed a Notice of Appeal.

[¶11] The Notice was misfiled in the District Court on January 2, 2019.

[¶12] Another Notice of Appeal was then properly filed on January 4, 2019.

[¶13] The Notice of Filing the Notice of Appeal was filed on January 4, 2019.

[¶14] This matter is now before the North Dakota Supreme Court.

STATEMENT OF FACTS

[¶15] Defendant/Appellant Abdulrahman Ibrahim Ali was charged in Cass County with the following offenses: Gross Sexual Imposition, Kidnapping, Aggravated Assault, and two (2) counts of Terrorizing. Because Ali waived his rights to a jury trial all of these five (5) charges were tried in the court. The trial in the court ended with a guilty verdict on each of the five (5) counts.

[¶16] After judgment was entered by the District Court, Ali appealed to the North Dakota Supreme Court. In the ruling on that Appeal the North Dakota Supreme Court in State v. Ali 2018 N.D.87, 909 N.W.2d112 summarily affirmed the District Court judgment.

[¶17] On July 30, 2018, Ali filed an Application for Post Conviction Relief. The hearing on that Application was heard on November 8, 2018, before District Court Judge Thomas R. Olson. Two witnesses were called at that hearing, Ali and the attorney who represented Ali in his trial at the District Court, Stormy Vichers. At the end of that hearing the Court did not issue a ruling. The Court's ruling was issued on November 16, 2018 and it denied Ali's Application for Post Conviction Relief and found him to be competent.

[¶18] Ali then filed in the North Dakota Supreme Court an Appeal from the District Court's denial of his Application for Post Conviction Relief. Ali filed an Appeal because he believes he could not and did not understand the legal

proceedings in his case. This Appeal is now pending before the North
Dakota Supreme Court.

ISSUE PRESENTED

[¶19] Was Ali's mental health during the legal proceeding in this case in such a state that he could not understand the proceeding?

ARGUMENT

[¶20] 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.

[¶21] In the case now before the Court the Defendant/Appellant Abdulrahman Ibrahim Ali is disputing and appealing the trial judge's finding that he is competent.

[¶22] According to *State v. Dahl*, 2010 ND 108 [¶7] The standard for determining if a criminal defendant is competent to stand trial is set forth in *State v. Gleeson*:

It has long been held the conviction of a mentally incompetent accused is a violation of constitutional due process. *Dusky v. United States*, 362 U.S. 42 (1960). The United States Supreme Court has summarized the test for determining if an accused is mentally competent to stand trial. *Id.* A defendant is incompetent when he lacks (1) 'sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding' or (2) 'a rational as well as factual understanding of the proceedings against him.' *Dusky*, 362 U.S. at 402. This test is essentially codified at section 12.1-04-04, N.D.C.C., which states: 'No person who, as result of mental disease or defect, lacks capacity to understand the proceedings against the person or to assist in the person's own defense shall be tried, convicted, or sentenced for the commission of an offense so long as such incapacity endures.' 2000 ND 205, 9, 619, N.W. 2d 858. Dahl concedes he had an adequate understanding against him, but

he argues he was not able to assist in his defense by coherently conferring with his attorney. The crux of being able to “consult the commission of an offense so long as such incapacity endures.’ 2000 ND 205, 9, 619 N.W.2d 858. Dahl concedes he had an adequate understanding of the proceedings against him, but he argues he was not able assist in his defense by coherently conferring with his attorney. The crux of being able to “consult with a lawyer with a reasonable degree of rational understanding: is being able to “confer coherently with counsel and provide necessary and relevant information to formulate a defense.” State v. VanNatta, 506 N.W.2d 63, 65, 68 (N.D. 1993).

[¶23] In the case now before the Court on:

P.22 L 19-20 “...but when he was medicated I think he understood fine.”

P.23 L 7-8 “...he made knowing choices about what he wanted to do with stuff.”

P.27 L 6-8 “...at the end of the proceedings when he was on the injectable, I do believe he understood what was being explained to him.”

P.28 L17-21 ...”Q: Did you review all of that discovery with Mr. Ali? A: Yes. Q: Do you think he understood that discovery? A: Again, at the beginning I think it was spottier...”

P.30 L 9-10 ‘Q: Do you think he understood that document? A: I do think, yes...”

P.31 L10-12 “Q: Do you think as his attorney, he understood all of the proceedings? A: I do.”

[¶24] The above transcript quotes how Ali probably understood the legal proceedings in the case. But according to VanNatta a defendant has to be able to “consult with a lawyer with a reasonable degree of rational understanding” and be able to

“confer coherently with counsel and provide necessary and relevant information to formulate a defense” (N.D. 1993).

[¶25] No where in the trial transcript is there any statement that establishes Ali was able to consult with his lawyer with a reasonable degree of rational understanding or that he was able to confer coherently with his attorney and provide necessary and relevant information to formulate a defense.

CONCLUSION

[¶26] Establishing a Defendant is competent to stand trial requires the State to prove not only that the Defendant probably understands the legal proceedings and issues in his case, but that he was able to during the legal proceeding confer coherently with his attorney and was able to provide necessary and relevant information to formulate a defense. In this case the evidence and testimony submitted at trial doesn't establish that Ali ever conferred coherently with his attorney and was able to provide necessary and relevant information to formulate a defense. Therefore the case should be remanded to the district court and order the trial court to determine Ali's present competency to stand trial and for a new trial if he is found competent.

DATED this 18th day of March, 2019.

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CERTIFICATE OF SERVICE BY MAIL

[¶27] 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 March 18, 2019, she served, by e-mail and mailed a copy of the following:

BRIEF

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To: Birtch Burdick
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The undersigned further certifies that on March 18, 2019, she served electronically on the Clerk, North Dakota Supreme Court, the APPELLANTS BRIEF.



Cassy Larson
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