

SUPREME COURT OF NORTH DAKOTA

Jason James Vogt v. State of North Dakota

Vogt v. State, 2022 ND 163 (2022) · No. 20220058 · Decided August 18, 2022

SUMMARY

The North Dakota Supreme Court affirmed dismissal of Jason Vogt’s application for post-conviction relief. The court held that the State timely asserted its affirmative defenses and that the district court did not abuse its discretion in granting a continuance concerning the State’s summary-disposition motion. The court further held that Vogt’s psychological assessment did not satisfy the newly discovered evidence exception to the post-conviction statute of limitations, and declined to consider his equitable-estoppel argument because it was raised for the first time on appeal.

CASE DETAILS

COURT	Supreme Court of North Dakota
WRITING FOR THE COURT	Lisa Fair McEvers, Justice; Jon J. Jensen, Chief Justice; Gerald W. VandeWalle; Daniel J. Crothers; Lisa Fair McEvers; Jerod E. Tufte
JURISDICTION	North Dakota
DECIDED	August 18, 2022
DOCKET	20220058
DISPOSITION	affirmed
PROCEDURAL POSTURE	Jason James Vogt appealed from a Cass County District Court judgment dismissing his application for post-conviction relief.
STANDARD OF REVIEW	Questions of law in post-conviction proceedings are fully reviewable. Findings of fact are reviewed for clear error under N.D.R.Civ.P. 52(a). A district court's decision to grant or deny a continuance is reviewed for abuse of discretion. Summary disposition is proper when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.
PRECEDENTIAL VALUE	Published North Dakota Supreme Court opinion; precedential
PARTIES	Jason James Vogt v. State of North Dakota

TOPICS

- post-conviction relief
- successive petitions
- statute of limitations
- summary judgment
- appellate procedure

PRACTICE AREAS

Post-conviction relief

Criminal procedure

Appellate procedure

Civil procedure

QUESTIONS PRESENTED

1. Whether the State timely asserted its affirmative defenses in response to Vogt's post-conviction application.
2. Whether the State's motion for dismissal or summary disposition was untimely and whether the district court abused its discretion by granting a continuance.
3. Whether Vogt's psychological assessment qualified as newly discovered evidence that excused the two-year post-conviction statute of limitations.
4. Whether equitable estoppel should apply based on the State's alleged representations concerning a continuance.

HOLDINGS

1. The State timely asserted res judicata, misuse of process, and the statute-of-limitations defense because it filed its answer within 30 days of Vogt's application and expressly included those defenses.
2. The State's motion was properly considered as a motion for summary disposition, and the district court did not abuse its discretion by granting a continuance and allowing Vogt 30 days to respond.
3. Vogt's psychological assessment did not satisfy the newly discovered evidence exception because it did not establish that he did not engage in the criminal conduct for which he was convicted; therefore, his application was barred by the two-year statute of limitations.
4. The court would not address Vogt's equitable-estoppel argument because he did not assert in the district court that equitable estoppel entitled him to an evidentiary hearing.

KEY QUOTATIONS

“The petitioner must prove: (1) the evidence was discovered after his or her guilty plea; (2) failure to discover the evidence prior to the plea was not the result of his or her lack of diligence; (3) the newly discovered evidence is material to what would have been the issues at trial; and (4) “if proved and reviewed in light of the evidence as a whole the newly discovered evidence would establish that the petitioner did not engage in the criminal conduct for which the petitioner was convicted.”” (¶ 16)

“Vogt has not explained how the psychological assessment would establish he did not commit the crime to which he pled guilty.” (¶ 17)

FACTUAL BACKGROUND

Vogt pleaded guilty to gross sexual imposition and later filed multiple post-conviction challenges. In the present application, he claimed actual innocence, ineffective assistance of counsel, an involuntary guilty plea, and a coerced confession. He relied on a psychological assessment prepared after the application was filed, which opined that he may have involuntarily waived his rights and falsely confessed. The assessment did not assert that Vogt did not engage in the criminal conduct for which he was convicted.

PROCEDURAL HISTORY

Vogt pleaded guilty to gross sexual imposition. His first post-conviction application was summarily affirmed, his second application was dismissed without appeal, and a later motion to vacate the judgment and withdraw his guilty plea was treated as a third post-conviction application, reversed, and remanded for lack of proper notice before summary dismissal. In the present proceeding, the State answered within 30 days and asserted res judicata, misuse of process, and statute-of-limitations defenses. The district court treated the State's motion as one for summary disposition, dismissed the application as untimely, and entered judgment; the Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- Vogt v. State, 2016 ND 48, 876 N.W.2d 485
- State v. Vogt, 2019 ND 236, ¶ 7, 933 N.W.2d 916
- Morris v. State, 2019 ND 166, ¶ 6, 930 N.W.2d 195
- Curtiss v. State, 2016 ND 62, ¶ 7, 877 N.W.2d 58
- Burden v. State, 2019 ND 178, ¶ 10, 930 N.W.2d 619
- Lehman v. State, 2014 ND 103, ¶ 8, 847 N.W.2d 119
- Chisholm v. State, 2014 ND 125, ¶¶ 10-17, 848 N.W.2d 703
- Pinkney v. State, 2021 ND 155, ¶ 8, 963 N.W.2d 737
- Wong v. State, 2010 ND 219, ¶ 12, 790 N.W.2d 757
- Bridges v. State, 2022 ND 147, ¶¶ 9, 13
- Ellis v. North Dakota State University, 2009 ND 59, ¶ 18, 764 N.W.2d 192
- Burr v. Trinity Medical Center, 492 N.W.2d 904, 908 (N.D. 1992)
- State v. Kelly, 2022 ND 112, ¶ 2, 974 N.W.2d 634