

SUPREME COURT OF NORTH DAKOTA

Kaiser v. State, 2005 ND 49

693 N.W.2d 26 (N.D. 2005) · No. No. 20040135 · Decided March 4, 2005

SUMMARY

The Supreme Court of North Dakota reversed the dismissal of Gregory Clifford Kaiser's application for post-conviction relief. The court held that Kaiser was entitled to 30 days to respond to the State's motions and supporting materials because the proceedings are civil in nature and the materials outside the pleadings required treatment under summary judgment procedures. The matter was remanded for further proceedings.

CASE DETAILS

COURT	Supreme Court of North Dakota
WRITING FOR THE COURT	Sandstrom, Justice; Gerald W. Vande Walle, C.J.; William A. Neumann, J.; Mary Muehlen Maring, J.; Carol Ronning Kapsner, J.; Sandstrom, J.
JURISDICTION	North Dakota
DECIDED	March 4, 2005
DOCKET	No. 20040135
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Kaiser appealed from a judgment dismissing his application for post-conviction relief without allowing him an opportunity to respond to the State's motions.
STANDARD OF REVIEW	An appeal from a summary denial of post-conviction relief is ordinarily reviewed in the same manner as an appeal from summary judgment.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Gregory Clifford Kaiser v. State of North Dakota

TOPICS

- state post-conviction relief
- summary judgment
- motions to dismiss
- civil procedure
- appellate procedure

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the district court could dismiss Kaiser's post-conviction-relief application without allowing him 30 days to respond to the State's motions and supporting brief.
2. Whether the State's submission of materials outside the pleadings required the dismissal motion to be treated as a summary-judgment motion under North Dakota Rule of Civil Procedure 56.

HOLDINGS

1. A court may not dismiss an application for post-conviction relief under N.D.C.C. § 29-32.1-06(2) or § 29-32.1-09 without affording the applicant 30 days after service of the State's brief to serve and file an answer brief and supporting papers.
2. Because the State submitted and the district court relied on matters outside the application, the motion had to be treated as one for summary judgment under N.D.R.Civ.P. 12(b), with the procedural protections of N.D.R.Civ.P. 56, including the applicant's 30-day response period.

KEY QUOTATIONS

“A dismissal of an application for post-conviction relief without a hearing is a summary denial, whether based on N.D.C.C. § 29-32.1-06(2) or N.D.C.C. § 29-32.1-09.” (28)

“If, on a motion asserting defense numbered (vi), to dismiss for failure of the pleading to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the court, the motion must be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties must be given reasonable opportunity to present all material made pertinent to the motion by Rule 56.” (29)

FACTUAL BACKGROUND

Kaiser entered guilty pleas to attempted murder and burglary under a written plea agreement stating that his pleas were voluntary and waiving appellate and post-conviction relief rights. He later applied for post-conviction relief, alleging constitutional defects, ineffective assistance of counsel, an involuntary plea, a coerced confession, and nondisclosure of favorable evidence. The State submitted materials beyond the application, including the plea agreement, a partial plea transcript, and affidavits from Kaiser's former attorneys. The district court relied on those materials and dismissed the application without giving Kaiser an opportunity to respond.

PROCEDURAL HISTORY

Kaiser applied for post-conviction relief challenging his convictions and asserting, among other claims, ineffective assistance of counsel and an involuntary guilty plea. The State moved to dismiss, for summary disposition, to supplement the record, and to enforce a plea-agreement waiver of appellate and post-conviction rights. The district court granted the motions and dismissed the application without waiting for Kaiser's response. The Supreme Court of North Dakota reversed and remanded.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The matter was remanded for further proceedings consistent with the opinion, including allowing Kaiser 30 days to respond to the State's motions and brief.

CASES CITED

- Eagleman v. State, 2004 ND 6, 673 N.W.2d 241
- State v. Steen, 2004 ND 228, 690 N.W.2d 239
- Johnson v. State, 2004 ND 130, 681 N.W.2d 769
- Vandeberg v. State, 2003 ND 71, 660 N.W.2d 568