

IN THE SUPREME COURT
OF THE STATE OF NORTH DAKOTA

State of North Dakota,)	
)	Supreme Court No. 20220327
Plaintiff/Appellee,)	
)	Nelson Co. No. 20-2021-CR-00002
v.)	
)	
Matthew Howard Walsh,)	
)	
Defendant/Appellant,)	

Appeal of Northeast Central District Court Second Amended Criminal Judgment dated October 25, 2022, the Honorable Lolita Hartl-Romanick, Presiding.

BRIEF OF APPELLEE

ORAL ARGUMENT REQUESTED

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TABLE OF AUTHORITIES

CASES

State vs. Boushee, 459 N.W.2d 552 (N.D. 1990).....¶8

State v. Hoffarth, 456 N.W.2d 111, 115 (N.D. 1990).....¶8

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Rules

N.D.R.Crime.P. 11(b)(1).....¶1, 4, 5, 6, 7, 8

ORAL ARGUMENT JUSTIFICATION

[¶1] Oral Argument has been requested to emphasize and clarify the Appellee's written arguments on their merits.

STATEMENT OF ISSUES

[¶2] The District Court did follow the required procedure in Rule 11(b)(1) of the North Dakota Rules of Criminal Procedure during Matthew Howard Walsh's criminal hearings.

STATEMENT OF CASE

[¶3] On January 8, 2021 Matthew Walsh was charged with theft by information. The initial appearance was held on January 29, 2021. The preliminary hearing was held on May 21, 2021. A change of plea and sentencing hearing was held on April 8, 2022. During the April 8, 2022 hearing, restitution was held open for a time period of sixty days. A restitution hearing was held on July 29, 2022. The July 29, 2022 was then continued. On October 12, 2022 the parties filed a stipulated restitution agreement. A second amended judgment was filed on October 25, 2022. On November 8, 2022 a Notice of Appeal and an Order for Transcript was filed. The Notice of Appeal was filed on November 8, 2022. The Transcripts were filed on November 29, 2022. The Clerk's Certificate of Appeal was filed on December 5, 2022.

STATEMENT OF THE FACTS

[¶4] On July 29, 2022 Matthew Walsh was sentenced in case number 32-2021-CR-00001 and case number 32-2021-CR-00002. Mr. Walsh entered open guilty pleas to

both files. During the sentencing hearing Judge Hartl-Romanick advised the Defendant of his rights under N.D.R. Crim P. 11(b)(1), including N.D.R Crim P. 11(b)(1)(I). After the advisement, the Defendant acknowledged that he did not have questions about his rights. During the April 8, 2022 sentencing hearing restitution was held open for a time period of sixty days. A restitution hearing was held on July 29, 2022 in case 32-2021-CR-0002. During the restitution hearing the state requested a continuance and it was granted. A new hearing was scheduled. Prior to the next restitution hearing the parties stipulated that the Defendant would pay \$3,000 in restitution.

LAW AND ARGUMENT

[¶5]The Court must inform a defendant of his rights and of the charges against him in accordance with N.D.R.Crime.P. 11(b)(1)(A)-(J). The rule is as follows:

b) Advice to defendant.

(1) The court may not accept a plea of guilty without first, by addressing the defendant personally [except as provided in Rule 43(b)] in open court, informing the defendant of and determining that the defendant understands the following:

(A) the right to plead not guilty, or having already so pleaded, to persist in that plea;

(B) the right to a jury trial;

(C) the right to be represented by counsel at trial and at every other stage of the proceeding and, if necessary, the right to have the counsel provided under Rule 44;

(D) the right at trial to confront and cross-examine adverse witnesses, to be protected from compelled self-incrimination, to testify and present evidence, and to compel the attendance of witnesses;

(E) the defendant's waiver of these trial rights if the court accepts a plea of guilty;

(F) the nature of each charge to which the defendant is pleading;

(G) any maximum possible penalty, including imprisonment, fine, and mandatory fee;

(H) any mandatory minimum penalty;

(I) the court's authority to order restitution; and

(J) that, if convicted, a defendant who is not a United States citizen may be removed from the United States, denied citizenship, and denied admission to the United States in the future.

[¶6]The requirement of following Rule 11 are mandatory and binding upon the court because guilty pleas result in the waiver of the defendant's rights. State v. McKay 234 N.W.2d 853 (N.D. 1975). This needs to be done on the record, but the court is not required to follow any specific form to comply with the mandatory requirement of Rule 11. State v. Storbakken, 246 N.W.2d 78, 84 (N.D. 1976).

[¶7]The district court did inform the Defendant of his rights at the beginning of the court session prior to his case being called. Further, after the Defendant's case was called he was again addressed and informed of the charges, the penalties and the fact that there could be restitution.

“THE COURT: All right. Mr. Walsh, in case 32-2021-CR-02, that is the theft of property, C felony charge that carries maximum penalties of 5 years, \$525 in court fees, \$1,000 in – or excuse me, \$10,000 in fines potentially as maximum penalties, and the restitution. And that in the other case, 32- 2021-CR-1, that is theft of property, B misdemeanor, which varies maximum penalties of 30 days, \$1,500 in fines, or a combination of those; \$250 in court fees, and restitution. Any question about the nature of the charge of the maximum penalties that could be assessed?”

[¶8]In this specific instance the defendant was addressed by the court with the maximum penalties and also informed there would be restitution prior to the Defendant pleading guilty. When asked if there were any questions the defendant stated, “No.” He affirmatively acknowledged that he did not have any questions when addressed by the

court. Based on this exchange between the district court and the Defendant it's the state's position that there was substantial compliance with N.D.RCrim.P. 11 prior to the Defendant's guilty plea.

"[t]here is substantial compliance with NDRCrimP 11 if the record of the arraignment, in conjunction with the record of the change-of-plea hearing, clearly reveals that the defendant had knowledge of the rights he was waiving by pleading guilty."

State v. Hoffarth, 456 N.W.2d 111, 115 (N.D. 1990). See State vs. Boushee, 459 N.W.2d 552 (N.D. 1990).

CONCLUSION

[¶9] The State respectfully requests that this Court affirms the district court's sentence of Matthew Howard Walsh.

[¶10] Respectfully submitted this 30th day of January, 2023

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CERTIFICATE OF COMPLIANCE

[¶1]The undersigned, hereby certifies, in compliance with Rule 32(e) of the North Dakota Rules of Appellate Procedure, that the above brief was prepared with the proportional type face and the total number of pages in the above brief totals 7pages.

[¶2]This Certificate of Compliance is drafted to ensure the filings on this day are in compliance with the rules and specifically pursuant to N.D.R.App.P. 32(e).

Respectfully submitted this 30th day of January, 2022.

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IN DISTRICT COURT
NORTH DAKOTA

NELSON COUNTY

STATE OF

State of North Dakota, Plaintiff, v. Matthew Howard Walsh, Defendant,	CERTIFICATE OF SERVICE CASE NO. 32-2021-CR-00002
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[¶ 1] I hereby certify that on January 30, 2023 the following document:

Appellee's Brief

Certificate of Compliance

Certificate of Service

was filed electronically with the Clerk of the Supreme Court through Odyssey, and via email to Benjamin C. Pulkrabek at pulkrabek@counsellor.com

Dated this 30th day of January, 2023.

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