

IN THE SUPREME COURT
STATE OF NORTH DAKOTA

State of North Dakota,

Plaintiff- Appellee,

Vs.

Jason James Vogt,

Defendant- Appellant.

Supreme Court No. 20190124

Case No. 09-2013-CR-03705

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

APPELLANT'S REPLY BRIEF



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STATEMENT OF THE ISSUES

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

STATEMENT OF THE FACTS

[¶1] The facts are sufficiently laid out in the Appellant's Brief.

LAW AND ARGUMENT

[¶2] Although Mr. Vogt disagrees with many of the State's Appellee's Brief. Mr. Vogt would like to respond to a couple of their arguments. First, the State argues the District Court based their decision on the record of Mr. Vogt's original case file and other proceedings, But Mr. Vogt asserted that he was going to present audio footage and witness testimony. (See, Appellant App. P.10 ¶9) Which is why Mr. Vogt should be awarded a hearing to present competent evidence to prove his innocence.

[¶3] Mr. Vogt asserts the State acknowledges the District Court filed an Order denying the Motion 2 days after the State responded. (See, Appellee's Brief ¶19) Vogt would argue N.D.R. of Court 3.2 (a) (2) states " 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 fourteen (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 (7) days after service of the answer brief." Mr Vogt filed his original brief on March 7th, 2018, the State filed a response on March 11th, 2018, Vogt should have had until the 18th of March to file an answer brief, but instead the Court took the State's responsive brief without giving Vogt notice of intent to dismiss or allowing him to respond pursuant to Rule 3.2. Pursuant to Rule 3.2, the State should have filed a notice of motion to dismiss with a motion and served it upon Mr. Vogt.

[¶4] The State asserts the Court took into consideration Mr. Vogt's response to the State's response, but that's not true as the Court denied Vogt's motion without giving Vogt the proper

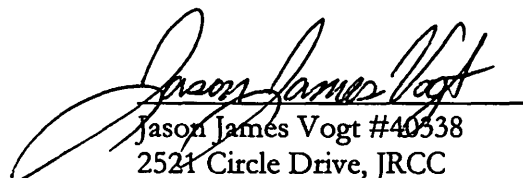
response time as by 3.2. Mr. Vogt raised a genuine issue and should have had a hearing. This Court has held if an applicant could raise a genuine issue, he would be entitled to a hearing. (See, Coppage v. State, 2011 ND 227 ¶1). This Court has noted “Even if we assume the court treated the state’s answer as a motion for summary disposition.” Vogt asserts the notice component required in motion pleadings. Under North Dakota Rules of Court 3.2. “Notice must be served and filed with a motion.” See, Ourada v. State, 2019 ND 10. This Court has upheld Rule 3.2 violations. See, Atkins v. State, 2019 ND 146, Ourada v. State, 2019 ND 10.

¶5 The State alleges that Mr. Vogt’s allegation is a claim of ineffective assistance of counsel. This is not true, Mr. Vogt’s argument is that because of the promises made by the defense lawyer and the threat by the state’s attorney made Mr. Vogt’s guilty plea not voluntarily or intelligently made.

CONCLUSION

¶6 For the foregoing reasons and the reasons set out in the Appellant’s Brief, Mr. Vogt respectfully requests that the District Court Order be reversed and remanded for further proceedings.

Dated this 23rd day of July, 2019.


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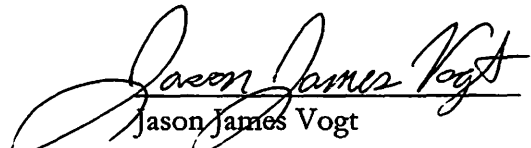
CERTIFICATE OF SERVICE

[¶7] A true and correct copy of the foregoing documents were sent via U.S. Mail on this 23rd day of July, 2019, and mailed to the following parties:

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Jason James Vogt

CERTIFICATE OF COMPLIANCE

[¶8] This brief complies with the word limit set forth in North Dakota Rules of Appellate Procedure 32(a)(8)(A) and is less than 2,000 words in length pursuant to Microsoft word. This Appellate Reply brief is 886 words.


Jason James Vogt