

IN THE SUPREME COURT
STATE OF NORTH DAKOTA

2022 ND 70

Jerry Verl Holmes, Sr.,

Petitioner and Appellant

v.

State of North Dakota,

Respondent and Appellee

No. 20210284

Appeal from the District Court of Williams County, Northwest Judicial District, the Honorable Benjamin J. Johnson, Judge.

AFFIRMED.

Per Curiam.

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

Nathan K. Madden, Assistant State's Attorney, Williston, ND, for respondent and appellee; submitted on brief.

Holmes v. State
No. 20210284

Per Curiam.

[¶1] Jerry Holmes, Sr. appeals from a district court order denying his application for post-conviction relief. Holmes argues the court erred in summarily dismissing his application based on newly discovered evidence. He contends that a hearing on newly discovered evidence is separate and distinct from a summary judgment motion hearing and that disputed facts exist in this case on whether he committed the crime, whether the complaining witness recanted, and whether the submitted statement supports a claim of newly discovered evidence. Holmes failed to present competent admissible evidence that raises a genuine issue of material fact. We summarily affirm under N.D.R.App.P. 35.1(a)(6) and (7); *Yoney v. State*, 2021 ND 132, ¶ 6, 962 N.W.2d 617 (explaining that when the State moves for summary dismissal, an applicant must present “competent admissible evidence by affidavit or other comparable means which raises a genuine issue of material fact” to avoid a summary dismissal).

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