

APPENDIX

ETEMAD VS ND APPENDIX

| | |
|---------------------------------------|---|
| STATE OF NORTH DAKOTA | IN DISTRICT COURT |
| COUNTY OF GRAND FORKS | NORTHEAST CENTRAL JUDICIAL DISTRICT |
| Bejan David Etemad, Petitioner, |) Case No. 18-2021-CV-00901 |
| vs. |) ORDER DENYING POST-CONVICTION RELIEF |
| State of North Dakota, Respondent. |) |

INTRODUCTION

[¶ 1] Bejan Etemad ("Etemad") was found guilty of Terrorizing after a jury trial on November 14 through November 16, 2017. (Doc. 243, Case No. 18-2016-CR-01535). Judge Lolita Hart Romanick presided over the trial and all pre-trial and post- trial discussions and orders. After the guilty verdict, Etemad filed multiple motions and requests to the Court, including a Motion to Set Aside Jury Verdict. (Doc. 262, Case No. 18-2016-CR-01535). Etemad appealed the jury verdict and judgment, and the verdict and judgment were affirmed by the North Dakota Supreme Court on December 12, 2020 in State v. Etemad, 2018 ND 240, 919 N.W.2d 192. The matter is again before the Court on a Petition for Post-Conviction Relief.

[¶ 2] Etemad filed an Application for Post-Conviction Relief on May 10, 2021. (Doc. 1).

Etemad alleged in his application:

"In the related cases 4 show up as bogus harassment charges. Too make matters worse. The entire trial as indefinitely delayed until arrangement was discharged. This meant all the jurors were sequestered until the charges were added to the docket. Troublesome is they had walked into the courthouse seeing all FOUR charges on the big board before the trial started. At a minimum it is prejudicial, at the maximum a new trial is obligatory." (sic)

Id. at 3.

ETEMAD VS ND APPENDIX

[¶ 3] Etemad then filed a request for court-appointed counsel. (Doc. 6). Kyle Craig was appointed, and he filed on Etemad's behalf a motion requesting leave to file an amended application for post-conviction relief on August 13, 2021. (Doc. 19). The Court allowed the amended application to be filed. Judge Hartl Romanick recused herself from the case on August 19, 2021. (Doc. 20). The case was reassigned to the undersigned Judge.

[¶ 4] Etemad's Amended Petition for Post-Conviction Relief abandoned the initial grounds for relief asserted in the first application, and instead asserted in essence that the trial court did not complete a sufficient inquiry into the ability of Etemad to represent himself at trial and that Etemad was not competent to represent himself at trial. (Doc. 19).

[¶ 5] A hearing was held on November 5, 2021. Etemad was present with his counsel, Kyle Craig. Ashley Neufeld appeared on behalf of the State. Rhiannon Gorham ("Gorham") was called to testify by the Petitioner and was cross examined by the State. Etemad did not call any additional witnesses, nor did the State. Etemad did not testify at the hearing. The parties stipulated to the Court taking judicial notice of document #331 filed in the underlying criminal case, 18-2016-CR-1535. That document is a transcript of the hearing held on October 24, 2017 when the Court addressed a motion by Gorham to withdraw as counsel and when Etemad made his request to represent himself during the trial.

FINDINGS

[¶ 6] Gorham testified that she represented Etemad during his criminal case. She was appointed as counsel before trial and remained on during trial to assist Etemad as standby counsel. Gorham testified that before trial in the case, Etemad asked her to withdraw. After a hearing, the Court did not allow Gorham to withdraw but instead ordered her to remain on the case as standby counsel. Gorham testified that she worked with Etemad, that he was open to her

ETEMAD VS ND APPENDIX

counsel and appeared to be intelligent. Gorham discussed trial options and strategies with Etemad. Gorham testified that Etemad chose his trial strategies. Gorham testified that during the trial Etemad appeared to know what he was doing and they were able to interact and get along during the trial. Gorham testified that she only filed a motion to withdraw as counsel during the case because Etemad asked her to do so. Gorham testified she discussed the issue of Etemad representing himself with Etemad and he understood the pros and cons of that decision. Gorham testified that she was the third attorney appointed to represent Etemad during his case. Gorham testified that Etemad's prior counsel had filed a motion for Etemad to receive an evaluation regarding his competency and fitness to proceed with the trial and that the evaluation found that Etemad was competent and fit to proceed. Gorham testified that she had made arrangements for Etemad to receive a second evaluation, but that Etemad chose to not participate or follow through with any additional evaluations. When asked if she had any concerns about Etemad's competency during the case, Gorham testified that Etemad was able to discuss the case properly, ask intelligent questions, and that she did not have any concerns about Etemad's competency or fitness to proceed during the criminal case.

[¶ 7] This Court reviewed the transcript of the hearing held in case 18-2016-CR-1535 on Gorham's motion to withdraw as counsel. During that hearing, Etemad indicated he had gotten a copy of Gorham's Motion to Withdraw as Counsel and agreed with the Motion. Etemad stated that he had represented himself on criminal cases in the past and had done a "very excellent job representing [himself] pro se," in November 2015. (Doc. 331, Case No. 18-2016-CR-01535). Etemad stated that he had also previously filed three different civil suits in federal court as a pro se litigant and "[he] did an excellent job there too." (*Id.*) After being asked by the Court, Etemad stated he earned a Bachelor of Science in electrical engineering from North Dakota State

ETEMAD VS ND APPENDIX

University. Etemad stated he made his request to represent himself on his own. Etemad stated that nobody threatened him or made any promises to him to get him to represent himself. Etemad stated that he would be ok with Gorham acting as standby counsel in his case, a request which the Court ultimately granted. Etemad stated he understood the charge against him, understood the maximum penalties that could be imposed and he did not have any questions about those things. Etemad stated he understood that acting as his own counsel meant he would not be given special considerations and would be required to follow the rules of the court. Etemad stated he understood that if the Court granted his request to represent himself, he would not be allowed to reconsider that decision. Etemad specifically stated, "Your Honor, no more attorneys. Pro se. Let's do this November 14th with Rhi Gorham as advisory." (Id.) The Court then extensively explained the role of standby counsel to Etemad, clearly outlining what standby counsel could and could not do for him during trial. To that explanation, Etemad stated he had no questions. Etemad later affirmatively stated that he waived his right to have counsel represent him.

[¶ 8] Judge Romanick made findings on the record, stating that

"Mr. Etemad has intelligently considered this, knowingly considered it, and has made the determination that he wishes to represent himself. He has prior criminal -- or prior experience with the judicial system and has represented himself in other proceedings, and he also has a significant educational background with a Bachelor of Science degree from North Dakota State University. He is making this decision of his own free will, despite his statement to the court that he has received threats for -- if he proceeds with this trial. However, I am going to require and order that Ms. Gorham remain as standby counsel."

(Id.)

[¶ 9] The Court then went on during that hearing to discuss scheduling and logistical items for trial.

ETEMAD VS ND APPENDIX

RELEVANT LAW

[¶ 10] N.D.C.C. § 29-32.1-01 Provides that an individual may institute a proceeding for relief under the Uniform Post-Conviction Relief Procedure Act if the conviction was obtained in a violation of laws of the Constitution of the United States or the laws of the North Dakota.

[¶ 11] The United States Supreme Court has articulated in Faretta v. California, 422 U.S. 806 (1975), that although a defendant has a right to counsel, he also has a right to represent himself. "When an accused manages his own defense, he relinquishes, as a purely factual matter, many of the traditional benefits associated with the right to counsel. For this reason, in order to represent himself, the accused must 'knowingly and intelligently' forgo those relinquished benefits." Faretta at 835, *see also* Johnson v. Zerbst, 304 U.S. 458, 464-465 (1938); Cf. Von Moltke v. Gillies, 332 U.S. 708, 723-724 (1948). Although a defendant need not himself have the skill and experience of a lawyer in order to competently and intelligently choose self-representation, he should be made aware of the dangers and disadvantages of self-representation, so that the record will establish that "he knows what he is doing and his choice is made with eyes open." *Id.* *see also* Adams v. United States ex rel. McCann, 317 U.S. 279 (1942).

CONCLUSIONS AND ORDER

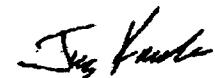
[¶ 12] Etemad concedes that the Court did conduct a Faretta analysis regarding Etemad's ability to represent himself. The Court also finds it is clear from the record that this is true.

[¶ 13] Etemad, however, argues on closing that the inquiry done by the Court in this case was insufficient and that Etemad shouldn't have been allowed to represent himself. Etemad argues further in his closing brief to the Court that this case was set for trial days after this hearing had taken place. Etemad argues the trial was not continued to afford Mr. Etemad additional time to prepare and that Etemad was not able to review audio or video recordings, could not consult with

ETEMAD VS ND APPENDIX

[¶ 16] Etemad's Amended Petition for Post-Conviction Relief is **DENIED**.

Dated this 10th day of December, 2021



Jay Knudson
District Judge

ETEMAD V ND APPENDIX

IN THE SUPREME COURT
STATE OF NORTH DAKOTA

2022 ND 81

Bejan David Etemad, Petitioner and Appellant

v.

State of North Dakota, Respondent and Appellee

No. 20210343

Appeal from the District Court of Grand Forks County, Northeast Central Judicial District, the Honorable Jay D. Knudson, Judge.

AFFIRMED.

Per Curiam.

Scott O. Diamond, Fargo, ND, for petitioner and appellant.

Ashlei A. Neufeld, Assistant State's Attorney, Grand Forks, ND, for respondent and appellee.

ETEMAD V ND APPENDIX

Etemad v. State
No. 20210343

Per Curiam.

[¶1] Bejan David Etemad appealed from a district court order denying his amended application for post-conviction relief. On appeal, Etemad argues the district court erred in finding that he knowingly, intelligently, and voluntarily waived his right to counsel. Following a post-conviction evidentiary hearing, the court found that Etemad knowingly, intelligently, and voluntarily waived his right to counsel. We conclude the district court's findings are not clearly erroneous and the court did not err in denying Etemad's application for post-conviction relief. We summarily affirm under N.D.R.App.P. 35.1(a)(2).

[¶2] **Jon J. Jensen, C.J.**
Gerald W. VandeWalle
Daniel J. Crothers
Lisa Fair McEvers
Jerod E. Tufte

ETEMAD V ND APPENDIX

**IN THE SUPREME COURT
STATE OF NORTH DAKOTA**

JUDGMENT

Supreme Court No. 20210343
Grand Forks County Case No. 2021-CV-00901

Appeal from the district court for Grand Forks County.

Bejan David Etemad, **Petitioner and Appellant**
v.
State of North Dakota, **Respondent and Appellee**

[¶1] This appeal having been considered by the Court at the April 2022 Term before:

[¶2] Chief Justice Jon J. Jensen, Justice Gerald W. VandeWalle, Justice Daniel J. Crothers, Justice Lisa Fair McEvers, and Justice Jerod E. Tufte;

[¶3] and the Court having considered the appeal, it is ORDERED AND ADJUDGED that the order of the district court is AFFIRMED under N.D.R.App.P. 35.1(a)(2).

[¶4] This judgment, together with the opinion of the Court filed this date, constitutes the mandate of the Supreme Court on the date it is issued to the district court under N.D.R.App.P. 41.

Dated: April 14, 2022

By the Court:

Jon J. Jensen
Chief Justice

ATTEST:

Petra H. Mandigo Hulm
Clerk



**RULE 24. SUPPLEMENTAL STATEMENT OF INDIGENT
PARTY**

Effective Date: 3/1/2019

(a) In General.

(1) Statement Permitted. In a criminal or post-conviction case in which counsel representing an indigent defendant has submitted a brief, the indigent defendant or applicant may file a statement of additional grounds for review to identify and discuss matters that the indigent defendant or applicant believes were not adequately addressed in the brief filed by counsel.

(2) Length and Legibility The statement may not exceed 16 pages and may be handwritten so long as it is legible.

(3) Identification of Errors. The court will not consider an indigent defendant's or applicant's statement of additional grounds for review if it does not inform the court of the nature and occurrence of alleged errors. Reference to the record and citation to authority is required.

(b) Filing; Response.

(1) Time for Filing. The statement of additional grounds for review must be filed within 30 days after service on the indigent appellant of the brief prepared by indigent appellant's counsel. The indigent defendant or applicant must serve all parties with the statement of additional grounds for review.

(2) Additional Briefing; Oral Argument by Indigent Defendant. The court may, in the exercise of its discretion, allow additional briefing to address issues raised in the indigent defendant's or applicant's statement. Participation in oral argument by the indigent defendant or applicant is permitted only by order of the court on its own motion in exceptional cases.

Explanatory Note ▲

Rule 24 was adopted, effective March 1, 2010; amended March 1, 2013; October 1, 2014; March 1, 2019.

The title of this rule was amended, effective October 1, 2014, to clarify that an indigent defendant may file a statement of additional grounds for review.

Paragraph (a)(1) was amended, effective March 1, 2019, to allow supplemental statements to be filed in post-conviction relief cases.

Paragraph (a)(2) was amended, effective March 1, 2013, to decrease the page volume allowed in a supplemental brief.

SOURCES: Joint Procedure Committee Minutes of September 26, 2013, page 22; January 26-27, 2012, pages 8-9; September 30, 2011, pages 11-12; April 28-29, 2011, page 18-20; September 25, 2008, pages 7-12; Wash.R.App.P. 10.10, 18.3.