

SUPREME COURT OF NORTH DAKOTA

Wong v. State

2010 ND 219 (2010) · No. 20100171 · Decided November 9, 2010

SUMMARY

The document is a North Dakota Supreme Court opinion reversing and remanding the dismissal of Alman Wong’s application for post-conviction relief. The court held that the district court improperly dismissed the application without notice, an opportunity to respond, or compliance with the requirements governing summary disposition. Although the supplied title identifies the matter as Flemming v. Flemming and the opening line references 2010 ND 212, the opinion text identifies the case as Wong v. State, 2010 ND 219, No. 20100171.

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; Carol Ronning Kapsner; Gerald W. VandeWalle, C.J.
JURISDICTION	North Dakota
DECIDED	November 9, 2010
DOCKET	20100171
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Wong appealed from a district court order summarily dismissing his application for post-conviction relief.
STANDARD OF REVIEW	The application is construed in the light most favorable to the applicant and well-pleaded allegations are accepted as true. Dismissal for failure to state a claim is affirmed only when it would be impossible for the applicant to prove a claim for which relief can be granted. Summary disposition is proper only 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 opinion; precedential
PARTIES	Alman Andrew Wong v. State of North Dakota

TOPICS

state post-conviction relief

post-conviction relief

ineffective assistance

standard of review

appellate procedure

PRACTICE AREAS

State post-conviction relief

Criminal procedure

Appellate procedure

QUESTIONS PRESENTED

1. Whether the district court could summarily dismiss Wong's post-conviction-relief application on its own initiative for failure to state a claim when the State had not moved for dismissal.
2. Whether the district court could summarily dismiss the application under the summary-disposition procedures without providing notice and an opportunity to respond and submit evidence.
3. Whether Wong's allegations, including ineffective assistance of counsel and competency-related claims, were facially incapable of supporting post-conviction relief.

HOLDINGS

1. A district court may, in the cautious exercise of its discretion, dismiss a post-conviction-relief application on its own initiative for failure to state a claim, but only when it is certain that the applicant could not prove any set of facts entitling the applicant to relief.
2. A district court may summarily dismiss a post-conviction-relief application under N.D.C.C. § 29-32.1-09 only when there is no genuine dispute as to material facts or the inferences from undisputed facts, and the applicant must receive notice and an opportunity to respond and submit evidence before dismissal.
3. An applicant for post-conviction relief need not provide proof or evidence with the application; before summary dismissal, the applicant must be given an opportunity to respond to a motion and submit evidence supporting the claims.

KEY QUOTATIONS

“must be exercised sparingly and with great care to protect the rights of the parties, and the court should dismiss under Rule 12(b) only when certain it is impossible for the plaintiff to prove a claim for which relief can be granted.” (¶ 8)

“The party opposing the motion for summary disposition is entitled to all reasonable inferences at the preliminary stages of a post-conviction proceeding and is entitled to an evidentiary hearing if a reasonable inference raises a genuine issue of material fact.” (¶ 12)

“we conclude the court erred in dismissing Wong’s claims without giving him notice and an opportunity to respond.” (¶ 16)

FACTUAL BACKGROUND

In December 2009, Alman Wong pleaded guilty to gross sexual imposition, a class AA felony, and aggravated assault, a class C felony. After sentencing and entry of judgment, Wong did not appeal. In April 2010, he sought

post-conviction relief, alleging ineffective assistance of trial counsel, that his guilty plea was unlawfully induced because he was incompetent to stand trial, and that the prosecution failed to disclose a prior federal finding of incompetency. The district court dismissed the application on its own initiative shortly after the State answered, without giving Wong notice or an opportunity to submit supporting evidence.

PROCEDURAL HISTORY

Wong pleaded guilty to gross sexual imposition and aggravated assault in December 2009, was sentenced, and did not appeal the criminal judgment. He filed an application for post-conviction relief alleging ineffective assistance of counsel, an incompetently induced guilty plea, and nondisclosure of a prior incompetency finding. The State answered but did not move for summary disposition; the district court dismissed the application on its own motion thirteen days later. The Supreme Court of North Dakota reversed and remanded.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Remand for further proceedings consistent with the opinion, including proceedings that comply with the notice, response, evidentiary, and summary-disposition requirements.

CASES CITED

- Berlin v. State, 2005 ND 110, ¶¶ 6-9, 698 N.W.2d 266
- Henke v. State, 2009 ND 117, ¶¶ 9, 13, 15-16, 767 N.W.2d 881
- Kaiser v. State, 2005 ND 49, ¶ 9, 693 N.W.2d 26
- Johnson v. State, 2004 ND 130, ¶ 6, 681 N.W.2d 769
- Parizek v. State, 2006 ND 61, ¶¶ 5, 10, 12, 711 N.W.2d 178
- Vandenberg v. State, 2003 ND 71, ¶ 4, 660 N.W.2d 568
- Weaver v. State, 2003 ND 47, ¶ 4, 658 N.W.2d 352
- Ude v. State, 2009 ND 71, ¶ 15, 764 N.W.2d 419