

No.

19-6366

IN THE  
SUPREME COURT OF THE UNITED STATES

SPENCER KERRY CURTISS – PETITIONER

VS.

STATE OF NORTH DAKOTA – RESPONDENT

ORIGINAL

Supreme Court, U.S.  
FILED  
SEP 24 2019  
OFFICE OF THE CLERK

ON PETITION FOR A WRIT OF CERTIORARI TO  
NORTH DAKOTA SUPREME COURT

**PETITION FOR WRIT OF CERTIORARI**

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## QUESTIONS PRESENTED

As Truth is fundamental:

Can a state's duty to provide guarantee of counsel in a criminal action be duly fulfilled when supplied representation is in violation of conflict of interest statute?

Can assurance of guaranteed assistance of counsel exist where no lawfully binding power of attorney can attach creating attorney/client relationship?

Can a conviction be received and sustained in violation of statutory and constitutional requirements for the conviction?

## **LIST OF PARTIES**

All parties do not appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

North Dakota Supreme Court  
600 E. Boulevard Avenue  
Bismarck, North Dakota 58505-0530

Office of Attorney General for North Dakota  
600 E. Boulevard Avenue Dept. 125  
Bismarck, North Dakota, 58505-0040

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IN THE  
SUPREME COURT OF THE UNITED STATES  
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

**OPINIONS BELOW**

For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix A to the petition and is

- reported at 926 N.W.2d 707, 2019 ND 120

The opinion of the Burleigh County District Court appears at Appendix B to the petition and is

- reported at Burleigh County ,North Dakota Case # 08-2016-CV-02655

## JURIDITION

For cases from **state courts**:

The date on which the highest state court decided my case was May 16<sup>th</sup>, 2019

A copy of that decision appears at Appendix A

- A timely petition for rehearing was thereafter denied on the following date: June 27<sup>th</sup>, 2019.

And a copy of the order denying rehearing appears at Appendix C

The jurisdiction of this Court is invoked under U.S.C. § 1257(a)

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

### **United States Constitution**

5<sup>th</sup> Amendment

6<sup>th</sup> Amendment

13<sup>th</sup> Amendment § 1

14<sup>th</sup> Amendment § 1

### **North Dakota Constitution**

Article 1§1

Article 1 § 9

Article 1 § 12

Article 1§13

### **North Dakota Century Code**

§ 12.1-01-03(1)

§ 12.1-02-01

§ 12.1-02-02

§ 29-23-11

§ 12.1-20-03 (1) (d)

§ 12.1-20-02(3)

§ 12.1-20-03

§ 12.1-32-01(1)

§ 27-13-12

## STATEMENT OF THE CASE

This petition is from the North Dakota Supreme Court affirmation of the district court decision in waiving liability to all officers of the court relevant to violation of N.D.C.C. 27-13-12, [Conflict of Interest statute] creating infringement upon Curtiss' guarantee to Assistance of Counsel and a fair trial. All contracts for attorney services are not in accordance with law. The continued involvement of previous state's attorney Huesby denied Curtiss a fair trial and a meaningful opportunity to challenge the trial court decision and present reversible errors.

The action of the court include trial, direct appeal to North Dakota Supreme Court, three state post-conviction applications and subsequent appeals and a federal habeas petition to North Dakota District. All affirmed for no abuse of discretion. The last post-conviction contains claims of conflict of interest throughout all previous legal actions including trial and newly discovered evidence withheld by conflicted defense counsel. The contracts for employment of services were supplied at district court in appellate jurisdiction with clear and conclusive evidence that a previous prosecutor appointed all defense counsel. The denied post-conviction application with conflict of interest claim was appealed to the North Dakota Supreme Court which was affirmed as no abuse of discretion.

Only after Curtiss was denied post-conviction application by district court Judge Reich did Curtiss firmly assert withdraw of appointed counsel Askew and proceed pro se with motion for reconsideration and motion to correct illegal sentence and submitted support of claims with filings to the district court. [See Appendix E]

This case has inception in an unfounded ‘suspicious activity’ incident report filed May 27<sup>th</sup>, 2010. The legal situation erupted August 20<sup>th</sup> 2010, whereas strong influence of controlled substances in aggrieved individuals generated sheer hysteria and panic in others, and once the bell is rung no turning back. This resulted with two intertwined storylines occurring simultaneously in Bend, Oregon and Bismarck, North Dakota. During post-arrest investigations there was no followed protocol, no forensic interview, only the single pressured witness to create narrative based upon suspicious activity. Outside influence also engaged in stratagem by creating an altered digital platform in attempt to support allegations.

Jury became so enamored by the suspicious activity in May that they were misled to ignore the overwhelming lack of credible evidence in adherence to statutory language, especially where no narrative in accordance with or describing use of an object; furthermore, a review during jury deliberations of ‘lake’ allegation outside jurisdiction in a pretext call created prior to arrest occurred. No warning of an alleged ‘lake’ incident was charged in Third Information. Per no cautionary instruction given to jury, the verdicts rested upon suspicious activity and the lake. When given the choice, the court left full discretion to the jury resulting in one Not Guilty verdict dated and autographed and one Guilty verdict dated and printed name. Moreover, without one specific allegation declared in verdict no unanimous verdict conclusive to a single charge in light of multiple allegations as required to be in compliance with North Dakota Constitution art 1 § 13

Spencer Curtiss was charged in complaint with a singular charge of Gross Sexual Imposition under N.D.C.C. §§ 12.1-20-03(1) (d), 12.1-20-03(3), 12.1-20-02(3), and 12.1-32-01(1), occurring on or about May 23<sup>rd</sup>, 2010 to August 2010 and taking place in Burleigh county North Dakota. Spencer Curtiss was appointed counsel from North Dakota Commission on Legal Counsel for Indigents out of Valley City and did attend a preliminary hearing resulting in Jury Trial December 8<sup>th</sup> and 9<sup>th</sup>, 2010.

Spencer Curtiss received patchwork verdicts against a non-cognizable offense with no unanimous verdict upon specific allegation in an uncounseled trial, but yielded a judgment of conviction resulting in twenty five years imprisonment, with ten years suspended for five years.

Facts of the case encompass unrecognized consequences of no legally binding attorney of record causing penalty of incarceration with an un-counseled conviction. All consequences from above-mentioned issues intrinsic to denial of a fair trial. The truth metastasized into lurid fantasy with unsupported misrepresented facts and inferences in both evidence and law of case.

## REASONS FOR GRANTING THE PETITION

Fundamental fairness is the central concern and is protected by guarantee of Assistance of Counsel. Impropriety, untruthfulness, and criminal violation in this specific area of the legal process cannot be allowed to be concealed and then circumvented through acts of misleading all parties contrary to truth of what has been exhibited.

The issue here is that the process of fulfilling granted right to appointed counsel has infected all legal proceedings through court acceptance of contracts for defense counsel from the individual who previously prosecuted the Defendant. The financial provision from the state of North Dakota to North Dakota Commission on Legal Counsel for Indigents to supply a guaranty of Assistance of Counsel has not been fulfilled by interpretation of, and by operation of law. Defendant has been denied Fundamental rights of Constitutional guarantees and as such unlawfully imprisoned.

Due to the seriousness of the nature of the violations and all they encompass, the remedy must be of significance to deter any further, or future violations involving previous prosecution in the defense of a defendant.

Grant review to create precedence to define when an employment contract is unenforceable so that no power of attorney attaches, to preclude presumption that defendant has an advocate against state allegation. And that violation is actual prejudice and reversible error.

Prevent profiteering from arrangement of counsel to simply assist in state's prosecution, especially as monies designated for public good are used to fuel unlawful

practice to enslave. There exists fraud in financing previous prosecutor which leads to fraud by North Dakota Department of Corrections and Rehabilitation collecting federal grant to incarcerate Curtiss through false pretense. This is an unauthorized practice as Curtiss not “duly convicted” to be enslaved, to be utilized as chattel for which Department of Corrections and Rehabilitation collect funds to support the Judgment of conviction.

Set precedence that states must preaudit attending defense counsel to assure no conflict of interest, especially in states where a conflict of interest statute enacted.

As this will deter corruption in a state indigent counsel where no effort to affirm attorney/client relationship results in numerous constitutional violations and loss of liberty.

Past precedence has set out established right to counsel, yet has not addressed the abuse to this established right fashioned in the favor of state courts.

Innocent citizens with an outstanding vendetta with a previous prosecutor have no protection in the guaranty of counsel to protect their liberty rights.

Generate precedence to protect this right to counsel in this condition where and when existence of previous prosecutor in a legal action. In this case this is the circumstance and sets the environment for asserted violations.

There has been no fairly and legally appointed “attorney of record” in the case of *State v Curtiss* No 08-10-K-1650; N.D. Supreme Court Appeal No. 20110062, 2011 ND 175; and subsequent collateral appeal cases 08-2012-CV-01810, 08-2014-CV-01843 and 08-2016-CV-02655.

The court should hold fast to available remedy or risk loss to judicial integrity and dignity in which the public holds trust, as here, the prejudicial value of denied Fundamental Rights strongly outweighs any possible probative force presented by the state. There can be no public interest in undermining guarantee of assistance of counsel, redefining conflict of interest statutes, and obfuscating reasonable doubt upon all essential elements in an information to receive a conviction, especially where a vendetta is allowed completion through previous state's attorney providing defense counsel. Prejudice is real and most absolute with this direct involvement of a previous prosecutor.

This small state needs big state equal protection of the laws with precedence upon this specific conflict of interest. Respectfully produce precedence to define enforceable power of attorney, which will deter abuse and grant protection to citizens with a previous prosecutor at large to prevent wrongful convictions.

There exists collusion through condonation and acquiescence with the lower courts as this violation extinguishes the power, authority and the entitlement to have a fair trial before an impartial jury.

Here as a result of conflict of interest and uncounseled conviction, Curtiss was unduly convicted of a statutory narrow defined offense in a jury trial, received no review of sufficiency in appellate jurisdiction, yet remains liable and incarcerated upon a non-cognizable offense, with the finding of guilt relying on evidence outside the jurisdiction and outside the scope of statutory provisions in Third Amended Information concluding with no unanimous verdict upon single charge.

No recognized link with reality and truth.

This violation through operation of law voids all judgments, including that of affirmation, by the denied assistance of counsel, thereby granting the available remedy of vacation of trial judgment through the removal of limitation of affirmation.

There was no equal protection to avert the violations of the Fundamental Rights and Laws that safeguard and protect the accused from government intrusion and enslavement.

Upon review of the actions taken in this continuing legal action it will be clear that the officers of the court defrauded the protections in the North Dakota and United States Constitution.

“An adequate remedy at law exists when the acts of the judicial officer can be reviewed on appeal or by extraordinary writ.” *Pulliam v Allen*, 466 US 522, 542, 104 S Ct 1970, 80 L Ed 2d 565, and n.22 (1984)

Due to well-defined legal principles, well-established precedent, clear set forth statute law, and Constitutional laws, the courts must grant a remedy based upon what has been proved, rather than was is pleaded. Here the courts are ignoring where the mere formal appointment originated and the parties involved to avoid liability.

“The Sixth Amendment recognizes the right to the assistance of counsel because it envisions counsel’s playing a role that is critical to the ability of the adversarial system to produce just results” *Strickland v Washington*, 466 US 668, 685 (1984)

An accused’s right to be represented by counsel is a fundamental component of our criminal justice system. Lawyers in criminal cases “are necessities, not luxuries.”

*Gideon v Wainwright*, 372 US 335, 344 (1963)

“[T]he defendant requires the guiding hand of counsel at every step in the proceeding against him, without it, though he be not guilty, he faces the danger

of conviction because he does not know how to establish his innocence.” Their presence is essential because they are the means through which the other rights of the person on trial are secured. Without counsel, the right to a trial would be of little avail. *Powell v Alabama*, 287 US 45, 53 S.Ct. 55, 77 L.Ed. 158(1932)

If no actual “Assistance” for the accused’s defense is provided, then the constitutional guarantee has been violated.

*United States v Decoster*, 199 US App DC 359, 382, 624 F 2d 196, 219, cert denied, 444 US 944 (1979)

To hold otherwise could convert the appointment of counsel into a sham and nothing more than a formal compliance with the Constitution’s requirement that an accused be given the assistance of counsel. The Constitution’s guarantee of assistance of counsel cannot be satisfied by mere formal appointment.

*Avery v Alabama*, 308 US 444, 446 (1940)

“Our system of law has always endeavored to prevent even the probability of unfairness.”

*In re Murchinson*, 349 US 133, 136, 99 L.Ed 942, 946, 75 S Ct 623 (1955)

The court has uniformly found constitutional error without any showing of prejudice when counsel was either totally absent, or prevented from assisting the accused during a critical stage of the proceeding.

*Geders v United States*, 425 US 80, 47 L.Ed. 2d 592

Defense counsel have an ethical obligation to avoid conflicting representation and to advise the court promptly when a conflict of interest arises during the course of trial. Unless the accused receives the effective assistance of counsel, “a serious risk of injustice infects the trial itself.”

The Sixth Amendment guarantees each criminal defendant the right to assistance of counsel “unhindered by a conflict of interest”.

*Cuyler v Sullivan*, 446 US 335, 64 L Ed 2d 333, 100 S. Ct. 1708(1980)

The two rights under the Sixth Amendment to the Federal Constitution include the right to a defense conducted by an attorney who is free from conflict of interest, and the denial of such can lead to a claim of reversible error. See *Wheat v United States*, 486 US 153, 100 L Ed 2d 140, 108 S. Ct 1692.

The Question therefore is: Can a state's duty to provide guarantee of counsel in a criminal action be duly fulfilled when supplied representation is in violation of conflict of interest statute?

An orthodox accounting of evidentiary hearing events reveal usurpation by district court ignoring obligation to a strict liability, conflict of interest statute.[See Case 0802106-CV-02655 Id#'s 244,245 (Transcripts)] And as no one is bound to follow the acts of usurpation, since they are void and unenforceable, the judgment being appealed is also void and unenforceable.

#### N.D.C.C. Chapter 27-13 Conduct of Attorneys

N.D.C.C. § 27-13-12 Attorney not to aid defense when formally interested as public prosecutor-Penalty

Every attorney who, having prosecuted or in any manner aided or promoted any action or proceeding in any court, as state's attorney or other public prosecutor, afterward, directly or indirectly, advises in relation to or takes any part in the defense thereof as attorney or otherwise, or takes any valuable consideration from or on behalf of any defendant therein, upon any understanding or agreement whatever, express or implied, having relation to the defense thereof, is guilty of a class A misdemeanor and in addition to the punishment prescribed therefor, that attorney forfeits that attorney's license to practice.

Its purpose can be clearly understood in the language and should protect the public from corruption which might lie undetectable beneath the surface of a contract conceived in a tainted transaction.

The following set out provisions for North Dakota Commission on Legal Counsel for Indigents mission:

See N.D.C.C. § 29-07-01.1 (1) which states in part: Expenses necessary for the adequate defense of an indigent person prosecuted in district court...when approved by the commission must be paid by the state.

See N.D.C.C. § 31-01-16 which states in part: ...the commission on legal counsel for indigent shall pay witness fees and expenses for witnesses in those cases in which counsel has been provided by the commission.

See N.D.C.C. 54-61-01 (1) which states in: The commission on legal counsel for indigent is established for the purposes of developing and maintain a process for the delivery of state-funded legal counsel services for indigent which are required under the Constitution of North Dakota and the U.S. Constitution and any applicable statute or court rule. The commission shall provide indigent defense services for indigent individuals determined by the court to be eligible for and in need of those services pursuant to the standards and policies of the commission governing eligibility for such services.

Under N. D. R. Crim. P. 44 Right to Counsel in the Explanatory Note it states: Effective January 1, 2006, court ceased appointing counsel for indigents because the North Dakota Commission on Legal Counsel of Indigents became responsible for the defense of indigents.

And under N.D.C.C. § 54-61-03 (2) (b) The director shall administer and coordinate delivery of indigent defense services and supervise compliance with commission standards.

To support this assertion a presentation of criminal action in Barnes County, North Dakota court record case #02297 shows Robin Huseby was the State's Attorney against the Petitioner. On July, 1992 a criminal complaint was placed upon the Petitioner by Robin Huseby, being Criminal Trespass pursuant to N.D.C.C. § 12.1-22-03(1), a class C felony, and Manufacture of a Controlled Substance, pursuant to N.D.C.C. § 12.1-03.1-23(1)(b), a class B felony.

On September 22, 1992 on motion to dismiss, the Criminal Trespass complaint was filed as dismissed by order. On November 10<sup>th</sup>, 1992 the criminal information was clerically amended to a class C felony and Barnes County Court filed an amended Criminal Judgment and sentence in which the Manufacture of a Controlled Substance was amended to Possession of a Controlled Substance, a class C felony.

Resulting in a deferred sentence of one year at the State Farm suspended for two years with a \$500.00 fine.

Robin Huseby was the Executive Director of Commission on Indigent counsel for North Dakota and all 'attorney of record' was contracted and appointed from this office by Robin Huseby. [See case 08-2016-CV-02655 Id #'s 141, 142, 143, 144, 145, and 146]

North Dakota was underwriter of North Dakota Commission and Huseby was underwriter of all counsel of record as employer in contracts for employment.

N.D.C.C. § 27-13-12 divested the North Dakota Commission on Legal Counsel for Indigents of its authority to provide services required by the State to comply with United States and North Dakota Constitution as long as Robin Huesby was executive director. The direct violation of N.D.C.C. § 27-13-12 resulted in no power of attorney to attach, consequently all actions by appearing attorney(s) of record void and unenforceable; ultimately there was no guarantee of Sixth Amendment Assistance of Counsel. This is actual prejudice in that no fair trial can occur and thus violates the Due Process Clause.

A campaign of deceit gauged to warp the public's view of Curtiss was waged to receive vengeance for lost liability in 1992. This conflict enlarged in having knowledge that all requests for financing and advancing claims must be authorized by the Curtiss' past State's Attorney. All contracted attorneys acted with conflict of interest in performing their duties to the Commission versus protecting the rights of the Curtiss.

Here judicial usurpation occurred during appellate review when given cognizance of conflict error the district court waived all obligation and ignored the language in conflict of interest statute, thus all previous actions involving contacted attorneys affirmed with last appellate action commencing notwithstanding. During trial, direct appeal, and all subsequent collateral review proceedings no attorney of fact to advocate and submit exculpatory material upon the record. There is no public interest in enlarging judicial powers to create immunity against strict liability statute law which will alter the doctrinal landscape of contract law.

Conscious advantage-taking and opportunistic calculations occurred where actual events reveal illusionary promise by State of compliance with guaranteed assistance of counsel during trial and direct appeal.

This is not just simple error, but exceptional circumstance where in a lower populated state a previous prosecuting attorney was elevated to executive director of the North Dakota Commission on Legal Counsel for Indigents, and was indorsed and financed to continuously appoint counsel for Curtiss. This intent and direction was to withhold finances to discovery and investigative process as well as withholding exculpatory material and evidence inherent to, and relevant to, a complete defense plus unquestionably not raise notice of conflict of interest at trial.

Furthermore, appointed counsel directed not to support any claims by Curtiss in direct appeal and all collateral review proceedings, Such as, where the district court failure to instruct the jury upon all essential elements in charging instrument, failed judicial notice of non-cognizable offense, failure to properly instruct upon

evidence outside of district court jurisdiction, denial of unanimous verdict, and ultimately denied review for sufficiency of evidence to sustain conviction.

Dynamics of this case must set precedence against any similar condition where improper allowance of an attorney acting under conflict proceeds as counsel in all crucial aspects of trial. There was no agent or representation authorized by a power of attorney to act for Curtiss all legal matters.

Honor bound to ND Bar Association, District Court Judge Reich consciously ignored language in N.D.C.C. § 27-13-12 and the known affects such events had upon conviction and all subsequent appeals. This action is contrary to his oath to support the constitution and law of the land, as well as contains no lawful exercise of judicial power.

**Abuse of discretion** is a decision by whim or caprice, arbitrarily, or from a bad motive which amount practically to a denial of justice as a clearly erroneous conclusion, one that is clearly against logic and effect of the facts presented. 5 Am J2d A&E § 774

This Court has said, that “every procedure which would offer a possible temptation to the average man as a judge...not to hold the balances nice, clear and true between the State and the accused, denies the latter due process of law.”

*Tumey v Ohio*, 273 US 510, 532, 71 L.Ed. 749, 758, 47 S Ct 437, 50 ALR 1243

A reasonable officer of the court could not have reasonable belief that these actions were lawful, hence no answer by state's attorney when directed by the district court to submit response to the claim of conflict of interest during evidentiary hearing March 13<sup>th</sup>, 2018. Here there can be no legitimate state interest in the finality of this

unlawful criminal judgment. The gravity of this action and continued transaction is most grave and egregious.

Additionally, the aspect of fraud lies in the fact that the state financed Robin Huseby in violation of statutory conflict of interest and that all opposing parties are reluctant to admit to this and grant relief as the consequences involved are decisive to retain their professional positions. This is a political issue and Curtiss is therefore a political prisoner, as to grant relief will result in political sanctions against those involved. This clearly presents evidence that the interest of the state and the North Dakota Bar Association weigh substantially stronger than any Constitutional rights of Curtiss. There can be no equitable or moral standing when Curtiss has been deprived of liberty due to political status in the officers of the court.

No guaranty of due process has been applied to this entire legal proceeding as the district court devised an evil internecine path to conviction, and in the appellate jurisdiction encroached upon powers granted to legislature to sustain conviction.

The following amplify this concept.

If the court felt free to pave over bumpy statutory texts in the name of expeditiously advancing a policy goal, we would risk failing to “take ... account of” legislative compromises essential to law’s passage and, in that way, thwart rather than honor “the effectuation of congressional intent.”

*Board of Governors, FRS. V Dimension Financial Corp.*, 474 US 361, 374, 106 S Ct 681, 88 L Ed 2d 691 (1986)

As said in *Ferguson v Gooch*, 94 VA 1, 36 S.E. 397, 40 L.R.A. 234, “To be secretly in the service of one party, while ostensibly acting solely for the opposite party, is a fraud upon the later, and a breach of public morals which the law will not permit.”

As we have cautioned “slight encroachments create new boundaries from which legions of power can seek new territory to capture.” *Stern v Marshall*,

564 US 462, 131 S Ct 2594, 2620, 180 L.Ed 2d 474, 507. It goes without saying that practical considerations of efficiency and convenience cannot trump the structural protections of the Constitution.” 131 S Ct, at 2619.

“Liberty is always at stake when one or more of the branches seek to transgress the separation of powers” *Clinton v New York*, 524 US 417, 118 S Ct 2091, 141 L Ed 2d 393(1998)

It is unbecoming in the extreme as the District Court usurped power and created immunity to conflict of interest to protect the political interests of involved officers of the court with the North Dakota Supreme Court’s endorsement.

There can be no reverence, or respect toward a tribunal and officers of the court that abuse their power and authority granted, and here the judicial integrity of the judicial system is in jeopardy, as the lower courts redefined the game and the rules to the game when conflict of interest was revealed with clear and convincing evidence.

“A trial court has wide discretion when, but only when, it call the game by the right rules.” *Fox v Vice*, 563 US 826, 839, 131 S Ct 2205, 180 L.Ed. 2d 45 (2011)

“A district court by definition abuses its discretion when it makes an error of law.”

*Koon v United States*, 518 US 81, 100, 116 S Ct 2035, 135 L.Ed. 2d 392 (1996)

The court has refused to determine an actual conflict of interest and granted impunity to involved officers of the court, N.D. Bar attorneys. Divergence in interests obliterated the adequacy of counsel’ representation and the decisions of the lower courts.

“A district court would necessarily abuse its discretion if it based its ruling on an erroneous view of the law or on an erroneous assessment of the evidence.” *Cooter & Geli v Hartmarx Corp.*, 496 US 384, 405, 110 L.Ed. 2d 359 (1990)

Reshaping a conflict of interest statute and concluding an effect altogether different from that sought by the measure viewed as a whole assumes the legislative function, furthermore, doing so imposes its own new statutory regime consisting of policies, risks, and duties that legislature did not enact. N.D.C.C. § 27-13-12 rearticulated will not function in the manner consistent with the language therein or the intent of legislature. It is the function of legislature, and not the courts, to spell out limitations and exceptions in such conditions.

This new created immunity is outside judicial authority and usurped legislative intent and purpose which was to prevent bias and protect integrity of judicial system; and only served to protect the state's inherent interest in concealing fraud and deception connected to the fiduciary authority in violation of statute law. Consequences of this newly created immunity is the preservation of system of injustice (good ole boys) with a higher political interest in retaining position and title while retaining an uncounseled conviction and unlawful imprisonment.

The threshold requirements for assistance of counsel do not endorse encroachment upon it by supplying a conflict of interest. Legal assistance inherently implies lawfully authorized. A state cannot discharge its duty to provide counsel by appointing an attorney who cannot render lawful defense assistance. The appearing counsel of record actively represented conflicting interests.

Simply stated, the violation of N.D.C.C. § 27-13-12 in the realm of employment of "attorney of record" has violated the Sixth Amendment of the United States Constitution, North Dakota Constitution art. 1 §12, and the Fourteenth and Fifth

Amendments of the United States Constitution concerning Curtiss resulting in no fair trial.

The Uniform Contract for Appointed Counsel Services and the Contracts for Appellate Attorneys are Void contracts as the North Dakota Commission on Legal Counsel for Indigents in this time frame cannot be a lawful, capable party to contract, thus not authorized to enforce a power of attorney.

The agency solely responsible for supply of contract attorney was in violation of statutory provision and could not create the requisite for attorney in fact. This forbidden act caused injury to Curtiss with loss of liberty, destroyed reputation and loss of property.

**Attorney of fact** is an agent or representation authorized by a power of attorney to act for his principle in certain matters. *3 Am J2d Agency § 23*

Huesby's seal/signature upon all contracts for defense counsel, yet no recognized wrong/error due to protecting political status of all involved parties. The contract(s) for appointed counsel are the evidence on the record of conclusive proof involvement of previous prosecutor. All indigent state defense attorney had to be hired by the Commission in 2010.

Which leads to the Question: Can assurance of guaranteed assistance of counsel exist where no lawfully binding power of attorney can attach creating attorney/client relationship?

Any approach without a legally binding attorney of record would rewrite the duties of trial judges and counsel in our legal system and seriously destroy the fairness, integrity, and public reputation of judicial proceedings.

Few things could do more to undermine the criminal justice system's integrity than to allow the state to initiate a prosecution and then, at its discretion, disarm its presumptive innocent opponent by depriving him of his counsel by providing a charlatan.

Assistance of counsel should inherently mean representation appearing with lawful contract for defense services, which provides requisite power of attorney for attorney/ client relationship. In this circumstance the lawful contract is non-existent and precludes granting of appointment of legal defense counsel. These employment contracts for appointment of defense counsel involve moral turpitude as the party employing these attorneys is expressly forbidden by statute to participate in this exact process and offered no disclosure.

The following is from *22 F Supp 2d 133* footnote 6:

On behalf of the public good, the court is entitled to the simple truth on all occasions. Stated from a different perspective, a duty of truthfulness is owed to the court by all citizens, especially by its officers, but not primarily because the court is empowered to sternly punish untruthfulness. *Rather*, a court is empowered to punish untruthfulness because citizens, especially the court's officers, owe the court an unwavering, solemn, and in delegable duty of truthfulness, including the qualities of honor, condor, and forthcoming disclosure. *US v Sterba*, 22 F Supp 2d 133, (1998)

The legal relationship of an attorney and the court can be found in the following:

§ 4 ATTORNEY & CLIENT 7 C.J.S

His first duty is to the courts and the public, not to the client, and wherever the duties to his client conflict with those he owes as an officer of the court in the administration of justice, the former must yield to the latter.

The office of attorney is indispensable to the administration of justice and is intimate and peculiar in its relation to, and vital to the well-being of, the court. An attorney has a duty to aid the court in seeing that actions and proceedings in which he is engaged as counsel are conducted in a dignified and orderly manner, free from passion and personal animosities, and that all causes brought to an issue are tried and decided on their merits only, to aid the court.

The best general definition of the term 'moral turpitude' is that it imparts an act of baseness, vileness or depravity in the duties which one person owes to another or to society in general, which is contrary to the usual, accepted and customary rule of right and duty which a person should follow. *58 C.J.S. at page 1201.*

The lower courts have denied review of legality of all contract for services created by Curtiss' previous prosecutor. No honor by N.D. Bar attorneys in acquiescence to this matter as business as usual. As matter of law and material presented to courts, there was no lawful binding contract for defense counsel, therefore there was no binding power of attorney to fulfill representation for Curtiss throughout legal process.

Of all the rights that an accused person has, the right to be represented by counsel is by far the most pervasive, for it affects his ability to assert any other rights he may have.

*Schaefer, Federalism and State Criminal Procedure*, 70 Harv. L. Rev. 1, 8(1956)

Without legal representation there can be no fair trial.

The right to a fair trial in a criminal case is a fundamental liberty secured by the Fourteenth Amendment. *Drope v Missouri*, 420 US 162, 172, 43 L.Ed. 2d 103, 95 S. Ct. 896 (1975).

Courts must indulge every reasonable presumption against the loss of constitutional rights. *Johnson v Zerbst*, 304 US 458, 464, 82 L. Ed. 1461, 58 S. Ct. 1019, 147 ALR 357, (1937)

If by fraud, collusion, trickery, or subordination of perjury on the part of those representing the state, the trial of an accused person results in his conviction, he has been denied due process of law"

*Mooney v Holohan*, 294 US 103, 55 S.Ct. 340, 79 L.Ed. 2d 791(1935)

Fundamental fairness entitles indigent defendant to “an adequate opportunity to present their claims fairly within the adversary system.” *Ake v Oklahoma*, 470 US 68, 84 L Ed 2d 53

Preconception of guilt and no preaudit to substantiate binding power of attorney has precluded all opportunity to support the record and acknowledgement to conspicuous errors. Discretion remains controlling factor where no act, decision, or case serves as a guide or justification for this situation.

Therefore as no authority given to these attending attorneys to waive any substantial rights, any other right by law, and a failure to preserve objections occurred during trial.

Prejudice here is actual and most absolute with no attorney of fact producing far-reaching consequence of an uncounseled conviction.

“No imprisonment may be imposed on the basis of an uncounseled conviction.”

*Nichols v United States*, 511 US 738, 755, 128 L.Ed. 2d 745

No individual “can be imprisoned unless he is represented by counsel”  
*Argersinger v Hamlin*, 407 US 25, 32 L.Ed 530, 92 S Ct 2006 (1972)

The defendant... who showed a significant possibility of conflict, should have been entitled to a presumption that his representation in fact suffered.  
(Brennan J., concurring)

Sentences based upon material misinformation or erroneous assumption violate due process. *United States v Wright*, 799 F.2d 423,426 8<sup>th</sup> cir (1986)

Curtiss was given imprisonment as punishment to non-cognizant offense.

There was no agent acting lawfully in the court of law as a representative for Curtiss to protect his liberty and reputation interests or to advocate against the State.

The previous claim raised by appellate counsel in initial collateral review was under *Strickland* in attempt to negate conflict of interest disqualification of all attorneys in *Curtiss*, as it endeavored to affirm assistance of counsel. North Dakota State courts are creating an increasingly number of per se rules in lieu of applying *Strickland's* fact-specific inquiry, thereby departing even further from the original meaning of the Sixth Amendment.

Whether a man is innocent cannot be determined from a trial in which, as here, denial of counsel has made it impossible to conclude, with any satisfactory degree of certainty, that the defendant's case was adequately presented.

*Betts v Brady*, 316 US 455(1942)

"Under our adversary system, once a defendant has the assistance of counsel the vast array of trial decisions, strategic and tactical, which must be made before and during trial rest with the accused and his attorney. Any other approach would rewrite the duties of trial judges and counsel in our legal system".

*Estelle v Williams*, 425 US 501, 503,512, 96 S. Ct. 1691, 1697, 48 L. Ed. 2d 126, 135 (1976)

The trial decisions was to utilize outdated precedence, the strategy was to present character witnesses, and the direct appeal was only relevancy issues to evidence.

When the motives and methods utilized here are recognized with the propaganda they are bound to present, the establishment of dishonesty in political status quo in North Dakota will clearly illuminate grave violations of liberty, reputation interests and law of the land.

So, add to the fire of malice with the bellows of accusation by applying fuel of their own accord, so that it does not extinguish itself but flairs up more abundantly,

and authority will receive a conviction exclusively based upon passion and prejudice. A lack of transparency has concealed an uncounseled and unlawful conviction.

Grant precedence that without a lawful employment contract no binding power of attorney can attach, and furthermore no attorney/client relationship can be created. Proceeding with no agent to provide legal services, in that no entity having obligation to protect client's well-established rights, is actual prejudice and reversible error.

Curtiss' trial did proceed with an individual appearing with presumption of lawful employment contract by the state's attorney and the court. The trial proceeded with numerous errors and violations, yet because the appearing counsel had no legal obligation to represent Curtiss, no claim of liability could attach to performance. Therefore, the conviction was received in violation of essential requirements and constitutional provisions.

Final Question: **Can a conviction be received and sustained in violation of statutory and constitutional requirements for the conviction?**

The attending pseudo attorneys in fact had no obligation and duty to present an adequate and meaningful opposition to the state and defend Curtiss' interests. North Dakota's capacity to obviate guaranteed rights has created obtuse arranged counsel that permitted all errors without objection. Ignored dispositive issues due to predisposition of North Dakota courts to protect political interest/status when court realized Curtiss could produce material conclusive to innocence and no fair trial.

“Answering Paragraph Three of Petitioner’s Application, The State admits that the Petitioner was convicted of Gross Sexual Imposition in violation of N.D.C.C. §§ 12.1-20-03(1)(d), 12.1-20-03(3), 12.1-20-03(3) and 12.1-32-01(1). “ [Case 08-2016-CV-0655 Id# 93, ¶4]

Curtiss cannot be held liable and enslaved as charged in the information. A different set of fact are required as set out in the statutory language, requiring proof of these different elements.

Where the officers of the court in this action proceeded knowingly in violation of law having no binding power of attorney besides failing to openly disclose this harm, all violations of law and Constitution in this legal action followed with no enforcement or recognition. This hardly comports with the ideal of administration of justice with an even hand.

The Court has considered the wrongful deprivation of the right to counsel a structural error that so affects the framework within which the trial proceeds that court may not even ask whether the error harmed the defendant. *United States v Gonzalez-Lopez*, 548 US 140, 148, 126 S. Ct. 2557, 165 L. Ed. 2d 409 (2006)

Reliability of the trial process cannot be confident where no legal power of attorney exists, and faux counsel that appeared did not subject the prosecution’s case to a meaningful adversarial testing as jury did not receive defined essential elements in charging document, no evidence presented to receive verdict of guilt upon a narrow line of liability, no jury instruction regarding evidence presented to prove allegation outside the jurisdiction.

Falsus in uno, falsus in omnibus – “False in one thing, false in everything”

If the judicial proceeding can plainly error in protecting guarantee of assistance of counsel, then further violation and errors sure to follow.

Due to the seriousness of the nature of the violations and all they encompass, the remedy must be of significance to deter any further, or future violations involving previous prosecution in the defense of a defendant. Create precedence to deter future violations that deny due process and equal protection of law.

No lawful basis can judiciously support this conviction under admitted statutes and specific jurisdiction, as allegation and jury instruction must include language of an “object” in boundary violation and include inherent understanding of “anything but the actor,” in order to determine unanimous verdict of guilt beyond a reasonable doubt upon single charge. The dispositive issue is whether Curtiss engaged in a sexual act with an object in Burleigh County, North Dakota in which there is no evidence. In the end, the verdict did not specify the exact allegation/event/location that the jury unanimously found guilt beyond a reasonable doubt upon

The following statutes are requisite for receipt of verdict of guilt.

N.D.C.C. § 12.1 01-03(1) No person may be convicted of an offense unless each element of the offense is proved beyond a reasonable doubt. “Essential elements” include (b) Attendant circumstances specified in the definition and grading of the offense.

Definition N.D.C.C. § 12.1-20-02(3) “Object” means anything used in the commission of a sexual act other than the person of the actor.

The underlying alleged offense is one charge where the statutes conflict against the body of the Third Information. The Court applied reasonable suspicion to allegations and vague circumstance of suspicion which rendered guilt to material

which supported no finding of fact inherent to the statutory language. Proof beyond a reasonable doubt was predisposed to all aspects outside of the set time frame and set jurisdiction of Burleigh County.

“Under Due Process Clause, criminal defendants must be afforded a meaningful opportunity to present a complete defense”  
*California v Trombetta*, 467 US 479, 485, 104 S.Ct. 2528, 81 L.Ed. 2d 413(1984)

A meaningful opportunity to present a complete defense would have been to have a lawful, binding attorney of record to assure proper jury instructions, proper objections during trial, prevent conviction upon a non-cognizable offense, and demand unanimous verdict upon a specific allegation.

The statute language of N.D.C.C. § 12.1-20-02(3) was not presented to jury to be followed as is required. The trial evidence contained no testimony to substantiate the definition of object. As a matter of case law the jury was not shown facts upon which to determine whether the Defendant willfully engaged in a sexual act with object, and statutory language excludes the person of Curtiss; thus making it a non-cognizable offense. Jury trial impermissibly determined a guilty verdict without any verbal proof of use of an ‘object,’ as Curtiss himself could not be the person or actor.

N.D.C.C. § 12.1-20-03(1) (d) joined with N.D.C.C. § 12.1-20-02(3) is a not a cognizable offense as the definition contains the essential element “anything other than the actor.” The state cannot set before a jury narrative on the actor of Curtiss against the charging instrument “anything but the actor,” as that is logically and legally impossible to rectify. Accusable sexual intercourse is countered by specific

language and Curtiss cannot willingly engage in a sexual act and be in compliance with definition.

Additionally, during jury deliberations the jury reviewed a pretext call created pre-arrest that contained material to be considered for determining the truth of the matter that was outside the court jurisdiction of Burleigh County and the trial court did not give 'pointed instruction' that jury could not consider call for truth upon lake allegation.

"The government should not have the windfall of having the jury be influenced by evidence against a defendant which, as a matter of law, they should not consider but which they cannot put out of their minds.

*Delli Paoli v United States*, 352 US 232, 1 L.Ed. 2d 278, 77 S Ct 294

"The truth of every accusation against a defendant should afterwards be confirmed by the unanimous suffrage of twelve of his equals and neighbors." An accusation which lacks any particular fact which the law make essential to the punishment is...no accusation within the requirements of the common law, and is no accusation in reason. *Blakely v Washington*, 542 US 296, 301, 124 S. Ct. 2531, 159 L Ed 2d 403.

North Dakota Constitution art 1 § 13 requires all verdicts be unanimous as equivalent to U. S. Constitution.

North Dakota has precedence upon essential elements, yet failed to acknowledge.

In a criminal case the state must prove every element of the crime beyond a reasonable doubt. If the state does not do so, the accused must be acquitted of the charge.

*State v Vogel*, 467 N.W.2d 86, 89(ND 1991)

The Supreme Court has long made clear that the Constitution provides that a criminal defendant may be convicted only if every element of a charge offense is found beyond a reasonable doubt by a proper fact finder. See *United States v Gaudin*, 515 US 506, 522-23, 115 S Ct 2310, 132 L Ed 2d 444 (1995)

A defendant's tactical decision not to confront an essential element of the crime does not remove the prosecution's burden to prove that element. *Estelle v McGuire*, 502 US 62, 69, 116 L. Ed. 2d 385, 113 S. Ct 475 (1991)

The District of Columbia Court of Appeals stated that "[f]ailure on the part of a trial court in a criminal case to instruct on all essential questions of law involved in the case, whether requested or not, would clearly affect substantial rights within the meaning of Rule 52(b) of the Federal Rules of Criminal Procedure." *State v Thiel*, 411 N.W.2d 66 (ND1987); *State v Kraft*, 413 N.W. 2d 303(ND 1987); *Tatum v United States*, 190 F2d 612, 615 (DC Cir 1951)

In light of this conflict of interest no court has reviewed the instructions as a whole to determine if they correctly and adequately informed the jury, just as no court has reviewed the case as a whole for sufficiency of evidence.

It has been stated in appellate process that :"Neither the state district court in its conclusion of Curtiss's petitions for post-conviction relief nor the North Dakota Supreme Court on direct appeal or appeal from the denial of amended first post-conviction relief made any factual finding regarding the evidence presented at trial."

However, all pleadings subsequent to *State v Curtiss, 2011 ND 175* has inaccurately stated this appeal was based upon the sufficiency of the evidence. Later, in the Court opinion *Curtiss v State, 2016 ND 62 ¶11* it is stated that "the Court made its decision based on the parties' briefs and testimony given at the hearing, rather than the criminal trial transcript". This of itself has created unwarranted detriment to the review of issues and displays the force of presumption that Curtiss must face.

*Taylor v Maddox*, 366 F.3d 992, 1001, (9<sup>th</sup> Cir) (commenting that "where the state courts plainly misapprehended or misstate the record in making their findings...that misapprehension can fatally undermine the fact-finding process, rendering the factual findings unreasonable")

“The very nature of a trial is a search for truth” *Nix v Whiteside*, 475 US 157, 166, 89 LED 2d 123, 106 S Ct 988, and the private interest in the accuracy of a criminal proceeding that places an individual life or liberty at risk is almost uniquely compelling.

The conviction was unconstitutional and the sentence was unconstitutional when imposed and remains unconstitutional today; whereas due process violation in denied adherence to essential elements as non-cognizable offense plus outside jurisdiction then due process violation as uncounseled conviction cannot receive incarceration.

Due process dictates the court must reconcile legal action taken against Curtiss to the language inherent in statutory laws, such as essential elements, jurisdiction and conflict of interest, to retain the integrity of judicial proceedings, and for the guarantee of lawful assistance of counsel to advocate for equal protection of all laws. The state’s subterfuge was so labyrinthine it could not be unraveled without all the language and material now present on the record.

The Court has insisted that no one be punished for a crime without “a charge fairly made and fairly tried in a public tribunal free of prejudice, passion, excitement, and tyrannical power.”

*Chambers v Florida*, 309 US 227, 236-237, 84 L.Ed. 716, 722, 60 S Ct 472 (1940)

Miscarriage of justice is a decision inconsistent with substantial justice  
*Kotteakos v United States*, 328 US 750, 90 Led 1557, 66 S.Ct. 1239

Actual innocence can be supported as all alleged events were grossly incorrect, and either fabricated or intentionally distorted, however prejudice has obstructed and concealed avenues and material crucial to support actual innocence of the underlying alleged offense.

Reversal of this conviction necessary with dismissal with prejudice as the above mentioned effects on the trial process and the continued scheme to ignore errors in direct appeal and all collateral review proceedings. A just conclusion of acquittal at trial has been avoided and a false one reached by the adroit substitution of one phrase, or one word, for another.

The opinions of the district court is that Curtiss is just trying to beat the rap. And with the time lapse permitted in the lower court the truth is just being rejected as a lie.

Political barriers have been erected to sustain conviction no matter the cost. Ruthless ambition allowed a critical error in structural protocol and the oversight of conflict of interest. The tide of history is running with state's attorneys whose only goal is title of judgeship by conviction rates. The case was susceptible to amendment, as altered and modified through every legal transaction to divert liability from the state and officers of the court. State's attorney control the history of the case and court has granted equivocation and misinterpretation with glee. Errors allowed to prosper untrammeled by truth and actual events. This practice is a common tactic of tyrants to accuse one man of something and the rest will fall into line lest they be accused. It works best when the charge is untrue, because no one is safe.

Curtiss vehemently asserts this conviction was obtained and the sentence was imposed in violation of the laws and Constitution of the United States and the state laws and Constitution of North Dakota.

Respectfully, do not allow the American people to lose a feasible sense of justice and make precedence upon these issues to counter abuse of power in vendetta creating actual prejudice, hence abolish vigilante justice.

## CONCLUSION

The petition for a writ of certiorari should be granted.

Resentfully submitted,

I declare under penalty of perjury that the foregoing is true and correct to the best of my belief and knowledge.

Executed and dated this 24 day of September, 2019.

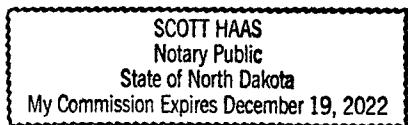


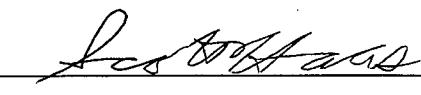
SPENCER KERRY CURTISS  
Missouri River Correctional Center  
P. O. Box 5521  
Bismarck, North Dakota 58505-5521

Subscribed and sworn before me this 24<sup>th</sup> day of September, 2019,

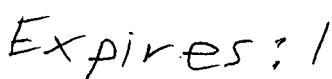
In the county of Burleigh.

State of North Dakota



  
NOTARY PUBLIC

  
Scott Haas

  
Expires: 12-19-22