

IN THE SUPREME COURT OF NORTH DAKOTA

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James Charles Thompson,  
  
Petitioner and Appellant,  
  
v.  
  
State of North Dakota,  
  
Respondent and Appellee.

Supreme Court File No.  
20210038  
Stutsman County File No.  
47-2020-CV-00571

**APPELLANT BRIEF**

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BRIEF OF PETITIONER-APPELLANT, JAMES CHARLES THOMPSON  
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Appeal from the Order Denying Petitioner's Application for Post-Conviction Relief

Entered on the 5<sup>th</sup> day of January, 2021.

In District Court, Stutsman County, State of North Dakota

The Honorable Cherie Clark

ORAL ARGUMENT REQUESTED

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**Oral Argument:**

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

## NATURE OF THE CASE

[¶1] Petitioner/Appellant, James Charles Thompson (Mr. Thompson) filed a post-conviction petition on November 16, 2020.

[¶2] The criminal case that is involved in this petition is case number 47-03-K-01052.

[¶3] The state filed a response to case number 47-2020-CV-00571 on 11/24/2020 and a motion to dismiss on 11/25/2020.

[¶4] The state also filed a motion to dismiss based on the statute of limitation on 4/25/2020.

[¶5] Mr. Thompson filed for indigent legal services on 12/01/2020 and as a result was assigned Attorney Kyle Craig on 12/03/2020.

[¶6] Attorney Craig filed a request for a 120-day extension on 12/14/2020.

[¶7] The state responded to this request asserting the affirmative defense of laches and misuse of process on 12/22/2020.

[¶8] The district court entered an order dismissing Mr. Thompson's application for post-conviction relief due to the statute of limitations on 01/06/2021. Judgment was then entered on 01/07/2020.

[¶9] Attorney Craig then filed a notice of appeal of that judgment on 02/08/2021.

[¶10] The clerk's certificate of appeal was filed on 03/08/2021.

[¶11] This case is now before the North Dakota Supreme Court.

## STATEMENT OF THE ISSUE

**ISSUE I.** Did the District Court err when it entered an order dismissing Mr. Thompson's post-conviction petition for relief?

## STATEMENT OF FACTS

[¶12] The petitioner/appellant, James Charles Thompson (Mr. Thompson) acting pro se filed an application for post-conviction relief with the Stutsman County Clerk of the District Court on November 16, 2020. The criminal case involved in this post-conviction application was case number 47-03-K-01052. Case number 47-03-K-01052 began on November 19, 2003 with a criminal complaint charging Mr. Thompson with promoting a sexual performance by a minor. Mr. Thompson plead guilty to that charge and judgment was entered on 01/26/2004.

[¶13] The state responded to Mr. Thompson's post-conviction application by filing a response on November 24, 2020. Then on 11/25/2020 the state filed a motion for summary dismissal and brief.

[¶14] Mr. Thompson filed an application for indigent defense services on 12/01/2020. He was found to be eligible for defense services and had attorney Kyle Craig assigned as his counsel. Attorney Craig on 12/14/2020 filed a request for 120-day extension to draft an amended petition. The reasons attorney Craig filed for an extension were; a.) he was recently assigned as counsel for Mr. Thompson's case, b.) he was in the process of doing investigation into the claim and, c.) to obtain medical records.

[¶15] The state responded to Mr. Thompson's motion to amend by asserting the defense of laches and misuse of process.

[¶16] The district court granted summary dismissal of Mr. Thompson’s petition for post-conviction relief on 1/5/2021. Judgment of dismissal was then filed on 1/7/2021.

[¶17] Attorney Craig filed a notice of appeal of that judgment on 02/08/2021.

### ARGUMENT

**I. ISSUE I:** Did the District Court err when it entered an order dismissing Mr. Thompson’s post-conviction petition for relief?

[¶18] In this case now before the district court still has before it a motion by Mr. Thompson’s attorney Kyle Craig dated 12/14/2020 for an extension of 120 days to prepare an amended post-conviction petition. According to [¶4] of the States Response to the Motion to Amend the Petition Mr. Thompson’s attorney, Kyle Craig, explained the basis for his request for an extension was; a.) he was recently assigned as counsel for Mr. Thompson’s case, b.) he was in the process of doing investigation into the claim and, c.) to obtain medical records.

[¶19] The district court didn’t rule on Mr. Thompson’s motion to extend for 120 days and instead entered an order summarily dismissing Mr. Thompson’s application for post-conviction relief on 01/16/2021.

[¶20] *Friesz v. State of North Dakota* 2021 ND 37 has a somewhat similar fact situation to the case now before the court. In Friesz the state made a 3.2 motion for summary dismissal. According to N.D.R. of Ct. 3.2 the opposing party has 14 days to answer a 3.2 motion. Just 2 days after the state’s request the court entered an order dismissing Friesz’s application for post-conviction relief. According to Friesz the ruling of the district court on a 3.2 motion wasn’t ripe for ruling until 14 days have elapsed and remanded the case to allow 14 days for Mr. Friesz to respond to the 3.2 motion.

## STANDARD OF REVIEW

[¶21] The standard of review for determining if the district court’s ruling is premature according to Friesz [¶8] is:

“This Court has recently held that “[u]nless clear from the record that any response a party could make would be futile, justice requires a party be granted the opportunity to respond as required under N.D.R.Ct. 3.2.” *Davis v. Davis*, 2021 ND 24, ¶ 9. As noted by Justice Crothers in the special concurrence, “[a]bsent the parties’ compliance with the requirements of N.D.R.Ct. 3.2, this Court should conclude a request for relief was not ripe for consideration by the district court. See N.D.R.Ct.3.2(a)(2) (‘Upon the filing of briefs, or upon the 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.’).” Special Concurrence, at ¶ 14. The appropriate remedy is to reverse and remand to provide Friesz with an opportunity to respond.”

[¶22] Mr. Thompson’s claims in his case the district court should have ruled on his 120-day motion for extension prior to summarily dismissing his post-conviction application for relief.

[¶23] Mr. Thompson is not an attorney. He needed an attorney to help him draft his post-conviction petition. However, according to the rules, he can’t qualify for an appointed attorney until he drafts his own and files a post-conviction petition. In the case now before the Court Mr. Thompson followed the above procedure and on his own drafted and filed a post-conviction petition. After that filing, he applied for and qualified for an appointed attorney. Once an attorney was appointed, he needed that attorney to amend his post-conviction relief application.

[¶24] The attorney appointed for Mr. Thompson’s post-conviction petition was Kyle Craig. Attorney Craig needed time to investigate the facts involved in Mr. Thompson’s post-conviction petition, amend Mr. Thompson’s post-conviction petition,

and get Mr. Thompson's medical records. In order to get the above things done, attorney Craig needed more time and to get that time he made a motion for a 120-day continuance.

[¶25] The two-year time period for filing Mr. Thompson's post-conviction petition under N.D.C.C. 29-32.1-01(2) had elapsed prior to Mr. Thompson's filing his post-conviction application. However, it could still be filed under N.D.C.C. 29-32.1-01(3) which states:

- “3. a. Notwithstanding subsection 2, a court may consider an application for relief under this chapter if:
- (1) The petition alleges the existence of newly discovered evidence, including DNA evidence, which if proved and reviewed in light of the evidence as a whole, would establish that the petitioner did not engage in the criminal conduct for which the petitioner was convicted;
  - (2) The petitioner establishes that the petitioner suffered from a physical disability or mental disease that precluded timely assertion of the application for relief; or
  - (3) The petitioner asserts a new interpretation of federal or state constitutional or statutory law by either the United States supreme court or a North Dakota appellate court and the petitioner establishes that the interpretation is retroactively applicable to the petitioner's case.”

[¶26] To determine whether any of the above exceptions in N.D.C.C. 29-32.1-01(3) apply to Mr. Thompson's post-conviction petition attorney Craig needed time to question Mr. Thompson and get his medical record.

### CONCLUSION

[¶27] The district court erred when it didn't allow Mr. Thompson's motion for a 120-day extension and instead while that motion was before the district court ordered summary dismissal of Mr. Thompson's post-conviction petition for relief.

[¶28] This case should be remanded so that Mr. Thompson's attorney Kyle Craig gets 120 days to question Mr. Thompson and research his medical records.



Dated this 12<sup>th</sup> day of March, 2021.

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**CERTIFICATE OF SERVICE**

[¶1] I certify that a true and correct copy of the following, specifically:

1. Appellant Appendix
2. Appellant Brief
3. Certificate of Compliance
4. Certificate of Service

by electronically serving the same through the North Dakota Supreme Court e-filing system and that North Dakota Supreme Court e-filing portal will provide service to the following:

North Dakota Supreme Court  
[supclerkofcourt@ndcourts.gov](mailto:supclerkofcourt@ndcourts.gov)

Fredrick Russell Fremgen  
Stutsman County States Attorney  
[attorney@stutsmancounty.gov](mailto:attorney@stutsmancounty.gov)

and by U.S. postal service with proper postage affixed to:

James Charles Thompson  
c/o Minnesota Correctional Facility Oak Park Heights  
Inmate ID#256857  
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Petitioner/Appellant

Dated this 12<sup>th</sup> day of March, 2021.

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**CERTIFICATE OF  
COMPLIANCE**

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[¶1] This appellant's brief and appendix complies with the page limit of 38 for the brief and 100 pages for the appendix set forth in Rule 32(a)(8)(A) of the North Dakota Rules of Appellate Procedure. The brief in this matter consists of 9 pages and appendix consists of 43 pages.

Dated this 12<sup>th</sup> day of March, 2021.

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