

No. 23-6935

IN THE
SUPREME COURT OF THE UNITED STATES

DENNIS J. GAEDE — PETITIONER

VS.

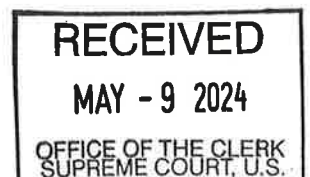
THE STATE OF NORTH DAKOTA — RESPONDENT
ON PETITION FOR A WRIT OF CERTIORARI TO
THE SUPREME COURT OF NORTH DAKOTA

PETITION FOR REHEARING

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QUESTIONS PRESENTED

DID THE COURT ERR WHEN IT DENIED THE PETITION FOR WRIT OF CERTIORARI?

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JURISDICTION

The jurisdiction of this Court is invoked under U.S. Sup. Ct. Rule 44(2), 28 U.S.C.A.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. The First Amendment of the United State Constitution

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. 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.

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, 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.

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 PSTD 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. This Court recently denied the Writ of Certiorari and the Petitioner has now filed a Petition for Rehearing.

I. DID THE COURT ERR WHEN IT DENIED THE PETITION FOR WRIT OF CERTIORARI?

ARGUMENT

The Petitioner would like the Court to review the North Dakota Supreme Court's opinion on case No. Gaede v. State, 801 N.W. 2d 707 (2011) and consider this issue as a USCA Const. Amend. 1 violation and new ground for this rehearing. This ruling sets the stage for what's in the argument for the Petition for Rehearing. During the trial, the prosecutor Birch Burdick was aware of the Petitioner's religious background and became the "advocatus diaboli" or Devil's Advocate, and used the Holy Bible to condemn him in court. So, this Petitioner now challenges that the "Book" has been opened and it is now a time of reckoning. The State used the Holy Bible and the Petitioner's beliefs to convict him and now it's time to use the truth to convict them.

Here is an excerpt from the case summary:

"Kind of ironic that those words were used or that analogy was used, because I was sitting at the table thinking about some of the things that I talked to you about in my opening statement. I talked to you about the fact that this case was about betrayal. We talked a little bit about Judas and the 30 pieces of silver. I don't if any of you are Bible scholars or if that's important to you or not, but why was Judas asked to betray Jesus? Because the powers to be needed the log jam broken. They needed to solve the problem."

"Mr. Burdick referenced the fact that [Diana Fruge is] not a Saint. Presumably if she's not a Saint, she's just like the rest of us, a sinner. She's gone up here and painted a terrible picture of Dennis Gaede, a crook, a thief, a liar, a manipulator. Ask yourself this, why is his sinner to be believed and why is mine to be condemned?"

"You have, when you go into that jury room, an amazing amount of power. The power you have when you go into that room is almost sacred. In that room you are in fact God. All we're asking you to do is to use the power you have, to use it wisely, but to use it pursuant to the instructions of the Court."

During the state's rebuttal, the prosecutor told the jury:

"Let me try and address a few points that Mr. Mottinger has made. First of all, that issue he brought up of betrayal and Judas, who was the real betrayer? The real betrayer is that man right there. He betrayed his friendship with Timothy Wicks or what Timothy Wicks thought was friendship...Mr. Mottinger asked why his sins should be held against him and her sins not. Well, the answer is because his were the greater sins. He was the one who committed the murder."

Of course, the North Dakota Supreme Court said that it was perfectly fine to use this line of argument in court, even though this petitioner claimed a constitutional violation. So, based on that ruling the Petitioner has provided an established U.S. Supreme Court ruling that should suffice to open the door to show the following thoughts to the Court:

" The Constitution does not require complete separation of church and state; it affirmatively mandates accommodation, not merely tolerance of all religions, and forbids hostility toward any," USCA Const. Amend. 1 Lynch v. Donnelly, 104 S.Ct. 1355 (1984).

"IN GOD WE TRUST" is the motto of our country. The question is, how many justices on the United States Supreme Court placed their hand on the Holy Bible and swore an oath to uphold the Laws and the Constitution of the United States of America? So then how many broke that oath by denying the Writ of Certiorari and therefore also denied God and God's authority at the same time?

A witness gets on the stand, puts their hand on the Holy Bible and takes the oath: "I swear to tell the truth, the whole truth, and nothing but the truth. So, help me God." Now is all of this just lip service or does it have a deeper meaning in its promise?

Even over in the Chamber of Congress the fresco of Moses overlooks and monitors the lawmakers while in session and while the building sleeps. Why was this painted there? What is the deeper meaning?

Another new ground not previously raised in the writ is that this petitioner is an ordained monastic and a seminary graduate that is invoking the Holy Bible as the intervening authority in this matter. Members of this Court all swore oaths to uphold the U.S. Constitution and failed their posts by ignoring the violations in the Writ of Certiorari for what appears to be political reasons. The Holy Bible speaks clearly on this very subject:

“Do not seek to become a judge, or you may be unable to root out injustice; you may be partial to the powerful, and so mar your integrity.” [Holy Bible, Sirach 7:6]

Further, when it comes to politics, control is out of man’s hands and is in God’s:

“The government of the earth is in the Hand of the Lord, and over it He will raise up the right leader for the time.” [Holy Bible, Sirach 10:4]

So, when it comes to this Court, there can be no fear of political reprisal because of an unpopular ruling unless your souls are sold to the dark side. In this Court no one can be afraid of being disbarred by the establishment because of unpopularity. The question now is how unpopular is this injustice within the Christian community or lobby? Especially, when our soon to be President Donald Trump is selling Holy Bibles and speaking daily about corruption in the courts. Therefore, everyone should pay heed to the following:

“Let every person be subject to the governing authorities; for there is no authority except from God, and those authorities that exist have been instituted by God. Therefore, whoever resists authority resists what God has appointed, and those who resist will incur judgment. For rulers are not a terror to good conduct, but to the bad. Do you wish to have no fear of the authority? Then do what is good, and you will receive its approval; for it is God’s servant for your good. But if you do what is wrong, you should be afraid, for the authority does not bear the sword in vain! It is the servant of God to execute wrath on the wrongdoer.” [Holy Bible, Romans 13:1-4].

This is and was a strong warning to police, prosecutors, and ultimately judges not to pervert justice. Yet in this case, everyone thus far has put politics

before the law and most importantly the United States Constitution and used them to violate the petitioner's right to a fair trial.

History dictates that the Holy Bible did become the basis for all the laws in our country and that's why this petitioner wants a full quorum to vote on this petition so the decision comes from your hearts.

CODE OF CONDUCT FOR THE SUPREME COURT OF THE UNITED STATES

CANON 1: A JUSTICE SHOULD UPHOLD THE INTEGRITY AND INDEPENDENCE OF THE JUDICIARY.

"A Justice of the Supreme Court of the United States should maintain and observe high standards of conduct in order to preserve the integrity and independence of the federal judiciary."

The Justices of the United State Supreme Court are supposed be of the highest standards in this country. So what example is the Court setting for others to follow when it denies an uncontroverted Writ of Certiorari that has solid, meritorious constitutional grounds for fear of its consequences? Remember that in battle we will never cower in the face of the enemy.

CANON 2: A JUSTICE SHOULD AVOID IMPROPRIETY AND THE APPEARANCE OF IMPROPRIETY IN ALL ACTIVITIES.

A. Respect for the law.

"A justice should respect and comply with the law and act at all times in a manner that promotes public confidence in the integrity of the judiciary."

Corruption is a bigger threat to our democracy than any known enemy on the planet and it hides within our own souls. So why then would this Court further enable it by ignoring the State of North Dakota in violation of your own Canons? Especially when it puts the integrity of this Court at risk.

B. Outside Influence.

“A Justice should not allow family, social, political, financial, or other relationships to influence official conduct or judgment.”

This Court’s decision has the distinct appearance of political impropriety in its simplicity for the following reasons:

1. The Court received the petition for Writ of Certiorari on March 4th, 2024 (App. 1) and on March 8th, 2024 after being examined by case analyst Angela Jimenez, this case was placed on the docket by Scott S. Harris, Court Clerk. This action alone shows that this case passed the screening exam likened to the 28 U.S.C.A. Fed. Rules Civ. Proc. Rule 3 process and deemed it meritorious.
2. The State of North Dakota was then notified of the acceptance of the writ and then threw in the towel of opposition and filed a waiver in the action, which also included the Attorney General because he was served with the petition. This action made the case uncontroverted which should have automatically proved the validity of the factual claims asserted and thus shifted favor toward the petitioner.

3. Then on April 1st, 2024 when the Court denied the Writ of Certiorari without a written explanation of rhyme or reason it can only leave one to conclude that political impropriety and/or possible ex parte communications from an outside source took place.
4. Even the court of public opinion is questioning this Court's ruling now that the uncontested facts of the petition were published in the media. Especially when information about the murder confession was withheld from a grand jury and this Court failed to act on it.
5. This is a super high-profile case which does not escape the media's eye including the Christian networks because of the petition's affiliations. North Dakota will not escape the Divine Light and unfortunately neither will the U.S. Supreme Court at this point.
6. And if this Court refused to hear the petition once it was calendared on the docket as the media is now reporting, it would only imply political impropriety and corruption in this Court. Again, what message is that sending?

CANON 3: A JUSTICE SHOULD PERFORM THE DUTIES OF OFFICE FAIRLY, IMPARTIALLY, AND DILIGENTLY.

A. Responsibilities.

"A Justice should not be swayed by partisan interests, public clamor, or fear of criticism. A Justice should participate in matters assigned, unless disqualified, and should maintain order and discourse in judicial proceedings."

"Except as provided by law or Court rule, a Justice should not initiate, permit, or consider ex parte communications or consider other communications concerning a pending matter that are made outside the presence of the parties or their lawyers. If a Justice receives an unauthorized ex parte communication bearing on the substance of the matter, the Justice should promptly notify the parties of the subject matter of the communication and allow the parties to respond."

North Dakota is violating its citizen's rights with unconstitutional laws and practices. And this case was docketed and assigned to be heard by this Court until it was swayed by some unknown source or interest. The question is what could possibly outweigh the civil rights of the citizens of the entire state?

The Petitioner knows the magnitude of what the ruling had this Court ruled in his favor on the grand jury issue. It was not his intent to release thousands of prisoners with it. It was to get North Dakota to change their laws into honest constitutional ones and treat people fairly. So that defendants get fair trials and can challenge their cases through postconviction processes that work for everyone. This Petitioner is not trying to dismantle the justice system, only help fix a broken one.

CONCLUSION

This Petitioner laid prostrate on the altar of God to take his vows to uphold the Holy Scriptures. It is therefore his humble duty to give this prophetic warning to this Court to rule wisely under the Lord's watchful eye.

We may be in the end-times as it appears, but there is no need to hurry things along within our own borders. The Court needs to be the pillar of justice and can never turn a blind eye to those who trample on the U.S. Constitution. If we

cannot look to this Court for justice, what then? Anarchy? Revolution? Civil war?
But havn't we all had enough of that?

But you have to remember that in the absence of justice, there's just us. We
the People. So, we need the U.S. Supreme Court to do their job defending and
upholding the U.S. Constitution.

If any of the members of this Court have ever experienced a civil war or
genocide like this petitioner has, you would know that the Virtue of Hope
disappears swiftly in the sand, blood and smoke of warfare. And it all starts with
lawlessness at its core. If you defend the U.S. Constitution, we will stand up and
defend the rest of the country. That's a promise.

This Petition for Rehearing should be granted due to the issues contained
within.

Respectfully submitted,

Dennis J. Haack

Date: 4-15-2024

CERTIFICATION

This Petition for Rehearing is brought in God's good faith and is hereby restricted
specifically to the grounds raised herein and is not intended to delay the
proceedings.

Dennis J. Haack

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