

SUPREME COURT OF NORTH DAKOTA

Phillips v. State

2014 ND 10 (2014) · No. 20130151 · Decided January 14, 2014

SUMMARY

The North Dakota Supreme Court held that an indigent post-conviction applicant demonstrated a particularized need for a transcript of the evidentiary hearing. Because appellate counsel had not attended the hearing and the district court’s dismissal order gave only the reasons stated on the record, the court concluded that denying the transcript was an abuse of discretion. The court reversed and remanded, retaining jurisdiction.

CASE DETAILS

COURT	Supreme Court of North Dakota
WRITING FOR THE COURT	Dale V. Sandstrom, Justice; Dale V. Sandstrom; Daniel J. Crothers; Mary Muehlen Maring, Surrogate Judge; Carol Ronning Kapsner; Gerald W. VandeWalle, Chief Justice
JURISDICTION	North Dakota
DECIDED	January 14, 2014
DOCKET	20130151
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Appeal from a district court order dismissing a petition for post-conviction relief and denying the indigent petitioner’s request for a transcript of the post-conviction evidentiary hearing.
STANDARD OF REVIEW	The denial of an indigent post-conviction applicant’s request for a transcript is reviewed for abuse of discretion.
PRECEDENTIAL VALUE	Published North Dakota Supreme Court opinion; precedential.
PARTIES	Casey Phillips v. State of North Dakota

TOPICS

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

PRACTICE AREAS

- State post-conviction relief
- Appellate procedure
- Criminal procedure

QUESTIONS PRESENTED

1. Whether Phillips was required to file a separate notice of appeal to challenge the denial of his request for a transcript after appealing the dismissal of his post-conviction petition.
2. Whether the district court abused its discretion by denying an indigent post-conviction applicant's request for a transcript of the evidentiary hearing.

HOLDINGS

1. A challenge to the denial of a transcript is sufficiently interrelated with an appeal from the order denying post-conviction relief that no separately filed notice of appeal is necessary.
2. The district court abused its discretion because Phillips demonstrated a particularized need, necessity, or justification for preparation and use of the transcript.
3. The district court must provide a transcript of the post-conviction hearing so Phillips may properly pursue his appeal from the order denying post-conviction relief.

KEY QUOTATIONS

"When an indigent defendant has demonstrated a particularized need entitling him to a free transcript, a court reporter or recorder must provide a transcript as needed and ordered by the court." (¶ 18)

"We reverse and remand with instructions for the district court to provide a transcript of the post-conviction hearing so that Phillips may properly pursue his appeal from the order denying his petition for post-conviction relief." (¶ 19)

FACTUAL BACKGROUND

Phillips pleaded guilty to charges involving violation of a domestic violence protection order, stalking, terrorizing, and criminal trespass. He later sought post-conviction relief, alleging ineffective assistance of counsel, a coerced confession, an unlawfully induced guilty plea, and evidence warranting vacation of his convictions. His post-conviction hearing was conducted with appointed counsel who differed from his appellate counsel, and the district court dismissed the petition based on reasons stated on the record without supplying findings or conclusions. Because appellate counsel had not attended the hearing and lacked its transcript, counsel could not determine the basis for the dismissal.

PROCEDURAL HISTORY

Phillips pleaded guilty to violating a domestic violence protection order, stalking, terrorizing, and criminal trespass, and did not directly appeal. He later filed a petition for post-conviction relief alleging ineffective assistance, a coerced confession, an unlawfully induced guilty plea, and newly presented evidence. After the district court dismissed the petition in a one-sentence order referring to reasons stated on the record, it denied Phillips's request for a free transcript. The North Dakota Supreme Court held that the transcript issue was properly raised within the pending appeal, reversed, and remanded with instructions to provide the transcript.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The district court must provide Phillips with a transcript of the post-conviction hearing so he may properly pursue his appeal. The Supreme Court retained jurisdiction under N.D.R.App.P. 35(a)(3).

CASES CITED

- Swearingen v. State, 2013 ND 125, ¶¶ 2-5, 5, 13-14, 16, 833 N.W.2d 532
- Fleming v. State, 553 So. 2d 505, 506 (Miss. 1989)
- Shanks v. State, 906 So. 2d 760, 762 (Miss. Ct. App. 2004)
- Waslaski v. State, 2013 ND 56, ¶ 7, 828 N.W.2d 787
- Klose v. State, 2008 ND 143, ¶ 25, 752 N.W.2d 192
- Owens v. State, 1998 ND 106, ¶ 33, 578 N.W.2d 542