

SUPREME COURT OF NORTH DAKOTA

Palmer v. State, 2012 ND 237

824 N.W.2d 406 (N.D. 2012) · Decided November 27, 2012

SUMMARY

Mark Palmer appealed the denial of his N.D.R.Civ.P. 60(b)(1) motion seeking relief from an order denying his application for post-conviction relief. The North Dakota Supreme Court held that the district court did not abuse its discretion in determining that counsel's failure to respond to the State's summary-dismissal motion did not constitute sufficient mistake, inadvertence, or excusable neglect. The court affirmed the district court's denial of relief.

CASE DETAILS

COURT	Supreme Court of North Dakota
WRITING FOR THE COURT	Justice Crothers; Justice Mary Muehlen Maring; Justice Carol Ronning Kapsner
JURISDICTION	North Dakota
DECIDED	November 27, 2012
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from an order denying a North Dakota Rule of Civil Procedure 60(b)(1) motion for relief from an order denying an application for post-conviction relief.
STANDARD OF REVIEW	Abuse of discretion. The court will not reverse a decision on a Rule 60(b) motion unless the district court abused its discretion in deciding whether sufficient grounds existed to disturb the judgment or order.
PRECEDENTIAL VALUE	Published North Dakota Supreme Court opinion
PARTIES	Mark Palmer v. State

TOPICS

- post-conviction relief
- civil procedure
- standard of review
- appellate procedure

PRACTICE AREAS

- post-conviction relief
- civil procedure
- appellate procedure

QUESTIONS PRESENTED

1. Whether the district court abused its discretion by denying Palmer's N.D.R.Civ.P. 60(b)(1) motion for relief from the order denying his application for post-conviction relief based on counsel's mistake, inadvertence, or excusable neglect.

HOLDINGS

1. The district court did not abuse its discretion in denying Palmer's motion for relief because counsel's failure to respond to the State's motion did not establish sufficient grounds under Rule 60(b)(1) to disturb the order denying post-conviction relief.

KEY QUOTATIONS

“We will not reverse a court’s decision on a motion for relief unless the court abused its discretion in deciding whether the party established sufficient grounds for disturbing the judgment or order.” (¶ 6)

“The moving party bears the burden of establishing sufficient grounds for disturbing the finality of the judgment, and relief should be granted only in exceptional circumstances.” (¶ 7)

FACTUAL BACKGROUND

Palmer's counsel failed to respond to the State's motion for summary dismissal of his post-conviction-relief application and mistakenly failed to request additional time. Counsel asserted that she was under significant personal strain because her husband was ill and later died. On remand, the district court found that counsel continued providing legal services, was not shown to have been absent from work, and had received the case approximately ten years after the criminal trial while attempting to become familiar with it.

PROCEDURAL HISTORY

Palmer was convicted of four counts of gross sexual imposition in 2001, and the North Dakota Supreme Court affirmed his convictions. In 2011, he applied for post-conviction relief; after he did not respond to the State's motion for summary dismissal, the district court denied the application. The district court denied Palmer's Rule 60(b)(1) motion based on counsel's mistake or inadvertence. The Supreme Court previously remanded for an adequate explanation of the denial, after which the district court issued a memorandum opinion again denying relief. The Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- State v. Palmer, 2002 ND 5, 638 N.W.2d 18
- Palmer v. State, 2012 ND 98, 816 N.W.2d 807
- American Bank Ctr. v. Schuh, 2010 ND 124, 784 N.W.2d 468
- Shull v. Walcker, 2009 ND 142, 770 N.W.2d 274

- Follman v. Upper Valley Special Educ. Unit, 2000 ND 72, 609 N.W.2d 90

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