

IN THE DISTRICT COURT OF HOLT COUNTY, NEBRASKA

THE STATE OF NEBRASKA,
Plaintiff,

vs.

RUSSELL R. FROST,
Defendant.

Case No. CR99-5

ORDER ON AFFIDAVIT

SUBJECT OF ORDER: affidavit of probable cause for arrest without warrant.

ORDER: After examination of the files, the court finds, determines, and orders:

1. The chief of police has filed and submitted to this court a document entitled "Affidavit of Probable Cause." The affidavit recites that the officer believes that the defendant has violated a condition of release on bond, and has effected an arrest without warrant of the defendant. The affidavit claims that the arrest was made for the "Offense of: Violation of Bond" and states the claimed cause therefor.

2. The court is not aware of any crime created by statute in this state of "Violation of Bond." NEB. REV. STAT. § 29-404(2) provides for warrantless arrest for felony, misdemeanors in certain circumstances, and certain other conduct. Violation of conditions of release on bond is not among the possible grounds for effecting a warrantless arrest under that section. The court finds no bail or bond statute authorizing warrantless arrest, and NEB. REV. STAT. § 29-901.02 implies to the contrary.

3. The court finds no grounds in law to issue any order approving the warrantless arrest, or to make a post-arrest determination of probable cause regarding violation of a bond condition. It appears that no statutory or other authority exists for arrest of a defendant alleged to have violated a bond condition without first obtaining a warrant upon showing of probable cause.

4. It appears that the defendant was arrested without warrant, and must be discharged until an arrest warrant has properly been obtained.

IT IS SO ORDERED.

Dated: July 16, 1999.

If checked, the Court Clerk shall:

X. Mail a copy of this order to all counsel of record and to any pro se parties.

Done on _____, 19____ by _____.

X. Note the decision on the trial docket as: 7/16/99 Signed "Order on Affidavit" entered directing discharge of defendant until proper arrest warrant is obtained.

Done on _____, 19____ by _____.

Mailed to:

BY THE COURT:

William B. Cassel
District Judge