

SUPREME COURT OF NORTH DAKOTA

State v. Ferderer

2018 ND 254 (2018) · No. 20180072 · Decided December 6, 2018

SUMMARY

The North Dakota Supreme Court affirmed an order denying Jeremy Ferderer’s motion to compel and answer, which the district court also treated as a request to reconsider denial of his motion to correct an illegal sentence. The Court held that Ferderer had not timely appealed the amended judgment or the earlier order, found no pending matter supporting a motion to compel, and rejected his double-jeopardy argument concerning probation revocation and resentencing.

CASE DETAILS

COURT	Supreme Court of North Dakota
WRITING FOR THE COURT	Daniel J. Crothers, Justice; Lisa Fair McEvers, Justice; Jon J. Jensen, Justice; Jerod E. Tufte, Justice; Gerald W. VandeWalle, Chief Justice
JURISDICTION	North Dakota
DECIDED	December 6, 2018
DOCKET	20180072
DISPOSITION	affirmed
PROCEDURAL POSTURE	Ferderer appealed from the district court's January 25, 2018 order denying his informational motion to compel and answer and, to the extent treated as such, his request for reconsideration of an order denying motions to correct an illegal sentence and for summary judgment.
PRECEDENTIAL VALUE	Published precedential opinion
PARTIES	Jeremy John Ferderer v. State of North Dakota

TOPICS

- double jeopardy
- probation
- sentencing
- criminal procedure
- appellate procedure

PRACTICE AREAS

- criminal procedure
- sentencing
- probation
- appellate procedure
- constitutional law

QUESTIONS PRESENTED

1. Whether the district court erred by denying Ferderer's informational motion to compel and answer, including insofar as the motion sought reconsideration of the denial of his motion to correct an illegal sentence.
2. Whether revocation of probation and imposition of a greater sentence than originally imposed violated the Double Jeopardy Clause.

HOLDINGS

1. The district court properly denied the motion because no pending matter existed to which a motion to compel could be addressed, and the motion did not provide a cogent basis for reconsidering the earlier denial of the illegal-sentence motion.
2. Revocation of a sentence based on a probation violation and imposition of a greater sentence than originally imposed do not violate double jeopardy.

KEY QUOTATIONS

“this Court has held that the revocation of a sentence based upon a probation violation and the imposition of a greater sentence than originally imposed does not violate double jeopardy.” (¶ 11)

FACTUAL BACKGROUND

In November 2013, Ferderer pleaded guilty to stalking, a class C felony, and was sentenced to five years in the custody of the Department of Corrections with all but eighteen months suspended, followed by five years of supervised probation. In March 2017, the district court revoked his probation and entered an amended judgment committing him to the Department of Corrections for four years. After Ferderer requested recalculation of his time-served credit, the State asserted that he had received excessive credit, and a second amended judgment reduced the credit from eighteen months and sixty-eight days to eleven months and 107 days.

PROCEDURAL HISTORY

Ferderer pleaded guilty to stalking and received a sentence including incarceration and supervised probation. After his probation was revoked and the judgment was amended to reduce his credit for time served, he filed motions under N.D.R.Crim.P. 35(a) challenging the sentence, including on double-jeopardy grounds. The district court denied those motions and later denied his informational motion to compel and answer. The Supreme Court of North Dakota affirmed the January 25, 2018 order.

DISPOSITION

affirmed

CASES CITED

- State v. Jones, 418 N.W.2d 782, 783-86 (N.D. 1988)

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