

Filed 6/27/19 by Clerk of Supreme Court
IN THE SUPREME COURT
STATE OF NORTH DAKOTA

2019 ND 149

Tilmer Everett,

Petitioner and Appellant

v.

State of North Dakota,

Respondent and Appellee

No. 20180436

Appeal from the District Court of Burleigh County, South Central Judicial District, the Honorable Bruce A. Romanick, Judge.

AFFIRMED.

Per Curiam.

Tilmer Everett, self-represented, Bismarck, ND, petitioner and appellant (on brief).

Karlei K. Neufeld, Assistant State's Attorney, Bismarck, ND, for respondent and appellee (on brief).

Everett v. State

No. 20180436

Per Curiam.

[¶1] Tilmer Everett appeals after the district court summarily dismissed his application for post-conviction relief.

[¶2] In 2007 a jury found Everett guilty of gross sexual imposition. This Court affirmed. *State v. Everett*, 2008 ND 126, 756 N.W.2d 344. Everett has filed and appealed denial of numerous applications for post-conviction relief. *See Everett v. State*, 2016 ND 78, 877 N.W.2d 796; *Everett v. State*, 2015 ND 162, 870 N.W.2d 26; *State v. Everett*, 2014 ND 191, 858 N.W.2d 652; *Everett v. State*, 2012 ND 189, 821 N.W.2d 385; *Everett v. State*, 2011 ND 221, 806 N.W.2d 438; *Everett v. State*, 2010 ND 226, 795 N.W.2d 37; *Everett v. State*, 2010 ND 4, 789 N.W.2d 282; and *Everett v. State*, 2008 ND 199, 757 N.W.2d 530. This Court held three other cases were not appealable. *Everett v. State*, 2017 ND 111, 893 N.W.2d 506; *Everett v. State*, 2017 ND 93, 892 N.W.2d 898; *Everett v. State*, 2018 ND 114, 910 N.W.2d 835. In August 2015 the district court barred Everett from future filings without leave of the court. The Supreme Court affirmed the decision in *Everett v. State*, 2016 ND 78, 877 N.W.2d 796.

[¶3] The district court allowed the current application for post-conviction relief based on a signed affidavit containing alleged new evidence. Upon review the district court summarily dismissed the application. On appeal Everett argues the district court erred when it allowed the State to file an untimely motion for summary disposition.

[¶4] We summarily affirm under N.D.R.App.P. 35.1(a)(4), (6), and (7); *Klose v. State*, 2008 ND 143, ¶ 10, 752 N.W.2d 192 (res judicata precludes claims or variations of claims raised in previous proceedings, and misuse of process precludes claims that could have been raised in a prior proceeding) and *Bell v. State*, 1998 ND 35, ¶ 30, 575 N.W.2d 211 (district court granting more than thirty days for

State to respond is not an abuse of discretion when defendant fails to show he suffers any prejudice from State's untimely response).

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