

IN THE SUPREME COURT

STATE OF NORTH DAKOTA

City of Minot,)	
)	District Court No. 51-2021-CR-00625
)	
Plaintiff/Appelle,)	Supreme Court No. 20210134
)	
v.)	
)	
Lynette Burtch,)	
)	
Defendant/Appellant,)	
)	

**APPEAL FROM THE ORDER TO DISMISS FROM
THE WARD COUNTY DISTRICT COURT,
THE HONORABLE JUDGE GARY H. LEE PRESIDING**

APPELLANT’S BRIEF

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North Dakota Rule Criminal Procedure 37	¶¶ 3,4,5,6,8,9,11,12
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STATEMENT OF THE ISSUE

[¶ 1] Whether the district court was incorrect when it did not grant subject matter jurisdiction to hear the municipal court appeal.

JURISDICTIONAL STATEMENT

¶ 2] This is an appeal from the district court’s order dismissing a municipal court appeal from an order denying appellant’s motion to withdraw her guilty plea.

Pursuant to N.D.C.C. 29-08-06 this court has jurisdiction to consider this appeal.

See City of Williston v Kevin Werkmeister, 2015 ND 172 ¶7 &8.

THE STATEMENT OF THE CASE – FACTS

¶3] On April 1, 2021, the Appellant, Lynette Burtch pled guilty to the charge of Dangerous Animal (clerk of municipal court has it as Viscious Animal). (Minot City Ordinance 7-27). Appendix [hereinafter “A”] at 5. The Appellant moved to withdraw her guilty plea based on withdrawal was necessary to correct a manifest injustice. A. at 6. The city responded. A. at 11. The motion to withdraw was denied by order on April 8, 2021. A. at 19 ¶2. In that order the court indicates that she made a statement on March 16, 2021, that “dog bite cases do not typically or automatically result in animals being euthanized. ...” Id. ¶2. (with all due respect the Appellant disagrees as to the statement made and when the statement was made. The statement was different and clear as to animals not being euthanized)(it is believed that if jurisdiction is granted Appellant may be allowed a de novo

hearing on her motion to withdraw, but that is an issue for the district court). Based on the statement made by the Judge the Appellant (who did not want her dogs euthanized and relied on the statement) pled guilty to the offense on April 1, 2021. A. at 5. (once again the statement she relied on was much different). The appellant appealed the denial of her motion to withdraw to district court on April 12. A. at 30. The case was transferred to district court on that date. A. at 3. On April 16, the district court dismissed the appeal based on lack of subject matter jurisdiction. A. at 23. The Appellant maintains the district court has subject matter jurisdiction to hear the municipal court appeal pursuant to North Dakota Rule Criminal Procedure 37[hereinafter N.D.R.Crim.P.]. The district court relied on N.D. Cent Code 40-18-19. A. at 24 ¶10.

LAW AND ARGUMENT

I. The trial court has subject matter jurisdiction to hear the municipal court appeal pursuant to North Dakota Rule Criminal Procedure 37(k)(3)

[¶4] The trial court has subject matter jurisdiction to hear the municipal appeal pursuant to North Dakota Rule Criminal Procedure 37 (k)(3) [hereinafter N.D.R.Crim.P. 37(k)(3)].

[¶5] N.D.R.Crim.P. 37 allows appeals from municipal courts to district courts, including, it seems, appeals after post judgment motions. This includes certain orders entered after conviction. See City of Williston v Kevin Werkmeister, 2015 ND 172 ¶8.

[¶6] North Dakota Rule of Criminal Procedure 37 in part states as follows:

(K) Supervision in District Court. The supervision and control of the proceedings on appeal will be in the district court from the time an appeal is taken except as otherwise provided in these rules. The district court, at any time after an appeal is taken, may:

- (1) hear a motion to dismiss the appeal.
 - (2) conduct a trial anew and affirm, reverse, modify or vacate the municipal court judgment or order.
 - (3) correct an illegal sentence or a sentence imposed in an illegal manner; and
 - (4) order judgment to be entered in the district court.
- N.D.R. Crim. P. 37(k)(3)

[¶7] The explanatory note to the above indicates that it was amended in March of 2020. The above part of the rule seems to expand the jurisdiction of the district court. In its order the district court cited a supreme court case indicating subject matter jurisdiction can be determined sua sponte. See Estate of Finstrom, 2020 ND 227, 950 N.W. 2d 401. That case did not specifically apply to municipal court appeals.

[¶8] The undersigned does not see the jurisdictional issue to be as clear as the district court. Rule 37 states that it may **hear** (emphasis added) a motion to dismiss the appeal.(does this mean on all issues including jurisdiction). Yet without giving an opportunity to be heard the Judge sua sponte dismissed this appeal. The Appellant wasn't even given the ten days to demand a change of judge if she so desired. If jurisdiction is granted the Appellant requests that the ten (10) days to demand a change of judge be tolled. Curiously, though the district court said it did not have subject matter jurisdiction, it denied the Appellant's municipal court request to stay the judgment pending the district court appeal. A. at 26 ¶18.

[¶9] N.D.R.Crim.P. 37 does not limit the orders to be reviewed to orders deferring imposition of sentence as does North Dakota Century Code § 40-18-19 and as the Judge stated in his order to dismiss. N.D.R.Crim.P. 37 (K)(3). A. at 23 ¶10.

[¶10] The Appellant feels the municipal Judge's sentence/judgment is an illegal sentence. The municipal judge made the statement about not euthanizing. She participated in plea negotiations. See State v Mackey, 2011 ND 203, ¶6 and ¶11 (line of cases reviewing court participation and illegal sentences).

[¶11] Under N.D. Crim. Pro, 37 (this rule seems to expand the district court’s jurisdiction or better clarifies it). It is believed that N.D. Crim. Pro. 37 (k)(3) gives the district court jurisdiction to “correct an illegal sentence or a sentence imposed in an illegal manner.

Conclusion

[¶12] There can be different interpretations of N.D.R. Crim.Pro 37 which would have certainly required some type of briefing or argument. Yet that was denied. The court seemed to rely only on N.D.Cent code ¶49-18-19. It is the undersigned’s strong feeling that N.D.R. Crim. P. 37 expands the district court’s jurisdiction and should not have dismissed this appeal. The Appellant requests that this court require the district court to hear the municipal court appeal.

Dated this 14th day of June 2021.

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1 IN THE SUPREME COURT

2 STATE OF NORTH DAKOTA

3 City of Minot,) **AFFIDAVIT OF ELECTRONIC SERVICE**
 4 Plaintiff, Appellee,)
 5 -vs-) DISTRICT COURT NO. 51-2021-CR-00625
 6 Lynette Burtch,) SUPREME COURT NO. 20210134
 7 Defendant, Appellant.)

8 Tammy Hodge, being first duly sworn, on oath, deposes and
9 states:

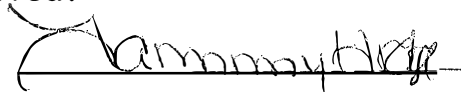
10 That she is of legal age and a citizen of the United States;
11 that on the 15th day of June, 2021, she electronically filed,
12 in the City of Minot, North Dakota a true and correct copy of the
13 following document(s):

- 13 1. Corrected Appellant's Brief.
- 14 2. Certificate Of Compliance

15 That said envelope was addressed as follows:

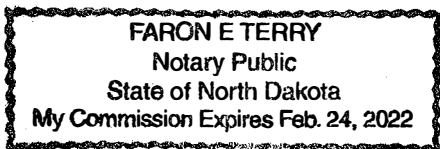
16
 17 Stefanie R. Stalheim (06894)
 18 Assistant City Attorney
 19 stefanie.stalheim@minotnd.org
 attorney@minotnd.org

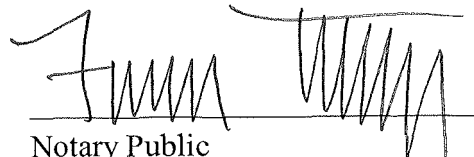
20 To the best of your affiant's knowledge, information and
21 belief, such e-mail address as given above was the actual e-mail
22 address of the party intended to be served.

23 

24 Tammy Hodge

25 Subscribed and sworn to before me this 15th day of June, 2021.



28 
 Notary Public