

IN THE SUPREME COURT  
STATE OF NORTH DAKOTA

JUN 19 2019

STATE OF NORTH DAKOTA

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State of North Dakota,

Plaintiff- Appellee,

Vs.

Jason James Vogt,

Defendant- Appellant.

Supreme Court No. 20190124

Case No. 09-2013-CR-03705

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On appeal from the Order Denying Motion to Vacate Judgement and Withdraw Plea

Filed March 13, 2019,

Cass County District Court

East Central Judicial District

State of North Dakota

The Honorable John C. Irby, presiding

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**APPELLANT'S BRIEF**

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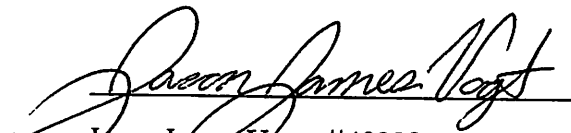
  
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**[¶1] STATEMENT OF THE ISSUES**

- 1) Whether the District Court erred in denying Vogt's Motion to Vacate Judgment and Withdraw Plea;
- 2) Whether the District Court erred in not allowing Vogt time to respond to the State's Response.

## STATEMENT OF THE CASE

¶2 This is an appeal from an Order Denying Jason James Vogt (hereinafter referred to as “Mr. Vogt”) Motion to Vacate Judgement and Withdraw Plea. Mr. Vogt filed a pro se Motion to Vacate Judgement and Withdraw Plea on March 7, 2019. The State filed a Response to Mr. Vogt’s Motion on March 11, 2019. The Court entered Judgement on March 13, 2019 without giving Mr. Vogt an opportunity to respond.

## STATEMENT OF THE FACTS

¶3 In 2013, Mr. Vogt was charged with 2 counts of Gross Sexual Imposition. (Appellant’s App. at 1). In 2014, Mr. Vogt plead guilty and was sentenced to a term of imprisonment. See id.

¶4 In April 17, 2015, Mr. Vogt filed a Post-Conviction Relief. See, Case No. 09-2015-cv-00957, which the district court denied on August 31, 2015. Mr. Vogt filed another Post-Conviction Application in 2017 which was also denied.

¶5 On March 7, 2019, Mr. Vogt filed a Motion to Vacate Judgement and Withdraw Plea. The State filed a response on March 11, 2019. The District Court entered judgement on March 13, 2019.

## STANDARD OF REVIEW

¶6 The decision whether a manifest injustice exists for withdrawal of a guilty plea lies within the trial court’s discretion and will not be reversed on appeal except for an abuse of discretion. *State v. Hendrick*, 543 N.W.2d 217, 219 (N.D. 1996). An abuse of discretion under N.D.R.Crim.P. 32(d) occurs when the court’s legal discretion is not exercised in the interest of justice. *State v. Dalman*, 520 N.W.2d 860, 862 (N.D. 1994).

## LAW AND ARGUMENT

[¶7] This Court has jurisdiction over this appeal under N.D. Const. art. VI § 6, N.D.C.C. § 29-28-03, 29-28-06. Subsection 4 & 5) which provides “an appeal may be taken by the Defendant from... An order denying a motion for new trial; and an order made after judgment affecting any substantially right of the party.”

- 1) Whether the District Court erred in denying Vogt’s Motion to Vacate Judgment and Withdraw Plea.

[¶8] The Court denied Mr. Vogt’s Motion on 3 grounds, which consist of: 1) Mr. Vogt’s plea of Guilty was knowingly, voluntarily made; 2) Mr. Vogt did not show a manifest injustice; 3) That the matter Mr. Vogt argues has been litigated already. See, Appellant App. at 21

[¶9] First the Court doesn’t state how or where Mr. Vogt entered a knowingly and voluntarily plea of guilty nor can the Court point to something in the record of this. Secondly the Court does not state that Mr. Vogt entered his plea “intelligently” as the court is supposed to. See, State v. Bates, 2007 ND 15, ¶ 14, 726 N.W.2d 595. The United States Supreme Court noted Guilty pleas must be knowingly, intelligently, and voluntarily entered to be valid. *Boykin v. Alabama*, 395 U.S. 238, 242, 89 S. Ct. 1709, 23 L. Ed. 2d 274 (1969). The court doesn’t state intelligently because the Court knew that the plea wasn’t intelligently made.

[¶10] Secondly the Court argues that Mr. Vogt did not show a Manifest Injustice. Mr. Vogt argued that his confession was false and coerced in multiple aspects, 1) that police made promises to him for his confession; 2) that Mr. Vogt was coerced into writing the apology letters to the alleged victim(s) in the case; 3) that the police used the “Reid Technique” or similar actions to make him confess; 4) that he was not read his Miranda Rights before the interrogation; and 5) Mr. Vogt was in fear during the interrogation. (See, Appellant App. at 8)

[¶11] The North Dakota Century Code defines “manifest injustice” as “a specific finding by the court that the imposition of sentence is unreasonably harsh or shocking to the conscience of a reasonable individual, with due consideration of the totality of circumstances.” N.D.C.C. 12.1-01-04(18). Mr. Vogt alleges that his guilty plea was coerced and involuntary, and his confession was coerced and involuntary to police, and the district court not complying with North Dakota Rules of Criminal Procedure 11 created a manifest injustice. Further that the District Court did not exercise in the interest of justice because the court didn’t even recommend for transcripts to see if Mr. Vogt’s claim of the district court not following Rule 11 was meritorious. The Court denied the Motion 2 days after the State responded without giving Mr. Vogt the proper time to respond to the State’s response. Further Vogt argues that a hearing was necessary because of the testimony that was going to be presented was audio footage and further personal and other testimony.

[¶12] The Court further argues that Mr. Vogt already litigated the claims argued in his brief. Mr. Vogt argues that he was not alleging ineffective assistance of counsel nor was he alleging that the state’s witness were uncredible. Mr. Vogt argues that because of the statements of the defense counsel he pleaded guilty of an agreement between the state and defense counsel, which was not followed, which did violate N.D.R.Crim.P. Rule 11 (c). The agreement was count 2 be dismissed and Mr. Vogt plead guilty to count 1 under the circumstance of 5 years with 3 suspended in the department of corrections. Mr. Vogt was not advised by the court nor his attorney nor the state that count 2 would be brought to count 1. See, Appellant App. at 4. So Mr. Vogt was under the assumption the Count 2 be dismissed fully. Since the agreement/contract was not followed it should be an automatic withdraw of the plea. Further that because the police telling Mr. Vogt of the statements of the alleged victims he made the false confession to the police and was under duress to write the apology letters. The Court did not exercise their discretion in the interest in justice, as the Court did not put Mr. Vogt on his proof nor did the court ask Mr. Vogt to support his allegations.

The Court didn't even consider Mr. Vogt's Motion and Brief in support. As if the Court did the Court would have seem Mr. Vogt arguing the district court failing to follow North Dakota Rules of Criminal Procedure 11; and his false confession, and his non-intelligent guilty plea which has never been argued in court.

[¶13] The United States Supreme Court noted "if force or coercion was used to exact a confession which has been admitted in evidence in a criminal case, the Supreme Court of the United States will not permit a conviction to stand. *Haley v. Ohio* 92 L.Ed 224. Mr. Vogt argues that these cases invalidate his plea of guilty. A plea of guilty, induced by coercion, will not support a judgment of conviction. *People v. Schwarz*, 201 Cal. 309, 257 P. 71; *State v. Poglianich*, 43 Idaho 409, 252 P. 177; *Nichels v. State*, 86 Fla. 208, 98 So. 497, 502, 99 So. 121; *State v. Brown*, 33 N.M. 98, 263 P. 502. A conviction based upon a plea of guilty which {67 N.W.2d 335} was induced by coercion violates the due process clause of the Fourteenth Amendment to the Constitution of the United States. *Hawk v. Olson*, 326 U.S. 271, 66 S. Ct. 116, 90 L. Ed. 61; *Smith v. O'Grady*, 312 U.S. 329, 61 S. Ct. 572, 85 L. Ed. 859.

Mr. Vogt has argued that his guilty plea was part of an agreement by the State and the defense counsel to 5 years in prison with 3 suspended with the Department of Corrections. The Court should have held a hearing so testimony and evidence can be produced to support such claims. Further the Court didn't consider the response to the State's argument which was a critical part of the case. (See Appellant App. at 19)

[¶14] The State has argued that Mr. Vogt has confession was a critical part of this criminal case and Mr. Vogt's Trial Counsel stated that the confession was a critical part of this case. Therefore this confession, [if] coerced, would create a huge manifest injustice. Which even would violate Mr. Vogt's Constitutional rights. The state has never proved if Mr. Vogt freely, voluntary nor



intelligently made this confession. The test set forth by this court is the totality of circumstances test. Which the court has never talked about either. Mr. Vogt does argue that the Bram test does invalidate his confession and the State is not arguing this. The State knows that it's true. Mr. Vogt in his brief explained in detail how the Bram test was critical to his case. (See Appellant App. at 10)

[¶15] Mr. Vogt argues that the Courts denial of the Motion without a hearing created a “manifest injustice” and is not in line with the Supreme Court of the United States nor in line with the North Dakota Supreme Court.

2) Whether the District Court erred in not allowing Vogt to respond to the State's Response.

[¶16] The Order denying Mr. Vogt's Vacate Judgement and Withdraw Plea was subject to the requirements of the North Dakota Rules of Court. Rule 1.1 specifically defines the scope of the Rules of Court, stating “these rules apply to all trial court of this state in all civil, criminal and juvenile cases.” N.D.R.Ct. 1.1

[¶17] Rule 3.2 of the Rules of Court provides the requirements for a properly filed motion and response and reply brief and time frame in which a party shall respond. N.D.R.Ct. 3.2. Rule 3.2 (a)(2) which states “(2) Briefs. Upon serving and filing a motion, the moving party must serve and file a brief and other supporting papers and the opposing party must have 14 days after service of a brief within which to serve and file an answer brief and other supporting papers. The moving party may serve and file a reply brief within seven days after service of the answer brief. Upon the filing of briefs, or upon expiration of the time for filing, the motion is considered submitted to the court, unless counsel for any party requests oral argument on the motion.

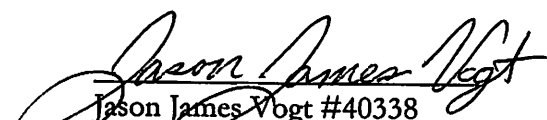
[¶18] Mr. Vogt argues that the State filed an answer on March 11, 2019, and the court denied the Motion on March 13, 2019. The Court should have allowed Mr. Vogt till March 18, 2019 to respond to the State and the Court should not have ruled till the 18<sup>th</sup> of March by statute.

¶19 Mr. Vogt argues that the Court was not allowed by law to dismiss the Motion by its own Motion. Further the State did not file a Motion to dismiss the Motion to Vacate Judgement, the State just simply asked the Court to deny the Motion. (See Appellant App. at 17). Mr. Vogt argues that for there to be a dismissal in this Motion the State was responsible for doing a Notice of Motion, Motion, and Brief in Support of the Motion, required by Rule 3.2. The State did not argue that Mr. Vogt was not entitled to a hearing. The State just simply filed a response to the Motion which by law was supposed to, which Mr. Vogt should have had a hearing on the Motion so he could present his evidence and testimony.

¶20 This Court has noted that you are allowed 14 days in which to respond to the State's answer/dismissal. See, Atkins v. State, 2019 ND 146, quoting Ourada v. State, 2019 ND 10 Mr. Vogt was not allowed the (14) day allowed by statute. Further Vogt argues that Ourada's case states "once the state responded to an application for post-conviction relief and the district court treated that response as a motion to dismiss, the applicant was required to receive notice and an opportunity to be heard prior to dismissal. See Ourada v. State, 2019 ND 10 ¶6, 921 N.W.2d 677.

### CONCLUSION

¶21 Mr. Vogt respectfully asks this Honorable Court to reverse the order denying Vogt's Motion to Vacate Judgement and Withdraw Plea and hold a Motion Hearing so evidence can be presented. Mr. Vogt asks this Court to resign a new judge because the Honorable John C. Irby has been bias in the case.

  
Jason James Vogt #40338  
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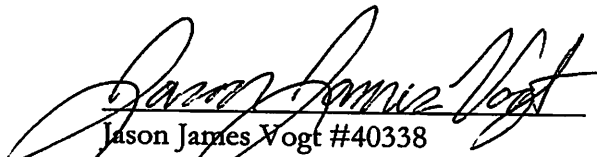
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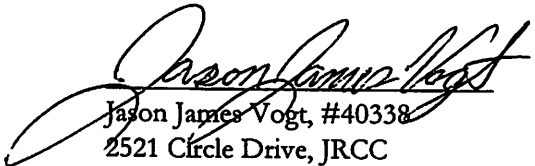
Case No. 09-2013-CR-03705

WORD COUNT CERTIFICATE

  
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WORD COUNT CERTIFICATE

█ I hereby verify that the APPELLANT'S BRIEF contains no more than 8,000 words, as ascertained by the "Word Count" feature of Microsoft Word in the Microsoft Office Professional Plus 2013 suite, which determined a count of 2,388 words, including footnotes.



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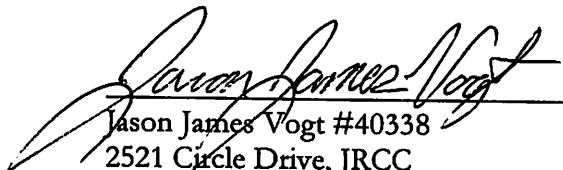
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Case No. 09-2013-CR-03705

CERTIFICATE OF SERVICE

  
Jason James Vogt #40338  
2521 Circle Drive, JRCC  
Jamestown, ND 58401

The undersigned certifies that he served true and accurate copies of the following documents:

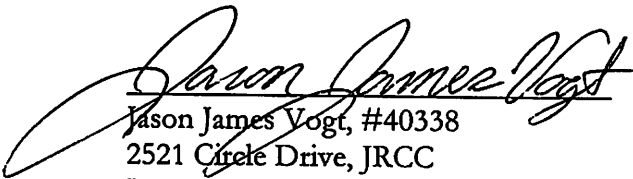
- **CERTIFICATE OF SERVICE;**
- **APPELLANT'S BRIEF;**
- **APPENDIX;**
- **WORD COUNT CERTIFICATE;**
- **LETTER TO: Clerk of Supreme Court.**

By placing such documents in a postage pre-paid envelope addressed as follows:

Clerk of the Supreme Court  
State of North Dakota  
600 E. Boulevard Avenue  
Bismarck, ND 58505-0530

State's Attorney  
County of Cass  
P.O. Box 2806  
Fargo, ND 58108-2806

And then placing such documents in the James River Correctional Center's Internal mailing system (U.S. mail) on this 18<sup>th</sup> day of JUNE, 2019.

  
Jason James Vogt, #40338  
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