

CIVIL COVER SHEET

The JS 44 civil coversheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I (a) PLAINTIFFS

STEVEN SCOTT SAMUELSON

DEFENDANTS

TOM ROY, MINN. COMMISSIONER OF CORRECTIONS

(b) County of Residence of First Listed Plaintiff ITASCA
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant (unknown)
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

(c) Attorneys (Firm Name, Address, and Telephone Number)
Pro se: Steven Scott Samuelson, #234139, MCF-Faribault, 1101 Linden Lane, Faribault, MN 55021-6400

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
- 3 Federal Question (U.S. Government Not a Party)
- 2 U.S. Government Defendant
- 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff, and One Box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	<input checked="" type="checkbox"/> 1	<input checked="" type="checkbox"/> 1	Incorporated or Principal Place of Business in This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTE	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Med. Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark INTELLECTUAL PROPERTY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input checked="" type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	PROBATION MATTERS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609		

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from another district (specify)
- 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 U.S.C. 2254

Brief description of cause:

Imprisonment for exercise of free speech and right of intimate association under unconstitutional statute

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 **DEMAND \$** _____
CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE _____

DOCKET NUMBER _____

DATE _____ SIGNATURE OF ATTORNEY OR PRO SE _____

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

**PETITION UNDER 28 U.S.C. § 2254 FOR WRIT OF
HABEAS CORPUS BY A PERSON IN STATE CUSTODY**

STEVEN SCOTT SAMUELSON v. TOM ROY

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Civil cover sheet (Form JS 44)

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**PETITION UNDER 28 U.S.C. § 2254 FOR WRIT OF
HABEAS CORPUS BY A PERSON IN STATE CUSTODY**

STEVEN SCOTT SAMUELSON v. TOM ROY

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**PETITION UNDER 28 U.S.C. § 2254 FOR WRIT OF
HABEAS CORPUS BY A PERSON IN STATE CUSTODY**

STEVEN SCOTT SAMUELSON v. TOM ROY

INTRODUCTION

This application for a Writ of Habeas Corpus includes many subsidiary issues, including, but not limited to, the matter that the Petitioner is presently being denied reasonable medical care while in prison, which has led to a potentially life-threatening blood infection; but the primary issue here distills to simply that:

THE PETITIONER IS IN PRISON SOLELY FOR HAVING TELEPHONE CONVERSATIONS WITH HIS FIANCEE; AS SUCH, THE IMPRISONMENT IS BLATANTLY IN VIOLATION OF HIS FIRST AMENDMENT RIGHT TO HAVE FREE SPEECH; AND ALSO HIS RIGHT TO HAVE, AND PRIVACY OF HIS, INTIMATE ASSOCIATION (sometimes termed a Ninth Amendment right).

In this case, Judge Maturi (Minnesota District Court, Itasca County), had issued an order prohibiting contact between the Petitioner and his fiancée (Jennifer Bardine); but **in the absence of any request, ever, from the Petitioner or the fiancée (Bardine) for such an order, or for protection of any kind, coupled with absence of proof that any crime had been committed or that Bardine was under any threat of danger, or of harassment, whatsoever; Judge Maturi's order was an unconstitutional restraint upon the Petitioner's First Amendment right of free speech, and of intimate association, and as such is, constitutionally, unenforceable.**

The "Kelling" Memorandum (attachment 7, pp. 25-35, hereof) offers a Minnesota District Judge's (Judge Casey J. Christian, Minnesota District Court, Third District, at Steele County) reasoning as to why such a statute is unconstitutional, in an unrelated case.

The Petitioner's conviction is presently on appeal before the Minnesota Court of Appeals. But the Petitioner has now been held, due to these charges, **FOR OVER TWO YEARS**, since his arrest November 25th, 2009. He was denied release on bail while the matter was pending before the trial court; and release pending appeal has been denied by both the trial court and the Minnesota Appellate Court. He is presently imprisoned for having had constitutionally protected free speech; his rights continue to be violated each day that he is so held; and, although he has not exhausted his state remedies with regard to appeal of the conviction, as he remains unconstitutionally held during the pendency of same, **circumstances exist that render such process ineffective to protect the rights of the applicant** (28 USC 2254 (b) (1) (B) (ii)) and he has no adequate State remedy.

**PETITION UNDER 28 U.S.C. § 2254 FOR WRIT OF
HABEAS CORPUS BY A PERSON IN STATE CUSTODY**

United States District Court		District: DISTRICT OF MINNESOTA	
Name (under which you were convicted): STEVEN SCOTT SAMUELSON		Docket or Case No.:	
Place of Confinement : MINNESOTA CORRECTIONAL FACILITY - FARIBAULT, MN		Prisoner No.: 234139	
Petitioner (include the name under which you were convicted) STEVEN SCOTT SAMUELSON		Respondent (authorized person having custody of petitioner) v. TOM ROY, COMMISSIONER OF CORRECTIONS, FOR THE STATE OF MINNESOTA	
The Attorney General of the State of MINNESOTA			

PETITION

1. (a) Name and location of court that entered the judgment of conviction you are challenging:
DISTRICT COURT, STATE OF MINNESOTA, ITASCA COUNTY, 123 4th St. N.E., Grand Rapids, Minn.

- (b) Criminal docket or case number (if you know): **31-CR-10-169**
2. (a) Date of the judgment of conviction (if you know): **12/1/2010**
- (b) Date of sentencing: **1/4/2011**
3. Length of sentence: **5 years and 5 days**
4. In this case, were you convicted on more than one count or of more than one crime? Yes No
5. Identify all crimes of which you were convicted and sentenced in this case:
33 counts of violating a Domestic Abuse No Contact Order (DANCO) (Minnesota Statutes 518B.01, subd. 22 (d) (1)). Specifically, the Petitioner was convicted of returning, on multiple occasions, from the Itasca County Jail, seemingly urgent and desperate telephone calls made to him, by his fiancée (Jennifer Bardine) who had left over 100 messages for him on the jail's telephone messaging system. Judge Maturi had earlier issued a no-contact order for contact between Petitioner and Bardine, but neither said order, nor protection of any kind, had been requested by either party. Said order was thusly an undue restraint of free speech and freedom of intimate association; and is constitutionally unenforceable.
6. (a) What was your plea? (Check one)

<input checked="" type="checkbox"/> (1) Not guilty	<input type="checkbox"/> (3) Nolo contendere (no contest)
<input type="checkbox"/> (2) Guilty	<input type="checkbox"/> (4) Insanity plea

(b) If you entered a guilty plea to one count or charge and a not guilty plea to another count or charge, what did you plead guilty to and what did you plead not guilty to?

(c) If you went to trial, what kind of trial did you have? (Check one)

Jury Judge only

7. Did you testify at a pretrial hearing, trial, or a post-trial hearing?

Yes No

8. Did you appeal from the judgment of conviction?

Yes No

9. If you did appeal, answer the following:

(a) Name of court: Minnesota Court of Appeals

(b) Docket or case number (if you know): A11-326

(c) Result: Pending; the Petitioner is being unconstitutionally held pending determination.

(d) Date of result (if you know):

(e) Citation to the case (if you know):

(f) Grounds raised:

Please see attachment 1, post.

(g) Did you seek further review by a higher state court? Yes No

If yes, answer the following:

(1) Name of court:

(2) Docket or case number (if you know):

(3) Result:

(4) Date of result (if you know):

(5) Citation to the case (if you know):

(6) Grounds raised:

(h) Did you file a petition for certiorari in the United States Supreme Court?

Yes No

If yes, answer the following:

(1) Docket or case number (if you know):

(2) Result:

(3) Date of result (if you know):

(4) Citation to the case (if you know):

10. Other than the direct appeals listed above, have you previously filed any other petitions, applications, or motions concerning this judgment of conviction in any state court? Yes No

11. If your answer to Question 10 was "Yes," give the following information:

(a) (1) Name of court: Minnesota District Court, Itasca County

(2) Docket or case number (if you know): 31-CR-10-169

(3) Date of filing (if you know): 1/24/2011

(4) Nature of the proceeding: Motion for release pending appeal

(5) Grounds raised:

Please see Attachment #2, post

(6) Did you receive a hearing where evidence was given on your petition, application, or motion?

Yes No

(7) Result: Denied (by Judge Maturi)

(8) Date of result (if you know): 2/1/2011

(b) If you filed any second petition, application, or motion, give the same information:

- (1) Name of court: MINNESOTA COURT OF APPEALS
(2) Docket or case number (if you know): A11-326
(3) Date of filing (if you know): *Approximately June, 2011*
(4) Nature of the proceeding: Motion for Release Pending Appeal
(5) Grounds raised:
Please see attachment #3, post.

(6) Did you receive a hearing where evidence was given on your petition, application, or motion?

Yes No

(7) Result: Denied

(8) Date of result (if you know): 7/12/2011

(c) If you filed any third petition, application, or motion, give the same information:

- (1) Name of court: Minnesota Supreme Court
(2) Docket or case number (if you know): A11-326
(3) Date of filing (if you know): 9/9/2011
(4) Nature of the proceeding: PETITION FOR REVIEW OF APPEALS COURT DECISION
(5) Grounds raised:

1. That the Appellant (Petitioner) is eligible for release, or conditional release, pending the appeal of his cause. The essential criteria for said eligibility are that a) the appeal is not frivolous or taken for delay; and b) there is no substantial risk that the Defendant-Appellant i) will fail to appear to answer the judgment following the conclusion of the appellate proceedings, or ii) is likely to commit a serious crime, intimidate witnesses, or otherwise interfere with the administration of justice. 2. The present imprisonment of the Appellant denies his civil rights under the First (free speech), Fifth (due process), Ninth (freedom of intimate associations) and Fourteenth (applying the foregoing to the States) Amendments to the United States Constitution. 3. The statute which gave rise to the DANCO order, for violation of which Appellant stands convicted, is unconstitutional. It is asked that the Court take judicial notice of the Memorandum of the Hon. Judge Casey J. Christian in State of Minnesota v. Kelling (Third Judicial District of Minnesota, case no. 74-CR-11-254). 4. In ruling on his Motion for Release Pending Appeal, the lower courts have so far departed from the accepted and usual course of justice that the Supreme Court should intervene.

(6) Did you receive a hearing where evidence was given on your petition, application, or motion?

Yes No

(7) Result: Please see attachment #4, post

(8) Date of result (if you know):

(d) Did you appeal to the highest state court having jurisdiction over the action taken on your petition, application, or motion?

(1) First petition: Yes No

(2) Second petition: Yes No

(3) Third petition: Yes No

(e) If you did not appeal to the highest state court having jurisdiction, explain why you did not:

Please see attachment #5, post

12. For this petition, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

CAUTION: To proceed in the federal court, you must ordinarily first exhaust (use up) your available state-court remedies on each ground on which you request action by the federal court. Also, if you fail to set forth all the grounds in this petition, you may be barred from presenting additional grounds at a later date.

GROUND ONE:

M.S. 518B.01, subd. 22, under which the Petitioner was convicted, is an unconstitutional restraint of free speech and intimate association.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

The Petitioner was convicted of violating a no-contact order imposed by Judge Maturi, under the above statute. Neither the Petitioner, nor the party that he was ordered not to contact (his fiancée, Jennifer Bardine), had ever requested such an order, or any protection whatsoever. Both tried to have the no-contact order vacated. The no-contact order had been imposed by Judge Maturi based upon the Petitioner's being charged with two counts of Domestic Assault against Bardine. These charges were a "frame". Bardine had told deputies, who had been sent to Samuelson's (Petitioner's) residence by a third-party, that she had NOT been assaulted or abused; but they arrested Samuelson anyway, on Nov. 25th, 2009 and Judge Maturi imposed the unwanted no-contact order. Bardine, who lived with Petitioner and was wholly dependent upon him for support, left over 100 messages for him on the Itasca Co. Jail's inmate messaging system. When Petitioner returned her desperate calls, he was charged with the no-contact violations. In Jan., 2011, following Petitioner's conviction on the no-contact charges, the Domestic Assault charges were dropped. Bardine had testified in open court, on August 31st, 2010, and again on Jan. 4th, 2011, that she had not been assaulted or otherwise caused fear by Petitioner. *Please see attachment #7 - The "Kelling" memorandum, and attachment #11 - testimony of Bardine.*

(b) If you did not exhaust your state remedies on Ground One, explain why:

Please see Attachment #5, post, for further detail. The conviction is on appeal before the Minnesota Court of Appeals, but the state courts have denied Petitioner release on reasonable bail pending the appeals. As a result, he has remained jailed or imprisoned for over 2 years, since Nov. 25th, 2009, for violations of this unconstitutional no-contact order. He is presently in prison solely for exercising his rights to free speech and intimate association. His rights continue to be violated each day that he is so imprisoned, and circumstances exist that render state process ineffective to protect the rights of the Petitioner (28 USC 2254 (b) (1) (B) (ii)) and he has no adequate state remedy.

(c) **Direct Appeal of Ground One:**

(1) If you appealed from the judgment of conviction, did you raise this issue? Yes No

(2) If you did not raise this issue in your direct appeal, explain why:

The constitutional right of privacy between persons having an intimate relationship was raised in the direct appeal. The Free Speech issue was omitted due to ineffective assistance of counsel filing the appeal.

(d) **Post-Conviction Proceedings:**

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

Yes No

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition:

Name and location of the court where the motion or petition was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(3) Did you receive a hearing on your motion or petition? Yes No

(4) Did you appeal from the denial of your motion or petition? Yes No

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal? Yes No

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

(e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground One:

GROUND TWO:

The Petitioner has systematically been denied release on bail, and has been jailed or imprisoned, continuously, since his arrest, November 25th, 2009. This violates his right to reasonable bail under the Eighth Amendment.

(a) **Supporting facts** (Do not argue or cite law. Just state the specific facts that support your claim.):

Following the Petitioner's arrest, November 25th, 2009, on the baseless Domestic Assault charges (later dropped), Judge Maturi (Minnesota District Court, Itasca County) set bail in the amount of \$25,000 on same, but ordered the Petitioner held, without bail, for an alleged probation violation triggered by the said Domestic Assault charges. Later, in January, 2010, the no-contact order violation charges (the only charges on which Petitioner was convicted) were added; but the Petitioner still could not procure release on bail due to the pending alleged probation violation for which no bail was set. He was held until trial and sentencing, January 4th, 2011; at which time the probation matter was, effectively, dismissed. But sentenced on the no-contact violations, he continued to be held and was immediately sent to prison. He made a motion, before Judge Maturi, for release pending appeal, but said motion was denied. Following Minnesota criminal procedure, he then made a similar motion, for release pending appeal, before the Minnesota Court of Appeals. That motion was also denied. Petitioner's appeal raises substantial legal issues (please see Attachment #1), is not taken for delay, and the Petitioner has presented clear and convincing evidence that he is not likely to commit further crimes, endanger any person, or flee or fail to appear at the conclusion of the appeals.

(b) If you did not exhaust your state remedies on Ground Two, explain why:

Petitioner appealed the District Court's denial of his Motion for Release Pending Appeal by filing same before the Minnesota Court of Appeals. When said Court of Appeals denied the motion, Petitioner sought Review of same by filing a Petition for Review before the Minnesota Supreme Court. But Petitioner's attorney, for purposes of appeal of his main case (not retained for the Supreme Court petition) caused said petition to be withdrawn over the objections of Petitioner (please see Attachment #4). Said withdrawal was, thusly, due solely to attorney misconduct and ineffective assistance of counsel.

(c) **Direct Appeal of Ground Two:**

(1) If you appealed from the judgment of conviction, did you raise this issue? Yes No

(2) If you did not raise this issue in your direct appeal, explain why:

Ineffective assistance of counsel. Attorney John Remington Graham failed to include this issue in the brief on appeal of the conviction (of violating a no-contact order).

(d) **Post-Conviction Proceedings:**

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

Yes No

Although the Eighth Amendment was not expressly cited the motion sought release under state law. As conditions for release were met, denial of the motion constituted an Eighth Amendment denial of rights.

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: Motion for Release Pending Appeal

Name and location of the court where the motion or petition was filed:

Minnesota District Court, Itasca County, 123 NE 4th St., Grand Rapids, Minn. (Judge Maturi)

Docket or case number (if you know): 31-CR-10-169

Date of the court's decision: 2/1/2011

Result (attach a copy of the court's opinion or order, if available):

Denied. Please see attachment #8, post.

(3) Did you receive a hearing on your motion or petition? Yes No

(4) Did you appeal from the denial of your motion or petition? Yes No

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal? Yes No

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Minnesota Court of Appeals, St. Paul, Minnesota

Docket or case number (if you know): A11-326

Date of the court's decision: 7/12/2011

Result (attach a copy of the court's opinion or order, if available):

Denied. Please see attachment #9, post.

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

The Eighth Amendment was not specifically cited, due to ineffective assistance of counsel, in the appeal of the district court decision denying the Motion for Release Pending Appeal (which, under state law is taken by filing the Motion for Release Pending Appeal before the Minnesota Court of Appeals); but, again, the Motion was for release under state law, which state law was meant to comply with the muster of the U.S. Eighth Amendment. Where the Petitioner met the criteria for release under said state law, the denial of his motion for release, administratively or otherwise, denied him his Eighth Amendment rights under the U.S. Constitution.

(c) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you :
have used to exhaust your state remedies on Ground Two

GROUND THREE:

Incarcerated at the Minnesota Correctional Facility (MCF), the Petitioner is being denied reasonable and necessary medical treatment, including treatment for injuries suffered at said facility. As such, he is being subjected to cruel and unusual punishment in violation of the Eighth Amendment to the U.S. Constitution.
(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

Please see attachment #10, post.

(b) If you did not exhaust your state remedies on Ground Three, explain why?

Adequate state relief is not, as a practical matter, available to Petitioner. If the issue could have been raised at the state level, prison conditions and restrictions make it impossible to do so. At the prison, the Petitioner does not have access to the resources necessary for legal research, preparation of pro se legal papers, and the filing of same. Further, as Petitioner is not represented by counsel on this matter, cannot afford same, and has been denied assistance by the Minnesota State Public Defender, he is unaware of any state relief which might be available, and how to pursue same.

(c) **Direct Appeal of Ground Three:**

(1) If you appealed from the judgment of conviction, did you raise this issue? Yes No

(2) If you did not raise this issue in your direct appeal, explain why:

The issue occurred during post-trial imprisonment, not during trial. It occurred after sentencing and the transporting of the Petitioner to the prison (MCF-Faribault).

(d) **Post-Conviction Proceedings:**

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

Yes No

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition:

Name and location of the court where the motion or petition was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(3) Did you receive a hearing on your motion or petition? Yes No

(4) Did you appeal from the denial of your motion or petition? Yes No

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal? Yes No

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

- (c) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Three:

GROUND FOUR:

At trial, the Petitioner's right of Due Process was violated because the Judge (Maturi) refused to allow, before the jury, the relevant testimony of Jennifer Bardine, which, if it had been heard by the jury, would likely have caused them to reach a different result. Please see attachment #12 for grounds 5-8.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

At trial, Judge Maturi would not let Petitioner's witness, Jennifer Bardine, fully testify before the jury as to the circumstances of the telephone calls which are the subject of the charges for which the Petitioner was convicted. Just prior to her testimony before the jury, Judge Maturi admonished her that she may not testify to certain facts. Had she been allowed to so testify, her testimony would have shown that 1) she never requested the no-contact order or other protection, and had attempted to have same vacated; 2) she desired to have contact with Petitioner and that said contact was welcome; 3) she was never assaulted or otherwise abused by Petitioner in the approx. two years that they were together; 4) she had left over 100 messages on the jail's inmate messaging system for Petitioner to call her; and 5) she resided with, and was wholly dependent upon Petitioner, and urgently needed to speak with him regarding such matters as household money, food, firewood (for heat), septic system failure, etc. Please see Attachment #11, post - excerpt from the testimony of Jennifer Bardine (taken at an earlier hearing prior to the jury trial).

- (b) If you did not exhaust your state remedies on Ground Four, explain why:

This issue is part of the pending appeal. But the Petitioner is presently, and unconstitutionally, incarcerated for exercise of his First and Ninth (right of intimate association) Amendment rights, and the time required for the appeal process, possibly beyond the Minnesota Court of Appeals, is such that circumstances exist that render such process ineffective to protect the rights of the applicant which are presently being violated each day that he remains so incarcerated. Even if the conviction were reversed on appeal, the Petitioner would, by that time, likely have been caused to serve most or all of his sentence under the erroneous judgement.

- (c) **Direct Appeal of Ground Four:**

(1) If you appealed from the judgment of conviction, did you raise this issue? Yes No

(2) If you did not raise this issue in your direct appeal, explain why:

- (d) **Post-Conviction Proceedings:**

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

Yes No

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: For Release Pending Appeal (also for habeas corpus ad deliberandum) 11

Name and location of the court where the motion or petition was filed:

Minnesota District Court, in Itasca County; 123 NE 4th St., Grand Rapids, Minnesota (Judge Maturi)

Docket or case number (if you know): 31-CR-10-169

Date of the court's decision: 2/1/2011

Result (attach a copy of the court's opinion or order, if available):

Denied. Please see attachment #8, post.

(3) Did you receive a hearing on your motion or petition? Yes No

(4) Did you appeal from the denial of your motion or petition? Yes No

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal? Yes No

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Minnesota Court of Appeals, St. Paul, Minn.

Docket or case number (if you know): A11-326

Date of the court's decision: 7/12/2011

Result (attach a copy of the court's opinion or order, if available):

Denied. Please see attachment #9, post.

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

(e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Four:

PLEASE SEE GROUNDS FIVE THROUGH EIGHT IN ATTACHMENT #12, STARTING ON PAGE 45.

13. Please answer these additional questions about the petition you are filing:

- (a) Have all grounds for relief that you have raised in this petition been presented to the highest state court having jurisdiction? Yes No

If your answer is "No," state which grounds have not been so presented and give your reason(s) for not presenting them:

Please see attachment #5, post. In this matter, circumstances exist that render such [state] process ineffective to protect the rights of the applicant [Petitioner] and he has no adequate state remedy. As such, a Federal Writ of Habeas Corpus is authorized under 28 USC 2254 (b) (1) (B) (ii).

- (b) Is there any ground in this petition that has not been presented in some state or federal court? If so, ground or grounds have not been presented, and state your reasons for not presenting them:

The grounds relating to Cruel and Unusual Punishment (Grounds Three and Six) have not been so presented as Petitioner is without means to present same. Although the ground of right to intimate association (Ninth Amendment), of Ground One, has been raised in state court, the free speech argument was not, due to ineffective assistance of counsel. Then-attorney John Remington Graham was asked to raise said argument, but omitted same.

14. Have you previously filed any type of petition, application, or motion in a federal court regarding the conviction that you challenge in this petition? Yes No

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, the issues raised, the date of the court's decision, and the result for each petition, application, or motion filed. Attach a copy of any court opinion or order, if available.

15. Do you have any petition or appeal now pending (filed and not decided yet) in any court, either state or federal, for the judgment you are challenging? Yes No

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the raised.

MINNESOTA COURT OF APPEALS, at St. Paul, Minnesota. Case No. A11-326. Appeal of judgement of conviction for 33 counts of violation of a no-contact order. For grounds, please see Attachment 1, post.

16. Give the name and address, if you know, of each attorney who represented you in the following stages of the judgment you are challenging:
- (a) At preliminary hearing:
(unknown)
 - (b) At arraignment and plea:
Anne Marcotte, P.O. Box 192, Hill City, MN; John Remington Graham, 180 Haut de la Paroisse, St. Agapit (LOTB), Quebec G0S 1Z0, Canada (Graham is a member of the Minnesota Bar)
 - (c) At trial:
John Remington Graham, 180 Haut de la Paroisse, St. Agapit (LOTB), Quebec G0S 1Z0, Canada
 - (d) At sentencing:
John Remington Graham, 180 Haut de la Paroisse, St. Agapit (LOTB), Quebec G0S 1Z0, Canada
 - (e) On appeal:
John Remington Graham, 180 Haut de la Paroisse, St. Agapit (LOTB), Quebec G0S 1Z0, Canada;
Jennifer Chaplinski, P.O. Box 336, St. Cloud, MN 56302-0336
 - (f) In any post-conviction proceeding:
John Remington Graham, 180 Haut de la Paroisse, St. Agapit (LOTB), Quebec G0S 1Z0, Canada
 - (g) On appeal from any ruling against you in a post-conviction proceeding:
John Remington Graham, 180 Haut de la Paroisse, St. Agapit (LOTB), Quebec G0S 1Z0, Canada
17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? Yes No
- (a) If so, give name and location of court that imposed the other sentence you will serve in the future:
 - (b) Give the date the other sentence was imposed:
 - (c) Give the length of the other sentence:
 - (d) Have you filed, or do you plan to file, any petition that challenges the judgment or sentence to be served in the future? Yes No
18. **TIMELINESS OF PETITION:** If your judgment of conviction became final over one year ago, you must explain the one-year statute of limitations as contained in 28 U.S.C. § 2244(d) does not bar your petition.*
- The judgement of conviction is not yet final, as conclusion of direct review has not yet occurred and the time for seeking same has not expired. The direct appeal of the conviction is pending, before the Minnesota Court of Appeals, at this time; however, circumstances exist that render such process ineffective to protect the rights of the applicant [Petitioner] and he has no adequate State remedy. Federal Writ of Habeas Corpus is thusly authorized under 28 USC 2254 (b) (1) (B) (ii). Please see Attachment #5, post (page 23, hereof).

* The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") as contained in 28 U.S.C. § 2244(d) provides in part that:

- (1) A one-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall run from the latest of -
 - (A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review;
 - (B) the date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such state action;
 - (C) the date on which the constitutional right asserted was initially recognized by the Supreme Court, if the right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
 - (D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.

- (2) The time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection.

Therefore, petitioner asks that the Court grant the following relief:

1. Declaratory judgement that M.S. 518B.01, subd. 22 is unconstitutional and unenforceable; 2. For immediate release of the Petitioner, on reasonable bail or otherwise, pending his appeals and final determination of the validity of his conviction;

or any other relief to which petitioner may be entitled.

[NONE - petitioner appears pro se]

Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct and that this Petition for Writ of Habeas Corpus was placed in the prison mailing system on _____ (month, date, year).

Executed (signed) on _____ (date).

Signature of Petitioner

If the person signing is not petitioner, state relationship to petitioner and explain why petitioner is not signing this petition.

**PETITION UNDER 28 U.S.C. § 2254 FOR WRIT OF
HABEAS CORPUS BY A PERSON IN STATE CUSTODY**

STEVEN SCOTT SAMUELSON v. TOM ROY

ATTACHMENT 1. - Grounds Raised on Appeal (form AO 241 question 9f.)

A. This prosecution under Section 518B.01, Subd. 22, of Minnesota Statutes, covering events before August 1, 2010, must be dismissed, because the language, from which authority to issue no-contact orders might perhaps be inferred, is unconstitutionally vague.

B. Under the common law, Section 518B.01, Subd. 22, of Minnesota Statutes must be strictly construed, so as to authorize no order or conviction unless there should be an actual or claimed victim, of which there was none in this case.

C. In keeping with the fundamental law of the United States and the State of Minnesota, Section 518B, Subd. 22, of Minnesota Statutes must be construed strictly so as to avoid collision with the recognized constitutional right of privacy between persons having an intimate relationship, and under such construction no conviction can be sustained in this case.

D. The district court committed prejudicial error in ordering, over protest of the accused, separate trial of the charges of violating a domestic abuse no-contact order, wholly apart from the charges of domestic assault in consideration of which the no-contact was issued. (In the instant case, and in light of **the earlier testimony of the alleged victim**, at an interlocutory hearing in the absence of the jury, **that she was never assaulted or abused; the pretended charges of domestic abuse were dismissed on motion of the prosecutor**, which motion was made shortly following the instant conviction of violations of the no-contact order. The district court's separating of the trials (on alleged domestic abuse and violation of the no-contact order) prevented the jury from hearing the alleged victim's testimony that she was not abused and made no complaint against the Petitioner; and the district court, by Judge Maturi, explicitly prohibited her from offering said testimony, that she was not abused, at the trial for violations of the no-contact order.)

E. The district court committed prejudicial error in giving improper instructions to the jury on the question of criminal intent.

F. The district court unconstitutionally denied the accused a full opportunity to defend himself by excluding testimony from both Kelli Samuelson and Jennifer Bardine.

Again, the district court, by Judge Maturi, explicitly prohibited testimony by the alleged victim (Jennifer Bardine) that she was never abused by the Petitioner; that she made no complaint against the Petitioner; that the telephone calls which were the subject of the charging were welcome and were initiated by her by leaving messages for the Petitioner to call her; that she left over 100 messages for Petitioner on the Itasca County Jail's inmate phone messaging system; that she never asked for the no-contact order and had tried to have it removed; and that, as she

resided at the Petitioner's home and was wholly dependent upon him for support, she had urgent matters of household and financial urgency that she needed to discuss with him.

The witness (Jennifer Bardine) was admonished by Judge Maturi from so testifying when she was on the stand, and the then-attorney for Petitioner (John Remington Graham) was admonished from eliciting said testimony.

Additionally, the court refused to allow the testimony of Kelli Samuelson, the former wife of the Petitioner, in which testimony she would have recanted earlier statements she had made (in approximately 2002) with regard to an unrelated charge, at that time, against the Petitioner. Said charge was an aggravating offense in the instant case, and raised the instant no-contact violations to the level of felonies.

G. The Petitioner, now represented by a new attorney (Jennifer Chaplinski), is attempting to now file, before the Minnesota Court of Appeals, a new Supplemental Brief which may raise further grounds.

**PETITION UNDER 28 U.S.C. § 2254 FOR WRIT OF
HABEAS CORPUS BY A PERSON IN STATE CUSTODY**

STEVEN SCOTT SAMUELSON v. TOM ROY

ATTACHMENT 2. - Grounds Raised on district court Motion for Release Pending Appeal (form AO 241 question 11 (a) (5)):

1. That the instant charges (violation of a no-contact order) had been elevated to felony level due to a previous conviction (approximately 2002) which was had by way of coercion of a witness (i.e. the alleged victim, Kelli Samuelson), witness tampering and the attempted suborning of perjury. In this, the affidavit of Kelli Samuelson, recanting her earlier statements, and to the authenticity of which she had testified in open court (at the sentencing hearing on the instant case) on January 4th, 2011, was recited.

2. That the alleged victim [in the instant no-contact order matter], Jennifer Bardine, had testified in open court [but not before the jury] that she was not assaulted [by the Petitioner], did not ask for him to be arrested, initiated the contacts by telephone, by leaving messages on the Itasca County Jail's inmate message line, and that the calls were for household necessities.

3. That the State has known, if not from the beginning, then for a very long time that, in the said prosecution for domestic assault, Mme Bardine was neither battered, nor threatened, or victimized in any manner; that, therefore, the proceedings against Mr. Samuelson were a malicious prosecution; and that the said malicious prosecution was the predicate for the issuance of the domestic abuse no contract order issued improvidently by the court without inquiry on November 30, 2009, of violating which the defendant has been charged and convicted.

In summary, a) That the court's order was improvidently issued without inquiry, on the basis of a malicious prosecution by the State, when in fact, as has been proved in the proceedings, there was no domestic assault and no victimization; b) that the defendant's conduct in assisting his lady, supposedly in violating the court's order from December 2 through December 20, 2009, was morally right; and c) that the predicate offense, of first-degree criminal sexual conduct, as adjudicated on May 24, 2002, which raised the level of the instant alleged offense to a felony, was in fact secured by criminal witness tampering and suborning of perjury.

**PETITION UNDER 28 U.S.C. § 2254 FOR WRIT OF
HABEAS CORPUS BY A PERSON IN STATE CUSTODY**

STEVEN SCOTT SAMUELSON v. TOM ROY

ATTACHMENT 3. - Grounds Raised on Motion for Release Pending Appeal before the Minnesota Court of Appeals (form AO 241 question 11 (b) (5)):

Said motion was filed before the Minnesota Court of Appeals, approximately June, 2011 and raised grounds that:

1. Conviction on the predicate offense (in 2002), that elevated the instant charges (violation of a no-contact order) to felony level, was had on the basis of false statements by the alleged victim (Kelli Samuelson), which she was coerced into making, and which she repudiated in her sworn affidavit. Kelli Samuelson had testified as to the authenticity of her affidavit in open court at the sentencing hearing (in the instant case) on January 4th, 2011.

2. That the alleged victim (in the instant no-contact order matter), Jennifer Bardine, had testified in open court (but not before the jury) that she was not assaulted, did not ask for him [the Petitioner] to be arrested, initiated the contacts by telephone, by leaving messages on the Itasca County Jail's inmate message line, and that the calls were for household necessities.

3. That the appeal raises the following issues [and hence is not frivolous or taken for delay]:

a.) Should the Domestic Abuse Act (especially Section 518B.01, Subd. 22, of Minnesota Statutes, in effect at all times material in the proceedings before the district court, and presumably its successor provision enacted in Sections 13-15 of Chapter 229, Minnesota Laws of 2010) be strictly construed, the same as for any other criminal statute, so as to authorize a domestic abuse no-contact order, or conviction for such order, only where some defined form of domestic abuse has in fact been committed against an identified victim, or the identified victim at least credibly claims that such abuse has been committed, and such victim asks for or actually needs such an order?

b.) Should the Domestic Abuse Act (especially Section 518B.01, Subd. 22, of Minnesota Statutes, in effect at all times material in the proceedings before the district court, and presumably its successor provision enacted in Sections 13-15 of Chapter 299, Minnesota Laws of 2010) be construed in conformity with the constitutional right of privacy so as to authorize a domestic abuse no-contact order, separating two persons in an intimate sexual and personal relationship from any contact with each other, only where some defined form of domestic abuse has in fact been committed against an identified victim in the relationship, and such victim at least asks for or actually needs such an order?

c.) May a domestic abuse no-contact order be issued and enforced when there has been no domestic assault or other defined form of domestic abuse on which such order is ostensibly premised, or where the person identified as the victim insists without impeachment or contradiction under oath in open court that there was no victimization and no request or need for such order?

- d.) Where a criminal defendant accused of violating a domestic abuse no-contact order is charged with a felony because of a previous predicate felony conviction within ten years, does such defendant, by reason of *Chambers v. Mississippi*, 410 U. S. 282 (1973), and judicial progeny, have the right to show to the court and jury as an affirmative defense against the enhancement or aggravation that the predicate felony conviction was wrongful because the State's principal witness and alleged victim expressly conceded that she was induced by witness tampering or suborning of perjury to give knowingly false evidence against the accused?
- e.) Where a criminal defendant is accused of violating a no-contact order issued under the Domestic Abuse Act (or its successor provision enacted in Sections 13-15 of Chapter 299, Minnesota Laws of 2010), must the State prove that the disobedience was willful or intentional?
- f.) Did the district court commit prejudicial error in disallowing joint trial of the interrelated charges of domestic assault and violating a domestic abuse no-contact order?
- g.) Did the district court commit prejudicial error in refusing the offers of proof and requests for instructions on the law made in behalf of the accused by his counsel at trial in this cause?
- h.) Should Mr. Samuelson be released pending appeal?

4. That the Defendant (Petitioner), if released, is not likely to commit other crimes or jeopardize the safety of any person.

5. That, in past criminal proceedings, the Defendant (Petitioner) has made all required appearances; has never attempted flight from justice; and is not likely to fail to appear for any further proceedings in this matter. Further, that, if release were granted, the Defendant (Petitioner) would be willing to report regularly to the Itasca County Sheriff as a condition of release.

**PETITION UNDER 28 U.S.C. § 2254 FOR WRIT OF
HABEAS CORPUS BY A PERSON IN STATE CUSTODY**

STEVEN SCOTT SAMUELSON v. TOM ROY

ATTACHMENT 4. - Disposition of PETITION FOR REVIEW OF APPEALS COURT
DECISION (form AO 241 question 11 (c) (7)):

This was a Petition for Review of the Appeals Court's denial of Petitioner's Motion for Release Pending Appeal.

Petitioner's then-attorney, John Remington Graham, refused to file this Petition for Review for what the Petitioner could pay him; and the Petitioner had been denied assistance by the Minnesota State Public Defender's Office. With the deadline imminent for seeking Review of the Appeals Court's denial of his Motion for Release Pending appeal, the Petitioner retained another attorney, Michael Ruffenach, to file the Petition for Review before the Supreme Court; and the same was filed.

Following said filing, attorney Graham became upset that the Petition had been filed, and, by threat, coerced attorney Ruffenach to withdraw from the case; and then, as Petitioner's sole counsel, had the Petition withdrawn from the Minnesota Supreme Court, allowing the filing deadline to pass with no Petition filed. Graham did this wholly contrary to the wishes of the Petitioner, as same were expressed to Graham. The Petitioner (Samuelson) attempted to represent himself (for the matter of the Petition for Review before the Minnesota Supreme Court) and keep the Petition filed before the Minnesota Supreme Court; in this, he sent a letter to the Minnesota Supreme Court stating that Graham was not his attorney on that matter and that he (Samuelson, the Petitioner herein) did not want the Petition withdrawn. But the Minnesota Supreme Court refused to consider, or even file, his letter, and forwarded the same to John Remington Graham.

In this matter of release pending appeal, to which the Petitioner is entitled under the Eighth Amendment to the U.S. Constitution, the Petitioner has taken all possible steps to exhaust all State remedies, and was prevented from seeking Minnesota Supreme Court review of same solely due to misconduct of his then-attorney, John Remington Graham, coupled with violation of due process by the Minnesota Supreme Court (by not allowing Petitioner's filings and communication with the Court on his own behalf, and allowing Graham, who was not authorized to represent Petitioner before the Minnesota Supreme Court, to withdraw Petitioner's petition).

The Petitioner has since fired Mr. Graham.

(Although Petitioner is presently represented, in further proceedings in his appeal before the Minnesota Court of Appeals, by Jennifer Chaplinski, Esq., he appears pro se in the matter of the Petition for Writ of Habeas Corpus herein. Attorney Chaplinski is not retained for, and does not represent Petitioner for purposes of this Petition, and, in this matter, Petitioner appears before the United States District Court on his own behalf, and representing himself).

**PETITION UNDER 28 U.S.C. § 2254 FOR WRIT OF
HABEAS CORPUS BY A PERSON IN STATE CUSTODY**

STEVEN SCOTT SAMUELSON v. TOM ROY

ATTACHMENT 5. - Detail of form AO 241 question 11 (d):

If you did not appeal to the highest state court having jurisdiction, explain why you did not:

The first petition was a Motion for Release Pending Appeal before the state district court.

The second petition was a Motion for Release Pending Appeal before the Minnesota Court of Appeals, which, per Minnesota law, is the manner by which an adverse decision by the district court, on the same issue (i.e. the first petition, ante), is appealed.

The third Petition was a Petition for Review, by the Minnesota Supreme Court, of the adverse decision by the Minnesota Court of Appeals, on the second petition, ante. By the action of the Minnesota Supreme Court, Petitioner was prevented from putting the issue before it, violating his right to due process (see Attachment #4, ante).

The Petitioner has an Eighth Amendment constitutional right to release on reasonable bail, until such time as his conviction has become final and all appeals are exhausted. This right has been denied by the Minnesota courts.

Further, aside from his Motions for Release Pending Appeal, his main case (appeal of the conviction, itself, of violating a no-contact order) remains on appeal to the Minnesota Court of Appeals; but, unless the Petition herein is granted, and due also to refusal of the Minnesota Courts to release him on reasonable bail pending appeal and review of his case, he would remain imprisoned, possibly for most of the term of his sentence, before all state remedies could be exhausted.

The statute under which the Petitioner was convicted (Minnesota Statutes 518B.01, subd. 22) is unconstitutional, in that it allows a judge, on his own initiative, or on motion by the State, to impose an unconstitutional restraint on Petitioner's free speech and intimate association, in circumstances where no such protection has been requested by either the Petitioner, or the party (the alleged "victim") with whom contact by him is prohibited by the no-contact order; and where the contact is welcome and desired by both.

Because the Petitioner would continue to remain imprisoned, for exercising his right to free speech and intimate association, pending the outcome of his appeals, his rights continue to be violated with each day that he serves in prison for exercise of said rights, and **circumstances exist that render such [state] process ineffective to protect the rights of the applicant** (28 USC 2254 (b) (1) (B) (ii)) and he has no adequate state remedy.

**PETITION UNDER 28 U.S.C. § 2254 FOR WRIT OF
HABEAS CORPUS BY A PERSON IN STATE CUSTODY**

STEVEN SCOTT SAMUELSON v. TOM ROY

ATTACHMENT 6. - Minnesota Statutes Sec. 518B.01, subd. 22, under which the Petitioner was convicted, as said statute was in effect at the time of the alleged offenses (December, 2009 through January 2010). The Minnesota courts have applied this statute so as to authorize them to issue no-contact orders in any case involving the below stated criminal proceedings, regardless of whether the allegations constituting the basis of said proceedings are proven, and regardless of whether the alleged victim, or any other person has requested protection:

Subd. 22. Domestic abuse no contact order. (a) A domestic abuse no contact order is an order issued by a court against a defendant in a criminal proceeding for:

- (1) domestic abuse;**
- (2) harassment or stalking charged under section 609.749 and committed against a family or household member;**
- (3) violation of an order for protection charged under subdivision 14; or**
- (4) violation of a prior domestic abuse no contact order charged under this subdivision.**

It includes pretrial orders before final disposition of the case and probationary orders after sentencing.

(b) A person who knows of the existence of a domestic abuse no contact order issued against the person and violates the order is guilty of a misdemeanor.

(c) A person is guilty of a gross misdemeanor who knowingly violates this subdivision within ten years of a previous qualified domestic violence-related offense conviction or adjudication of delinquency. Upon a gross misdemeanor conviction under this paragraph, the defendant must be sentenced to a minimum of ten days' imprisonment and must be ordered to participate in counseling or other appropriate programs selected by the court as provided in section 518B.02. Notwithstanding section 609.135, the court must impose and execute the minimum sentence provided in this paragraph for gross misdemeanor convictions.

(d) A person is guilty of a felony and may be sentenced to imprisonment for not more than five years or to payment of a fine of not more than \$10,000, or both, if the person knowingly violates this subdivision: (1) within ten years of the first of two or more previous qualified domestic violence-related offense convictions or adjudications of delinquency; or (2) while possessing a dangerous weapon, as defined in section 609.02, subdivision 6. Upon a felony conviction under this paragraph in which the court stays imposition or execution of sentence, the court shall impose at least a 30-day period of incarceration as a condition of probation. The court also shall order that the defendant participate in counseling or other appropriate programs selected by the court. Notwithstanding section 609.135, the court must impose and execute the minimum sentence provided in this paragraph for felony convictions.

(e) A peace officer shall arrest without a warrant and take into custody a person whom the peace officer has probable cause to believe has violated a domestic abuse no contact order, even if the violation of the order did not take place in the presence of the peace officer, if the existence of the order can be verified by the officer. The person shall be held in custody for at least 36 hours, excluding the day of arrest, Sundays, and holidays, unless the person is released earlier by a judge or judicial officer. A peace officer acting in good faith and exercising due care in making an arrest pursuant to this paragraph is immune from civil liability that might result from the officer's actions.

State of Minnesota
Steele County

District Court
Third District

Court File Number: 74-CR-11-254

Case Type: Crim/Traf Mandatory

Notice of Filing of Order

JOEL DAVID EATON
104 1/2 W BROADWAY STE 204
OWATONNA MN 55060

State of Minnesota vs KEITH LEE KELLING

You are notified that an order was filed on this date.

Dated: June 28, 2011

Kristine Maiers
Court Administrator
Steele County District Court
111 E. Main Street
Owatonna MN 55060
507-444-7700

cc: DANIEL ANDREW MCINTOSH

JUN 29 2011

STATE OF MINNESOTA
COUNTY OF STEELE

DISTRICT COURT
CRIMINAL DIVISION
THIRD JUDICIAL DISTRICT

State of Minnesota,
Plaintiff,

File No. 74-CR-11-254

vs.

ORDER

Keith Lee Kelling,
Defendant.

The above-entitled matter came on for hearing before the Honorable Casey J. Christian of the Steele County District Court on February 16, 2011, for Mr. Kelling's Rule 8 appearance and pursuant to the State's motion for issuance of a Domestic Abuse No Contact Order.

Jennifer Dunn-Foster, Assistant Steele County Attorney, appeared on behalf of the state. Attorney Joel D. Eaton, appeared on behalf of Defendant, Keith Lee Kelling, who was also present.

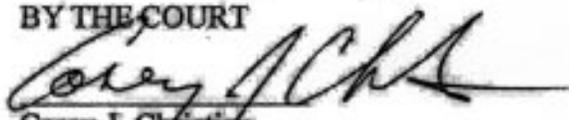
Based upon the record, the Court makes the following:

ORDER

1. The State's Petition for a Domestic Abuse No Contact Order is **DENIED** because Minnesota Statute Section 629.75 is unconstitutionally vague in violation of due process.
2. The attached Memorandum is incorporated herein by reference.

DATED: 6/23/11

BY THE COURT


Casey J. Christian
District Court Judge
Third Judicial District

Court Administrator
Steele County, MN

FILED

Date 6-28-11

By [Signature]

MEMORANDUM

I. INTRODUCTION.

Effective August 1, 2010, the statutory provision related to Domestic Abuse No Contact Orders was amended and moved from Minnesota Statute Section 518B.01, subd. 22 to Minnesota Statute Section 629.75. The substance of the amended language is found in Minn. Statute Section 629.75, subd. 1(b) and (c), which states:

(b) A domestic abuse no contact order may be issued as a pretrial order before final disposition of the underlying criminal case or as a postconviction probationary order. *A domestic abuse no contact order is independent of any condition of pretrial release or probation imposed on the defendant. A domestic abuse no contact order may be issued in addition to a similar restriction imposed as a condition of pretrial release or probation.*

(c) *A no contact order under this section shall be issued in a proceeding that is separate from but held immediately following a proceeding in which any pretrial release or sentencing issues are decided.*

(emphasis added). The prior Domestic Abuse No Contact Order provision found in Minnesota Statute Section 518B.01, subd. 22 did not contain the emphasized language above. Furthermore, prior to the amendment of the statute, Domestic Abuse No Contact Orders were often issued as a condition of release. The district court would determine whether to issue a Domestic Abuse No Contact Order as a condition of release by considering whether “(1) release of the person poses a threat to the alleged victim, another family or household member, or public safety; or (2) there is a substantial likelihood the person will fail to appear at subsequent proceedings.” Minn. Stat. § 629.72, subd. 2. In fact, Minnesota Statute Section 629.72, subd. 2. requires that “[b]efore releasing a person arrested for or charged with a crime of domestic abuse, harassment, violation of an order for protection, or violation of a Domestic Abuse No Contact Order, the judge shall make finding on record, to the extent possible, concerning the determination made in accordance with the factors specified in clauses (1) and (2) [above].” However, the new language found in Minnesota Statute Section 629.75, subd. 1(b) and (c) clearly states that a Domestic Abuse No Contact Order is “independent of any condition of pretrial release,” “may be issued in addition to a similar restriction imposed as a condition of pretrial release,” and is “issued in a proceeding that is separate from ... a proceeding in which any pretrial release or sentencing issues are decided.” It appears that by adding this language and moving the provision to Section 629.75, the

legislature intended to allow the district court to issue a Domestic Abuse No Contact Order even where the defendant is released after posting the unconditional bail amount. *See State v. Martin*, 743 N.W.2d 261, 265 (Minn. 2008) (noting that conditional release may be offered only as an alternative to money bail without conditions). However, by adding language stating that a Domestic Abuse No Contact Order is "independent" of pretrial release conditions and that such an order must be issued at a proceeding "separate from a proceeding in which pretrial release or sentencing issues are decided," it is explicitly clear that Minnesota Statute Section 629.72, subdivision 2 and Minnesota Rules of Criminal Procedure 6.02, which contain factors to consider when setting terms of conditional release, are inapplicable to the recently amended Domestic Abuse No Contact Order Statute.

II. Void for Vagueness.

The void-for-vagueness doctrine is grounded in the Due Process Clause of the Fifth and Fourteenth Amendments of the Federal Constitution and Article I Section 7 of the Minnesota Constitution. Under the void-for-vagueness doctrine, a statute can violate due process for two reasons. First, a statute is unconstitutionally vague if it fails to give a person of ordinary intelligence fair notice that his contemplated conduct is forbidden by the statute. *State v. Rowke*, 773 N.W.2d 913, 917 (Minn. 2009); *Papachristou v. City of Jacksonville*, 405 U.S. 156, 162, 92 S.Ct. 839, (1972). Second, a statute is unconstitutionally vague if it authorizes or encourages arbitrary and discriminatory enforcement. *Id.* A statute authorizes or encourages arbitrary and discriminatory enforcement when it lacks adequate standards restricting the discretion of governmental authorities who apply it. *See Giaccio v. Pennsylvania*, 382 U.S. 399, 402-03, 86 S.Ct. 518, 520-21 (1966); *Smith v. Goguen*, 415 U.S. 566, 572-73, 94 S.Ct. 1242, 1247 (1974). The courts have noted that the second prong of the void-for-vagueness doctrine is of greater importance. *Goguen*, 415 U.S. at 572-73; *City of Mankato v. Fetchenhier*, 363 N.W.2d 76, 78 (Minn. Ct. App. 1985). Minnesota Statute Section 629.75 does not run afoul of prong one of the void-for-vagueness doctrine because it clearly prohibits a knowing violation of a Domestic Abuse No Contact Order. The problem with Minnesota Statute Section 629.75 lies in prong two of the void-for-vagueness doctrine, in that the statute completely lacks standards guiding and restricting the discretion of the district court when determining whether to issue a Domestic Abuse No Contact Order.

When a statute imposes criminal penalties, a higher standard of clarity and certainty in the statute is required. *State v. Newstrom*, 371 N.W.2d 525, 528 (Minn. 1985) (citing *Kolender v. Lawson*, 461 U.S. 352, 358 n.8, 103 S.Ct. 1855, 1859 n.8, (1983)). Similarly, a higher level of scrutiny applies when a statute implicates a fundamental constitutionally protected activity. *State v. Campbell*, 756 N.W.2d 263, 269 (Minn. Ct. App. 2008) (citing *State v. Hipp*, 213 N.W.2d 610, 614 (Minn. 1973)). Lastly, when a statute implicates freedom of speech under the First Amendment, the “defendant is permitted to challenge the statute on its face, that is challenge the hypothetical vagueness of the statute as applied to others, even if the statute is neither vague nor overbroad as applied to the defendant.” *Id.* When a statute does not implicate the First Amendment, the court must first apply the void-for-vagueness doctrine to the specific facts of the case at hand before considering a facial challenge. *Village of Hoffman Estates v. Flipside, Hoffman Estates, Inc.*, 455 U.S. 489, 494-95, 102 S.Ct. 1186, 1191 (1982).

a. Minnesota Statute Section 629.75 is quasi-criminal requiring a higher level of clarity and certainty.

Strictly speaking, Minnesota Statute Section 629.75 is not purely a criminal statute. However, the statute defines a Domestic Abuse No Contact Order as “an order issued by a court against a defendant in a criminal proceeding or a juvenile offender in a delinquency proceeding ...” Minn. Stat. § 629.75, subd. 1. Furthermore, the statute provides penalties for violation of a Domestic Abuse No Contact Order. *See* Minn. Stat. § 629.75, subd. 2. Because a Domestic Abuse No Contact Order can only be issued when a defendant has been charged with a criminal offense and the statute provides penalties for violation of such orders, the statute appears to be criminal in nature. Nevertheless, the Minnesota Courts have labeled similar statutes, such as the Harassment Restraining Order statute contained in Minnesota Statute Section 609.748, as “quasi-criminal.” *See Dunham v. Roer*, 708 N.W.2d 552, 567-68 (Minn. Ct. App. 2006) (concluding that the Harassment Restraining Order statute is “quasi-criminal” because it provides for criminal punishment even though it is civil in form). At the very least, Minnesota Statute Section 629.75 is “quasi-criminal” because it provides for punishment. *See id.* For purposes of vagueness analysis, “quasi-criminal” statutes are tantamount to criminal statutes making Minnesota Statute Section 629.75 subject to the higher standard of clarity and certainty. *See id.* at 568 (citing *Women’s Med. Ctr. of NW Houston v. Bell*, 248 F.3d 411, 422 (5th Cir.2001)).

b. Minnesota Statute Section 629.75 implicates the fundamental right of freedom of intimate associations warranting a higher level of scrutiny.

Freedom of intimate association is a “fundamental element of personal liberty.” *Roberts v. Jaycees*, 468 U.S. 609, 618, 104 S.Ct. 3244, 3249 (1984); see *State v. Gray*, 413 N.W.2d 107, 113 (1987) (declining to determine whether the fundamental right of freedom of intimate association is protected under the First Amendment or as an intrinsic element of personal liberty); *State v. Holiday*, 585 N.W.2d 68, 71 n.1 (Minn. Ct. App. 1998) (noting that the Minnesota Courts have treated freedom of association as a conditional right closely associated with First Amendment protections). As stated by the United States Supreme Court, “choices to enter into and maintain certain intimate human relationships must be secured against undue intrusion by the State because of the role of such relationships in safeguarding the individual freedom that is central to our constitutional scheme.” *Jaycees*, 468 U.S. at 618. Protecting such relationships from unwarranted state interference is central to any concept of liberty. *Id.* at 619. Issuance of a Domestic Abuse No Contact Order implicates this fundamental right to form and maintain intimate relationships by making it a criminal offense to make contact with a “family or household member.” See Minn. Stat. § 629.75; Minn. Stat. § 518B.01. In fact, Domestic Abuse No Contact Orders can only be issued when the alleged victim of the criminal offense is a “family or household member.” See Minn. Stat. § 629.75; Minn. Stat. § 518B.01. Family and household members are precisely the class of persons the right to freedom of intimate associations is meant to protect. Thus, Minnesota Statute Section 629.75 implicates this fundamental right warranting a higher level of scrutiny.

c. Minnesota Statute Section 629.75 implicates freedom of speech under the First Amendment of the Federal Constitution and Article I Section 3 of the Minnesota Constitution warranting a facial challenge.

In *Dunham v. Roer*, 708 N.W.2d 552 (Minn. Ct. App. 2006) the Minnesota Court of Appeals considered whether Minnesota Statute Section 609.748 (Harassment Restraining Order Statute) implicates freedom of speech under the First Amendment. When addressing this issue, the court noted that “the focus of the statute is to prohibit repeated and unwanted acts, words, or gestures that have or are intended to have a substantial adverse effect on the safety, security, or privacy of another.” *Dunham* 708 N.W.2d at 566. The court concluded that the statute does not implicate freedom of speech under the First Amendment because “the harassment statute only

regulates speech or conduct that constitutes 'fighting words,' 'true threats,' or substantial invasions of one's privacy." *Id.*

Minnesota Statute Section 629.75 is not so narrowly written. There are no limiting terms indicating that a Domestic Abuse No Contact Order or violation of such an order only applies to unprotected speech. *See* Minn. Stat. § 629.75. Furthermore, the *Dunham* decision was based on the principle that the State can regulate conduct that invades the privacy of another. 708 N.W.2d at 566 (*citing Gormley v. Dir., Conn. State Dept. of Prob.*, 632 F.2d 938, 942 (2d Cir. 1980)). Under the Harassment Restraining Order Statute, the victim of harassment is the party seeking a restraining order to prohibit conduct that is intrusive upon his or her privacy. *See id.*; Minn. Stat. § 609.748. However, the Domestic Abuse No Contact Order Statute does not even indicate who can petition the court for a Domestic Abuse No Contact Order, nor does it indicate whether it is appropriate to issue such an order over the objection of the alleged victim of the underlying crime. *See* Minn. Stat. § 629.75.

In other words, Minnesota Statute Section 629.75 is not limited to unprotected speech and does not contemplate the privacy interests of the alleged victim of the underlying crime. At its core, issuance of a Domestic Abuse No Contact Order constitutes a prior restraint on speech because it prohibits speech before it is uttered. *See Alexander v. United States*, 509 U.S. 544, 550, 113 S.Ct. 2766, 2771 (1993) (defining prior restraint as forbidding certain communications in advance of the time that such communications are to occur, and noting that restraining orders and permanent injunctions are "classic examples" of prior restraints on speech). Furthermore, such an order cannot be classified as a time, manner, and place restriction because it is directed at conduct and speech that could potentially occur at any time or place. *See Dunahm*, 708 N.W.2d at 565 (concluding that the Harassment Statute is not a time or place restriction on speech because it prohibits conduct that could potentially occur at any time or place). Thus, Minnesota Statute Section 629.75 implicates freedom of speech under the First Amendment of the Federal Constitution and Article I Section 3 of the Minnesota Constitution warranting a facial challenge.

III. Minnesota Statute Section 629.75 is Facially Unconstitutional because it Lacks Adequate Standards Guiding and Restricting the Discretion of the District Court when Determining whether to Issue a Domestic Abuse No Contact Order.

As illustrated above, Minnesota Statute Section 629.75 implicates freedom of speech under the First Amendment. When a statute implicates the First Amendment, the "defendant is

permitted to challenge the statute on its face, that is challenge the hypothetical vagueness of the statute as applied to others, even if the statute is neither vague nor overbroad as applied to the defendant." *Campbell*, 756 N.W.2d at 269 (citing *Hipp*, 213 N.W.2d at 614). The Domestic Abuse No Contact Order Statute contains absolutely no guidance or standards for the district court to apply when determining whether to issue such an order. See Minn. Stat. § 629.75. The statute does define what a Domestic Abuse No Contact Order is, and states that such an order "may be issued as a pretrial order before final disposition of the underlying criminal case or as a postconviction probationary order," but the statute is silent regarding: (1) what factors the court is to consider when determining whether to issue a Domestic Abuse No Contact Order, (2) which evidentiary standard is applied to issuance of a Domestic Abuse No Contact Order (i.e. preponderance, clear and convincing, etc...), (3) whether a petition is required for issuance of a Domestic Abuse No Contact Order, (4) who may petition the court for a Domestic Abuse No Contact Order, (5) whether a Domestic Abuse No Contact Order may be issued over the objection of the alleged victim of the domestic abuse, (6) whether a Domestic Abuse No Contact Order may be issued over the objection of the State, (7) when, if ever, a Domestic Abuse No Contact Order expires, (8) and what authority the court has to modify, lift, or terminate a Domestic Abuse No Contact Order. See Minn. Stat. § 629.75. The lack of standards in the statute also greatly inhibits a defendant's ability to challenge the issuance of a Domestic Abuse No Contact Order. Without knowing what factors the courts will consider, a defendant has no way of knowing how to argue against the issuance of a Domestic Abuse No Contact Order.

The lack of procedural standards and guidance is made even more apparent when comparing Minnesota Statute Section 629.75 to the statutory provisions governing Orders for Protection and Harassment Restraining Orders. See Minn. Stat. § 518B.01 (Order for Protection); Minn. Stat. § 609.748 (Harassment Restraining Orders). Both the Order for Protection and Harassment Restraining Order statutes contain extensive procedural requirements and guidance including but not limited to: (1) who may petition the court for relief, (2) what must be alleged and contained in the petition, (3) notice and service requirements, (4) when an Order for Protection or Harassment Restraining Order can be issued *ex parte*, (5) under what circumstances a hearing is required, (6) what relief can be provided by the court, (7) procedures for extending an Order for Protection or Harassment Restraining Order, and (7) procedures for modifying or vacating an Order for Protection or Harassment Restraining Order. See Minn. Stat. § 518.01;

Minn. Stat. § 609.748. No similar standards and guidance are provided in the Domestic Abuse No Contact Order Statute.

Furthermore, this is not a situation where the courts can save the statute by imposing *post facto* limitations on discretion through case-by-case adjudications because no such limitations appear on the face of the statute. See *State v. Newstrom*, 371 N.W.2d 525, 529 (Minn. 1985) (courts may cure a statute of vagueness by placing a limiting construction on its terms, but courts cannot cure a penal statute by imposing *post facto* limitations on discretion where no such restraints appear on the face of the legislation). Similar to other statutes the courts have declared void for containing no standards guiding and restricting the discretion of those that apply and enforce them, Minnesota Statute Section 629.75 is impermissibly vague. See e.g. *Smith v. Goguen*, 415 U.S. 566, 94 S.Ct. 1242 (1974) (striking down a statute that made it a crime to “publicly treat contemptuously” the United States flag because the statute “sets forth the standards so indefinitely that police, court, and jury are free to react to nothing more than their own preferences for treatment of the flag”); *Giaccio v. State of Pennsylvania*, 382 U.S. 399, 86 S.Ct. 518 (1966) (striking down a statute that allowed a jury to impose costs of prosecution on an acquitted defendant because the statute contains “no standards at all, nor does it place any conditions of any kind upon the jury’s power to impose costs [of prosecution]”); *State v. Newstrom*, 371 N.W.2d 525, 528 (Minn. 1985) (striking down a compulsory school attendance statute because the statute provided no guidance to enforcement officials limiting their discretion in determining what credentials were “essentially equivalent” to those of a licensed teacher).

Due to the lack of any standards found in Minnesota Statute Section 629.75, the district courts are left with unfettered discretion in determining when to issue a Domestic Abuse No Contact Order. This unfettered discretion creates a great danger that the statute will be applied arbitrarily and inconsistently. See *Rourke*, 773 N.W.2d at 917 (a statute is unconstitutionally vague if it authorizes or encourages arbitrary and discriminatory enforcement); see also *Groguen*, 415 U.S. at 574 (noting that the more important aspect of the void-for-vagueness doctrine is the requirement that the legislature establish minimal guidelines to govern enforcement); *Fetchenhier*, 363 N.W.2d at 78 (same). Because Minnesota Statute Section 629.75 lacks standards guiding and restricting the discretion of the district court in violation of due process, the statute is unconstitutionally vague.

IV. Even Assuming Minnesota Statute Section 629.75 does not Implicate Freedom of Speech, the Statute is Still Unconstitutional as Applied to Mr. Kelling and as applied *in toto* because the Statute Lacks Adequate Standards Guiding and Restricting the Discretion of the District Court when Determining whether to Issue a Domestic Abuse No Contact Order.

When a statute does not implicate the First Amendment, the court must first apply the void-for-vagueness doctrine to the facts of the case before considering a facial challenge. *Flipside*, 455 U.S. at 494-95; see also *State v. Reha*, 483 N.W.2d 688, 691 (Minn. 1992) (a person whose conduct is clearly proscribed cannot complain of the vagueness of the law as applied to other). After determining that the statute is impermissibly vague as applied to the facts of the case at hand, the court must then determine whether the statute is impermissibly vague on its face. *Id.* "To succeed in a facial challenge to vagueness outside the context of the First Amendment, a complainant must demonstrate that the law is impermissibly vague in all its application." *Dunham*, 708 N.W.2d at 568 (quoting *State v. Eryeart*, 676 N.W.2d 311, 320 (Minn. Ct. App. 2004)).

Most of the vagueness problems of Minnesota Statute Section 629.75, discussed above, are applicable to Mr. Kelling. In the instant case, the State petitioned the district court for a Domestic Abuse No Contact Order. Based on the record, it appears that the alleged victim supports the Domestic Abuse No Contact Order Petition. The State argued that the probable cause portion of the complaint "stands for itself," warranting a Domestic Abuse No Contact Order. Even with these facts, the following vagueness issues are still present: (1) what factors should the court consider when determining whether issuance of a Domestic Abuse No Contact Order is appropriate in Mr. Kelling's case, (2) which evidentiary standard should be applied when determining whether to issue of a Domestic Abuse No Contact Order in Mr. Kelling's case (i.e. preponderance, clear and convincing, etc...), (3) whether the State is the appropriate party to bring a Domestic Abuse No Contact Order petition, (4) if the court issues a Domestic Abuse No Contact Order, when, if ever, does the order expire, and (5) if the court issues a Domestic Abuse No Contact Order, what authority does the court have to modify, lift, or terminate the order. Mr. Kelling is also placed in a position where he is unsure how to challenge the Domestic Abuse No Contact Order Petition because the statute does not indicate what factors the court will consider. Applying the void-for-vagueness doctrine to the facts of Mr. Kelling's case shows that the statute is impermissibly vague as applied to him because it lacks any standards guiding and restricting the discretion of the district court.

Furthermore, and as illustrated above, the Domestic Abuse No Contact Order Statute is impermissibly vague in all circumstances. There are simply no standards and guidance in the statute making it ripe for arbitrary and discriminatory application. See *Rourke*, 773 N.W.2d at 917 (Minn. 2009); *Goguen*, 415 U.S. at 572-73. And as noted, this is not a situation where the courts can save the statute by imposing *post facto* limitations on discretion through case-by-case adjudications because no such limitations appear on the face of the statute. See *Newstrom*, 371 N.W.2d at 529 (Minn. 1985) (courts cannot cure a penal statute by imposing *post facto* limitations on discretion where no such restraints appear on the face of the legislation). Even assuming that Minnesota Statute Section 629.75 does not implicate the First Amendment, the statute is unconstitutionally vague under due process of law as applied to Mr. Kelling and as applied *in toto* because it lacks standards guiding and restricting the discretion of the district court.

ATTACHMENT # 8

State of Minnesota
Itasca County

District Court
9th Judicial District

Court File Number: 31-CR-10-169

Case Type: Crim/Traf Mandatory

Notice of Filing of Order

JOHN R GRAHAM
180 HAUT DE LA PAROISSE
ST-AGAPIT LOTB
QUEBEC G0S 1Z0 CANADA

State of Minnesota vs STEVEN SCOTT SAMUELSON

You are notified that an order was filed on this date.

Dated: February 1, 2011

James Vilt
Court Administrator
Itasca County District Court
123 Northeast 4th Street
Grand Rapids Minnesota 55744
218-327-2870

cc: TODD SCOTT WEBB

STATE OF MINNESOTA

IN DISTRICT COURT

COUNTY OF ITASCA

NINTH JUDICIAL DISTRICT

State of Minnesota,

File #: 31-CR-10-169

Plaintiff,

vs.

ORDER

Steven Scott Samuelson,

Defendant.

The above-entitled matter came before the undersigned judge of District Court pursuant to the defendant's Motion for Release Pending Appeal. The parties agreed that the matter would be taken under advisement by the Court based upon the submissions. The State declined to submit anything. The Plaintiff, State of Minnesota, is represented by Todd Webb, Assistant County Attorney. The defendant is represented by J. Remington Graham, Attorney at Law.

Based on the moving papers, the Court makes the following:

ORDER

1. The Defendant's Motion for Release Pending Appeal is denied.

Let the attached Memorandum be made a part hereof.

IT IS SO ORDERED:

Dated this 1st day of February 2011.

BY THE COURT:



Jon A. Maturi
Judge of District Court

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FEB 01 2011

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MEMORANDUM

The defendant brings this motion pursuant to Minn.R.Crim.P. 28.02, Subd. 7(3), which requires that a defendant seeking release from incarceration pending appeal must first apply to the district court before seeking relief from the appellate court.

The burden of proving that release is appropriate falls upon the defendant. Minn.R.Crim.P. 28.02, Subd. 7(2). When a defendant has been sentenced to incarceration, to obtain release pending appeal, the defendant "must establish to the Court's satisfaction that:

- (a) The appeal is not frivolous or taken for delay; and
- (b) No substantial risk exists that the defendant:
 - (i) Will fail to appear to answer the judgment following the conclusion of the appellate proceedings;
 - (ii) Is likely to commit a serious crime, intimidate witnesses, or otherwise interfere with the administration of justice.

Id.

The defendant has made no such showing in the present case. The entire defense memorandum in support of the present motion is a summary of the defendant's arguments on appeal. The memorandum makes no attempt to address the questions of whether the defendant will appear at the conclusion of appellate proceedings or whether the defendant is likely, or unlikely, to engage in any criminal acts, intimidate witnesses, or otherwise interfere with the administration of justice. Accordingly, the defendant's Motion for Release Pending Appeal is denied.

STATE OF MINNESOTA
IN COURT OF APPEALS



State of Minnesota,

ORDER

Respondent,

#A11-326

vs.

Steven Scott Samuelson,

Appellant.

Considered and decided by Johnson, Chief Judge; Worke, Judge; and Ross, Judge.

**BASED ON THE FILE, RECORD, AND PROCEEDINGS, AND FOR THE
FOLLOWING REASONS:**

Appellant has filed a motion for release pending this appeal from his conviction on multiple felony counts of violating a no-contact order. The state has not filed a response to the motion.

A defendant seeking release pending appeal must establish that

(a) the appeal is not frivolous or taken for delay;
and

(b) no substantial risk exists that the defendant:

(i) will fail to appear to answer the judgment following the conclusion of the appellate proceedings;

(ii) is likely [to] commit a serious crime, intimidate witnesses, or otherwise interfere with the administration of justice.

Minn. R. Crim. P. 28.02, subd. 7(2). The motion must first be made to the district court. *Id.*, subd. 7(3). In this case, the district court denied appellant's motion for release pending appeal, but appellant has not provided this court with a copy of that order.

The district court is in a "far better position than an appellate court" to assess the factors governing release pending appeal. *State v. McKinley*, 424 N.W.2d 586, 586-87 (Minn. App. 1988); *see also State v. Johnson*, 447 N.W.2d 605, 607 (Minn. App. 1989) (noting appellate court cannot hastily acquire familiarity with defendant required to assess factors governing release). A motion for release that addresses the release factors "only in conclusory fashion" is "entitled only to the most summary consideration." *McKinley*, 424 N.W.2d at 587.

Appellant's motion focuses on challenges to a 2002 conviction for first-degree criminal sexual conduct, which was apparently used to enhance his current offenses to felonies, and a 2009 domestic-assault charge, which the prosecution dismissed. The merits of an appeal are relevant to a motion for release only in the negative sense that the motion may be denied if the appeal appears to be "frivolous or taken for delay." Minn. R. Crim. P. 28.02, subd. 7(2)(b)(i). And appellant has not shown that these issues, even if meritorious, are within the scope of this appeal.

Appellant has not supported his motion with a bail evaluation or a presentence investigation, or other factual record providing this court with information equivalent to that possessed by the district court when it denied his motion for release pending appeal. Appellant relies heavily on conclusory statements made by counsel, including statements

as to appellant's community ties. But these statements are not supported by a factual record, and fall far short of the evidence available to the district court. Therefore, we conclude that appellant has not made the showing required to obtain release pending appeal.

IT IS HEREBY ORDERED that appellant's motion for release pending appeal is denied.

Dated: July 12, 2011

BY THE COURT

/s/

Matthew E. Johnson
Chief Judge

**PETITION UNDER 28 U.S.C. § 2254 FOR WRIT OF
HABEAS CORPUS BY A PERSON IN STATE CUSTODY**

STEVEN SCOTT SAMUELSON v. TOM ROY

ATTACHMENT 10. - GROUND THREE for relief - answer to question (a) (Form AO 241, p. 9)

Supporting facts for Ground Three:

In summer, 2011, while incarcerated at the Minnesota Correctional Facility (MCF), at Stillwater, Minn., where he worked in the kitchen of same; while so working, Petitioner suffered a deep cut on his hand. He requested medical treatment, but none was given until several days later. By that time, and due to the lack of first aid and lack of immediate administration of antibiotics, the laceration had progressed to what appeared to be a condition known as "Sepsis" (a blood infection) which had spread, and was affecting his whole arm. When he was finally seen by medical staff, he was told that if the condition didn't improve, he could suffer amputation of the hand. He was then given antibiotics, and the condition improved but has not fully gone away. It has recurred and has been more specifically diagnosed as "Mercer" (a staph infection which may be caused by untreated Sepsis), and has migrated to other parts of his body, affecting about 50% of same, including his hip.

In January, 2011, the Petitioner requested, at MCF-Faribault, to see a doctor for the resultant hip pain, but over a week passed without his being given medical attention. Additionally, the Petitioner has been periodically denied his prescribed medications for days at a time; and the medications that he had when at MCF-Stillwater were not transferred to MCF-Faribault when the Petitioner was moved there, and so he has been denied those medications since he was moved.

It is not reasonable that Petitioner should risk amputation of his hand, and substantial bodily damage due to Mercer, for returning his fiancée's desperate telephone calls. This absurd result cannot have been what the Minnesota legislature intended when enacting M.S. 518B.01 subd. 22; and it is not within the bounds of the U.S. Constitution.

**PETITION UNDER 28 U.S.C. § 2254 FOR WRIT OF
HABEAS CORPUS BY A PERSON IN STATE CUSTODY**

STEVEN SCOTT SAMUELSON v. TOM ROY

ATTACHMENT 11. - Testimony of Jennifer Bardine, in open court hearing August 31st, 2010
(the jury was not permitted to hear this testimony at trial).

Jennifer Bardine, has unequivocally stated in sworn testimony under oath on August 31, 2010,
officially transcribed as follows:

“Q. Jennifer, are you aware that Steven Samuelson is charged with acts of domestic violence?”

“A. Yes.

“Q. That is, he’s charged with battering?”

“A. Yes, I’m aware

“Q. And also of causing you to fear for your own safety?”

“A. Yes.

“Q. And you also understand that he’s charged with contacting you on several occasions contrary to no contact orders of the court?”

“A. Yes.

“Q. Okay. Now I’m going to ask you, you are the individual?”

“A. The victim.

“Q. Who is supposed to have been assaulted, right?”

“A. Yes.

“Q. And you are the person with whom he made contact?”

“A. Yes.

“Q. On several occasions while a no contact order of the court was outstanding?”

“A. Yup.

“Q. You understand all that?”

“A. Yes.

“Q. And on or about the 25th of November, 2009, did Mr. Samuelson do anything by way of an assault or causing you to be fearful of harm or by way of a battery or hitting or anything of the kind?”

“A. No.

“Q. No?

“A. No.

“Q. Did you ever ask that Mr. Samuelson should be arrested?

“A. No.

“Q. Did you ask that he should ever be charged?

“A. Nope.

“Q. Do you feel that in any way you were victimized by Mr. Samuelson?

“A. No, we were only arguing.

“Q. When Mr. Samuelson contacted you, were those contacts welcome or unwelcome?

“A. Welcome.

“Q. How did you communicate your wishes to him?

“A. I left messages on the message line.

“Q. What message line?

“A. In jail.

“Q. So you – were these by e-mail?

“A. No, it’s a phone number I dial and you type in or press in the first three initials of his last name and you have about 30 seconds to leave a message.

“Q. What did you contact him for?

“A. Different things about the house.

“Q. Like what?

“A. Like the furnace breaking down, how to get wood, um —

“Q. Domestic necessities?

“A. Yeah.”

Jennifer Bardine elaborated the foregoing testimony in greater detail on January 4, 2011 (the sentencing hearing).

**PETITION UNDER 28 U.S.C. § 2254 FOR WRIT OF
HABEAS CORPUS BY A PERSON IN STATE CUSTODY**

STEVEN SCOTT SAMUELSON v. TOM ROY

ATTACHMENT 12 - ADDITIONAL GROUNDS FOR RELIEF

GROUND FIVE:

In proceedings on the instant case, the Petitioner's right of Due Process was violated because the Judge (Maturi) would not allow counsel for the Petitioner to challenge the conviction on a predicate offense (1st degree criminal sexual conduct - approx. 2002) on which the Petitioner had been induced to plead guilty by use of false statements being then made by his then wife, Kelli Samuelson. Said Kelli Samuelson was coerced into making said statements by threat of loss of her children; and has now recanted said statements. Kelli Samuelson made an affidavit recanting said statements, and, at Petitioner's sentencing hearing on the instant offense, January 4th, 2011, Kelli testified in open court as to the affidavit's authenticity and validity. Please see attachment #13 - Affidavit of Kelli Samuelson, post. The effect of the presence of this predicate offense, unchallenged, was to elevate the instant charges of violation of a no-contact order to felony level offenses, thus allowing the Judge to sentence Petitioner to prison time for same.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

The trial court, by Judge Maturi, repeatedly denied motions of Petitioner's attorney, John Remington Graham, to raise a challenge to Petitioner's conviction on the said predicate offense, and did not allow Kelli Samuelson to testify at Petitioner's trial on the instant charges. Had she been allowed to testify, she would have affirmed her affidavit (Attachment #13), as she did at the sentencing hearing on January 4th, 2011. Judge Maturi, nonetheless, sentenced the instant charges (violation of a no-contact order) as felonies.

(b) If you did not exhaust your state remedies on Ground Five, explain why:

This issue is part of the pending appeal. But the Petitioner is presently, and unconstitutionally, incarcerated for exercise of his First and Ninth (right of intimate association) Amendment rights, and the time required for the appeal process, possibly beyond the Minnesota Court of Appeals, is such that circumstances exist that render such process ineffective to protect the rights of the applicant which are presently being violated each day that he remains so incarcerated. Even if the conviction were reversed on appeal, the Petitioner would, by that time, likely have been caused to serve most or all of his sentence under the erroneous judgement.

(c) **Direct Appeal of Ground Five:**

(1) If you appealed from the judgment of conviction, did you raise this issue? Yes.

(2) If you did not raise this issue in your direct appeal, explain why:

(d) Post-Conviction Proceedings:

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court? Yes.

(2) If your answer to Question (d)(1) is “Yes,” state:

Type of motion or petition: Motion for Release Pending Appeal

Name and location of the court where the motion or petition was filed:

Minnesota District Court, Itasca County (Judge Maturi), 123 N.E. 4th St., Grand Rapids, Minn.

Docket or case number (if you know):

31-CR-10-169

Date of the court’s decision: 02/01/2011

Result (attach a copy of the court’s opinion or order, if available):

Denied. Please see Attachment # 8, ante

(3) Did you receive a hearing on your motion or petition? No.

(4) Did you appeal from the denial of your motion or petition? Yes.

(5) If your answer to Question (d)(4) is “Yes,” did you raise this issue in the appeal? Yes.

(6) If your answer to Question (d)(4) is “Yes,” state:

Name and location of the court where the appeal was filed:

Minnesota Court of Appeals, St. Paul, Minn.

Docket or case number (if you know): A11-326

Date of the court’s decision: 07/12/2011

Result (attach a copy of the court’s opinion or order, if available):

Denied. Please see attachment #9, ante

(7) If your answer to Question (d)(4) or Question (d)(5) is “No,” explain why you did not raise this issue:

(e) Other Remedies: Describe any other procedures (such as habeas corpus, administrative

remedies, etc.) that you have used to exhaust your state remedies on Ground Five:

GROUND SIX:

The Petitioner has been subject to cruel and unusual punishment in violation of his Eighth Amendment rights; and has been threatened with extension of his sentence beyond that pronounced by Judge Maturi, and also has been subjected to unjustified in-prison sanctions, in violation of his right to due process.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

The Petitioner, since his imprisonment, has been subject to cruel and unusual punishment in that he has been required, by Respondent, the Commissioner of Corrections, to attend unneeded drug/alcohol treatment, which would require him to walk several miles per day, across the MCF-Faribault prison campus, in the cold Minnesota winter. Although, at times, the Petitioner has been charged with probation violation due to consuming alcohol in his home, the Petitioner does not have a recent record of alcohol-related offenses - his last one was a DWI approximately 12 years ago - and he does not have an alcohol problem or a dependence on alcohol. He has never been convicted of any drug-related offense whatsoever. Nonetheless, he was required, by Respondent, to attend such treatment while at MCF-Faribault; and upon his refusal, was threatened, by prison authorities at MCF-Faribault, that 30 days would be added to his sentence (which had not been authorized by the trial court at sentencing); and has, as a result of his refusing treatment, been subject to certain prison sanctions such as "lockdown" and "segregation" which has included deprivation of Petitioner's medications, and also of his in-prison property such as his personal notes, books, lists of people's telephone numbers, etc. The Petitioner refused the unneeded "treatment" because he is disabled, with a spinal injury, and cannot walk the distance that said treatment would require without discomfort, aggravation of his spinal injury, and risk of further injury to same.

(b) If you did not exhaust your state remedies on Ground Six, explain why:

Petitioner is unaware of any state remedies available, as a practical matter, to him. At MCF-Faribault, he does not have access to the legal resources, facilities, and equipment to bring a pro se legal action against the Respondent; he does not have, and cannot afford to hire, counsel for such an action; and he has been denied assistance from the Minnesota State Public Defender. Further, the circumstances are such that if not immediately remedied, the Respondent's imminent actions may cause irreparable harm to the Petitioner; and circumstances exist that render state process ineffective to protect his rights.

(c) Direct Appeal of Ground Six:

(1) If you appealed from the judgment of conviction, did you raise this issue? No.

(2) If you did not raise this issue in your direct appeal, explain why:

This has occurred after the trial, and since imprisonment at MCF-Faribault, after the appeal brief was submitted. The Petitioner does not believe it to be an issue which could be raised in the appeal of the conviction for violation of the no-contact order.

(d) Post-Conviction Proceedings:

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court? No.

(2) If your answer to Question (d)(1) is “Yes,” state:

Type of motion or petition:

Name and location of the court where the motion or petition was filed:

Docket or case number (if you know):

Date of the court’s decision:

Result (attach a copy of the court’s opinion or order, if available):

(3) Did you receive a hearing on your motion or petition?

(4) Did you appeal from the denial of your motion or petition?

(5) If your answer to Question (d)(4) is “Yes,” did you raise this issue in the appeal?

(6) If your answer to Question (d)(4) is “Yes,” state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know):

Date of the court’s decision:

Result (attach a copy of the court’s opinion or order, if available):

(7) If your answer to Question (d)(4) or Question (d)(5) is “No,” explain why you did not raise this issue:

(e) Other Remedies: Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Six:

GROUND SEVEN:

Denial of Due Process by not being given credit for time served pending trial.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

The Petitioner was denied Due Process in that, at sentencing, the Judge failed to give him credit for the time (over 400 days) that he had served, pending trial, incarcerated at the Itasca County Jail. He was so jailed, pending trial, from November 25th, 2009 through January 4th, 2011. The Judge's said refusal to allow him credit for such time served violated the Minnesota Rules of Criminal Procedure.

(b) If you did not exhaust your state remedies on Ground Seven, explain why:

This issue is part of the pending appeal. But the Petitioner is presently, and unconstitutionally, incarcerated for exercise of his First and Ninth (right of intimate association) Amendment rights, and the time required for the appeal process, possibly beyond the Minnesota Court of Appeals, is such that circumstances exist that render such process ineffective to protect the rights of the applicant. Even if this ground was recognized and corrected on appeal, the Petitioner would, by that time, likely have been caused to serve most or all of his sentence under the erroneous judgement.

(c) **Direct Appeal of Ground Seven:**

(1) If you appealed from the judgment of conviction, did you raise this issue? Yes.

(2) If you did not raise this issue in your direct appeal, explain why:

(d) **Post-Conviction Proceedings:**

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court? No.

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition:

Name and location of the court where the motion or petition was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(3) Did you receive a hearing on your motion or petition?

(4) Did you appeal from the denial of your motion or petition?

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

(e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Seven:

GROUND EIGHT:

M.S. 518B.01, subd. 22, under which the Petitioner was convicted, is void for being unconstitutionally vague, in violation of the Due Process clause of the Fifth and Fourteenth Amendments to the U.S. Constitution. As the sole statute under which he was convicted is so void, the Petitioner should be immediately released.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

M.S. 518B.01, subd. 22 (recited in Attachment #6, p. 24, ante) is unconstitutionally vague because it authorizes and encourages discretionary enforcement by lacking adequate standards restricting the discretion of governmental authorities who enforce it. Said statute completely lacks standards guiding and restricting the discretion of the district court when determining whether to issue a Domestic Abuse No Contact Order (DANCO). The statute states that such an order "may be issued by a court against a defendant in a criminal proceeding for 1) domestic abuse; . . ."; but the statute is silent regarding (1) what factors the court is to consider when determining whether to issue a Domestic Abuse No Contact Order, 2) which evidentiary standard is applied to issuance of a Domestic Abuse No Contact Order (i.e. preponderance, clear and convincing, etc...), 3) whether a petition is required for issuance of a Domestic Abuse No Contact Order, 4) who may petition the court for a Domestic Abuse No Contact Order, 5) whether a Domestic Abuse No Contact Order may be issued over the objection of the alleged

victim of the domestic abuse, 6) whether a Domestic Abuse No Contact Order may be issued over the objection of the State, 7) when, if ever, a Domestic Abuse No Contact Order expires, and 8) what authority the court has to modify, lift, or terminate a Domestic Abuse No Contact Order. The lack of standards in the statute also greatly inhibits a defendant's ability to challenge the issuance of a Domestic Abuse No Contact Order. Without knowing what factors the courts will consider, a defendant has no way of knowing how to argue against the issuance of a Domestic Abuse No Contact Order.

Although it has sometimes been called other than a criminal statute, M.S. 518B.01, subd. 22 authorizes criminal penalties. In the instant case, a sentence of felony punishment of over 5 years in prison has been applied. As such, said statute must be regarded as a criminal statute, and subject to the standards of same, under the U.S., and Minnesota, Constitutions.

For further rationale, of a Minnesota district court, in finding M.S. 629.75 (the successor statute to M.S. 518B.01, subd. 22, with, in many respects, similar wording) unconstitutional, please see Attachment #7 hereof, the "Kelling" Memorandum, beginning on page 25, ante.

(b) If you did not exhaust your state remedies on Ground Eight, explain why:

This issue is part of the pending appeal. But the Petitioner is presently, and unconstitutionally, incarcerated solely for exercise of his First and Ninth (right of intimate association) Amendment rights, which exercise violated an unconstitutional order of the district court improperly restraining same and issued under the said statute (M.S. 518B.01, subd. 22, which is void for being unconstitutionally vague); and the time required for the appeal process, possibly beyond the Minnesota Court of Appeals, is such that **circumstances exist that render such process ineffective to protect the rights of the applicant.** Even if this ground was recognized and corrected on appeal, or on Petition for Review to the Minnesota Supreme Court, or on Petition for Writ of Certiorari to the U.S. Supreme Court, the Petitioner would, by that time, likely have been caused to serve most or all of his sentence under the erroneous judgement. **As the statute under which the Petitioner was convicted is clearly unconstitutional, immediate relief by the United States District Court issuing it's Writ of Habeas Corpus is necessary to protect the rights of the Petitioner, and to avoid further irreparable damage to him.**

(c) **Direct Appeal of Ground Eight:**

(1) If you appealed from the judgment of conviction, did you raise this issue? Yes.

(2) If you did not raise this issue in your direct appeal, explain why:

(d) **Post-Conviction Proceedings:**

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court? No.

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition:

Name and location of the court where the motion or petition was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(3) Did you receive a hearing on your motion or petition?

(4) Did you appeal from the denial of your motion or petition?

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

(e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Eight:

**PETITION UNDER 28 U.S.C. § 2254 FOR WRIT OF
HABEAS CORPUS BY A PERSON IN STATE CUSTODY**

STEVEN SCOTT SAMUELSON v. TOM ROY

ATTACHMENT 13. - Affidavit of Kelli Samuelson, with preface excerpted from the Motion for Release Pending Appeal filed before the District Court at Itasca County (before Judge Maturi - case no. 31-CR-10-169) in January, 2011. This affidavit relates to the alleged predicate offense of First Degree Criminal Sexual Conduct (approx. 2002) which caused the instant charges (violation of a no-contact order) to be raised to felony level.

In said alleged predicate offense, the Petitioner herein (Steven Samuelson) was accused of having involuntary sexual acts with his then-wife (Kelli Samuelson), which acts were recorded, by Petitioner on a video tape.

The Petitioner was induced, by the presence of false statements then made to law enforcement authorities by Kelli Samuelson, and which statements she now recants, to plead guilty, in approx. 2002, to the said First Degree Criminal Sexual Conduct charges.

PREFACE:

The findings of this [i.e. the District] court on October 18, 2010, expressed doubts over whether the said affidavit [i.e. the affidavit of Kelli Samuelson, following] was genuine. But all such doubts were definitively removed by the sworn testimony of Sarah Lippincott, on August 31, 2010, that Mrs. Samuelson dictated the affidavit herself, that she went to the American Bank in Keewatin, and that she signed the said affidavit under oath before a notary public as her free act and deed; by the sworn testimony of Bobby Fillman on January 4, 2011, that she was the notary public before whom the said affidavit as executed as the free act and deed of Mrs. Samuelson; and by the sworn testimony of Mrs. Samuelson on January 4, 2011, that, in fact, she dictated and executed the said affidavit before Mme Fillman as her free act and deed, and that the said affidavit is true and correct. The said affidavit, therefore, creates a prima facie case, not meaningfully contested on this record, that the testimony of Mrs. Samuelson against Mr. Samuelson was unlawfully coerced by felonious witness tampering and suborning of perjury by a certain criminal syndicate in Itasca County known as the Advocates for Family Peace in aid of the State's prosecution.

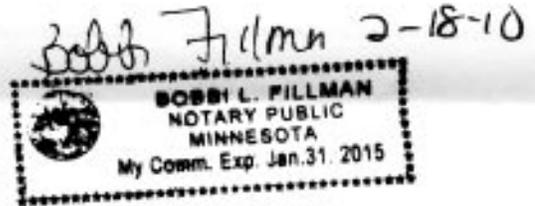
[THE SWORN AFFIDAVIT OF KELLI SAMUELSON, WHICH SHE SO AFFIRMED UNDER OATH IN OPEN COURT, FOLLOWS, ON THE THREE NEXT PAGES]

7. I told the Advocates for Family Peace that I did not want to discuss this matter. However, I was told by the Advocates for Family Peace Office that if I wanted to get my children back, I had to show them that I could protect them, and I was not protecting them if I was not willing to give testimony against Steven Samuelson. Therefore, that threat or promise made by the Advocates for Family Peace led to the statement I gave to investigator Greg Snyder on December 21, 2001.
8. The statements in there, as well as my cooperation to prosecute and proceed with this matter, were an effort for me to get my children back.
9. Since this time and after Steven's conviction, I have gotten my children back, and they can no longer use this threat against me. I want the Court to know that the allegations that I made against Steven Samuelson were not in any way correct.
10. The events that transpired on the tape that Chad Sterle, Steven Samuelson's attorney, has in his possession were voluntary.
11. Steven and I have used a video camera many times in our relationship to tape various aspects of our relationship. Everything on the tape was voluntary.
12. I understand that an outsider looking in may have issues with what happened on this tape. However, as the Court could also see if the Court ever viewed the tape, which I know the Court has not at this point in time, while the act was happening, my sister called.
13. Steven Samuelson allowed me to talk to my sister on the phone, and obviously, if I needed help or assistance from law enforcement, I would have asked for it.
14. I simply request of the Court the following: the Court vacates the conviction of Steven Samuelson and reset this matter for trial. If the Itasca County Attorney's Office still wants to prosecute Steven Samuelson, that's fine.
15. I am willing to give this affidavit to the Court. I would prefer to not testify in front of a jury unless absolutely needed.
16. Chad Sterle obtained a tape which was stolen from my possession. He has no right to possess. I in no way gave him permission.

FURTHER AFFIANT SAYETH NOT.

X Kelli R. Samuelson
Kelli R. Samuelson

Dated this 18th day of February 2010



Subscribed and sworn to before me this

18th day of February 2010.