

IN THE SUPREME COURT  
STATE OF NORTH DAKOTA

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2021 ND 45

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Anthony Leon Campbell,

Petitioner and Appellant

v.

State of North Dakota,

Respondent and Appellee

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No. 20200227

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Appeal from the District Court of Ward County, North Central Judicial District, the Honorable Richard L. Hagar, Judge.

REVERSED AND REMANDED.

Opinion of the Court by VandeWalle, Justice.

Kiara C. Kraus-Parr, Grand Forks, N.D., for petitioner and appellant.

Kelly A. Dillon, Assistant Attorney General, Bismarck, N.D., for respondent and appellee.

**Campbell v. State**  
**No. 20200227**

**VandeWalle, Justice.**

[¶1] Anthony Campbell appealed from a judgment entered after the district court summarily dismissed his application for post-conviction relief. Campbell argues the court improperly dismissed his application for post-conviction relief and he was denied due process. We reverse and remand for further proceedings.

I

[¶2] In 2016, a jury found Campbell guilty of murder, a class AA felony. His conviction was affirmed on appeal. *State v. Campbell*, 2017 ND 246, 903 N.W.2d 97. In November 2017, Campbell filed an application for post-conviction relief alleging ineffective assistance of counsel. The State opposed the application and moved for summary disposition.

[¶3] In December 2017, Campbell amended his application, and an attorney was subsequently appointed to represent him. In January 2018, the State renewed its motion for summary disposition. In a September 2018 order, the court denied the State's motion, and an evidentiary hearing on the application was scheduled for December 21, 2018. In November 2018, the State requested a continuance, which was granted.

[¶4] At a January 2019 status conference, Campbell's attorney informed the district court that he wanted to have a blood sample tested. The court gave him 30 days to submit information with regard to the testing. Nothing was submitted. In April 2019, the State renewed its motion for summary disposition.

[¶5] At an October 2019 hearing on an order to show cause, Campbell's attorney represented that the private lab would accept the blood sample only if the State submitted it. In March 2020, the court ordered the State to cooperate with the lab and the production of a DNA profile.

[¶6] In June 2020, the district court held another status conference. Campbell was unable to attend because of restrictions on transporting inmates due to the COVID-19 pandemic. Campbell’s counsel was present and acknowledged taking no action on the order to cooperate. The State renewed its motion at the hearing. The court held Campbell failed to meet his burden and granted the summary dismissal. The court requested the State to draft the order dismissing the application.

## II

[¶7] Campbell argues the district court improperly summarily dismissed his application for post-conviction relief.

[¶8] “Post-conviction relief proceedings are civil in nature and governed by the North Dakota Rules of Civil Procedure.” *Myers v. State*, 2017 ND 66, ¶ 7, 891 N.W.2d 724 (quoting *Wacht v. State*, 2015 ND 154, ¶ 6, 864 N.W.2d 740). A district court may summarily dismiss a post-conviction relief application if there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. N.D.C.C. § 29-32.1-09(3). This Court reviews an appeal from summary dismissal of post-conviction relief as it would review an appeal from a summary judgment. *Myers*, at ¶ 7. “The party opposing the motion for summary dismissal is entitled to all reasonable inferences to be drawn from the evidence and is entitled to an evidentiary hearing if a reasonable inference raises a genuine issue of material fact.” *Id.*

[¶9] “The issue of ineffective assistance of counsel is a mixed question of law and fact and is fully reviewable by this Court.” *Morales v. State*, 2019 ND 137, ¶ 4, 927 N.W.2d 401 (quoting *Brewer v. State*, 2019 ND 69, ¶ 5, 924 N.W.2d 87). “[C]laims of ineffective assistance of counsel are ordinarily unsuited to summary disposition without an evidentiary hearing.” *Morales*, at ¶ 4 (quoting *Horvath v. State*, 2018 ND 24, ¶ 8, 905 N.W.2d 734).

## III

[¶10] Campbell asserts his application was dismissed because the district court agreed with the State that his post-conviction counsel did not submit evidence to support the application or respond to the State’s motion. He argues,

however, that there is a reasonable inference that blood present at the crime scene, if properly tested, would exonerate him. He further contends that issues not related to blood testing regarding his trial counsel's ineffective performance were viable and supported and that summary disposition had already been denied on those claims. He argues that an evidentiary hearing as to those issues should have been held.

[¶11] The State responds that its motion “put petitioner on his proof” and that Campbell did not respond. The State asserts that its summary dismissal motion and supporting papers “showed the district court that it was entitled to judgment as a matter of law” and that Campbell did not submit affidavits or other supporting materials to raise an issue of material fact. Because Campbell did not respond, the State asserts summary dismissal was proper.

[¶12] Here, the district court's order granting summary dismissal does not address the specific claims asserted in Campbell's verified amended post-conviction relief application. From the record, the lengthy delays by Campbell's post-conviction counsel to obtain the blood testing initially appear to be due to inexperience, delays in dealing with the State and the private lab, and possibly COVID-19 issues. Rather than dismissing for failure to respond, the district court should have rescheduled the evidentiary hearing that the court had previously concluded was necessary.

[¶13] We conclude that the district court's order and judgment summarily dismissing the application is conclusory. In summarily dismissing, the court did not address the specific claims of Campbell's amended application alleging ineffective assistance of trial counsel; did not undertake any analysis under *Strickland*; and did not adequately explain why an evidentiary hearing on the application, which had originally been ordered in September 2018, was no longer necessary.

[¶14] Because claims of ineffective assistance of trial counsel are ordinarily unsuited to summary disposition without an evidentiary hearing, *Morales*, 2019 ND 137, ¶ 4, we reverse the district court's order and remand for an evidentiary hearing on Campbell's verified amended post-conviction relief application.

#### IV

[¶15] Campbell argues that he was denied both procedural and substantive due process. He essentially contends that he received ineffective assistance of post-conviction counsel in the proceedings leading to the district court’s summary dismissal.

[¶16] The State responds that Campbell did not object to his attorney’s performance, did not ask the court to appoint different counsel, and did not raise this issue below. The State asserts the record does not establish Campbell was prejudiced by his post-conviction attorney’s conduct.

[¶17] Section 29-32.1-09(2), N.D.C.C., provides that “[a]n applicant may not claim constitutionally ineffective assistance of postconviction counsel in proceedings under this chapter.” This Court has plainly held “district courts are required to dismiss an applicant’s claims of ineffective assistance of post-conviction relief counsel in a Uniform Postconviction Procedure Act proceeding.” *Chisholm v. State*, 2020 ND 19, ¶ 13, 937 N.W.2d 520 (quoting *Jensen v. State*, 2019 ND 126, ¶ 9, 927 N.W.2d 479); *see also Kalmio v. State*, 2018 ND 182, ¶ 18, 915 N.W.2d 655.

[¶18] Nevertheless, because we have concluded that an evidentiary hearing is necessary to address Campbell’s claims of ineffective assistance of trial counsel and are remanding for further proceedings, we do not address his argument that he was denied due process.

#### V

[¶19] The judgment is reversed, and the case is remanded for proceedings consistent with this opinion.

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