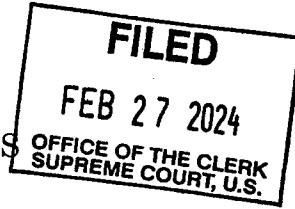


No.  
23-6935

ORIGINAL

IN THE  
SUPREME COURT OF THE UNITED STATES



DENNIS J. GAEDE — PETITIONER

VS.

THE STATE OF NORTH DAKOTA — RESPONDENT

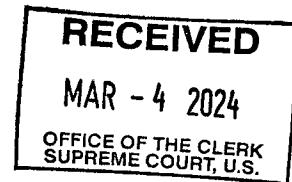
ON PETITION FOR A WRIT OF CERTIORARI TO  
THE SUPREME COURT OF NORTH DAKOTA

PETITION FOR WRIT OF CERTIORARI

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## QUESTIONS PRESENTED

1. Whether Gaede's 8<sup>th</sup> and 14<sup>th</sup> Amendment Rights to Due Process and to be Free from Excessive Punishment were Violated when the State of North Dakota used an Unconstitutional and Ex Post Facto Statute to Rule against him in a Post-Conviction Proceeding?
2. Whether Gaede's 8th and 14th Amendment Rights to Due Process and to be Free from Excessive Punishment were Violated when the North Dakota Supreme Court used a Repealed Statute to Rule against him in his Appellate Proceeding?
3. Whether Gaede's 5<sup>th</sup> Amendment Right was Violated when the State Denied him a Grand Jury so the Prosecution could Protect and Shield the Confessed Murderer in the Case and then use her to Testify against the Petitioner?

## LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

## TABLE OF CONTENTS

I. WHETHER GAEDE'S 8 <sup>TH</sup> AND 14 <sup>TH</sup> AMENDMENT RIGHTS TO DUE PROCESS AND TO BE FREE FROM EXCESSIVE PUNISHMENT WERE VIOLATED WHEN THE STATE OF NORTH DAKOTA USED AN UNCONSTITUTIONAL AND EX POST FACTO STATUTE TO RULE AGAINST HIM IN A POST-CONVICTION PROCEEDING? .....	18
II. WHETHER GAEDE'S 8 <sup>TH</sup> AND 14 <sup>TH</sup> AMENDMENT RIGHTS TO DUE PROCESS AND TO BE FREE FROM EXCESSIVE PUNISHMENT WERE VIOLATED WHEN THE NORTH DAKOTA SUPREME COURT USED A REPEALED STATUE TO RULE AGAINST HIM IN HIS APPELLATE PROCEEDING? .....	33
III. WHETHER GAEDE'S 5 <sup>TH</sup> AMENDMENT RIGHT WAS VIOLATED WHEN THE STATE DENIED HIM A GRAND JURY SO THE PROSECUTION COULD PROTECT AND SHIELD THE CONFESSED MURDERER IN THE CASE AND THEN USE HER TO TESTIFY AGAINST THE PETITIONER? .....	35

## INDEX TO APPENDICES

Appendix A — Objection to State’s Motion for Summary Judgment and Brief.

Appendix B — Denial of Petitioner’s Objection to State’s Motion for Summary Judgment.

Appendix C — Memorandum Opinion and Order Summarily Dismissing Petitioner’s Application for Post-Conviction Relief and Denying Petitioner’s Motion for Appointment of Counsel.

Appendix D — Opinion on the merits of the appeal from the North Dakota Supreme Court.

Appendix E — Judgment of North Dakota Supreme Court Affirming Appeal.

Appendix F — Petition for Rehearing.

Appendix G— Decision of North Dakota Supreme Court Denying Petition for Rehearing.

Appendix H — Motion and 30-day Extension for Stay of Mandate.

Appendix I — Confession of Diana Gaede/Fruge’

Appendix J — Statement of Crime provided to Prosecutor Birch Burdick on 5-5-21.

Appendix K — Transcript of November 19, 2021, Evidentiary Hearing.

Appendix L — Perjured affidavit of Christine Aman.

Appendix M — North Dakota Senate Bill 2181 (Ch. 366, §1, 1985).

Appendix N — North Dakota Senate Bill 2227 (Ch. 248, 2013).

Appendix O — FBI Reports and supporting documents relating to Diana Gaede/Fruge' a.k.a. Debra Strand.

Appendix P— Cass County Court Order Denying Psychiatric Exam and attorney communications.

## TABLE OF AUTHORITIES CITED

### Cases

Butler V. Alabama Judicial Inquiry Commission, 245 F. 3d 1257, (2001 WL 292996)	
United States Court of Appeals, 11 <sup>th</sup> Cir. March 27, 2001 .....	34
Ex Parte McCordle, 74 U.S. 506, 514, 7 Wall. 506, 19 L.Ed. 264 (1868) .....	32
Gaede v. State, 832 N.W. 2d 334, (2013).....	10
Gaede v. State, 870 N.W. 2d 26, (2015) .....	11
Gaede v. State, 973 N.W. 2d 5, (2022) .....	12
Gideon v. Wainwright, 372 U.S. 335 (1963) .....	16, 35
State v. Gaede, 736 N.W. 2d 418 (2007) .....	9
State v. Kopp, 419 N.W. 2d 169 (ND 1988) .....	19
State v. Meador, 785 N.W. 2d 886 (2010) .....	28
State v. Norman, 660 N.W. 2d 549 (ND 2013) .....	28, 29
U.S. v. Forbes, 790 F.3d 403, 409 (2 <sup>nd</sup> Cir. 2015) .....	19
U.S. v. Glinn 965 F.3d 940, 942 (8 <sup>th</sup> Cir. 2020) .....	19
U.S. v. Kelly, 252 U.S. App. D.C. 308, 790 F.2d 130 (1986) .....	19
U.S. v. McLaren 13 f.4 <sup>th</sup> 386, 416 (5 <sup>th</sup> Cir. 2021) .....	19
Yakima Valley Memorial Hosp. v. Washington State Dept. of Health, 654 F.3d 919 (2011) at ¶25 .....	32

### Statutes

N.D.C.C. §12.1-16-01(2)..... 19, 25

N.D.C.C. §12-44.1-28..... 30

N.D.C.C. §29-32.1-01(2)..... 26

N.D.C.C. §29-32.1-01(3)(a), (b) .....11, 12, 15, 16, 17, 20, 25, 26, 31

## **Other Authorities**

North Dakota Senate Bill 2227 (Ch.248, 2013)..... 17

North Dakota Senate Law (Ch.366, §1, 1985)..... 18

## **Rules**

Federal Criminal Procedure Rule 33(b)(1) ..... 19

## **Constitutional Provisions**

14<sup>th</sup> Amendment ..... 22, 35

5<sup>th</sup> Amendment ..... 17, 36

8<sup>th</sup> Amendment .....22, 27, 30

U.S.C.A. Const. Art. 1, §9 Cl. 3 ..... 28

U.S.C.A. Const. Art. 1, § 10 Cl. 1..... 29

U.S.C.A. Const. Art. VI Cl. 2..... 17, 36

## **State Constitutional Provisions**

N.D. Const. Art. 1, §10 .....17, 36, 38

N.D. Const. Art. 1, §18 ..... 29

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

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

**OPINIONS BELOW**

This case is from a State Court:

The opinion of the highest state court to review the merits appears at Appendix D to the petition and is reported at 2023 WL 8940090.

The opinion of the Cass County District Court appears at Appendix C.

**JURISDICTION**

The date on which the highest state court decided my case was December 28, 2023. A copy of that decision appears at Appendix E.

A timely petition for rehearing was thereafter denied on the following date: January 18, 2024, and a copy of the order denying rehearing appears at Appendix G.

A thirty (30) day extension of time to file the petition for a writ of certiorari was granted to and including January 18, 2024, on January 29, 2024, by motion to the North Dakota Supreme Court. This appears at Appendix H.

The jurisdiction of this Court is invoked under 28 U.S.C. §1257(a).

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. Article 1, §9, Clause 3 of the United States Constitution.
2. Article 1, §10, Clause 1 of the United States Constitution.
3. Article 6, Clause 2 of the United States Constitution.
4. The Fifth Amendment of the United States Constitution.
5. The Eighth Amendment of the United States Constitution.
6. The Fourteenth Amendment of the United States Constitution.
7. North Dakota Century Code §29-32. Uniform Post-Conviction Procedure Act [Repealed].
8. North Dakota Century Code §29-32.1-01(3)(a) (Remedies) Newly Discovered Evidence.
9. North Dakota Century Code §12-44.1-28 Correctional Facility Files and Records Confidentiality.
10. North Dakota Century Code §12.1-16-01(2) Class A Felony Murder – Extreme Emotional Disturbance (Diminished Capacity Defense).
11. North Dakota Century Code, Constitutional Article 1, §10 Grand Jury.
12. North Dakota Century Code, Constitutional Article 1, §18 Ex Post Facto Law.
13. North Dakota Senate Bill 2181 (Ch.366, §1, 1985).
14. North Dakota Senate Bill 2227 (Ch.248, 2013).

## STATEMENT OF CASE

In 2005, Dennis James Gaede was charged for the 2001 murder of Timothy Walker Wicks. Attorney Steven Mottinger was appointed to represent Gaede in defense of the charge. In 2006, a jury convicted Gaede of the murder of Wicks. Gaede was subsequently sentenced to serve a term of imprisonment for life without the possibility of parole. Gaede timely appealed his conviction to the North Dakota Supreme Court. See: State v. Gaede, 736 N.W. 2d 418 (2007). On his direct appeal, Gaede was represented by attorney William Kirschner. On July 25, 2007, the North Dakota Supreme Court affirmed Gaede's conviction. Id. at ¶31.

On October 13, 2008, Gaede served and filed an Application for Post-Conviction Relief with the East Central District Court in Cass County. Gaede filed a lengthy Application for Post-Conviction Relief where there were twenty-three (23) allegations and/or issues in the Post-Conviction petition based mainly on ineffective assistance of counsel. Of those twenty-three issues one main issue stands out for purposes of this writ: the ineffective assistance of trial counsel for not having the petitioner examined by a psychiatrist/psychologist prior to trial.

Attorney Mark Blumer was assigned to represent Gaede in this matter on October 13, 2008. The issues were heard at evidentiary hearings on May 27, 2009, and February 18-19, 2010; Gaede, Mottinger, and William Kirschner testified. At the hearing Mottinger admitted that he had been ineffective at trial, however the court still summarily dismissed the petition. The North Dakota Supreme Court agreed with the lower court's decision only focusing on the prosecution's use of a

biblical argument during trial rather than the defense lawyer's admissions of ineffectiveness.

Gaede filed another petition for post-conviction relief, which was denied on July 23, 2010; Gaede appealed the denial of the post-conviction to the North Dakota Supreme Court which was affirmed on August 24, 2011.

On August 24, 2011, Gaede filed a petition for habeas corpus with United States District Court for the District of North Dakota Southwestern Division.

Gaede then file a lengthy petition for post-conviction relief on March 13, 2012 indicating that he suffered from PTSD after he had been told by treatment department staff that he did in fact have the disorder. This was when the Cass County State's Attorney colluded with the treatment staff member Christine Aman to generate the false affidavit swearing that the Appellant did not nor ever did suffer from PTSD (Appendix at L). This petition in 2012 was denied then summarily affirmed on appeal [Gaede v. State, 832 N.W. 2d 334, (2013)].

On October 24, 2012, Gaede filed an Amended petition for habeas corpus with the federal district court. At the time he raised the PTSD issue. The North Dakota Attorney General then filed the same false affidavit of Christine Aman with the federal court.

On June 14, 2013, the federal district court denied Gaede's petition for habeas corpus based on the false affidavit. On August 12, 2013 Gaede filed an objection to the dismissal of his petition for habeas. On September 3, 2013, the district court entered a final Order dismissing the petition for habeas corpus.

On October 1, 2013, Gaede filed a Notice of Appeal to the Eighth Circuit Court of Appeals. The Eighth Circuit Court of Appeals affirmed the lower Courts decision.

Gaede has since filed three more post-convictions. The first in 2014 trying to show the court that the petitioner did in fact suffer from a documented psychological disorder. The district court again dismissed the petition for post-conviction relief based that this was not new evidence. The North Dakota Supreme Court upheld the decision which was summarily affirmed [Gaede v. State, 870 N.W. 2d 26, (2015)].

Gaede then contacted the prosecutor Birch Burdick and he requested that the petitioner send him a statement of the crime. So, on May 5, 2021 the petitioner sent him the statement he requested detailing the events of the crime (Appendix at I).

Gaede then filed the next post-conviction petition in 2021 citing “newly discovered evidence” after being “officially” diagnosed with PTSD by psychiatrist Dr. Madeline Free. [Appendix K: page 6, lines 18-21], but the damage had already been done earlier by the false affidavit. Gaede’s attorney filed a motion to have the petitioner examined at the State Hospital which was denied by the Court. The Indigent Defense Counsel also denied the funds to have Gaede privately examined (Appendix at P).

Then, the district court claimed the petition was not timely because it was filed just outside of the two-year time limitation allowed by N.D.C.C. §29-32.1-01(3)(a), (b) and it also was dismissed. The North Dakota Supreme Court then agreed with

the lower court. That post-conviction appeal which was summarily affirmed is found at [Gaede v. State, 973 N.W. 2d 5, (2022)].

Gaede then filed the most recent petition for post-conviction relief in 2023 based on his civil rights being violated by North Dakota enacting N.D.C.C. §29-32.1-01(3)(a), (b) an unconstitutional ex post facto statute. This petitioner also raised the issue of the Grand Jury denial as newly discovered evidence after a national civil rights group “WE THE PEOPLE” notified him and several other prison inmates at the North Dakota Department of Corrections and Rehabilitations that the State of North Dakota had been violating defendants’ rights for many years by avoiding and ultimately denying Grand Juries in criminal cases.

According to the lower Court’s opinion, it ruled resjudicata in this case stating that the PTSD diagnosis was not new evidence or it had or could have been raised previously. The petitioner argued that this meant that the court acknowledges that they knew the PTSD existed previously, but the question is then why were the previous postconviction petitions dismissed? This proved the egregious behavior of the judge and prosecutor and their determination to keep the petitioner in prison and violate his rights.

Additionally, there was no way that this evidence could have been raised previously because the petitioner was at the mercy of the State Department of Corrections to provide the proper treatment. Further, treatment was being denied because the prosecutor and North Dakota Attorney General’s Office were stopping it. And even then, when subpoenaed, psychiatrist Dr. Madeline Free lied about the

petitioner on the witness stand at the November 19, 2021 evidentiary hearing in an attempt to thwart the proceeding. That's why this petitioner had to finally come to the United States Supreme Court to get justice.

## FACTUAL REASONS FOR GRANTING THE PETITION

First this petitioner would like to ask this Court how many cases have there ever been where a criminal defendant challenged that his rights were violated because he was denied a Grand Jury?

And, if this petitioner was truly guilty of murder, why then would the State forfeit such an opportunity to seal his fate? Unless there was something that they were trying to hide from the Grand Jury? Like the fact that the FBI secured a confession from the real murderer in this case, but didn't want a grand jury to know about it? (Appendix at H). Then the fact that the FBI together with the state offered her blanket immunity from the murder in exchange for testimony against the petitioner.

Further proof of how she was protected can be seen all the way to the November 19, 2021 evidentiary hearing where the Court again dismisses the petitioner's claims against her:

"There's nothing new here. He makes reference to some movie, to his ex-wife, he blames his ex-wife for having done all these things. His ex-wife, as the Court may understand now, passed away many years ago. She is not here to speak otherwise, but she certainly did at the trial which is—which this Court sat over." [Appendix at J: Pg. 21, lines 3-8].

This was even after evidence was provided (Appendix at J & O) which, when combined with other physical evidence found by the FBI showed a linear connection to the movie "Devil in the Flesh (a.k.a. Debra Strand)" and also another serial killer.

Yet the Court refused to hear the truth or anything else that would scathe their protected witness.

The statement of the crime solicited by the prosecutor too went unanswered when the petitioner offered him the truth of what had actually happened (Appendix at J). And the reason the state could not refute it was because it lined up perfectly with the evidence in the case and this petitioner even offered to work with investigators and submit to a polygraph exam and/or sodium pentothal interview to prove his truthfulness and innocence. But, this bonified offer, suggestive of a CIA interrogation, went completely unanswered by the State's Attorney because of its authenticity.

Next, there is also the issue of North Dakota Century Code §29-32.1-01(3)(a), (b), the state's newly repealed unconstitutional post-conviction relief statute that's under review in this writ.

The North Dakota Supreme Court determined that N.D.C.C. §29-32.1-01(3)(a), (b) was unconstitutional and repealed it based on this petitioner's appellate brief arguments, but yet they still used it to uphold the lower court's ruling to deny his appeal. Even after this petitioner showed the court the illegality of their actions based on U.S. Supreme Court and Federal decisions in the Petition for Rehearing.

Another related issue in this writ is that North Dakota not only enacted an unconstitutional law, but made it retroactive and ultimately ex post facto.

Lastly, in looking at the lower Court's opinion dismissing the postconviction, (Appendix at C ¶20) it proves that the Judge admitted that the petitioner's Grand

Jury claim was valid, yet meritless and he completely disregarded the mandate of U.S.C.A. Const. Art. VI. Cl. 2:

'The Constitution, and the Laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the land; and the judges in every state shall be bound thereby, anything in the Constitution or Laws of any State to the contrary notwithstanding.'

This clause which enforces the 5<sup>th</sup> Amendment that governs the right to Grand Juries. Instead, he went with a North Dakota Supreme Court ruling based the unlawful N.D. Const. Art. 1, §10, which states that grand juries may be abolished at any time within the state.

And in comparison, the one case that sums up and parallels all the due process violations in this writ is Gideon v. Wainwright. Future Justice Abe Fortas in his recitation to the court points out so many similarities to this case that here it sounds as if he could be arguing for the petitioner himself:

"An accused person cannot effectively defend himself. The assistance of counsel is necessary to "due process" and to a fair trial. Without counsel, the accused cannot possibly evaluate the lawfulness of his arrest, the validity of the indictment or information, whether preliminary motions should be filed, whether a search or seizure has been lawful, whether a "confession" is admissible, etc. He cannot determine whether he is responsible for the crime as charged or a lesser offense. He cannot discuss the possibilities of pleading to a lesser offense. He cannot evaluate the grand or petit jury. At the trial he cannot interpose objections to evidence or cross-examining witnesses, etc. He is at a loss in the sentencing procedure."

See: Gideon v. Wainwright, 372 U.S. 335 (1963).

**I. WHETHER GAEDE'S 8<sup>TH</sup> AND 14<sup>TH</sup> AMENDMENT RIGHTS TO  
DUE PROCESS AND TO BE FREE FROM EXCESSIVE  
PUNISHMENT WERE VIOLATED WHEN THE STATE OF NORTH  
DAKOTA USED AN UNCONSTITUTIONAL AND EX POST FACTO  
STATUTE TO RULE AGAINST HIM IN A POST-CONVICTION  
PROCEEDING?**

The first reason this court should grant this writ revolves around North Dakota's Uniform Post-Conviction Procedure Act, N.D.C.C. §29-32, which is currently repealed and it was used as such against the petitioner in this case.

This petitioner raised the issue in his application for post-conviction relief that the statute N.D.C.C. §29-32.1-01(3)(a), (b) was unconstitutional ever since its amendment by North Dakota Senate Bill 2227 (Ch.248, 2013). The state never contested the issue, and the lower Court dismissed the petition without ruling on them.

This petitioner then appealed the post-conviction to the North Dakota Supreme Court pointing out that the state never contested the issues of the constitutionality of the statute or the violation of a grand jury.

Then once goaded, the state argued that this petitioner was relying on the merits of the application rather than the Court's reasoning for dismissing the petition for post-conviction relief. But this petitioner explained that the lower Court knew the truth about the petitioner's PTSD because it had been revealed during the evidentiary hearing and that the only ethical thing left to do was to act on it and

correct the past errors made by the court. This would have been the proper thing to do, especially when the Court knew that the petitioner had been initially charged incorrectly by the state.

But then the state tried to justify the Court's past reasoning by showing the Supreme Court the subdivision of N.D.C.C. §29-32.1-01(3)(a), (b):

- (1) The Petition alleges the existence of newly discovered evidence, including DNA, which if proved and reviewed in light of the evidence as a whole did not engage in the criminal conduct for which the petitioner was convicted;
- (2) The petitioner establishes that the petitioner suffered from a physical disability or mental disease that precluded timely assertion of the application for relief; or
- (3) The petitioner asserts a new interpretation of federal or state constitutional or statutory law by either the United States Supreme Court or a North Dakota appellate court and the petitioner establishes that the interpretation establishes that the interpretation is retroactively applicable to the petitioner's case.

(b) An application under this subsection must be filed within two years of the date the petitioner discovers or reasonably should have discovered the existence of the new evidence, the disability or disease ceases, or the effective date of the retroactive application of law.

So, this petitioner showed the Court the following comparison and case law to the previous newly discovered evidence criteria that was enacted after North Dakota Senate Law 2181 (Ch.366, §1, 1985)) (Appendix at M) went into effect prior to the ex post facto amendment in 2013:

“A motion for a new trial based on newly discovered evidence requires a showing that:

- (1) The evidence was discovered after the trial;
- (2) Failure to learn of the evidence during trial was not the result of the defendant’s lack of diligence;
- (3) The newly discovered evidence is material to the issues at trial; and
- (4) The weight and quality of the new evidence would likely produce an acquittal.

See: State v. Kopp, 419 N.W. 2d 169 (ND 1988) at [¶6].

And even current case law still shows that this is the standard criteria for newly discovered evidence and that the amendment that North Dakota created does come close to qualifying.

U.S. v. Kelly, 252 U.S. App. D.C. 308, 790 F.2d 130 (1986) at [¶2], also shows the five-part test governing motions for a new trial based on newly discovered evidence.

And under Federal Criminal Procedure Rule 33(b)(1):

“Motions for a new trial based on newly discovered evidence are disfavored and will generally be granted only if the evidence was not

discovered until after the trial; there was no lack of diligence by the movant; and the new evidence is material, more than merely cumulative or impeaching, and likely to produce an acquittal if a new trial is granted.”

See U.S. v. Glinn, 965 F.3d 940, 942 (8<sup>th</sup> Cir. 2020); U.S. v. McLaren, 13 F.4<sup>th</sup> 386, 416 (5<sup>th</sup> Cir. 2021); and U.S. v. Forbes, 790 F.3d 403, 409 (2<sup>nd</sup> Cir. 2015).

This comparison alone shows that with the new law, unless you are claiming complete innocence, the amended newly discovered evidence statute will not apply in any other case. This makes bringing a post-conviction claim such as diminished capacity like under N.D.C.C. §12.1-16-01(2) completely meaningless because it does not qualify under it. The diminished capacity statute reads:

“2. A person is guilty of murder, a class A felony, if the person causes the death of another human being under the circumstances which would be a class AA felony murder, except that the person causes the death under the influence of extreme emotional disturbance for which there is reasonable cause. The reasonableness of the excuse must be determined from the viewpoint of a person in that person’s situation under the circumstances as that person believes them to be. An extreme emotional disturbance is excusable, within the meaning of this subsection only, if it is occasioned by substantial provocation, or a serious event, or situation for which the offender was not culpably responsible.”

The petitioner showed the Court that especially like in this case, when the trial lawyer failed to raise a psychological defense in the beginning and the official diagnosis later came to light, even one minute after the verdict is read, the amendments to N.D.C.C. §29-32.1-01(3)(a), (b) will keep the evidence out of court and buried forever creating a true manifest injustice. That this proved the

petitioner's 14<sup>th</sup> Amendment Due Process and 8<sup>th</sup> Amendment Excessive Punishment/Sentence arguments along with the unconstitutionality of the statute. The Court ignored the argument.

It also must be noted that the new evidence that the state so adamantly wants to keep out of the Court record was raised at the November 19, 2021 evidentiary hearing when Dr. Madeline Free testified (Appendix at K: page 17, lines 6-7) as to the nature and cause of the petitioner's psychological/medical condition; this posttraumatic stress disorder stems from severe childhood sexual abuse, which was never before heard.

One other important fact here is that Judge Steven McCullough presided over all the post-conviction petitions in this case and knew that the issue of PTSD had been raised previously. In the past, the petitioner was accused of lying about having any psychological disorder when these petitions were dismissed for lack of evidence. Now that the proof was there in front of the Court, rather than acknowledge that the previous post-convictions had been wrongly dismissed, the Court instead ruled resjudicata in an attempt to block the petitioner from ever returning to court. The record reflects the biasness and hatred that the Court has toward the petitioner and has been faced with since the onset and why he will never see justice in this state.

Then, out of malice, the Court colluded with the state to exact a greater punishment upon him and upheld the original sentence of life without the

possibility of parole and claimed prejudice on the issue of PTSD. This was the epitome of judicial misconduct.



This next evidence shown here was the state trying to thwart the November 19, 2021 evidentiary hearing. This is a statement by Dr. Free that contradicts physical evidence and is found at (Appendix at K: page 13, lines 5-6), where she states:

"The diagnosis of PTSD has no bearing on his crime or his competency."

So, compare this excerpt from the 2021 post-conviction petition and the petitioner's Objection to State's Motion for Summary Judgment and brief (Appendix at A) in this case that he showed to the North Dakota Supreme Court:

"All of these conditions are the precepts for the condition of Post-Traumatic Stress Disorder that Gaede demonstrates symptoms of now and at the time of the murder.

Additionally, the medical text, "Mental Health Nursing: The Nurse-Patient Journey," lists the following as characteristics of the four levels of anxiety:

Characteristics of the Four Levels of Anxiety <sup>i</sup>

Level	Physiological	Emotional	Cognitive	Subjective
Mild	Increase in pulse, B/P, and heart rate due to sympathetic arousal	Affect Posture	Alert; aware; able to problem solve	Attentive
Moderate	Muscle tension; diaphoresis;	Tension, fear	Attention focused on	Sense of helplessness;

	pupils dilated; increased pulse, B/P, and breathing rate; peripheral vasoconstriction		issue of concern; able to shut out irrelevant data	apprehensive expectation; sweating palms; vigilance and irritability
Severe	“Fight or flight” responses; generalized sympathetic nervous system response; dry mouth; numbness of extremities	Distress, trembling	Sensory perception greatly reduced; person can focus only on small details; learning cannot occur	Dyspnea, dizziness; fear of going crazy; visual disturbances; motor tension with hyperactivity
Panic	Continued arousal	Emotionally overwhelmed; may regress to primitive coping behaviors	Responds only to internal distress	Feelings of impending doom or death; chest pain or discomfort

The text further states that:

“Severe anxiety and panic are infrequently observed outside the emergency department or psychiatric unit. In this state, patients are unable to think clearly because attention and concentration are markedly reduced. Sympathetic nervous system stimulation has caused increased blood pressure, pulse, and respirations. Subjective reports might include a felt inability to sit down, nausea, agitation, shortness of breath, and panicky statements such as ‘I am going to pass out’ or ‘I am going to die’ or ‘I am going crazy.’ Clearly, such patients require immediate nursing intervention. Severe anxiety has caused decompensation of ego functions so that the patient is overwhelmed with feeling and has a significant lessening of the capacity to think and problem solve.”

“This extreme reaction might be observed in persons involved in a major automobile accident, in a patient who has just been told about a terminal illness, or in one who is reacting to bad news about a significant other. Such a patient requires the immediate psychological and sometimes physical support of the nurse. The patient should not be left alone. His or her deficits in focused thinking, affect modulation, and problem solving require the capacities of the nurse as an ‘alter-ego’ whose functions have not been impaired by anxiety. Such patients need specific

instructions if task completion is required. In some cases, anxiolytic medication may be appropriate.”<sup>ii</sup>

In light of the previously quoted medical text, Gaede offers as evidence of his mens rea at the alleged time of the crime the following excerpts taken from a statement that Diane Fruge’ gave to Special Agent John A. Dalziel and Lieutenant Richard Majerus on February 23<sup>rd</sup> 2004 at the Hales Corners Police Department:

Fruge: “And about 8 o’clock, um, I took my son to bed and closed the door and went to sleep. And I, ah, woke up to Dennis frantically waking me up. Diane, Diane, wake up, come down stairs” Discovery pg. 1826.

Fruge: “And I said to Dennis, I said you must have really partied this guy out, you know, and he said, no, I shot him. And I said, what do you mean, you shot him? I said he’s snoring. He said, I’ve never seen anything like this in my life. And then I went into the living room and said Oh my God, I can’t believe you shot him. And then I walked back in to see what he was doing and he was putting the plastic bag over his head and that’s when I saw the first blood and I went and started vomiting” Discovery pg. 1826-1827.

Fruge: “He started running around the house freaking out, ‘What am I going to do now. What are we going to do? What are we going to do now? What are we going to do, what are you going to do?’ I was, I, what I do. Do I call the police? No like he might kill me before they get there because how am I going to explain having two Timothy Wicks in the same house” Discovery pg. 1827.

S.A. Dalziel: “Okay, snoring. (Pause) And then... (Pause) you go out into the living room. You come back into the kitchen, and Dennis... (Pause) was doing what?

Fruge: “Panicking” Discovery pg. 1880.”

First, this petitioner would like to point out that he did not commit the murder and next, there is no way that Dr. Free could possibly have known how the petitioner would react in such a situation. Furthermore, she never even read one single police report. This shows that it's a fact that she was prepped by the state as to what to say on the witness stand, which amounted to false testimony. But regardless, the evidence here corroborates the fact that the petitioner did and does in suffer from PTSD or more commonly called CPTSD (Childhood Posttraumatic Stress Disorder), and has since long before the murder happened. And Diana Gaede/Frude's statement gives a clear picture of a panic attack while it was happening. And again, she spoke the truth with one exception that she said that the petitioner committed the murder when she actually did.

But take notice to the above chart that this panic stage is well beyond the normal fight or flight psychological response for PTSD. And this statement came from the state's own star witness. So, there is no possible way that this petitioner could have rationally or coherently committed a homicide when reacting like this. Especially when upon returning home from work he finds that a murder had in fact already taken place and he panics.

Then the only reason that the petitioner stayed at the house after the murder with Diana was out of moral necessity. The petitioner is a father and there was a 4-year old child to protect and he was not about to leave him behind with an unstable murderer. That is why this petitioner has offered to plead guilty to N.D.C.C. §12.1-16-01(2) because of his mental state at the time of the crime; He was an accessory

after the fact and because of his actions and inactions he thereby aided his wife after she committed the murder. The petitioner is therefore just as guilty for failure to act, but his mental state of mind played a major role in all those decisions. And the medical records prove it. But it was not until 2019 that he was treated because the state refused to admit that he did in fact have the psychological disorder. Then once the petitioner was accurately diagnosed and treated for Posttraumatic Stress Disorder, and given the proper medications, it finally changed the long-standing problems that he suffered from since childhood. And all of this was presented to both the lower and the North Dakota Supreme Courts to no avail.

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The next reason this court should grant this writ is because of the ex post facto violation that N.D.C.C. §29-32.1-01(3)(a), (b) creates and that the state was well-aware of when they enacted it. Laws like the above-noted are designed to keep people in prison and unable to challenge their cases even with legitimate collateral attacks.

The two two-year statutes of limitations in N.D.C.C. §29-32.1-01(2) and §29-32.1-01(3)(b) are perfect examples. Both of these are unconstitutional and unnecessary in a post-conviction process. Especially when a court could impose laches if the process was being purposely abused or stalled by the defendant. This clearly shows that they were put in the statutory language out of malice and to punish the offender to an excessive degree. Hence, an 8<sup>th</sup> Amendment violation.

As most inmates are untrained in the law and are therefore at a handicap when performing legal work, the laws like the above assure that these individuals

will never win in court, even with meritorious claims. Then with a newly discovered evidence statute such as N.D.C.C. §29-32.1-01(3)(a), (b) one cannot get back into court at all, unless you are claiming complete innocence and can then prove it within the first two years.

North Dakota Senate Bill 2227 (Ch.248, 2013) is unconstitutional on its face with this case in point (Appendix at M). Over the years of fighting this case with witnesses giving false testimony and statements, it stalled the process and took an eon of time to sift through thousands of discovery documents to find the truth. And this is exactly what the new law and the two-year statute of limitations was designed to do. It ran out the clock before issues and matters could be discovered and heard which violated this petitioner's right to due process and against excessive punishment.

Further when you are an indigent defendant who is not trained in the law and who suffers from a psychological disorder, it takes longer to comprehend most legal texts, arguments and evidence. This alone makes this entire law unconstitutional as well as unethical. And the U.S. Constitution, the Supreme Law of our Land, supports this petitioner's claims:

“No Bill of Attainder or ex post facto Law shall be passed”

See: U.S.C.A. Const. Art. 1, §9 Cl. 3.

“No state shall \*\*\* pass any Bills of Attainder; ex post facto Laws \*\*\*”

See: U.S.C.A. Const. Art. 1, § 10 Cl. 1.

“No Bill of Attainder, ex post facto law, or law impairing the obligations of contracts shall ever be passed”

See: N.D. Const. Art. 1, §18

This Court can also see by the lower Court’s opinion (Appendix at C) that the Petitioner also attempted to tell the it several times that the new law was unconstitutional, but at the time could not articulate it clearly. This of course goes to the fact that he was not being treated for the psychological problems until 2018, which interfered with preparing these court documents. The Court even admits, at ¶17 of the document, that this would be an exception to the rules.

But, as one can see, North Dakota’s Legislature in running amok and writing laws that are completely contrary to the rule of law and are clearly violating its citizens’ rights. Furthermore, this is of national interest because if this state, with such a small population up in the dismal north can operate such an organized corrupt system of justice, who else might be watching from the shadows and following in their footsteps? This is a needed reprimand and case law from this Court to keep them and others like them in check to stop injustices like this in their tracks.

The following was North Dakota Supreme Court’s own cases that this petitioner argued with them and that they ruled against over the ex post facto issue:

See State v. Norman, 660 N.W. 2d 549 (ND 2013). Where the court held:

“A law which imposes a collateral consequence of a conviction may be applied retroactively if the purpose is to protect some other legitimate interest, rather than to punish the offender.”

This petitioner explained that the ex post facto clause resulted in an excessive sentence and punishment in violation of the 8<sup>th</sup> Amendment because challenges cannot be brought to light if they are found outside of the two-year limitation and showed them this quote from Norman, which they ignored:

The court in Norman further noted that:

“We have stated the Legislature may apply statutes retroactively unless doing so would result in ex post facto application.”

And yet there is another case in North Dakota that spells out this state's violations which they disregarded:

“An ex post facto law” for purposes of constitutional prohibition of ex post facto laws, is (1) a law that makes an action done before the passing of the law, and which was innocent when done, criminal, and punishes such actions, (2) a law that aggravates a crime or makes it greater than it was, when committed; (3) a law that changes the punishment, and inflicts a greater punishment, than the law annexed to the crime, when committed; or (4) a law that alters the legal rules of evidence and...”

See: State v. Meador, 785 N.W. 2d 886 (2010).

In the case at bar they found that there was clearly an ex post facto application, yet they upheld the lower court's ruling. However, they did repeal the law in 2023. But, the absolute proof of the retroactivity of the new law is that the court is applying a 2013 amendment to a 2006 conviction as in this case. As stated, the ruling in Norman applied.

See State v. Norman, 660 N.W. 2d 549 (ND 2013). Where the North Dakota Supreme Court held:

“A law which imposes a collateral consequence of a conviction may be applied retroactively if the purpose is to protect some other legitimate interest, rather than to punish the offender.”

Another factual reason for this court to accept this writ is because of how this petitioner’s rights were violated in the federal courts.

With the state’s witness Christine Aman giving false testimony and statements against the appellant to not only the Cass County District Court, but the Federal District Court, it tainted the habeas corpus process. The habeas petition and subsequent appeal to the 8<sup>th</sup> Circuit Court of Appeals were both dismissed based on the false testimony of Christine Aman. (The “Affidavit of Christine Aman” was filed under Gaede v. State, 832 N.W. 2d 334, (2013)). This issue was also raised in the 2021 post-conviction petition and was disregarded by the court and therefore not in the record nor brought on appeal by the appellate attorney. See Gaede v. State, 870 N.W.2d 26, (2015).

But it was not until just prior to the evidentiary hearing on November 19<sup>th</sup> 2021 that the petitioner was provided with the actual DOCR psychiatric files. So according to the State, Gaede was diagnosed with PTSD in early 2018. (Appendix at K: page 21, lines 13-17) However, the petitioner had no physical access to the psychiatric reports until November 18, 2021, the day before the evidentiary hearing. And note that it was N.D.C.C. §12-44.1-28 that prevented the petitioner from accessing these records until the post-conviction evidentiary hearing in 2021. So,

there was no possible way he could have known what his true diagnosis was other than by guessing through the medication regimen he was prescribed. He was never told by staff.

This again shows how the petitioner's rights were violated when his post-conviction was denied and then affirmed by the North Dakota Supreme Court. Especially, when N.D.C.C. §12-44.1-28. Correctional Facility Files and Records Confidentiality impeded the process.

Then at the November 19, 2021 evidentiary hearing Dr. Madeline Free testified and not only confirmed that the appellant suffered from PTSD, but also that it had existed since childhood, which in itself is new evidence that had never before been entered into the record (Appendix at K: page 17, lines 6-7). This, the lower court chose to ignore, however the petitioner offered the court an olive branch to correct the error in the petitioner's Objection to State's Motion for Summary Judgment brief at ¶16 but to no avail.

Please note that this evidence is highly relevant because it reaches all the way back to the first and original post-conviction filed in 2008. At the time, the Appellant raised the issue of ineffective assistance of counsel because his trial attorney Steven Mottinger failed to have him examined by a psychiatrist.

**II. WHETHER GAEDE'S 8<sup>TH</sup> AND 14<sup>TH</sup> AMENDMENT RIGHTS TO  
DUE PROCESS AND TO BE FREE FROM EXCESSIVE  
PUNISHMENT WERE VIOLATED WHEN THE NORTH DAKOTA  
SUPREME COURT USED A REPEALED STATUE TO RULE  
AGAINST HIM IN HIS APPELLATE PROCEEDING?**

Another factual reason for this court to accept this case for review is because of North Dakota's illegal use of repealed statute §29-32.1-01(3)(a), (b), to rule against the petitioner.

It is also clear that this case is what the repeal of N.D.C.C. §29-32.1-01(3)(a) in 2023 is based on. When the petitioner asked the North Dakota Supreme Court to correct their judgment and rule on the issues of the repealed statute and the Grand Jury denial in the petition for rehearing, the court refused the request. (Petition for Rehearing; Appendix at F).

This shows that the court's decision on affirming the appeal was biased and based on the repealed statute because of their refusal to answer. If they were to rule, they would have had to admit that the statute was unconstitutional and the petitioner's rights were violated. Therefore, they would have had to grant the appeal. By remaining mute this proves the corruption and injustice in the Court.

The petitioner argued with the Court that it also meant that the statute was unconstitutional when the lower court rendered its decision on the post-conviction petition being appealed. That its decision too was therefore void. That this again

showed that the petitioner's rights were violated at the lower court level. The petitioner pointed out that it further should be noted that the statute was unconstitutional and therefore void in 2013 when it was enacted and that the two-year statute of limitations imposed by it had no effect. He explained to the court that the law does not and cannot be used by the North Dakota Supreme Court or the lower court in deciding this case and showed them the following federal and U. S. Supreme Court precedents on this subject:

“For more than a century, ‘the general rule... [has been] that when an act of legislation is repealed, it must be considered... as if it never existed.’”

Ex Parte McCordle, 74 U.S. 506, 514, 7 Wall. 506, 19 L.Ed. 264 (1868).

Even in a pending action, ‘no judgment could be rendered...after the repeal of the act under which it was brought and prosecuted.’ Id. A statute that Congress snuffed out of existence by repeal leaves no residual clear statement of authorization.”

Yakima Valley Memorial Hosp. v. Washington State Dept. of Health, 654 F.3d 919 (9<sup>th</sup> Cir. 2011) at ¶25.

The North Dakota Supreme Court chose to disregard all this case law as well because this state has no respect for the rule of law or the U.S. Constitution.

**III. WHETHER GAEDE'S 5<sup>TH</sup> AMENDMENT RIGHT WAS VIOLATED  
WHEN THE STATE DENIED HIM A GRAND JURY SO THE  
PROSECUTION COULD PROTECT AND SHIELD THE  
CONFESSED MURDERER IN THE CASE AND THEN USE HER TO  
TESTIFY AGAINST THE PETITIONER?**

The factual reason for review here is because this issue is highly relevant in light of the other grounds. Gaede believes that if a State Grand Jury would have been convened he would have been charged correctly under N.D.C.C. 12.1-16-01(2) (or possibly not at all) as well as the state's number one witness against him, the confessed murderess Diana Gaede/Frige' (Appendix at I). Therefore, by this process being taken out of the hands of the true ministers of justice the petitioner's rights were violated from the onset. This would undoubtedly have changed the outcome of the trial.

It is also a fact that the state, while in collusion with the FBI, coerced Gaede/Frige' to testify against the petitioner. She even said in a letter to the petitioner that she was told that she could face the death penalty if she confessed to the crime. So, she then recanted and started blaming the petitioner for the murder. The state then offered her full immunity and deliberately avoided the grand jury to shield their "star" witness, from prosecution so they could use her to testify against the petitioner thus creating a hedged advantage for themselves. This alone is a 14<sup>th</sup> Amendment Due Process violation.

## 5<sup>TH</sup> AMENDMENT GRAND JURY

The United States Constitution's 5<sup>th</sup> Amendment Grand Jury Clause reads:

“No person shall be held to answer for a capital or otherwise infamous crime, unless on presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service time of war or public danger.”

Because the right to a Grand Jury falls under the United States Constitution it cannot be avoided. The “Federal Constitution is the Supreme Law of the United States, Butler V. Alabama Judicial Inquiry Commission, 245 F. 3d 1257, (2001 WL 292996) United States Court of Appeals, 11<sup>th</sup> Cir. March 27, 2001 ” (U.S.C.A. Const. Art. VI).

It is commonplace to hear that many criminal defendants in North Dakota have been told by their attorneys that the grand jury system was abolished when they questioned it. And that's very believable when one reads the North Dakota Constitution which essentially confirms it:

“Until otherwise provided by law, no person shall, for a felony, be proceeded against criminally, otherwise than by indictment, except in cases arising in the land or naval forces, or in the militia when in actual service time of war or public danger. In all other cases, offenses shall be prosecuted criminally by indictment or information. The legislative assembly may change, regulate or abolish the grand jury system”

N.D. Const. Art. 1, §10

But civil rights cannot be altered by the state:

**Clause 2, Supreme Law of the Land (U.S.C.A. Const. Art. VI Cl. 2).**

'The Constitution, and the Laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the land; and the judges in every state shall be bound thereby, anything in the Constitution or Laws of any State to the contrary notwithstanding.'

As noted earlier the petitioner was just recently notified by a watchdog group of civil rights lawyers "WE THE PEOPLE," of what the State of North Dakota is doing and what had been done to him. This is why this qualifies as newly discovered evidence because it was completely unknown to the petitioner up until then.

It too is crystal clear that after one trial lawyer, two appellate lawyers, and two post-conviction lawyers who failed to mention this claim, it was not for lack of due diligence or misuse of process on the part of the petitioner that it was not raised sooner. This claim also falls squarely in the realm of ineffective assistance of trial counsel and a denial of due process as per the scope of Gideon v. Wainwright, 372 U.S. 335 (1963) because the entire judicial process was tainted from the onset because of it. And if not for the lawyers from "WE THE PEOPLE" this issue may have stayed buried forever.

This petitioner argued with the North Dakota Supreme Court that attorney Mottinger's performance was defective for not having raised the issue of a grand jury convened when he knew or should have known the state was railroading his client into a sensationalized witch hunt, when all the while they were protecting the state's star witness for the prosecution. The petitioner also raised the question of how any criminal defense lawyer licensed in the United States of America could not know the U.S. Constitution along with the constitution of the state in which they

work. Unless, the attorney was in collusion with the prosecution all along to violate the petitioner's rights. The courts ignored every word.

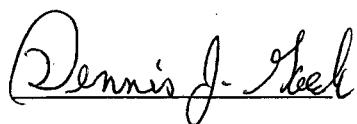
But lastly, it too should be noted by this Court that the North Dakota Supreme Court would not rule on the Grand Jury issue even after the petitioner moved them for an answer in his petition for rehearing. The lower Court did attempt to rule on it and showed that their analysis was flawed by citing bad case law that was based on N.D. Const. Art. 1, §10, and then completely disregarding the United States Constitution. The North Dakota Supreme Court no doubt caught this error but, rather than correcting them, stood silent at the sideline on the issue adding to the manifest injustice already done.

All in all, this proves the merits of this case.

## CONCLUSION

The petition for writ of certiorari should be granted and is subject to review under 28 U.S.C. §2403(b) due to the unconstitutionality of state statutes. As per U.S.C. §29.4(c) The North Dakota State Attorney General has been notified and electronically served with a copy of the petition.

Respectfully submitted,



Date: February 19<sup>th</sup>, 2024

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<sup>i</sup> Carson, V.B., Ph.D., R.N., CS-P, and Arnold, E.N., Ph.D., R.N., CS-P, *Mental Health Nursing: The Nurse-Patient Journey*. Philadelphia: W.B. Saunders Company, a Division of Harcourt Brace & Company, 1996. pg. 695

<sup>ii</sup> Ibid. pp. 695-696