

IN THE SUPREME COURT OF NORTH DAKOTA

Abdulrahman Ibrahim Ali,

Petitioner and Appellant,

v.

State of North Dakota,

Respondent and Appellee.

Supreme Court File No.
20210335
Cass County District Court No.
09-2021-CV-02341
APPELLANT BRIEF

BRIEF OF PETITIONER-APPELLANT, ABDULRAHMAN IBRAHIM ALI

Appeal from the Order Granting State's Motion for Summary Disposition of Application
for Post-Conviction Relief

Entered on the 17th day of November, 2021.

In District Court, Cass County, State of North Dakota

The Honorable John C. Irby

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CASES

Morel v. State, 912 N.W.2d 299 (N.D. 2018) ¶19

RULES

N.D. R. of Crim. P. 12.2(b) ¶22

N.D. R. of Crim. P. 12.2(c) ¶22

N.D. R. of Civ. P. 52(a) ¶19

OTHER AUTHORITIES

N.D.C.C. § 29-32.1-01(2) ¶16

N.D.C.C. § 29-32.1-01(3)(a)(2) ¶16, 24

N.D.C.C. § 29-32.1 ¶26, ¶27, ¶28, ¶31

N.D.C.C. § 29-32.1-01(1)(e) ¶26

N.D.C.C. § 39-32.1-12(1) ¶18

STATEMENT OF THE ISSUE

[¶1] ISSUE I: Did the Court err when it entered an order summarily dismissing the Petitioner/Appellant's application for post-conviction relief?

NATURE OF THE CASE

[¶2] This case is the second post-conviction relief application filed by Abdulrahman Ibrahim Ali (Mr. Ali). His first petition for post-conviction relief was case 09-2018-CV-02465. Both that case and this one sought post-conviction relief from criminal case # 09-2015-CR-04048.

[¶3] Mr. Ali's second application for post-conviction relief was filed on July 26, 2021.

[¶4] The state filed an Answer to Mr. Ali's second Application for Post-Conviction Relief on August 16, 2021.

[¶5] Mr. Ali's attorney, Kiara Kraus-Parr, on September 2, 2021 filed a motion to continue the response to the motion for summary judgement because she needed an interpreter in order to speak to Mr. Ali.

[¶6] The order to continue was granted on September 15, 2021. That order also set sixty (60) days for Mr. Ali's response to the state's motion for summary judgment.

[¶7] An order granting state's motion for summary disposition of application of post-conviction relief was entered on November 17, 2021.

[¶8] A notice of appeal of that dismissal was filed by Mr. Ali was filed December 2, 2021.

[¶9] The notice of the filing of the notice of appeal was filed on December 3, 2021.

[¶10] This matter is now before the North Dakota Supreme Court.

STATEMENT OF FACTS

[¶11] Defendant/Appellant Abdulrahman Ibrahim Ali (Mr. Ali) was charged in Cass County, North Dakota, with the following offenses: Gross Sexual Imposition, Kidnapping, Aggravated Assault, and two (2) counts of Terrorizing. After Mr. Ali waived his rights to a jury trial all of these five (5) charges were tried to the court. The trial to the court ended with a guilty verdict on each of the five (5) counts.

[¶12] After judgment was entered by the District Court, Mr. Ali appealed that judgment to the North Dakota Supreme Court. In the ruling on that Appeal the North Dakota Supreme Court in State v. Ali, 909 N.W.2d 112, 2018 ND 87 (N.D. 2018) summarily affirmed the District Court judgment.

[¶13] Mr. Ali immigrated to the United States. He still has real difficulty speaking or understanding English.

[¶14] There has always been questions as to his mental capabilities. In his application for post-conviction relief (App. p. 6), page 2, ground three it states: "... Mr Ali doesn't know the nature of why he's in prison, is heavily sedated on medications, and also can't clearly unders[...] english, in an forms.".

[¶15] At all times relevant to this case Mr. Ali has always raised issues about his competency and criminal responsibility. To settle these issues once and for all he should be mentally evaluated.

[¶16] Mr. Ali's convictions on the underlying charges in [¶1] are over two years old. Therefore, the two-year statute of limitations in N.D.C.C. § 29-32.1-01(2) prevents a post-conviction application unless he can find a way to bring it under one of the exceptions

to the statute of limitations. The exception he believes applies to him is N.D.C.C. § 29-32.1-01(3)(a)(2) which allows the court to consider an application for relief is “The petitioner establishes that the petitioner suffered from a physical disability or mental disease that precluded timely assertion of the application for relief”.

[¶17] In the past he has raised the issue of his mental capacity and to date there has been no mental health evaluation to determine whether his mental problems and heavy sedation have prevented him from timely filing his application for post-conviction relief.

[¶18] The trial judge in his opinion and order for dismissal of application for post-conviction relief states Mr. Ali’s application is barred by Res Judicata under N.D.C.C. 39-32.1-12(1). He then issued an order dismissing Mr. Ali’s post-conviction relief application.

STANDARD OF REVIEW

[¶19] The standard of review for a post-conviction relief petition is well established. In Morel v. State, 912 N.W.2d 299 (N.D. 2018):

“In post-conviction relief proceedings, a district court’s findings of fact will not be disturbed unless they are clearly erroneous under N.D.R.Civ.P. 52(a). A finding of fact is clearly erroneous if it is induced by an erroneous view of the law, if it is not supported by the evidence, or if, although there is some evidence to support it, a reviewing court is left with a definite and firm conviction that a mistake has been made. Questions of law are fully reviewable on appeal of a post-conviction proceeding.”

ARGUMENT

ISSUE I: Did the Court err when it entered an order summarily dismissing the Petitioner/Appellant’s application for post-conviction relief?

[¶20] When a person’s ability to speak or understand English is very limited and he is heavily sedated there is a good probability he is incompetent and is not able to timely file a post-conviction relief application. Also, it is very possible he is unable to

state the reasons why he is entitled to post-conviction relief. The only way to eliminate Mr. Ali's incompetency claim is to have him evaluated mentally.

[¶21] Mr. Ali claims he is very limited in his ability to speak or understand English and that he is incompetent. The fact that he is very limited in his ability to speak or understand English may be cured by getting an interpreter and having that interpreter present when Mr. Ali has conferences with his attorney and at all legal proceedings. An interpreter will make Mr. Ali aware what is being said and give him an opportunity to respond. However, an interpreter can't cure Mr. Ali's mental incompetency and an interpreter doesn't know if Mr. Ali understands his interpretation. The extent of Mr. Ali's mental incompetency can only be decided by a psychologist or psychiatrist.

[¶22] In a criminal case when a criminal Defendant intends to claim a defense based on his mental disease or defect or any other mental condition that Defendant must file a notice under N.D. R. of Crim. P. 12.2 (b). N.D. R. of Crim. P. 12.2(c) allows the state in an appropriate case to have the Defendant examined by a mental health professional retained by the prosecutor in order to be able to defend against a Defendant's claim of a mental disability.

[¶23] In this case the question isn't whether or not the Defendant, because of a mental disease or defect or mental condition, has a defense. The question is "Whether Mr. Ali, because of his heavy sedation and/or because of a mental disease, defect, or mental condition he has been unable to timely file his post-conviction application and include in that post-conviction relief application the grounds he has for filing his post-conviction relief."

[¶24] The reason the above question regarding Mr. Ali's mental competency arises is because of the following language in N.D.C.C. § 29-32.1-01(3)(a)(2): "The petitioner establishes that the petitioner suffered from a physical disability or mental disease that precluded timely assertion of the application for relief..."

[¶25] The only way to determine if Mr. Ali does or does not suffer from a physical disability or mental disease that precludes timely assertion of the application for relief is for him to undergo a mental health evaluation.

[¶26] There is always a possibility that Mr. Ali's mental incapacity isn't that bad or he is faking his inability to understand English and the legal proceedings in his case. However, when incarceration is involved, it is always better to err on the side of caution and order a mental health evaluation to determine if Mr. Ali can be held criminal responsible.

CONCLUSION

[¶27] Because of the issue raised above about Mr. Ali's competency the trial judge shouldn't have granted summary judgment. Summary judgment in Mr. Ali's case is not appropriate until after Mr. Ali's competency has been established by a psychologist or psychiatrist.

[¶28] This case should be remanded to the district court with an order requiring the district court to order Mr. Ali undergo a mental health evaluation to determine whether or not he had the ability to timely file his post-conviction relief application.

Dated this 17th day of January, 2022.

/S/ Benjamin C. Pulkrabek

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**CERTIFICATE OF
COMPLIANCE**

[¶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 22 pages.

Dated this 17th day of January, 2022.

/s/ Benjamin C. Pulkrabek

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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 e-filing will provide service to the following:

North Dakota Supreme Court
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Dated this 17th day of January, 2022.

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