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*This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2018).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1449
A18-1615**

Gene Rechtzigel, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent,

AND

State of Minnesota,
Respondent,

vs.

Gene Rechtzigel,
Appellant.

**Filed August 12, 2019
Affirmed; motion denied
Cochran, Judge**

Dakota County District Court
File No. 19AV-CR-15-10738

Gene A. Rechtzigel, Apple Valley, Minnesota (pro se ap-
pellant)

Keith Ellison, Attorney General, St. Paul, Minnesota;
and

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Christine J. Casellius, Apple Valley City Prosecutor,
Ryan J. Bies, Assistant City Attorney, Dougherty, Mo-
lenda, Solfest, Hills & Bauer P.A., Apple Valley, Minne-
sota (for respondent)

Considered and decided by Florey, Presiding
Judge; Worke, Judge; and Cochran, Judge.

UNPUBLISHED OPINION

COCHRAN, Judge

Appellant Gene Rechtzigel challenges two district court orders addressing probation violations and requests for postconviction relief arising out of his convictions for violating the Minnesota State Building Code (MSBC). Because the district court did not abuse its discretion in dismissing Rechtzigel's postconviction petitions, and Rechtzigel's other claims are moot or not properly before this court, we affirm.

FACTS

In June 2015, an Apple Valley building official issued Rechtzigel a citation related to a fence Rechtzigel constructed on his property. The citation included a total of four violations: two misdemeanor violations of the MSBC and two misdemeanor violations of the Minnesota State Fire Code (the fire code). The MSBC violations included one count of violating a stop work order and one count of failing to secure a building permit. The fire code violations related to a fire hydrant near the fence. Rechtzigel moved to dismiss the

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charges. The City of Apple Valley (the city) agreed to dismiss the charges related to the fire code. After a hearing, the district court denied Rechtzigel's motion to dismiss the remaining two counts, relating to the MSBC. Rechtzigel sought appellate review of the pre-trial order, and this court denied his request, noting that Rechtzigel could appeal from final judgment on the case.

The case was scheduled for jury trial on April 4, 2016. On that date, Rechtzigel entered into a plea agreement and pleaded guilty to two counts of violating the MSBC pursuant to an *Alford* plea.¹ In discussing the potential plea agreement, the prosecutor informed Rechtzigel that he would be required to apply for a permit and take any steps necessary to ensure that the fence complied with the MSBC. The prosecutor noted that she did not know what, if anything, Rechtzigel would need to do to comply with the MSBC, but defense counsel represented that the fence was built to code. The district court accepted Rechtzigel's *Alford* plea and proceeded to sentencing. The district court sentenced Rechtzigel to a stay of imposition on

¹ Under Minnesota law, a defendant may plead guilty pursuant to an *Alford* plea without admitting guilt if the defendant "agrees that evidence the State is likely to offer at trial is sufficient to convict" and if the district court independently determines that there is a strong factual basis for a finding of guilt and a strong probability that a jury would find the defendant guilty. *State v. Theis*, 742 N.W.2d 643, 649 (Minn. 2007); see also *North Carolina v. Alford*, 400 U.S. 25, 38, 91 S. Ct. 160, 168 (1970) (holding that in some circumstances, a court may constitutionally accept a defendant's guilty plea even though the defendant maintained his innocence).

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each count and to one year of probation. The district court also included the following condition:

Defendant must apply to the [C]ity of Apple Valley for the required [f]ence permit & pay applicable fees within 10 days from today. Defendant shall include a land survey/drawing or whatever is required by the City of Apple Valley within 60 days. Defendant must allow city inspection of the fence and defendant shall comply with all applicable city codes regarding the fence. Upon compliance with the applicable city codes with regard to the fencing defendant is to be discharged from probation.

Rechtzigel did not file a direct appeal of his convictions.

In September 2016, the city requested that the stays of imposition be vacated because Rechtzigel failed to provide an engineer-certified plan for the fence, a required submission with the application for a permit. The district court set a probation-violation hearing for October 2016. Rechtzigel did not appear for the probation-violation hearing, and the district court issued a warrant for Rechtzigel's arrest. Rechtzigel alleges that he never received notice of the hearing.

In September 2017, Rechtzigel filed an "ex parte" motion to "dismiss" the charges to which he pleaded guilty.² The district court denied Rechtzigel's ex parte

² In his filings at both district court and the court of appeals, Rechtzigel appears to use language about "dismissing" his charges interchangeably to mean either that his convictions

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motion and scheduled another probation-violation hearing. Rechtzigel then filed a petition for postconviction relief in October 2017. Rechtzigel requested that the criminal charges and fines be “dismissed” or, in the alternative, that the issue be set for jury trial. In December 2017, the district court denied Rechtzigel’s petition and set the matter on for a contested probation-violation hearing.

In January 2018, the district court found that Rechtzigel violated the terms of his probation. The district court ordered Rechtzigel to cooperate with the requirements of obtaining a permit for his fence and ordered the parties to return for a review and disposition hearing in three months. Following that review hearing, the district court extended Rechtzigel’s probation to July 26, 2018, required Rechtzigel to appear for a review hearing on June 5, 2018, and required Rechtzigel to submit an engineer’s report regarding the fence to the city.

In March 2018, Rechtzigel filed an engineer’s report with the district court. The report indicated that the fence was not adequate to resist wind loads and suggested additions were needed to repair the fence. Rechtzigel disagreed with the conclusions of his own engineer’s report. At the June 5, 2018 review hearing, the district court scheduled another contested probation-violation hearing based on Rechtzigel’s continued failure to bring his fence up to code. On June 7, 2018,

should be reversed or that he should be discharged from probation.

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Rechtzigel filed another motion to “dismiss” the charges. On July 6, 2018, Rechtzigel filed a motion to “dismiss” the charges or in the alternative to withdraw his guilty pleas. In August 2018, the district court issued an order finding that Rechtzigel violated the conditions of his probation and scheduled a disposition hearing. In that same order, the district court denied Rechtzigel’s motions to “dismiss” the charges or withdraw his guilty pleas. This order is the first of two district court orders that Rechtzigel is currently appealing.

In September 2018, following the disposition hearing, the district court ordered Rechtzigel to serve 20 days in jail starting on November 15, 2018. But the order stated that the jail sentence would be vacated if Rechtzigel brought the fence into compliance with the MSBC and received approval from a city inspector by November 1, 2018. This is the second order that Rechtzigel is appealing.

After Rechtzigel filed an appeal of the September order, he brought the fence into compliance with the MSBC by reducing its height so that the MSBC’s requirements no longer apply to the fence. As a result, the district court vacated Rechtzigel’s jail sentence and discharged him from probation. This court consolidated Rechtzigel’s appeals.

DECISION

Rechtzigel is self-represented in these consolidated appeals. Rechtzigel alleges a number of claims and constitutional violations. Although only the

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August 2018 order and the September 2018 order are at issue in this appeal, Rechtzigel's jumbled brief blends various issues from throughout the district court proceedings. It is difficult to follow all of Rechtzigel's arguments, and much of his brief is without citation to legal authorities. While a self-represented appellant "is usually accorded some leeway in attempting to comply with court rules, he is still not relieved of the burden of, at least, adequately communicating to the court what it is he wants accomplished and by whom." *Carpenter v. Woodvale, Inc.*, 400 N.W.2d 727, 729 (Minn. 1987); *see also State v. Seifert*, 423 N.W.2d 368, 372 (Minn. 1988) (noting that Minnesota courts require self-represented criminal defendants to comply with standard rules of court procedure and that "[n]o extra benefits will be given to [self-represented] litigants"). Because Rechtzigel is self-represented, we will consider his claims to the extent that we can understand them.

I. The district court did not abuse its discretion in dismissing Rechtzigel's postconviction petitions.

Rechtzigel argues that the district court erred in denying his postconviction petitions. He argues that the MSBC does not apply to his fence and that he should be allowed to withdraw his guilty plea and have a jury trial. Rechtzigel also makes a number of constitutional claims, including that the state violated his rights to due process under the Minnesota Constitution and his rights to equal protection under the

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United States and Minnesota Constitutions. Rechtzigel also alleges violations of article I, sections 1, 2, 4, 5, 6, 7, 8, 10, and 13 of the Minnesota Constitution. To the extent that Rechtzigel argues that his convictions should be reversed or that he should be allowed to withdraw his guilty plea, we address those arguments here. To the extent that Rechtzigel argues that he should be compensated based on any alleged constitutional violations, we address those arguments in section III.

Minnesota law allows criminal defendants to bring a variety of requests before a district court in the form of a postconviction petition. Minn. Stat. § 590.01, subd. 1 (2016) (allowing individuals convicted of crimes to bring claims that “the conviction obtained or the sentence or other disposition made violated the person’s rights under the Constitution or laws of the United States or of the state”); *see also Sanchez v. State*, 816 N.W.2d 550, 554-56 (Minn. 2012) (addressing a postconviction petition alleging violations of the Fourth and Sixth Amendments); *Stewart v. State*, 764 N.W.2d 32, 33-34 (Minn. 2009) (considering a postconviction petition alleging a lack of subject-matter jurisdiction based on an argument that the laws were invalid). “A motion to withdraw a guilty plea made after sentencing must be raised in a petition for postconviction relief. . . .” *Lussier v. State*, 821 N.W.2d 581, 583 (Minn. 2012); *see also Sanchez v. State*, 868 N.W.2d 282, 286 (Minn. App. 2015) (“A motion to withdraw a plea after sentencing must be raised in a postconviction petition.”), *aff’d*, 890 N.W.2d 716 (Minn. 2017).

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But “[t]he court may summarily deny a second or successive petition for similar relief on behalf of the same petitioner.” Minn. Stat. § 590.04, subd. 3 (2016). “Review of a postconviction proceeding is limited to determining whether there is sufficient evidence to sustain the postconviction court’s findings, and a postconviction court’s decision will not be disturbed absent an abuse of discretion.” *Dukes v. State*, 718 N.W.2d 920, 921 (Minn. 2006) (quotations omitted). “When making this determination, we are not limited to the reasoning of the postconviction court, and we can affirm the denial of postconviction relief on grounds other than those on which the postconviction court relied.” *Id.* at 921-22.

Rechtzigel filed his first petition for postconviction relief in October 2017. In that petition, he argued that the case should be “dismissed” on a number of grounds, including that he fulfilled the requirements of the plea agreement, that the MSBC did not apply to his fence, and that the city violated numerous provisions of the United States and Minnesota Constitutions. The district court denied Rechtzigel’s petition, and Rechtzigel chose not to appeal the district court’s decision. *See* Minn. R. Crim. P. 28.02, subd. 4(3)(c) (stating that a defendant must appeal an order denying postconviction relief within 60 days after entry of the order).

On June 7, 2018, roughly six months after the district court denied his petition for postconviction relief, Rechtzigel filed a motion to “dismiss” his charges under Minn. R. Crim. P. 17.06. Rechtzigel filed another motion to “dismiss” his charges under Minn. R. Crim.

P. 17.06 or withdraw his guilty pleas under Minn. R. Crim. P. 15.05 on July 6, 2018. Although Rechtzigel did not title his filings as postconviction petitions, his arguments amounted to requests for postconviction relief because he sought to collaterally attack the validity of his convictions and withdraw his *Alford* pleas. The supreme court addressed a similar situation in *Johnson v. State*, 801 N.W.2d 173 (Minn. 2011). In that case, Johnson filed an initial postconviction petition, which was denied, arguing that his plea agreement was invalid for a number of reasons. *Johnson*, 801 N.W.2d at 175. After the time limit to file postconviction petitions lapsed, Johnson filed a motion to correct his sentence under Minn. R. Crim. P. 27.03, subd. 9, arguing that his guilty plea was invalid. *Id.* The supreme court concluded that, despite the motion's title, it was in effect a petition for postconviction relief and that the "petition [was] untimely and should not be considered on the merits." *Id.* at 177. Similarly, Rechtzigel's June 2018 and July 2018 motions amounted to petitions for postconviction relief.

Thus, Rechtzigel's motions to dismiss and withdraw his guilty plea were successive postconviction petitions. Rechtzigel based those petitions on the same grounds as his initial petition for postconviction relief: that he fulfilled the requirements of the plea agreement, that the MSBC did not apply to his fence, and that the city was violating numerous provisions of the United States and Minnesota Constitutions. The district court summarily denied Rechtzigel's petitions, noting that the court had "previously denied

[Rechtzigel's] motions to dismiss in an Order dated December 8, 2017." Because Rechtzigel's June 2018 and July 2018 postconviction petitions constituted successive petitions requesting similar relief, the district court was entitled to summarily deny the petitions. *See* Minn. Stat. § 590.04, subd. 3. Furthermore, we note that Rechtzigel's successive petitions were procedurally barred under the *Knaffla* rule. *See Jackson v. State*, 919 N.W.2d 470, 473 (Minn. 2018) ("Under the *Knaffla* rule, any claim raised on direct appeal, or in a previous postconviction petition, will not be considered upon a subsequent petition for postconviction relief." (quotation omitted)). On this record, we discern no abuse of discretion in the postconviction court's summary denial of Rechtzigel's successive postconviction petition.

II. Rechtzigel's request to reverse the sentencing order is moot.

Rechtzigel also challenges the district court's conclusion that he violated his probation and the district court's subsequent sentence for the probation violation, requesting that the district court's "sentencing orders be reversed." Rechtzigel's challenges to the probation violation and subsequent sentence are moot. "Mootness has been described as the doctrine of standing set in a time frame: The requisite personal interest that must exist at the commencement of the litigation (standing) must continue throughout its existence (mootness)." *Dean v. City of Winona*, 868 N.W.2d 1, 4-5 (Minn. 2015) (quotation omitted). The doctrine

requires this court to decide only actual controversies, and to refrain from issuing advisory opinions. *In re Schmidt*, 443 N.W.2d 824, 826 (Minn. 1989). If there is “no injury that a court can redress,” the case becomes moot except in limited circumstances. *State ex rel. Sviggum v. Hanson*, 732 N.W.2d 312, 321 (Minn. App. 2007). “An appeal is not moot, however, where the issue raised is capable of repetition yet evades review or where collateral consequences attach to the judgment.” *In re McCaskill*, 603 N.W.2d 326, 327 (Minn. 1999).

We may consider post-appeal factual developments in determining whether an appeal is moot. *See Dean*, 868 N.W.2d at 5-6 (determining that appeal was moot based on factual developments occurring after grant of appellate review). Lack of mootness is “a constitutional prerequisite to the exercise of jurisdiction,” and appellate courts “must consider the mootness question even if ignored by the parties.” *Schmidt*, 443 N.W.2d at 826. “We review the issue of mootness de novo.” *Wayzata Nissan, LLC v. Nissan N. Am., Inc.*, 875 N.W.2d 279, 283 (Minn. 2016).

“The expiration of a sentence operates as a discharge that bars further sanctions for a criminal conviction.” *State v. Purdy*, 589 N.W.2d 496, 498 (Minn. App. 1999). Once the sentence has been served, any issues involving the sentence are moot because the court of appeals cannot grant effective relief. *See State v. Eller*, 780 N.W.2d 375, 384 (Minn. App. 2010) (noting that an appeal from a sentence was moot where the sentence had already been served).

In this case, the district court ordered Rechtzigel to serve 20 days in jail unless he brought his fence into compliance with the MSBC. After Rechtzigel reduced the height of his fence to bring it into compliance with the MSBC, the district court vacated the sentence and discharged Rechtzigel from probation. Because the district court vacated the sentence and discharged Rechtzigel from probation, we cannot grant effective relief. Rechtzigel has also not demonstrated that the issues raised in this case are capable of repetition because the issues are confined to the specific circumstances of his case. We conclude that under these facts, Rechtzigel's challenges to the probation violation and subsequent sentence are moot.³

III. Rechtzigel's requests for damages and declaratory judgment are not properly before the court.

Rechtzigel also requests just compensation for his fence, a ruling that the MSBC does not apply to his fence, and a ruling that he should be allowed to rebuild his fence without a permit. Rechtzigel's request for compensation appears to be based on claims that his fence was unconstitutionally taken without just compensation and that he was unconstitutionally forced to

³ To the extent that Rechtzigel's arguments in his petitions for postconviction relief that his charges should be "dismissed" referred to discharging him from probation, we note that those claims are also moot. Rechtzigel has been discharged from probation and thus, he has already received his requested relief in regard to those claims.

cut the fence in order to avoid cruel and unusual punishment. Parties injured by constitutional abuses may be entitled to recovery of monetary damages under 42 U.S.C. § 1983 (2012). *Maras v. City of Brainerd*, 502 N.W.2d 69, 75 (Minn. App. 1993), *review denied* (Minn. Aug. 16, 1993). But such claims should be brought as a civil action, not as a part of a criminal appeal. *See State v. Fox*, 868 N.W.2d 206, 226 (Minn. 2015) (declining to address claims related to an appellant's conditions of confinement because such claims are more appropriately raised in a petition for habeas corpus relief or in a civil action under 42 U.S.C. § 1983). Because Rechtzigel's claims for monetary damages should be brought as part of a civil suit, we decline to address them here.

Rechtzigel also requests that this court provide an opinion stating that he should be allowed to rebuild his fence without a permit. Rechtzigel's request amounts to a request for declaratory relief. *See* Minn. Stat. § 555.02 (2018) (allowing any person whose rights are affected by a statute or municipal ordinance to have any question of construction or validity arising under the statute or ordinance to seek a declaration of rights under that statute or ordinance); *see also McCaughtry v. City of Red Wing*, 808 N.W.2d 331, 337 (Minn. 2011) (noting that a declaratory-judgment action is proper to test the validity of a municipal ordinance). A request for declaratory relief may be brought in district court. But, because Rechtzigel did not bring a declaratory-judgment action in district court addressing his rights regarding a possible future fence, there is no district court order regarding Rechtzigel's rights in regards to

a possible future fence. “[A]n undecided question is not usually amenable to appellate review.” *Hoyt Inv. Co. v. Bloomington Commerce & Trade Ctr. Assocs.*, 418 N.W.2d 173, 175 (Minn. 1988). In the absence of a district court order addressing Rechtzigel’s rights regarding a theoretical future fence, we decline to address that issue.

IV. We deny as unnecessary the state’s motion to strike portions of Rechtzigel’s reply brief.

Finally, the state moved to strike portions of Rechtzigel’s reply brief, arguing that it raises new issues that were not raised in Rechtzigel’s principal brief. Issues that are raised for the first time in an appellant’s reply brief are “not proper subject matter for appellant’s reply brief and, therefore, [are] waived and stricken.” *See State v. Yang*, 774 N.W.2d 539, 558 (Minn. 2009) (striking an argument in appellant’s reply brief because it raised a new issue).

The state argues that Rechtzigel’s reply brief introduces new issues beyond his principal brief because the reply brief’s statement of the issues differs from the statement of the issues in his principal brief. Like Rechtzigel’s principal brief, his reply brief is difficult to follow at times, but it appears to center on the same issues raised in his principal brief. To the extent that we can understand Rechtzigel’s reply brief, and it addresses the issues raised in his principal brief and discussed above, we have considered his reply brief. We have not considered any new arguments raised in the

STATE OF MINNESOTA
COUNTY OF DAKOTA

DISTRICT COURT
FIRST JUDICIAL
DISTRICT

State of Minnesota,
City of Apple Valley

Plaintiff,

vs.

Gene Rechtzigel,

Defendant.

Court File Number:
19AV-CR-15-10738

**FINDINGS OF FACT,
CONCLUSIONS OF
LAW AND ORDER**

(Filed Aug. 2, 2018)

The above-entitled matter came on for a contested probation violation hearing and motion hearing before the Honorable David L. Knutson, Judge of District Court, on July 9, 2018 at the Dakota County Judicial Center in Hastings, Minnesota.

Christine Cassellius, Esq. appeared for and on behalf of the State of Minnesota, City of Apple Valley;

Gene Rechtzigel appeared *pro se*.

Based upon all of the files, records, testimony, arguments and proceedings herein, the Court makes the following:

FINDINGS OF FACT

1. On April 4, 2016, Defendant pled guilty to the charges contained in Count I, Fence Permit violation, and Count II, Stop Work Order Violation, both misdemeanor ordinance violations.

2. Defendant's plea of guilty to Count I and Count II on the scheduled trial date of April 4, 2016, was a result of negotiations between the city prosecutor and Defendant's attorney at that time, Lucas Spaeth. The plea was placed on the record. Defendant has appeared in court a number of times and has had many cases heard in court. He is quite familiar with court processes and his rights.

3. Defendant was placed on probation with the specific requirements that:

Defendant must apply to the City of Apple Valley for the required Fence permit & pay applicable fees within 10 days from today. Defendant shall include a land survey/drawing or whatever is required by the City of Apple Valley within 60 days. Defendant must allow city inspection of the fence and defendant shall comply with all applicable city codes regarding the fence. Upon compliance with the applicable city codes with regard to the fencing defendant is to be discharged from probation. (Sentencing Order dated April 4, 2016).

4. A probation violation hearing was held on January 25, 2018, where this Court found Defendant to be in violation of the conditions of probation. This Court issued findings specifically stated:

Defendant specifically failed to comply with the probationary condition requiring Defendant to file a permit including

“a land survey/drawing or whatever is required by the City of Apple Valley.” The City of Apple Valley requires a “stamped drawing from a licensed engineer” pursuant to its building code due to the subject matter being an 8 foot tall wood fence.

Defendant has failed to “comply with all applicable city codes regarding the fence” as was specifically stated in the Sentencing Order.

Defendant failed to make reasonable efforts within a reasonable period of time to comply with the city requirements. He further failed to work with the City to obtain the necessary stamped drawing from a licensed engineer. Defendant received multiple letters from the city outlining the additional requirements that he was to complete for the permit. (Probation Violation Order dated January 25, 2018).

5. The January 25, 2018 Order set the case on for a Review and Disposition/Resentencing Hearing on March 9, 2018. The Order further required the Defendant to “cooperate and work with the City of Apple Valley to complete the requirements to obtain a permit for his fence and obtain a “stamped drawing from a licensed engineer” within 30 days of the date of this order.”
6. At the hearing on March 9, 2018, this Court extended Defendant’s probation, scheduled another review hearing for June 5, 2018, and required Defendant to “submit a final signed

and stamped updated engineer's report to the City by March 23, 2018."

7. Following the June 5, 2018 hearing, the matter was set on for a contested probation violation hearing on July 9, 2018.
8. On July 6, 2018, Defendant served and filed a number of written motions. Defendant also made several oral motions prior to the start of the probation violation hearing on July 9. His motions included: 1) a motion to dismiss charges; 2) a motion to withdraw his guilty plea due to incompetent counsel, involuntary plea, and allegation that plea bargain wasn't on the record and did not comport with sentence; 3) an objection to and/or seeks disqualification of the prosecutor in this case because Ms. Cassellius previously represented Defendant's ex-wife; 4) an objection on the basis of double jeopardy and 5) a request to have a jury trial in this matter.
9. At the contested hearing, Exhibit 1 (Letter dated March 22, 2018 from Defendants Consulting Engineer), Exhibit 2 (Chapter 1303.2200 of the Minnesota State Building Code) and Exhibit 3 (Chapter 1300.0120 of the Minnesota State Building Code) were offered and received into evidence.
10. The following witnesses were called and offered testimony: 1) George Dorn, Apple Valley City Inspector; and 2) Zach Stadem, an associate of Defendant. Defendant exercised his right not to testify.

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11. Witness Dorn testified that Defendant has paid for and obtained a permit, but has not complied with all of the pertinent laws applicable for this permit. Mr. Dorn further testified that a condition of the permit is to obtain an engineer's report on whether the fence complies with the state building code due to the fact that the fence is 8' high.
12. Defendant did obtain an engineer's report, which was introduced as Exhibit 1. The report indicated that the construction is not adequate to resist the specified wind loads. The report also included specific repair requirements to the fence to bring it into compliance with the code.
13. Defendant has failed to comply with the building and structural requirements that were outlined by his own engineer. Defendant's questions during the trial were an attack on his own engineer's report without the engineer being present.
14. Mr. Dorn also testified that city inspections must be arranged to review the footings. He also testified that he sent Defendant 3-5 letters explaining all of the permit requirements. Mr. Dorn has not received a call from Defendant requesting an inspection. Mr. Dorn did testify that he talked with Defendant's consulting engineer who confirmed that they stand by their report.
15. On cross examination, Mr. Dorn testified that the 8' fence is a structure that must comply with the state building code pursuant to city

ordinance. He also testified that the original installation of the fence was completed without a permit in violation of city code, and is currently in violation of state building code since Defendant has not constructed the fence according to his own engineer's requirements under the applicable building code.

16. The testimony of Mr. Dorn was clear, believable and concise as to the code requirements and Defendant's deficiencies and non-compliance.
17. Zach Stadem testified as to the documents that were submitted on behalf of the Defendant to the city as part of the permitting process. He also testified as to his communications with the Defendant's engineer. Defendant asked Mr. Stadem a number of questions regarding the building code and the wind speed his fence should be able to sustain. Many of the questions were objected to and sustained by the Court as being irrelevant and found to have lacked foundation.
18. Defendant offered no testimony to support his motions to dismiss and withdraw his pleas. Defendant and this Court are relying on Defendant's written submissions and arguments during the hearing to support his motions.

CONCLUSIONS OF LAW

1. The State of Minnesota, City of Apple Valley met its burden of proof and proved by clear and convincing evidence, that the Defendant

violated the terms and conditions of probation imposed at the sentencing hearing on April 4, 2016 by specifically failing to have the fence inspected by the city and failing to comply with all applicable city building codes regarding the fence, in continuing violation of Count 1 of the criminal complaint.

2. The ability to withdraw a guilty plea is not absolute and may usually be done only at the trial court's discretion. *Shorter v. State*, 511 N.W.2d 743, 746 (Minn. 1994); *Kim v. State*, 434 N.W.2d 263, 266 (Minn. 1989). If a plea is invalid because it was not made voluntarily, made intelligently, or supported with a valid factual basis, the court must allow the plea to be withdrawn to correct a manifest injustice as long as the defendant's motion is timely and proven to the satisfaction of the court. Minn. R. Crim. P. 15.05, subd. 1; *State v. Theis*, 742 N.W.2d 643, 646 (Minn. 2007). A plea of guilty is considered voluntary when it is "a voluntary and intelligent choice among the alternative courses of action open to the defendant" including "the defendant's desire to accept the certainty or probability of a lesser penalty rather than face a wider range of possibilities extending from acquittal to conviction and a higher penalty authorized by law for the crime charged." *North Carolina v. Alford*, 400 U.S. 25, 31 (1970); *Brady v. United States*, 397 U.S. 742, 751 (1970). Defendant put forth no evidence that showed his plea was not entered into voluntarily, intelligently, and supported by a valid factual basis. Defendant entered his plea on April 4, 2016.

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After being sentenced, and appearing at 4 probation violation hearings, he now brings his motion to withdraw his plea, nearly 2 and ½ years later. The motion is not timely, and the Court finds no evidence of a manifest injustice.

3. This Court has previously denied Defendant's motions to dismiss in an Order dated December 8, 2017. The remaining motions before this Court are without merit and unsupported by any evidence or any testimony offered at the hearing.

ORDER

1. Defendant is found to be in violation of the conditions of his probation.
2. The parties shall appear at a disposition hearing at which time Defendant shall be resentenced on this violation.
3. The Disposition Hearing is scheduled for Monday September 10, 2018 at 9:00 a.m. at the Dakota County Judicial Center in Hastings, MN.
4. Defendant's motion to dismiss the charges are denied.
5. Defendant's motion to withdraw his guilty plea is denied.
6. Defendant's motion to disqualify the prosecutor in this case is denied.

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7. Defendant's motion to dismiss this case based on the prohibition against double jeopardy is denied.
8. Defendant's request to have his probation violation case heard by a jury is denied.

Dated: _____

BY THE COURT:

Knutson, David
2018.08.02

/s/ David L. Knutson 16:26:26-05'00'
Judge of District Court

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The State of Minnesota	District Court
Dakota County	1st Judicial District
Dakota, Apple Valley	

State of Minnesota vs GENE RECHTZIGEL
AMENDED ORDER

Case Number: 19AV-CR-15-10738

CURRENT DEFENDANT INFORMATION

Known Address: 6533 160th ST W
Apple Valley, MN 55124

Correspondence Address: 6533 160th ST W
Apple Valley, MN 55124

Phone Number: (H) 952-212-1234
(C) 612-618-0780 DOB: 10/15/1953

CASE CHARGES

Ct	Statute	Type	Description	Disposition
1	2015 MSBC1300.0120	Charging	Permit Required for Fence	Convicted
2	2015 MSBC1300.0170	Charging	Stop Work Order Violation	Convicted
3	2007	Charging	Objects to Close to Hydrant	Dismissed
4	2007	Charging	3 Foot Clearance Around Hydrants	Dismissed

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**TERMS OF DISPOSITION
OR SENTENCE; COUNT 1**

Level of

Sentence: Misdemeanor

**Sentence is a stay of imposition
pursuant to M.S. 609.135.**

Amended Due To: Probation Violation

Date Pronounced: September 10, 2018

Offense Information

Ct	Offense Date	Statute	Description	Offense Disposition
1	06/15/2015	2015 MSBC 1300. 0120	Permit Required for Fence	Convicted
	MOC at Filing	GOC	Controlling Agency Housing Inspector	Controlling No.

Sentence Details

Monitoring – Adult

Defendant is placed on Probation to the Court for 1 year and 6 months, monitored by Dakota Co District Court – Hastings Criminal.

Start Date: 04/04/2016 Discharge Date: 07/26/2018

probation extended 6 months to 7.26.18

Status: Active

Status Date: 03/09/2018

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Fees

Sentence includes a \$250.00 fine.

Law Library Fees \$5.00

Municipality Fines 2/3 \$250.00

Crim/Traffic Surcharge
(once per case) \$75.00

Apple Valley Pros Costs \$250.00

Subtotal \$580.00 Due 05/04/2016

Conditions – Adult

Defendant is placed under the following conditions:

Condition	Location	Amt	Effective	End
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Conditions, other			04/04/2016	
-------------------	--	--	------------	--

Defendant must apply to the city of Apple Valley for the required Fence permit & pay applicable fees within 10 days from today. Defendant shall include a land survey/drawing or whatever is required by the City of Apple Valley within 60 days. Defendant must allow city inspection of the fence and defendant shall comply with all applicable city codes regarding the fence. Upon compliance with the applicable city codes with regard to the fencing defendant is to be discharged from probation.

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Conditions – Adult

Defendant is placed under the following conditions:

Condition	Location	Amt	Effective	End
Conditions, other			01/25/2018	

Defendant shall cooperate and work with the City of Apple Valley to complete the requirements to obtain a permit for his fence and obtain a “stamped drawing from a license engineer” within 30 days of the date of this order.

Conditions – Adult

Defendant is placed under the following conditions:

Condition	Location	Amt	Effective	End
Conditions, other			01/09/2018	

review hearing scheduled for 6.5.18 @ 9:00 am in Hastings; Defendant shall submit a final signed and stamped updated engineers reprot to the city by 3.23.18

Local Confinement

Defendant is sentenced to 20 days in the Dakota County Jail.

Start Date: 11/15/2018

Start Time: 9:00 AM

jail may be vacated if def has inspection approval completed and submitted to court by 11/1/2018 along with other conditions listed.

Status: Active

Status Date: 09/10/2018

Conditions – Adult

Defendant is placed under the following conditions:

Condition	Location	Amt	Effective	End
------------------	-----------------	------------	------------------	------------

Conditions, other			09/14/2018	
-------------------	--	--	------------	--

1. Fence must conform to Apple Valley City Code in all respects including all applicable ordinances, policies and statutes regarding this fence permit and Defendant's building request.
2. Fence modifications, repairs and reinforcements must meet the requirements of the City as outlined in Defendant's consulting engineer's letter dated March 22, 2018, or, in the alternative, Defendant may reach agreement with the City of Apple Valley inspections department to make other modifications to the fence which would meet and comply with city code requirements.
3. Defendant must arrange for the City to inspect the fence following completion of any modification work.
4. Defendant must obtain a completed inspection and final approval of this permit on or before November 1, 2018 and submit the completed, stamped and signed permit approval to Court Administration.
5. If final inspection approval is not completed and obtained by November 1, 2018, then Defendant shall report to the Dakota County Jail on November 15, 2018 at 9:00 a.m.
6. Defendant shall be discharged from probation upon completion of listed conditions or jail sentence.

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**TERMS OF DISPOSITION
OR SENTENCE: COUNT 2**

Level of

Sentence: Misdemeanor

**Sentence is a stay of imposition
pursuant to M.S. 609.135.**

Date Pronounced: April 04, 2016

Offense Information

Ct	Offense Date	Statute	Description	Offense Disposition
1	06/15/2015	2015 MSBC 1300. 0120	Stop Work Order Violation	Convicted
	MOC at Filing	GOC	Controlling Agency Housing Inspector	Controlling No.

Sentence Details

Concurrent/Consecutive

Concurrent

all terms concurrent with count 1

Monitoring - Adult

Defendant is placed on Probation to the Court for 1 year,
monitored by Dakota Co District Court – Hastings
Criminal.

Start Date: 04/04/2016 Discharge Date: 04/04/2017

Status: Closed status Date: 04/23/2017

GRAND TOTALS

Date of Sentence: 09/10/2018

Due Date: 05/04/2016

Revised: \$580.00

The court may refer this case for collection if you fail to make a payment, and collection costs will be added. You have the right to contest a referral for collection based on inability to pay by requesting a hearing no later than the due date. M.S. §§ 480.15, subd, 10c; 609.104

SIGNATURE

/s/ David L. Knutson Judge David L. Knutson

Sentence pronounced on 09/10/2018 by District Court
Court Administrator: Heidi Carstensen 952-891-7256

If you have questions regarding the terms of your sentence or disposition, please contact your probation agent or court administrator.

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19AV-CR-15-10738

**STATE OF MINNESOTA IN DISTRICT COURT
COUNTY OF DAKOTA FIRST JUDICIAL
DISTRICT**

NAME: /s/ Gene Rechtzigel

Court File No(s): 19AV-CR-15-10738

PROBATION VIOLATION ORDER

FINDINGS FOR UNCONTESTED HEARING

- ☐ The Defendant **admitted** violating the terms and conditions of probation as set forth in the probation report filed with this Court. The Court accepts the Defendant's admission and the Defendant is now sentenced as follows:

COUNSEL Christine Cassellius
pro se

FINDINGS FOR CONTESTED HEARING

- ☒ The Court, having heard all evidence presented at this proceeding, now specifically finds, by clear and convincing evidence, that the Defendant violated the following terms and conditions of probation:
See order from 1/25/18

- ☐ The Court further finds that the violation was intentional or inexcusable.
- ☐ The Court finds that the need for confinement outweighs the policies favoring probation and/or that it would unduly depreciate the seriousness of the original conviction and/or violation if probation

were not revoked. Finding 3 only needed in case of prison sentence.

DISPOSITION

- ☒ The Defendant is reinstated on the same terms and conditions as previously imposed. **PLUS** the following terms and conditions as set forth below
- ☐ The previous sentence is vacated and you are now sentenced to the following terms and conditions set forth below:

SENTENCED: Probation is extended an additional 6 months to 7/26/18

- ☐ Serve _____ days in County jail: Beginning on _____ @ ____ am/pm: with Work Release, if eligible
- ☐ Credit for time served _____ days ☐ _____ days EHM ☐ _____ days STS

Note: Community Work Service, EHM, STS, Work Release and Victim Impact. Panels are all scheduled arranged by DCCC. See Appendix A on reverse side.

- ☐ Community Service of _____ hours
To be completed by _____
- ☐ Fine \$ _____ Surcharge \$ _____ Court/ Lab Costs \$ _____ CD DA Assessment \$ _____
- ☐ Restitution \$ _____ or
☐ as determined by Community Corrections

☐ Financial obligations are due by _____ or
as determined by Court Collector

An acceptable, private, chemical dependency evaluation may be provided within 30 days of this Order. Assessment fee is waived if private assessment is obtained.

- ☐ Submit to and follow all recommendations, including any recommended aftercare, of:
 - ☐ Chemical Dependency
 - ☐ Domestic Abuse
 - ☐ Psychological Evaluation
- ☐ No use of alcohol or illegal drugs.
- ☐ Submit to random chemical/substance testing
- ☐ Attend Victim Impact Panel
- ☐ No DAR, DAS, Driving without a driver's license, driving without insurance or alcohol related offenses.
- ☐ Follow rules and regulations of Probation Department.
- ☐ Remain law abiding.
- ☒ Review Hearing schedule for 6/5/18 @ 9:00 am in Hastings
- ☒ Other: Defendant shall submit a formal signed and stamped updated engineer's report to the city by 3/23/18.

3/9/18 /s/ David L. Knutson
DATE **Judge of District Court**

TO THE SHERIFF OF DAKOTA COUNTY, MINNESOTA: You the Sheriff of Dakota County, Minnesota are hereby commanded to take the said defendant into your custody there to be received, kept, and employed until duly discharged by due course of law or competent authority.

Witness the Honorable Judge of said Court at Dakota Minnesota BY: _____, Deputy

Date of Offense _____ Date of Birth: _____ MOC: _____

Controlling Agency: _____ Arresting Agency Control Number _____

******APPENDIX A ON THE REVERSE
SIDE IS PART OF THIS ORDER******

19AV-CR-15-10738

STATE OF MINNESOTA DISTRICT COURT
COUNTY OF DAKOTA FIRST JUDICIAL DISTRICT

<hr/> State of Minnesota, Plaintiff, v. Gene Rechtzigel, Defendant. <hr/>	<div>Court File No.: 9AV-CR-15-10738</div> <div>ORDER AND MEMORANDUM DENYING DEFENDANT'S MOTIONS TO DISMISS</div> <div>(Filed Dec. 8, 2017)</div>
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The above-entitled matter came on for an Admit/Deny Hearing before the Honorable David L. Knutson, Judge of District Court, on October 19, 2017 at the Dakota County Western Service Center in Apple Valley, Minnesota on the Order for Summons on a Probation Violation issued September 8, 2016. Defendant's motions to dismiss under Minnesota Rule of Criminal Procedure 17.06, Minnesota Statutes §§ 554.01 to 554.06 and for a lack of jurisdiction were also heard and considered.

Ryan J. Bias, Assistant Apple Valley City Attorney, appeared on behalf of the Plaintiff.

Defendant appeared *pro se*.

NOW, THEREFORE, the Court having considered the matter, being fully advised in the premises, and based upon all the files, records and proceedings herein, issues the following:

ORDER

1. Defendant's motion to dismiss for lack of jurisdiction is denied.
2. Defendant's motion to dismiss under Minnesota Rule of Criminal Procedure 17.06 is denied.
3. Defendant's motion to dismiss under Minnesota Statutes §§ 554.01 to 554.06 is denied.
4. A denial to the alleged probation violation shall be entered on the Defendant's behalf.
5. The parties shall appear for a Contested Probation Violation Hearing on January 25, 2018 at 9:00 a.m. at the Dakota County Judicial Center in Hastings, Minnesota.
6. The attached memorandum is incorporated herein by reference.

Dated: December 8, 2017

BY THE COURT:

/s/ David L. Knutson
David L. Knutson
Judge of District Court

MEMORANDUM

I. THE DAKOTA COUNTY DISTRICT COURT HAS JURISDICTION OVER THE PROBATION VIOLATION ALLEGED IN THE RECOMMENDATION OF THE PROSECUTING AGENCY FILED SEPTEMBER 7, 2016.

“The judicial power of the state is vested in a supreme court, a court of appeals . . . a district court and such other courts . . . as the legislature may establish. MINN. CONST. art. VI, § 1. “The district court has original jurisdiction in all civil and criminal cases and shall have appellate jurisdiction as prescribed by law.” *Id.* at § 3. The Apple Valley City Attorney’s Office is authorized by the legislature to charge and prosecute all violations of the Apple Valley City Ordinances like any violation of state law. *See* Minn. Stat. § 412.861, subd. 1 (2016). All probation revocation proceedings must be initiated by a summons or warrant based on a written report, signed under penalty of perjury pursuant to Minnesota Statutes, section 358.116, showing probable cause to believe a probationer violated probation.” Minn. R. Crim. P. 27.04, subd. 1(1)(a).

Defendant was convicted of two ordinance violations on April 4, 2016 and sentenced to a stay of imposition and probation to the Court for a period of up to one year on the conditions that he pay \$580.00 in fines and fees, apply for a fence permit and pay all applicable fees within ten days of sentencing, provide the city a land survey/drawing to the city within sixty days of sentencing, permit the city to inspect the fence and comply with all applicable city codes. On September 7,

2016, the Apple Valley City Attorney's Office filed a Recommendation to Vacate Stay and Issue Summons alleging that the Defendant failed to submit the land survey/drawing to the city within sixty days of April 4, 2016 as required by the terms of his probation. The Order for Summons was issued on September 8, 2016 and the initial Probation Violation Hearing was set for October 6, 2016 and Defendant failed to appear on that date, so a warrant was issued on October 7, 2016. On September 28, 2017, the Defendant was arrested on the warrant in this case while at the Dakota County Judicial Center and was released on \$300.00 bail.

The alleged probation violation was filed within the term of probation, which ended April 4, 2017, and was initiated by the Recommendation to Vacate Stay and Issue Summons, signed by an Assistant Apple Valley City Attorney. That Recommendation alleges that Defendant failed to comply with the terms of probation as ordered and, therefore, he violated the terms of probation. Because Defendant failed to appear at the original probation violation hearing, a bench warrant was issued with a term allowing the Defendant to post bail in the amount of \$300.00 in lieu of being incarcerated. Defendant argues that the warrant was executed after his original probation expiration date of April 4, 2017 and that therefore the Court has no authority to hear the probation violation. However, Minnesota Statutes § 609.14, subdivision 1(c) provides that as long as the probation violation was filed within the original term of probation and within six months after the end of the term of a defendant's probation, the alleged violation

cannot be dismissed even if the in-court proceedings occur after the original expiration of a defendant's probationary term. Therefore, because the Recommendation was filed within the Defendant's probationary term on September 7, 2016, the hearing on the alleged violation can proceed despite the expiration of Defendant's original term of probation in the interim.

When the warrant was executed on September 28, 2017, rather than being held until being taken before the Court, Defendant paid the \$300.00 bail, which allowed him to be released without having to appear before a judge as required in Minnesota Rule of Criminal Procedure 3.02, subdivision 2. Because the Dakota County District Court has jurisdiction under the law to hear the alleged probation violation in this case and because there was no violation of Minnesota Rule of Criminal Procedure 3.02, subdivision 2, Defendant's motion to dismiss for a lack of jurisdiction is denied.

II. MINNESOTA RULE OF CRIMINAL PROCEDURE 17.06 DOES NOT REQUIRE THAT THE PROBATION VIOLATION BE DISMISSED.

Minnesota Rule of Criminal Procedure 17.06, subdivision 1 does not allow courts to dismiss a charging document unless there is a defect or imperfection that is shown to prejudice the defendant's substantial rights. Here, Defendant specifically argues that the Recommendation to Vacate Stay and Issue Summons should be dismissed because: (1) the document does not include facts sufficient to create probable cause, (2) he

was never served with a copy of the document, (3) he was not notified of the October 6, 2016 hearing and (4) he is innocent. Because there has not been an infringement of the Defendant's substantial rights, the Defendant's motion is denied.

Based on the arguments raised by the Defendant with respect to Minnesota Rule of Criminal Procedure 17.06, the only argument which actually challenges the validity of the charging document is whether there is probable cause to believe the Defendant failed to abide by the terms of his probation. Minnesota Rule of Criminal Procedure 27.04, subdivision 1(1)(a) requires all summons or warrants for probation violations to include facts sufficient to show probable cause that the Defendant violated the term of his probation. In deciding a motion to dismiss for lack of probable cause, the court must determine, based upon the evidence provided by the parties, "whether probable cause exists to believe that an offense has been committed and that the defendant committed it." Minn. R. Crim. P. 11.04. The motion to dismiss for lack of probable cause is intended to "protect a defendant [who is] unjustly or improperly charged from being compelled to stand trial." *State v. Florence*, 239 N.W.2d 892, 900 (Minn. 1976). The court must consider all evidence presented in the light most favorable to the State. *State v. Slaughter*, 691 N.W.2d 70, 74-75 (Minn. 2005).

If the complaint, the police reports, and statements of witnesses, "convince the court that the prosecutor possesses substantial evidence that will be admissible at trial and that would justify denial of a

motion for a directed verdict of acquittal, then the court should deny the motion to dismiss without requiring the prosecutor to call any witnesses.” *State v. Rud*, 359 N.W.2d 573, 579 (Minn. 1984). When determining probable cause, the court may rely on all evidence that would be admissible at trial as well as reliable hearsay. *State v. Ortiz*, 626 N.W.2d 445, 450-51 (Minn. Ct. App. 2001); Minn. R. Crim. P. 11.04. if the evidence presented creates a question of fact for each element of the charged offense, the court must deny a motion to dismiss for lack of probable cause. *State v. Lopez*, 778 N.W.2d 700, 704 (Minn. 2010) (citing *Slaughter*, 691 N.W.2d at 74-75).

In the Recommendation to Vacate Stay and Issue Summons, the statement of facts states: “Defendant has failed to properly provide the City of Apple Valley with an engineer-certified plan of the fence as a required submission with the permit application within 60 days of April 4, 2016.” Those facts, as included on the signed Recommendation of the Apple Valley City Attorney’s Office, are sufficient to show that there is probable cause to determine the Defendant has violated the terms of his probation. Defendant was required as part of his probation to submit these plans to the City within 60 days of the date of sentencing and the City is now stating that it never received those plans from the Defendant. Because there is probable cause to believe that Defendant has violated his probation, Defendant’s motion to dismiss under Minnesota Rule of Criminal Procedure 17.06 is denied.

III. MINNESOTA STATUTES CHAPTER 554 IS NOT APPLICABLE IN CRIMINAL CASES AND DOES NOT REQUIRE THAT THE PROBATION VIOLATION BE DISMISSED.

Minnesota's anti-SLAPP (Strategic Lawsuit Against Public Participation) statutes, Chapter 554, were enacted to "protect citizens and organizations from civil lawsuits for exercising their rights to public participation in government." *Leiendecker v. Asian Women United of Minn.*, 848 N.W.2d 224, 228 (Minn. 2014) (citing 1994 Minn. Laws 895, 895). The anti-SLAPP statute provides immunity for speech that is genuinely aimed in whole or in part at procuring favorable government action. Minn. Stat. § 554.03 (2016). Chapter 554's applicability is limited to "any motion in a judicial proceeding to dispose of a judicial claim on the grounds that the claim materially relates to an act of the moving party that involves public participation." Minn. Stat. § 554.02 subd. 1 (2016). A "judicial claim" is defined as "any civil lawsuit, cause of action, claim, cross-claim, counterclaim, or other judicial pleading or filing seeking damages for an alleged injury." Minn. Stat. § 554.01 subd. 3 (2016). The chapter is therefore limited in scope to be a defense against all civil lawsuits, not criminal actions. *See Middle-Snake-Tamarac Rivers Watershed Dist. v. Stengrim*, 784 N.W.2d 834, 840-41 (Minn. 2010).

Here, Defendant is alleged to have violated the terms of his probation and a probation violation hearing has been ordered to be held, which is a criminal proceeding. This case does not involve any civil claims

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being brought against the Defendant and there is no request for civil damages present in this case. Therefore, because Minnesota Statutes Chapter 554 does not apply to criminal proceedings, Defendant's motion to dismiss under Minnesota Statutes Chapter 554, the anti-SLAPP statutes, is denied.

/s/ DLK
D.L.K.

App. 46

The State of Minnesota
Dakota County
Dakota, Apple Valley

District Court
1st Judicial District

State of Minnesota vs
GENE RECHTZIGEL

ORDER
(Filed Apr. 4, 2016)

Case Number:
19AV-CR-15-10738

CURRENT DEFENDANT INFORMATION			
Known Address:	6533 160th ST W Apple Valley, MN 55124	Correspondence Address:	6533 160th ST W Apple Valley, MN 55124
Phone Number:	None Provided		
		DOB:	10/15/1953

CASE CHARGES				
Ct	Statute	Type	Description	Disposition
1	2015 MSBC1300.0120	Charging	Permit Required for Fence	Convicted
2	2015 MSBC1300.0170	Charging	Stop Work Order Violation	Convicted
3	2007 MSFC	Charging	Objects to Close to Hydrant	Dismissed
4	2007 MSFC	Charging	3 Foot Clearance Around Hydrants	Dismissed

TERMS OF DISPOSITION OR SENTENCE: COUNT 1				
Level of Sentence:		Misdemeanor Sentence is a stay of imposition pursuant to M.S. 609.135.		
Date Pronounced:		April 4, 2016		
<i>Offense Information</i>				
Ct	Offense Date	Statute	Description	Offense Disposition
1	06/15/2015	2015 MSBC1300.0120	Permit Required for Fence	Convicted
	MOC at Filing	GOC	Controlling Agency	Controlling No.
			Housing Inspector	
<i>Sentence Details</i>				
<i>Monitoring - Adult</i>				
Defendant is placed on Probation to the Court for 1 year, monitored by Dakota Co District Court - Hastings Criminal.				
Start Date: 04/04/2016 Discharge Date: 04/04/2017				
Status: Active Status Date: 04/04/2016				
<i>Fees</i>				
Sentence includes a \$250.00 fine.				
Law Library Fees		\$5.00		
Municipality Fines 2/3		\$250.00		
Crim/Traffic Surcharge (once per case)		\$75.00		
Apple Valley Pros Costs		\$250.00		
Subtotal		\$580.00	Due	05/04/2016

Conditions - Adult

Defendant is placed under the following conditions:

Condition	Location	Amt	Effective	End
Conditions, other			04/04/2016	
<p>Defendant must apply to the city of Apple Valley for the required Fence permit & pay applicable fees within 10 days from today. Defendant shall include a land survey/drawing or whatever is required by the City of Apple Valley within 60 days. Defendant must allow city inspection of the fence and defendant shall comply with all applicable city codes regarding the fence. Upon compliance with the applicable city codes with regard to the fencing defendant is to be discharged from probation.</p>				

TERMS OF DISPOSITION OR SENTENCE: COUNT 2	
Level of Sentence:	Misdemeanor Sentence is a stay of imposition pursuant to M.S. 609.135.
Date Pronounced:	April 4, 2016

Offense Information				
Ct	Offense Date	Statute	Description	Offense Disposition
2	06/15/2015	2015 MSBC1300. 0170	Stop Work Order Violation	Convicted

	MOC at Filing	GOC	Controlling Agency	Controlling No.
			Housing Inspector	

Sentence Details**Concurrent/Consecutive**

Concurrent

all terms concurrent with count 1

Monitoring - Adult

Defendant is placed on Probation to the Court for 1 year, monitored by Dakota Co District Court - Hastings Criminal.

Start Date: 04/04/2016 Discharge Date: 04/04/2017

Status: Active Status Date: 04/04/2016

GRAND TOTAL**Date of Sentence: 04/04/2016**

Due Date: 05/04/2016 Original Amount: \$580.00

The court may refer this case for collection if you fail to make a payment, and collection costs will be added. You have the right to contest a referral for collection based on inability to pay by requesting a hearing no later than the due date. M.S. §§ 480.15 subd. 10c; 609.104

SIGNATURE

David Knutson Judge David L. Knutson
sentence pronounced on 04/04/2016 by District Court
Judge

Court Administrator:

Heidi Carstensen 952-891-7256

*If you have questions regarding the terms of your
sentence or disposition, please contact your attorney,
LUCAS BENJAMIN SPAETH 651-323-8527, your
probation agent or court administrator.*

**STATE OF MINNESOTA
IN COURT OF APPEALS**

State of Minnesota,	ORDER
Respondent,	(Filed Mar. 8, 2016)
vs.	#116-0253
Gene Rechtzigel,	
Petitioner.	

Considered and decided by Cleary, Chief Judge;
Peterson, Judge; and Rodenberg, Judge.

**BASED ON THE FILE, RECORD, AND PRO-
CEEDINGS, AND FOR THE FOLLOWING REA-
SONS:**

Petitioner Gene Rechtzigel has filed this petition for discretionary review from the district court's January 15, 2016 order denying his pretrial motion to dismiss two citations alleging building code violations. The state opposes discretionary review.

This court will grant discretionary review of a pretrial order only if a "compelling reason" is shown. *State v. Jordan*, 426 N.W.2d 495, 496 (Minn. App. 1988). A criminal defendant has a right to appeal any conviction, and to raise pretrial issues in that appeal; therefore, pretrial appellate review is rarely granted to a criminal defendant. *See State v. Hagen*, 342 N.W.2d 160, 161-62 (Minn. App. 1984) (denying prohibition because defendant can appeal after trial, even though it

involves delay); *cf. State v. Murphy*, 537 N.W.2d 492, 494 (Minn. App. 1995) (noting criminal defendant has no constitutional right to pretrial appeal). Additionally, a defendant can expedite an appeal by waiving trial rights and submitting the case on stipulated facts under Minn. R. Crim. P. 26.01, subd. 3. “If the court finds the defendant guilty based on the stipulated facts, the defendant may appeal from the judgment of conviction and raise issues on appeal as from any trial to the court.” *Id.*, subd. 3(e); *see also* Minn. R. Crim. P. 26.01, subd. 4 (permitting expedited appeal on stipulated evidence where parties agree district court’s ruling on specified pretrial issue is dispositive of the case).

Because petitioner can appeal from final judgment or proceed with a stipulated-facts trial under rule 26.01, subdivisions 3 or 4, he has not demonstrated a compelling reason for discretionary review.

IT IS HEREBY ORDERED:

1. The petition for discretionary review is denied.
2. This order shall not be construed as a final expression of opinion on the merits precluding later appellate review.

Dated: March 8, 2016

BY THE COURT

/s/ Edward J. Cleary

Edward J. Cleary
Chief Judge

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STATE OF MINNESOTA
IN SUPREME COURT

A18-1449

A18-1615

Gene Rechtzigel,

Petitioner,

vs.

State of Minnesota,

Respondent,

ORDER

Based upon all the files, records, and proceedings
herein,

IT IS HEREBY ORDERED that the petition of
Gene Rechtzigel for further review be, and the same is,
denied.

Dated: October 29, 2019

BY THE COURT:

/s/ Lorie S. Gildea

Lorie S. Gildea
Chief Justice

REGISTER OF ACTIONS
CASE No. 19AV-CR-15-10738

State of Minnesota vs § Case Type:
GENE RECHTZIGEL § **Crim/Traf Mandatory**
§ Date Filed:
§ **05/26/2015**
§ Location:
§ **Dakota-Apple Valley**
§ Judicial Officer:
§ **Knutson, David L.**

PARTY INFORMATION

Defendant	Lead Attorney
RECHTZIGEL, GENE	LUCAS BENJA-
Apple Valley, MN 55124	MIN SPAETH
Jurisdiction	Retained
State of Minnesota	651-322-8527(W)
DOB: 10/15/1953	CHRISTINE JODI
	CASSELLIUS
	952-432-3136(W)

CASE INFORMATION

Charges: RECHTZIGEL, GENE

1. Permit Required for Fence
Statute: 2015 MSBC1300.0120
Level: Misdemeanor **Date:** 06/15/2015
Disposition: 04/04/2018 Convicted

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Level of Sentence: 03/090/2018 Convicted of a Misdemeanor

2. Stop Work Order Violation
Statute: 2015 MSBC1300.0170
Level: Misdemeanor **Date:** 06/15/2015
Disposition: 04/04/2018 Convicted
Level of Sentence: 04/04/2016 Convicted of a Misdemeanor
3. Objects to Close Hydrant
Statute: 2007 MSFC
Level: Misdemeanor **Date:** 06/15/2015
Disposition: 10/01/2015 Dismissed
4. 3 Foot Clearance Around Hydrants
Statute: 2007 MSFC
Level: Misdemeanor **Date:** 06/15/2015
Disposition: 10/01/2015 Dismissed

EVENTS & ORDERS OF THE COURT

DISPOSITIONS

07/10/2015 **Plea** (Judicial Officer: Theisen, Mary J.)

1. Permit Required for Fence
Not guilty
2. Stop Work Order Violation
Not guilty
3. Objects to Close to Hydrant
Not guilty
4. 3 Foot Clearance Around Hydrants
Not guilty

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- 10/01/2015 **Disposition** (Judicial Officer: Moynihan, Shawn M.)
3. Objects to Close to Hydrant
Dismissed
 4. 3 Foot Clearance Around Hydrants
Dismissed
- 04/04/2016 **Amended Plea** (Judicial Officer: Knutson, David L.) Reason: Defense Motion Granted
1. Permit Required for Fence
Guilty
 2. Stop Work Order Violation
Guilty
- 04/04/2016 **Disposition** (Judicial Officer: Knutson, David L.)
1. Permit Required for Fence
Convicted
 2. Stop Work Order Violation
Convicted
- 04/04/2016 **Stay of Imposition Pursuant to MA. 609.135** (Judicial Officer: Knutson, David L.)
1. Permit Required for Fence
- 06/15/2015 (MSD) 2015 MSBC1300.0120 (HOUSING)

Monitoring – Adult:

Type: Probation to the Court
Agency: Dakota Co District Court
– Hastings Criminal
Term of 1 Yr

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04/04/2016 – 04/04/2017

Status: Closed 04/23/2017

Fee Totals:

Law Library Fees	\$5.00
Municipality Fines 2/3	\$250.00
Crim/Traffic Surcharge (once per case)	\$75.00
Apple Valley Pros Costs	\$250.00
Fee Totals	\$580.00

Condition – Adult:

1. Conditions, other, Defendant must apply to the city of Apple Valley for the required Fence permit & pay applicable fees within 10 days from today. Defendant shall include a land survey /drawing or whatever is required by the City of Apple Valley within 60 days. Defendant must allow city inspection of the fence and defendant shall comply with all applicable city codes regarding the fence. Upon compliance with the applicable city codes with regard to the fencing defendant is to be discharged from probation. 04/04/2016, Active 04/04/2016

Level of Sentence:

Convicted of a Misdemeanor

04/04/2016 **Stay of Imposition Pursuant to M.S. 609.135** (Judicial Officer: Knutson, David L.)
2. Stop Work Order Violation
06/15/2015 (MSD) 2015 MSBC1300.0170
(HOUSING)

Monitoring – Adult:

Type: Probation to the Court

Agency: Dakota Co District Court

– Hastings Criminal

Term of 1 Yr

04/04/2016 – 04/04/2017

Status: Closed 04/23/2017

Level of Sentence:

Convicted of a Misdemeanor

Concurrent/Consecutive:

Concurrent

Comment: all terms concurrent with
count 1

01/26/2018 **Amended Stay of Imposition Pursuant to M.S. 609.135** (Judicial Officer: Knutson, David L.) Reason: Probation Violation
1. Permit Required for Fence
06/15/2015 (MSD) 2015 MSBC1300.0120 (HOUSING)

Monitoring – Adult:

Type: Probation to the Court

Agency: Dakota Co District Court

– Hastings Criminal

Term of 1 Yr

04/04/2016 – 04/04/2017

Status: Closed 04/23/2017

Fee Totals:

Law Library Fees \$5.00

Municipality Fines 2/3 \$250.00

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Crim/Traffic Surcharge	\$75.00
(once per case)	
Apple Valley Pros Costs	\$250.00
Fee Totals \$	\$580.00

Condition – Adult:

1. Conditions, other, Defendant must apply to the city of Apple Valley for the required Fence permit & pay applicable fees within 10 days from today. Defendant shall include a land survey/drawing or whatever is required by the City of Apple Valley within 60 days. Defendant must allow city inspection of the fence and defendant shall comply with all applicable city codes regarding the fence. Upon compliance with the applicable city codes with regard to the fencing defendant is to be discharged from probation. 04/04/2016. Active 04/04/2016

Condition – Adult:

1. Conditions, other, Defendant shall cooperate and work with the City of Apple Valley to complete the requirements to obtain a permit for his fence and obtain a “stamped drawing from a license engineer” within 30 days of the date of this order. 01/25/2018, Active 01/26/2018

Level of Sentence:

Convicted of a Misdemeanor

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03/09/2018 **Amended Stay of Imposition Pursuant to M.S. 609.135** (Judicial Officer: Knutson, David L.) Reason: Probation Violation
1. Permit Required for Fence
06/15/2015 (MSD) 2015 MSBC1300.0120 (HOUSING)

Monitoring – Adult:

Type: Probation to the Court
Agency: Dakota Co District Court
– Hastings Criminal
Term of 1 Yr 6 mo
04/04/2016 – 07/26/2018
Comment: probation extended
6 months to 7.26.18
Status: Closed 03/09/2018

Fee Totals:

Law Library Fees	\$5.00
Municipality Fines 2/3	\$250.00
Crim/Traffic Surcharge	\$75.00
(once per case)	
Apple Valley Pros Costs	\$250.00
Fee Totals \$	\$580.00

Condition – Adult:

1. Conditions, other, Defendant must apply to the city of Apple Valley for the required Fence permit & pay applicable fees within 10 days from today. Defendant shall include a land survey/drawing or whatever is required by the City of Apple Valley within 60 days. Defendant must allow city inspection of the fence and defendant shall comply with all applicable city codes regarding the fence. Upon compliance with the applicable

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City codes with regard to the fencing defendant is to be discharged from probation. 04/04/2016, Active 04/04/2016

Condition – Adult:

1. Conditions, other, Defendant shall cooperate and work with the City of Apple Valley to complete the requirements to obtain a permit for his fence and obtain a “stamped drawing from a license engineer” within 30 days of the date of this order, 01/25/2018, *Active* 01/26/2018

Condition – Adult:

1. Conditions, other, review hearing scheduled for 6.5.18 @ 9:00 am in Hastings; Defendant shall submit a final signed and stamped updated engineers report to the city by 3.23.18 03/09/2018, *Active* 03/09/2018

Level of Sentence:

Convicted of a Misdemeanor

OTHER EVENTS AND HEARINGS

06/26/2015 **Citation Index # 1**
06/26/2015 **Police or Incident Report Index # 2**
07/10/2015 **Arraignment** (9:00 AM) (Judicial Officer Theisen, Mary J.)
Result: Held
07/10/2015 **Notice of Hearing Index # 3**
09/01/2015 **Affidavit of Service Index # 4**
09/01/2015 **Motion Index # 5**
09/03/2015 **Pre-trial** (1:30 PM) (Judicial Officer Wermager, Tim D.)
Result: Held

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09/03/2015 **Motion to Dismiss Index #6**
09/03/2015 **Affidavit-Other Index # 7**
09/03/2015 **Notice of Hearing Index # 9**
09/28/2015 **Motion Index # 10**
09/30/2015 **Certificate of Representation
Index # 11**
09/30/2015 **e-Service**
State of Minnesota Served 09/30/2015
10/01/2015 **Contested Omnibus (2:30 PM) (Judicial Officer Moynihan, Shawn M.)**
Result: Held
10/01/2015 **Court Clerk Minutes Index # 13**
10/23/2015 **Memorandum Index # 14**
10/23/2015 **Affidavit of Service Index # 15**
10/26/2015 **Taken Under Advisement Index # 12 (Judicial Officer: Moynihan, Shawn M.)**
01/15/2016 **Findings of Fact, Conclusions of Law and Order Index # 16 (Judicial Officer: Moynihan, Shawn M.)**
01/15/2016 **Notice of Filing of Order Index # 17**
02/12/2016 **Other Document Index # 18**
02/16/2016 **Appellate Notice of Case Filing Index # 19**
02/22/2016 **Other Document Index # 20**
03/03/2016 **Request for Transcript Index # 22**
03/04/2016 **Court Reporter Certificate as to Transcript-Appellate Court Index # 23**
03/04/2016 **Correspondence Index # 24**
04/01/2016 **Affidavit of Service Index # 25**
04/01/2016 **Notice of Motion and Motion Index # 26**

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04/01/2016 **e-Service**
State of Minnesota Served 04/01/2016

04/01/2016 **e-Service**
State of Minnesota Served 04/01/2016

04/01/2016 **Correspondence Index # 27**

04/04/2016 **Sentencing** (1:30 PM) (Judicial Officer
Knutson, David L.)
04/04/2016 Reset by Court to 04/04/2016
Result: Held

04/04/2016 **Sentencing Order Index # 28**
(Judicial Officer: Knutson, David L.)

04/04/2016 **Afford Plea**

04/29/2016 **Transcript Index # 29**

04/29/2016 **Court Reporter Certificate of Filing
&Delivery-Appellate Crt Index # 30**

09/07/2016 **Proposed Order or Document Index
31**

09/08/2016 **Order-Other Index # 32** (Judicial
Officer: Moynihan, Shawn M.)

09/08/2016 **Notice of Hearing Index # 33**

10/08/2016 **Probation Violation Hearing** (9:00
AM) (Judicial Officer King, Colleen G.)
Result Held

10/06/2016 **Fail to Appear at a hearing**

10/07/2016 **Warrant Issued Index # 34**

02/14/2017 **Notice-Other Index # 35**

02/14/2017 **Notice-Other Index # 36**

02/24/2017 **Exhibit Receipt or Authorization to
Release or Destroy Index # 37**

03/08/2017 **Correspondence Index # 38**

03/08/2017 **e-Service**
State of Minnesota Served 03/08/2017

03/08/2017 **e-Service**
RECHTZIGEL, GENE Served 03/08/2017

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03/13/2017 **Notice of Withdrawal of Counsel
Index # 39**

03/13/2017 **e-Service**
State of Minnesota Served 03/13/2017

03/13/2017 **e-Service**
RECHTZIGEL, GENE Served 03/13/2017

04/23/2017 **Discharge from Probation or Monitoring Index # 60**

09/28/2017 **Warrant-Make Inactive-Bail/Bond
Posted**

09/28/2017 **Notice of Hearing Index # 40**

09/28/2017 **Motion to Dismiss Index # 41**

09/28/2017 **Affidavit-Other Index # 42**

09/28/2017 **Affidavit-Other Index # 43**

09/28/2017 **Order-Other Index # 44 (Judicial
Officer: Bayley,Douglas C.,)**

09/28/2017 **Notice of Filing of Order
Index # 45**

10/16/2017 **Petition-Post Conviction Relief
Index # 46**

10/19/2017 **Affidavit-Other Index # 47**

10/16/2017 **Affidavit of Mailing Index # 48**

10/17/2017 **Petition-Post Conviction Relief
Index #49**

10/17/2017 **Affidavit of Service Index # 50**

10/17/2017 **Affidavit of Mailing Index # 51**

10/17/2017 **Correspondence Index # 52**

10/17/2017 **Motion Index # 53**

10/18/2017 **Motion to Dismiss Index # 54**

10/18/2017 **Affidavit of Mailing Index # 55**

10/18/2017 **Proposed Order or Document
Index # 56**

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10/19/2017 **Probation Violation Hearing** (9:00 AM) (Judicial Officer Knutson, David L.)
10/19/2017 Reset by Court to 10/19/2017 10/19/2017
Reset by Court to 10/19/2017
Result: Held

10/19/2017 **Motion to Dismiss Index # 57**

10/19/2017 **Taken Under Advisement Index # 58** (Judicial Officer: Knutson, David L.)

10/19/2017 **Statement of Rights Index # 59**

12/08/2017 **Order-Other Index # 61** (Judicial Officer: Knutson, David L.)

12/13/2017 **Order-Other Index # 62** (Judicial Officer: Knutson, David L.)

12/13/2017 **Notice of Filing of Order Index # 63**

01/25/2018 **Probation Violation Hearing** (9:00 AM) (Judicial Officer Knutson, David L.) Result: Held

01/25/2018 **Motion to Dismiss Index # 84**

01/25/2018 **Taken Under Advisement Index # 65** (Judicial Officer: Knutson, David L.)

01/25/2018 **Amended Sentencing Order Index # 66** (Judicial Officer: Knutson, David L.)

03/09/2018 **Review Hearing** (9:00 AM) (Judicial Officer Knutson, David L.)
Result: Held

03/09/2018 **Notice of Hearing Index # 57**

03/09/2018 **Amended Sentencing Order Index # 68** (Judicial Officer: Knutson, David L.)

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03/03/2018	Probation Violation Found (Judicial Officer: Knutson, David L.)
03/09/2018	Probation Continued – Same Terms and Conditions
03/16/2018	Correspondence Index # 69
03/23/2018	Correspondence Index # 70
03/23/2018	Affidavit of Service Index # 71
03/23/2018	Affidavit of Service Index # 72
05/05/2018	Review Hearing (9:00 AM) (Judicial Officer Knutson, David L.) Result: Held
06/05/2018	Notice of Hearing Index # 73
06/07/2018	Motion to Dismiss Index # 74
07/06/2018	Motion Index # 75
07/09/2018	Contested Revocation Hearing (9:00 AM) (Judicial Officer Knutson, David L.) Result: Held
07/09/2018	Taken Under Advisement Index # 76 (Judicial Officer: Knutson, David L.)
07/10/2018	Transcript Index # 77
08/02/2018	Findings of Fact, Conclusions of Law and Order Index # 78 (Judicial Officer: Knutson, David L.)
08/03/2018	Notice of Filing of Order Index # 79
09/10/2018	Disposition Hearing (9:00 AM) (Judicial Officer Knutson, David L.)

FINANCIAL INFORMATION

	Defendant: RECHTZIGEL, GENE	
	Total Financial Assessment	580.00
	Total Payments and Credits	580.00
	Balance Due as of 09/03/2018	0.00
04/04/2016	Transaction Assessment	580.00
04/12/2016	Counter Payment	
	Receipt # AV19-2016-03922	
	RECHTZIGEL: GENE	(580.00)

STATE OF MINNESOTA DISTRICT COURT
COUNTY OF DAKOTA FIRST JUDICIAL DISTRICT
OTHER CIVIL - TORRENS

In the Matter of the Application of <u>Fischer</u> <u>Market Place, LLP, a</u> <u>Minnesota limited liability</u> <u>partnership,</u> To Register the Title to Certain Land	Court File No. 1 9HA-CV-09-5476 STIPULATION AND ORDER REGARDING ACKNOWLEDGE- MENT OF AND CONSENT TO RIGHT OF WAY RIGHTS OF MAGELLAN PIPELINE COMPANY, (Filed Feb. 7, 2012)
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Magellan Pipeline Company, L.P. ("Magellan") and Gene I. Rechtzigel, as Trustee of the Evelyn I. Rechtzigel Trust and the Frank H. Rechtzigel Charitable Remainder Unitrust and the Estate of Frank H. Rechtzigel (collectively, "Rechtzigel"), by and through their undersigned legal counsel, stipulate and agree as follows:

STIPULATION

WHEREAS, Magellan and Rechtzigel are parties to that action in District Court Dakota County, State of Minnesota, captioned above and entitled *In re Matter of Application of Fischer Market Place, LLP to*

Register the Title to Certain Land, Court File No. 19HA-CV-09-5476 (the “Action”).

WHEREAS, in the Action, Rechtzigel and Fischer Market Place, LLP (“Fischer”) each claim ownership by adverse possession of the fee to a strip of land lying between the East line of the West 30 acres of the East $\frac{1}{2}$ of the Southwest $\frac{1}{4}$ of Section 35, Township 115, Range 20, Dakota County, MN and the West line of the East 50 acres of the East $\frac{1}{2}$ of the Southwest $\frac{1}{4}$ of Section 35, Township 115, Range 20, Dakota County, MN as stated in pleadings and the Report of Examiner in the Action (the “Strip”). Rechtzigel specifically denies Fischer’s claims of adverse possession regarding the Strip and denies that Fischer holds the fee to the Strip by adverse possession.

WHEREAS, in the Action, Magellan states that for more than 15 years it has occupied and used the east 50 acres of the Southwest $\frac{1}{4}$ of Section 35 Township 115, Range 20, Dakota County, Minnesota and the Strip for pipeline, telecommunication and other purposes, in an open, notorious and continuous fashion and pursuant to:

a) that certain Right of Way Agreement executed by Harold Schwanz and Hertha Schwanz, on the 13th day of October, 1966, and filed for record in the office of the Recorder of Deeds of Dakota County, Minnesota on the 17th day of October, 1966, in Book 80 of M.R. at Page 180, as Document No. 333427, as modified per a Partial Release and Grant of Right of Way Agreement and filed for record

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in the office of the Recorder of Deeds of Dakota County, Minnesota on the 2nd day of February, 2005, as Document No. 2291901, as modified per a Partial Release and Grant of Right of Way Agreement and filed for record in the Office of the County Recorder for Dakota County, Minnesota on the 7th day of June, 2006, as Document No. 2435630;

b) that certain Right of Way Agreement executed by Margaret Hyland, on the 23rd day of August, 1930, and filed for record in the office of the Register of Deeds of Dakota County, Minnesota on the 20th day of November, 1930 in Book 40 of M.R. at pages 377-378, as modified per a Partial Release of Right of Way Agreement dated the 29th day of February, 1980 and filed for record in the Office of the County Recorder for Dakota County, Minnesota, on the 14th day of March, 1980, as Document No 557117; and as all restated and modified by

c) that Restated Partial Release and Grant of Right of Way executed by Fischer on July 11, 2011 and recorded in the Office of the Dakota County Recorder on July 26, 2011 as Document Number 2811611.

(collectively, the "Magellan Right of Way").

WHEREAS, Rechtzigel acknowledges, concedes, consents and agrees to the Magellan Right of Way and acknowledges that their interest, if any, in the Strip is subject to the Magellan Right of Way.

NOW, THEREFORE, Rechtzigel and Magellan stipulate and agree as follows, and respectfully submit their Stipulation Regarding Acknowledgement of and Consent to Right of Way Rights of Magellan Pipeline Company, L.P. and Order to the Court for review and its requested approval and entry of judgment:

1. **Rechtzigel Acknowledge and Consent to the Magellan Right of way.** Rechtzigel acknowledges, concedes, consents and agrees to the Magellan Right of Way and Rechtzigel stipulates to and acknowledges that their interest in the Strip, if any, is subject to the Magellan Right of Way.

2. **Dismissal of Other Claims of Rechtzigel Against Magellan.** Any claims of Rechtzigel against Magellan or the Magellan Right of Way, including, without limitation, any claims for costs, disbursements or attorney's fees, shall be dismissed with prejudice and without costs, disbursements or attorney's fees to any party.

3. **Recording of This Stipulation and Order.** That the Dakota County Recorder and/or the Dakota County Registrar of titles should be required to accept a certified copy of the fully executed and entered Stipulation Regarding Acknowledgement of and Consent to Right of Way Rights of Magellan Pipeline Company, L.P. and Order for recording against the real property identified in the Magellan Right of Way, including the Strip.

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DATED: 1/18 2012 **LINDQUIST & VENNUM, PLLP**

By /s/ Christopher R. Grote
Christopher R. Grote
(#267995)
cgrote@lindquist.com
William B. Flynn (#0030600)
wflynn@lindquist.com
4200 IDS Center
80 South Eighth Street
Minneapolis, MN 55402-
2274
(612) 371-3211
(612) 371-3207 (facsimile)

**ATTORNEYS FOR MAGELLAN
MIDSTREAM PARTNERS LP**

DATED: 1-16 2012 **MOHRMAN & KAARDAL, P.A.**

By /s/ Erick G. Kaardal
Erick G. Kaardal (#229647)
33 South Sixth Street,
Suite 4100
Minneapolis, MN 55401
(612) 341-1074

**ATTORNEYS FOR FRANK H.
RECHTZIGEL, GENE A.
RECHTZIGEL, TRUSTEE, THE
EVELYN I. RECHTZIGEL
TRUST AND THE FRANK H.
RECHTZIGEL CHARITABLE
TRUST REMAINDER
UNITRUST**

ORDER

The foregoing Stipulation Regarding Acknowledgement of and Consent to Right of Way Rights of Magellan Pipeline Company, LP, has been reviewed and is hereby approved. Accordingly, the Court issues the following:

ORDER FOR JUDGMENT:

1. The interest of Rechtzigel, jointly or severally, in the Strip, if any is subject to the Magellan Right of Way.

2. Any claims of Rechtzigel against Magellan or the Magellan Right of Way, including, without limitation, any claims for costs, disbursements or attorney's fees, are hereby dismissed with prejudice and without costs, disbursements or attorney's fees to any party.

3. The Dakota County Recorder and/or the Dakota County Registrar of titles shall accept a certified copy of this Stipulation Regarding Acknowledgement of and Consent to Right of Way Rights of Magellan Pipeline Company, LP, and Order for recording against the real property identified in the Magellan Right of Way, including the Strip.

THERE BEING NO JUST REASON FOR DELAY, LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated: February 6, 2012 **BY THE COURT**

/s/ David L. Knutson
Judge of District Court

APPROVED FOR FILING

Date: 2/6/12

/s/ James P. O'Connell

James P. O'Connell
Examiner of Titles
Dakota County, MN

Re: *In the Matter of the Application of Fischer Market Place, LLP, a Minnesota limited Liability partnership, To Register the Title to Certain Land*
Dakota County District Court
File No. 19HA-CV-09-5476

AFFIDAVIT OF SERVICE BY MAIL

STATE OF MINNESOTA)
) **SS**
COUNTY OF HENNEPIN)

Amy Beth Crawford, of the City of Coon Rapids, County of Anoka, in the State of Minnesota, being duly sworn on oath says: that on the 18th day of January, 2012; she served the following:

1. Stipulation and Order Regarding Acknowledgement of and Consent to Right of Way Rights of Magellan Pipeline Company, L.P.; and
2. Affidavit of Service by Mail

upon the persons listed below:

SEE ATTACHED SERVICE LIST

mailing copies of the above-listed documents enclosed in an envelope, postage prepaid, and by depositing the

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same in the post office at Minneapolis, Minnesota, directed to said persons at the last known addresses listed above.

/s/ Amy Beth Crawford
Amy Beth Crawford

Subscribed and sworn to before me
this 18th day of January, 2012.

/s/ Amy Ganci Jones
Notary Public

[SEAL]	AMY GANCI JONES Notary Public Minnesota My Commission Expires January 31, 2016
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State of Minnesota
Dakota County

District Court
First Judicial District

Court File Number: 19HA-CV-09-5476

Case Type: Torrens

Notice of Filing of Order

ERICK GREGG KAARDAL
MOHRMAN & KAARDAL
33 SOUTH SIXTH STREET
SUITE 4100
MINNEAPOLIS MN 55402

**In re the Matter of the Application of Fischer
Market Place, LLP to Register the Title to
Certain Land [Cert # 153064-McNamara]**

You are notified that an order was filed on this date.

Dated: February 7, 2012

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Carolyn M. Renn
Court Administrator
Dakota County District Court
1560 Highway 55
Hastings MN 55033
651-438-8100

cc: GERALD S DUFFY
THOMAS ROSS DONELY
CHRISTOPHER RAYMOND GROTE

A true and correct copy of this notice has been served by mail upon the parties herein at the last known address of each, pursuant to Minnesota Rules of Civil Procedure, Rule 77.04.

RECEIVED
FEB 08 2012
MOHRMAN & KAARDAL, P.A.

SERVICE LIST

Re: *In the Matter of the Application of Fischer Market Place, LLP, a Minnesota limited Liability partnership, To Register the Title to Certain Land*
Dakota County District Court
File No. 19HA-CV-09-5476

Gerald S. Duffy, Esq. MONROE MOXNESS BERG PA 8000 Norman Center Drive Suite 1000 Minneapolis, MN 55437	Thomas R. Donely Severson Sheldon Doughtery & Molenda 7300 West 147th Street, Suite 600 Apple Valley, MN 55124
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James P. O'Connell Examiner of Titles, Dakota County 906 Vermillion Street Hastings, MN 55033	Erick G. Kaardal Mohrman &Kaardal, P.A. 33 South Sixth Street, Suite 4100 Minneapolis, MN 55402
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