

**IN THE SUPREME COURT**

**STATE OF NORTH DAKOTA**

**Supreme Court No. 20220289  
Ward County Case No. 51-2021-CR-00725**

State of North Dakota, )  
)  
)  
Plaintiff/Appellee, )  
)  
v. )  
)  
Susan Scheel Coons, )  
)  
Defendant/Appellant. )

**MOTION FOR REMAND REGARDING PENDING RULE 35 MOTION**

¶1 Attorney Lynn M. Boughey on behalf of Susan Coons hereby moves for a partial remand as to only the pending Rule 35 motion before the lower court for a reduction of sentence. The pending appeal does not relate to the sentence itself (see Appellate Brief) and as such a remand for the purpose of resolving the motion pending in the lower court does not impinge on this Court's authority or jurisdiction.

¶2 Dated this 5<sup>th</sup> day of January, 2023.

\_\_\_\_\_  
/s/ Lynn M. Boughey  
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**STATE OF NORTH DAKOTA**

**Supreme Court No. 20220289  
Ward County Case No. 51-2021-CR-00725**

State of North Dakota, )  
)  
) **BRIEF IN SUPPORT OF MOTION**  
Plaintiff/Appellee, ) **FOR REMAND REGARDING**  
) **PENDING RULE 35 MOTION**  
v. )  
)  
Susan Scheel Coons, )  
)  
Defendant/Appellant. )

¶1 Attorney Lynn M. Boughey on behalf of Susan Coons has moved for a partial remand as to only the pending Rule 35 motion before the lower court for a reduction of sentence. The pending appeal does not relate to the sentence itself (see Appellate Brief) and as such a remand for the purpose of resolving the motion pending in the lower court does not impinge on this Court's authority or jurisdiction.

¶2 Susan Coons has requested that this Court remand to the lower court the issue of addressing her Rule 35 motion. Susan has an upcoming civil trial in which she is the main witness in a case brought against her by her ex-husband and her ex-mother-in-law relating to the real property also at issue in the various criminal matters brought against her, including the instant case. It is Susan's

fervent hope that upon receiving sufficient jurisdiction to resolve the pending rule 35 motion that the lower court will reduce her sentence in a manner which allows her to attend in person the upcoming civil trial. The three-day trial scheduled at the end of this month, that is on January 31, 2023, in **CASE NO. 51-2021-CV-00473**.

### **Discussion**

¶3 Susan Coons was found guilty by a jury in the above referenced matter on May 12, 2022. Sentencing occurred on August 30, 2022, and judgment was entered on September 9, 2022 [**Doc. 189**]. Susan requested a court appointed attorney for the purpose of this appeal [**Doc. 186**] and Judge Lee granted the request [**Doc. 190**]. The notice of appeal was filed by Susan's appellate Attorney Benjamin C. Pulkrabek on September 28, 2022 [**Doc. 186**].

¶4 On December 8, 2022, Attorney Boughey on behalf of Susan Coons made a motion for Rule 35 reduction of sentence in regards to the sentence imposed following the jury verdict in the instant case [**Doc. 205**]. On the same date, Attorney Boughey on behalf of Susan Coons made a motion for Rule 35 reduction of sentence in regards to the sentences imposed upon receipt of various Alford pleas as to the other charges in other matters.<sup>1</sup>

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<sup>1</sup> The Rule 35's in the cases involving *Alford* pleas consist of the following:

**31-2021-CR-00099** Rule 35 Motion to Reduce Sentence 12-8-22, **Doc. No. 159**

**31-2021-CR-00100** Rule 35 Motion to Reduce Sentence 12-8-22 **Doc. No. 129**

**51-2021-CR-00562** Rule 35 Motion to Reduce Sentence 12-8-22 **Doc. No. 121**

¶5 Attorney Pulkrabek has filed his appellate brief in regards to this matter, raising two issues, neither of which relates to the sentence imposed. Sup. Ct. Doc. No. 7.

¶6 Judge Lee has recently entered an Order in an interrelated civil matter (in which Susan was requesting a continuance in regards to the upcoming hearing in the civil matter until she was released) stating in relevant part the following in regards to his ability to address the pending Rule 35 motions:

[20] In pleadings filed in support of the motion for continuance, counsel for Susan Gustafson noted that a Rule 35, NDRCRimPro, motion for reduction of sentence was pending. It should be noted that Susan Gustafson appealed her conviction. The District Court loses jurisdiction to determine matters once an appeal is filed. Wilson v. Kopyy, 2000 ND 179, 653 NW2d 68. The Court will not consider the Rule 35 motion until the appeal has run its course. The Court does not consider the Rule 35 motion to be a legitimate reason for granting the requested continuance.

*Troy Coons and Yolanda Coons v. Susan Coons a/k/a Susan Gustafson and Mike Gustafson*, Order 12-27-22, **CASE NO. 51-2021-CV-00473, Doc. No. 174.**

### **Conclusion**

¶7 For the reasons stated above, Susan Coons respectfully requests this court to remand the pending rule 35 motion to the lower court so Judge Lee will be in a position to address that matter in a timely fashion.

¶8 Dated this 5<sup>th</sup> day of January, 2023.

\_\_\_\_\_  
/s/ Lynn M. Boughey

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Supreme Court No. 20220289  
Ward County Case No. 51-2021-CR-00725

State of North Dakota,	)	
	)	
	)	
Plaintiff/Appellee,	)	<b>CERTIFICATE OF SERVICE</b>
	)	
v.	)	
	)	
Susan Scheel Coons,	)	
	)	
Defendant/Appellant.	)	

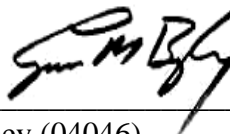
¶1 Defendant has served the following document(s):

1. 20220289 State v. Susan Coons - Notice of Limited Appearance by Atty Boughey 1-5-23;
2. 20220289 State v. Susan Coons, Motion for Remand Re Pending Rule 35 Motion 1-5-23;
3. 20220289 State v. Susan Coons, Brief in Support of Motion for Remand Re Pending Rule 35 Motion 1-5-23; and
4. 20220289 State v. Susan Coons, Certificate of Service.

were served upon the above-named Plaintiff and Defendant's Appellate Counsel by filing and serving true and correct copies of the above-listed document on the 5<sup>th</sup> day of January, 2023, via the North Dakota Supreme Court filing system to:

Rozanna Larson	51wardsa@wardnd.com
Benjamin C. Pulkrabek	Pulkrabek@lawyer.com

¶2 Dated this 5<sup>th</sup> day of January, 2023.




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