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IN THE SUPREME COURT
STATE OF NORTH DAKOTA

2001 ND 171

Kyle Kenneth Bell, Petitioner and Appellant

v.

State of North Dakota, Respondent and Appellee

No. 20010139

Appeal from the District Court of Cass County, East Central Judicial District, the Honorable Norman J. Backes, Judge.

AFFIRMED.

Per Curiam.

Monty Grant Mertz, P.O. Box 10396, Fargo, N.D. 58106-0396, for petitioner and appellant.

Mark Rainer Boening (argued) and Adam Wade Hamm (appeared), Assistant State's Attorneys, P.O. Box 2806, Fargo, N.D. 58108-2806, for respondent and appellee.

Bell v. State
No. 20010139

Per Curiam.

[¶1] Kyle Bell appeals from a judgment dismissing his second application for post-conviction relief. In Bell's direct appeal from a conviction entered upon a guilty plea to four charges, we affirmed the trial court's refusal to allow Bell to withdraw his guilty plea and the court's imposition of consecutive ten-year prison terms to each of the first three charges and five years supervised probation to the fourth charge. State v. Bell, 540 N.W.2d 599 (N.D. 1995). We subsequently affirmed a dismissal of Bell's first application for post-conviction relief, holding Bell's response to the State's motion for summary disposition failed to present competent admissible evidence that raised a genuine issue of material fact to support his claims his counsel failed to move for a change of venue, he should not have received the maximum sentence because he pled guilty, he had new witnesses who would benefit his case, he was deprived of due process, the prosecution made false statements at the preliminary hearing and disclosed confidential and false information to the media, and the trial court failed to acknowledge a state hospital report in sentencing him. Bell v. State, 1998 ND 35, 575 N.W.2d 211.

[¶2] In Bell's second application for post-conviction relief, he alleged the conviction was obtained in violation of his right to indictment by a grand jury, he was denied his sixth amendment right to counsel during an interrogation, the conviction was obtained by use of a coerced and involuntary confession, the conviction was obtained as a result of mass publicity that violated his right to a fair trial and due process, his guilty plea was involuntary because he did not know the consequences of it, the conviction was obtained through the use of inadmissible evidence that violated his right to due process, his sentence constituted cruel and unusual punishment, and the conviction and sentence violated the rules of criminal procedure and his due process and equal protection rights. The trial court summarily dismissed Bell's second application, concluding his claims were either res judicata or misuse of process.

[¶3] On appeal, Bell argues the trial court erred in summarily dismissing his application for post-conviction relief and in denying his request to be present at the hearing and to bar the media from the proceedings. We affirm under N.D.R.App.P.

35.1(a)(6) and (7), State v. Johnson, 1997 ND 235, ¶¶ 11-13, 571 N.W.2d 372 (defendant's argument, which was a variation of previous argument and inexcusably was not raised in a prior proceeding, was misuse of process), Clark v. State, 1999 ND 78, ¶¶ 21, 23, 593 N.W.2d 329 (defendant entitled to opportunity for at least one substantive review of issues relating to conviction, and misuse of process occurs if the defendant inexcusably fails to appeal issue that was raised and litigated in original trial court proceeding, or if the defendant inexcusably fails to raise an issue in an initial post-conviction application), and Bell, 1998 ND 35, ¶ 14, 575 N.W.2d 211 (voluntary unconditional guilty plea waives all nonjurisdictional defects allegedly occurring before guilty plea).

[¶4] Gerald W. VandeWalle, C.J.
Dale V. Sandstrom
William A. Neumann
Mary Muehlen Maring
Carol Ronning Kapsner