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IN THE SUPREME COURT OF NORTH DAKOTA APR 5 2019

STATE OF NORTH DAKOTA

Lorry Van Chase)
) Supreme Court No. 20190023
 Petitioner/Appellant)
)
 Vs.) District Court No. 2016-CV-00148
)
)
 State of North Dakota,)
)
 Respondent/Appellee)

APPEAL FROM AN ORDER DENYING MOTION UNDER RULE 60(B) FOR
 RELIEF FROM JUDGEMENT, NORTHEAST JUDICIAL DISTRICT,
 ROLLA, NORTH DAKOTA THE HONORABLE MICHAEL HURLY
 PRESIDING

Appellant's Reply Brief

Lorry Van Chase
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 P.O. Box 5521
 Bismarck, ND 58506
 Petitioner/Appellant
 In Propria Persona

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I. Petitioner did everything in his power to obtain a date and time for oral argument

[¶1] The State has argued that Petitioner merely stated within his filings that oral argument would be scheduled. The State also incorrectly argued that Petitioner's attempts to secure oral argument are not reflected in the record.

[¶2] Petitioner stated in his Motion Under Rule 60(B) for Relief from Judgement "Oral argument and taking of evidence is requested." (App. P. 11 at ¶3). Additionally in the Brief in Support of Motion Under Rule 60(B) for Relief from Judgement, Petitioner stated "Petitioner requests a hearing on this motion so that he and his witness may testify in person to the facts contained herein." (App. P. 41 at ¶25) Further, Petitioner stated in his Rule 3.2 Notice of Motion "Oral argument and taking of evidence has been requested but has not yet been scheduled." (App. P.9 at ¶2)

[¶3] In addition to these statements, Petitioner made contact with the Clerk by letter specifically addressed to Clerk of Court. As previously mentioned in his Appellant's Brief, mail is the only method available to Petitioner to contact the Clerk. These letters are reflected in the record. The first letter, directed to the Clerk of Court, was mailed along with the Rule 60(B) Motion, Notice, and Brief. This letter requests that the Clerk schedule a date and time for argument, it appears at Index #97 in the District Court Docket and was filed 11/13/18. When Petitioner did not receive a response from the Clerk, he sent a second request along with his response to the State's Objection to his Rule 60(B) Motion. This letter appears at Index #113 in the District Court docket and was filed on 11/30/18.

[¶4] Petitioner cannot force the Clerk to schedule argument, nor can he contact the Clerk's Office by phone or email to set up a date. The only option available is mail. Petitioner made his request by mail, then sent a follow-up request. Despite his requests, no action was taken. There is nothing more Petitioner could have done to secure a date and time for argument. Contrary to the State's assertions, these requests are supported by the record.

II. The Letter to the Trial Judge Presented by the State is not Inconsistent with Petitioner's Argument.

[¶5] The State, in its appendix, has presented a letter written by Petitioner to District Court Judge Sturdevant to be considered at sentencing. This letter does not provide any new information and is merely a reiteration of the lies Petitioner was directed to tell at trial. A careful reading of the section in question reveals that the statement is prefaced by the phrase "I told you..." (Appellee's Appendix P.12) indicating that this is not new or different information. Petitioner has already asserted that he was directed by counsel to lie. This letter is further proof and is not inconsistent with Petitioner's argument.

III. Petitioner's Motion was Properly Filed as a Rule 60(B) Motion for Relief from Judgement and is not an Application for Post-Conviction Relief.

[¶6] The State has argued in its Appellee's Brief that Petitioner's Rule 60(B) Motion was in fact an Application for Post-Conviction Relief and therefore was correctly dismissed under the rules governing post-conviction actions. It should be noted however that the State, in its Brief in Support of Objection to Petitioner's Motion Requesting Relief from Judgement [Rule 60(b) N.D.R.Civ.P.] (Appellee's Appendix P.1), originally argued that Petitioner's Motion should be denied under the Rules of Civil procedure regarding Motions. Counsel for the State extensively argued that he believed Petitioner misapplied the provisions of N.D.R.Civ.P. 60(B) to the case at hand, not that it should be treated as a post-conviction application. It was only after the District Court Judge completely ignored the State's argument and issued a ruling that the Motion was essentially an Application for Post-Conviction Relief that the State changed its argument to the one currently being advanced.

[¶7] The State also argued that Petitioner's citation of Bell v State, 2001 ND 188, 636 N.W.2d.438 is somehow an admission that the Rule 60(B) Motion is actually a Post-Conviction Application. Petitioner cited Bell because the underlying matter in which the Rule 60(B) Motion was filed was a Post-Conviction action. A Rule 60(B) Motion does not stand on its own but must be filed in a civil action. Petitioner's filing of the Rule 60(B) Motion is a continuation of the existing matter and is not a new post-conviction filing no matter how much the State now wishes it to be.

Conclusion

[¶8] The District Court abused its discretion in this matter by considering Petitioner's Rule 60(b) motion to be a post-conviction application and denying it without the required hearing. Additionally, the Court abused its discretion by finding that the motion was barred by res judicata and misuse of process, and by finding that there was no corroborating evidence presented. Petitioner requests that this Court reverse the decision and remand this matter back to the District Court with an order to hold a hearing and appoint counsel.

Dated this the 5th day of April, 2019

Lorry Van Chase

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IN THE SUPREME COURT OF NORTH DAKOTA

Lorry Van Chase)	
)	Supreme Court No. 20190023
Petitioner/Appellant)	
)	
Vs.)	District Court No. 2016-cv-00148
)	
State of North Dakota,)	
)	Affidavit of Service by Mail
<u>Respondent/Appellee</u>)	


[¶1] Lorry Van Chase being duly sworn, deposes and states that he is of legal age and that on the 5th day of April 2019, he served the **Appellant's Reply Brief** in Supreme Court No. 20190023 by mail directed to the following persons and addresses by placing them in the U.S. Mail at the North Dakota State Penitentiary with postage prepaid.

Ryan Thompson
States Attorney
P.O. Box 1079
Rolla, ND 58367

Subscribed and sworn to before me this 5th day of April 2019

Lorry Van Chase

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 4.5.19
Notary Public

PATRICK SCHATZ
Notary Public
State of North Dakota
My Commission Expires January 1, 2021