

IN THE SUPREME COURT OF NORTH DAKOTA

In the Interest of G.L.D.)	Supreme Court File No.
-----)	#20190179
Brian Grosinger, State's Attorney,)	
Petitioner/Appellee)	Morton County Court File
No.)	#30-04-R-44
v.)	
G.L.D.,)	APPELLANT'S BRIEF
Respondent/Appellant)	

Appeal from the Memorandum Decision and Order of Commitment entered June 6, 2019 in Morton County District Court, South Central Judicial District, North Dakota the Honorable Daniel J. Borgen presiding.

**APPELLANT'S BRIEF
ORAL ARGUMENT REQUESTED**

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STATUTES

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RULES

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Rule 1.1 of North Dakota Code of Judicial Conduct.....¶ 12

Oral Argument:

Oral argument has been requested to emphasize and clarify the Appellant's written arguments on their merits.

JURISDICTIONAL STATEMENT

[¶ 1] Jurisdiction in this matter is pursuant to N.D.C.C. § 25-03.3-19. The Morton County District Court issued a decision ordering G.L.D. remain civilly committed on June 6, 2019. G.L.D. timely filed this appeal on June 11, 2019.

ISSUE PRESENTED FOR REVIEW

- I. [¶ 2] Whether the District Court's findings of facts are sufficient.
- II. [¶ 3] Whether Remand or Reversal is the appropriate remedy.

STATEMENT OF THE CASE

[¶ 4] Petitioner filed a petition for civil commitment as a sexually dangerous individual (“SDI”) on March 5, 2004. After a hearing, G.L.D. was initially committed to the North Dakota State Hospital (“NDSH”) as an SDI on June 14, 2007.

[¶ 5] G.L.D. exercised his right to request a discharge hearing under N.D.C.C. § 25-03.3-18. A hearing on that request was held on June 3, 2019. The Morton County District Court determined that the state had established by clear and convincing evidence that G.L.D. remained a sexually dangerous individual pursuant to N.D.C.C. § 25-03.3-01(8) and denied G.L.D.’s discharge on June 6, 2019. G.L.D. appealed that decision on June 11, 2019.

STATEMENT OF THE FACTS

[¶ 6] G.L.D. petitioned for an annual review hearing pursuant to N.D.C.C. § 25-03.3-18 on whether he remained a sexually dangerous. A hearing was held on June 6, 2019. The state called Dr. Richard Travis (“Travis”) to testify that G.L.D. remained a sexually dangerous individual subject to continued civil commitment.

[¶ 7] The Morton County District Court found that the State had proven by clear and convincing evidence that G.L.D. remained a sexually dangerous individual subject to continued civil commitment and issued an Order in that regard on June 6, 2019. G.L.D. filed his appeal on June 11, 2019. The district court made its findings on the record (Order ¶ 3). On the record, the district court stated in regard to prong three and the

volitional control element, “he (Travis) testified that it is very likely that [G.L.D.] would reoffend if released into the community...[G.L.D.] would have serious difficulties controlling his behavior if he was released into the community” (Transcript page 88, lines 20-25).

ARGUMENT

[¶ 8] The district court’s findings of facts are insufficient

[¶ 9] In *R.A.S.*, this Court concluded the district court did not comply with N.D.R.Civ.P. 52(a) and therefore its findings are inadequate to permit appellate review. Matter of R.A.S., 2008 ND 185, 758 N.W.2d 909. This case represents another instance of this happening. The findings of fact are limited to what was stated on the record, which is “he (Travis) testified that it is very likely that [G.L.D.] would reoffend if released into the community...[G.L.D.] would have serious difficulties controlling his behavior if he was released into the community” (Transcript page 88, lines 20-25).

[¶ 10] The appropriate remedy is reversal

[¶ 11] Outside of *R.A.S.*, this Court has remanded the following SDI cases for more specific findings:

1. Matter of Vantreece, 2008 ND 197; 758 N.W.2d 909;
2. Matter of Hanson, 2008 ND 198; 758 N.W.2d 909;
3. Matter of Midgett, 2009 ND 106, 766 N.W.2d 717;
4. Interest of Voisine, 2010 ND 17, 777 N.W.2d 908;
5. Interest of L.D.M., 2011 ND 25, 793 N.W.2d 778;

6. Interest of Vondal, 2011 ND 59, 795 N.W.2d 343;
7. Matter of T.O., 2011 ND 9, 793 N.W.2d 204;
8. Matter of Hehn, 2011 ND 214, 806 N.W.2d 189;
9. Interest of Hoff, 2014 ND 63, 844 N.W.2d 866;
10. Interest of Johnson, 2015 ND 71, 861 N.W.2d 484;
11. Interest of Thill, 2015 ND 295, 872 N.W.2d 617;
12. Interest of Johnson, 2016 ND 29, 876 N.W.2d 25;
13. Interest of Nelson, 2017 ND 28, 889 N.W.2d 879;
14. Interest of Nelson, 2017 ND 152, 896 N.W.2d 923;
15. Matter of Kulink, 2018 ND 260, 920 N.W.2d 446; and,
16. Interest of T.A.G., 2019 ND 115, 926 N.W.2d 702.

These cases not only represent 11 years of precedence, but also 12% of the total SDI decisions written by this Court. This is not a new area of law or one that is in controversy.

[¶ 12] “A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.” N.D.R.Prof.Conduct. 1.1. Comment #5 to the rule explains what competent representation means regarding having the requisite legal knowledge and skill: “To maintain the requisite knowledge and skill, **a lawyer must keep abreast of changes in the law** (emphasis added).” While this rule pertains to representation of clients, Rule 1.1 of Canon 1 of the North Dakota Code of Judicial Conduct requires a judge to comply with the law. The time has come to require the

district court judges in North Dakota to know the law and proceed accordingly. This case demands reversal.

CONCLUSION

[¶ 13] The district court's findings of fact are insufficient pursuant to prior decision of this Court. While previous cases have resulted in remands for further findings, judges in North Dakota have had 11 years and 17 decisions on this issue to understand the current state of the law. Therefore, G.L.D. requests this Court reverse the district court order and grant G.L.D. his immediate release.

Respectfully submitted this 10th day of September, 2019.

/Tyler J. Morrow

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)	CERTIFICATE OF
G.L.D.,)	COMPLIANCE
Respondent/Appellant)	

[¶ 1] This Appellant’s Brief and Appendix complies with the page limit of 38 set forth in Rule 32(a)(8)(A) of the North Dakota Rules of Appellate Procedure as it only has 10 pages.

Dated: September 10, 2019.

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G.L.D.,)	CERTIFICATE OF SERVICE
)	
Respondent/Appellant)	

[1] The undersigned, being of legal age, being first duly sworn deposes and says that he served a true and correct copy of the following document(s):

Appellant's Brief with Certificate of Compliance
Appellant's Appendix

Electronically through the Court Electronic Filing System to:

Brian Grosinger, Assistant State's Attorney, Brian.Grosinger@mortonnd.org

Dated: September 10, 2019.

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Appellant's Brief with Certificate of Compliance
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