

IN THE SUPREME COURT

STATE OF NORTH DAKOTA

STATE OF NORTH DAKOTA,)	
)	
Plaintiff/Appellee,)	
)	Supreme Court No. 20210011
v.)	
)	
BRENT ALLEN CASTLEMAN,)	Ward County Case No. 51-2019-CR-02004
)	
Defendant/Appellant.)	

APPELLEE’S MOTION TO DISMISS APPEAL

[¶1] COMES NOW the Appellee, the State of North Dakota, by and through Ward County Assistant State’s Attorney Christopher W. Nelson, and does hereby move this Court dismiss Appellant’s appeal for failing to comply with the North Dakota Rules of Appellate Procedure. Respectfully submitted this 27th day of May, 2021.

/s/ Christopher W. Nelson
Christopher W. Nelson #08708
Assistant State’s Attorney
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[¶1] Comes now the Appellant, the State of North Dakota, by and through Ward County Assistant State's Attorney Christopher W. Nelson, and does hereby move this Court dismiss Appellant's appeal for failing to comply with the North Dakota Rules of Appellate Procedure.

LAW AND ARGUMENT

[¶2] "The supreme court may take appropriate action against any person failing to perform an act required by rule or court order." N.D.R.App.P. 13. "Failure to adhere to our rules of appellate procedure can result in the dismissal of an appeal." Krump-Wootton v. Krump, 2019 ND 275, ¶ 7, 935 N.W.2d 534.

[¶3] Appellant's appendix fails to comply with N.D.R.App.P. 10(a)(1) in that the following items in Appellant's appendix were not filed in the district court in this matter:

1. Motion to Dismiss Without Prejudice, State v. Brent Castleman, 51-2019-CR-01006, Appellant Appendix p. 14
2. Order to Dismiss Without Prejudice, State v. Brent Castleman, 51-2019-CR-01006, Appellant Appendix p. 15
3. Objection to Motion to Dismiss, State v. Brent Castleman, 51-2019-CR-01006, Appellant Appendix p. 16-19
4. Order Concerning Defendant's Objection, State v. Brent Castleman, 51-2019-CR-01006, Appellant Appendix p. 20-21

[¶4] Appellant's brief fails to comply with N.D.R.App.P. 28(7)(A), in that there are no citations to the record in sections I, II, III, and IV of Appellant's argument in his brief. Section V of Appellant's argument contains a single citation to the 201 page entirety of a trial transcript. Appellant Br. ¶ 55. This Court looked at this issue in State v. Noack:

We have stated we are not ferrets and we will not consider an argument that is not adequately articulated, supported, and briefed. We will not engage in unassisted searches of the record for evidence to support a litigant's position. Judges are not expected to be psychics, with the ability to divine a party's true intentions. The parties have the primary duty to bring to the court's attention the proper rules of law applicable to a case.

2007 ND 82, ¶8, 732 N.W.2d 389. Appellant seeks to make this Court ferrets and psychics of the facts in this case, the Court cannot consider his argument and should dismiss on this basis.

[¶5] Appellant fails to comply with N.D.R.App.P. 28(b)(7)(B) in that there is no "concise statement of the applicable standard of review" for Appellant's second, third, fourth, or fifth issues. Appellee also requests the Court exercise its authority under N.D.R.App.P. 3(a)(2) to dismiss the appeal on this basis.

[¶6] Appellant fails to comply with N.D.R.App.P. 30(a)(1)(B) in that the second amended information is not included in Appellant's appendix.

[¶7] Appellant fails to comply with N.D.R.App.P. 30(a)(1)(G) in that the judgment being appealed is not included in Appellant's appendix.

[¶8] Appellant fails to comply with N.D.R.App.P. 30(b) as "Rule 30(b) clearly provides that the appellant *shall* include in the appendix the portions of the record designated by the appellee." In re Estate of Raketti, 340 N.W.2d 894, 897 (N.D. 1983) (emphasis in original). Appellant fails to include Appellee's responses to any of Appellant's motions included in his appendix. "The rule clearly require[s] [Appellant] to include portions of the record designated by [Appellee] in the appendix. Failure to comply with the Rules of Appellate Procedure, in the discretion of this Court, may be grounds for dismissal of the appeal." Id. at 897 (citations omitted).

CONCLUSION

[¶9] Based upon the foregoing, Appellee requests this Court dismiss Appellant's appeal along with any other relief the Court deems proper.

Dated this 27th day of May, 2021.

/s/ Christopher W. Nelson
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CERTIFICATE OF COMPLIANCE

[¶]1 The undersigned, as attorney for the Appellee in the above matter, and as the author of the above brief, hereby certifies, in compliance with Rule 32(a) of the North Dakota Rules of Appellate Procedure, that the above brief was prepared with proportional type face and that the total number of pages is 6.

Dated this 27th day of May, 2021.

/s/ Christopher W. Nelson
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CERTIFICATE OF SERVICE

[¶1] I hereby certify that a true and correct copy of the foregoing Appellee's Motion to Dismiss Appeal, Brief in Support of Appellee's Motion to Dismiss Appeal, and Appellee's Motion for Extension of Time, were on the 27th day of May, 2021 emailed to the following:
Attorney for Appellant:

Kyle R. Craig – kcraig@ackrelaw.com

/s/ Christopher W. Nelson
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