

IN THE DISTRICT COURT OF HOLT COUNTY, NEBRASKA

THE STATE OF NEBRASKA,
Plaintiff,

vs.

DARRIN PELC,
Defendant.

Case No. CR99-30

**MEMORANDUM OPINION
AND JUDGMENT ON APPEAL**

DATE OF HEARING: November 10, 1999.

DATE OF DECISION: November 10, 1999.

APPEARANCES:

For plaintiff: Thomas P. Herzog, Holt County Attorney.
For defendant: Rodney W. Smith without defendant.

SUBJECT OF ORDER: appeal from county court.

FINDINGS: The Court finds that:

1. No statement of errors was filed. This court’s review is limited to of errors assigned and discussed in the statement of errors. *State v. Nelson*, 2 Neb. App. 289, 509 N.W.2d 232 (1993). The district court also has jurisdiction to review the record for plain error not assigned. *Id.*

2. The defendant argues a constitutional violation. However, he failed to assign any such claim of error in a statement of errors. Consideration of plain error occurs at the discretion of an appellate court, and a party who fails to properly assign an error on further review does so at its peril. *State v. Al-Zubaidy*, 257 Neb. 935, ___ N.W.2d ___ (1999). The court finds no plain error.

3. Consequently, the conviction and sentence must be affirmed.

ORDER: IT IS THEREFORE ORDERED AND ADJUDGED that:

1. The judgment is AFFIRMED.
2. Costs on appeal are waived pursuant to the affidavit of poverty.
3. Unless notice of appeal and deposit of docket fee is made on or before December 10, 1999, the clerk of this court shall issue the mandate to the county court on December 13, 1999 showing that the judgment was “AFFIRMED”. If such notice of appeal and docket fee are timely filed and

deposited, the mandate shall not be issued until receipt of the mandate of the higher appellate court and in accordance therewith.

Entered: November 10, 1999.

If checked, the Court Clerk shall:

- : Mail a copy of this order to all counsel of record and to any pro se parties.
Done on _____, 19____ by _____.
- : Deliver a certified copy of this opinion and order to county court.
Done on _____, 19____ by _____.
- : When appropriate, issue mandate in accordance with paragraph 3 of order.
Done on _____, 19____ by _____.
- 9** Trial docket entry dictated in open court.
Done on _____, 19____ by _____.

Mailed to:

BY THE COURT:

William B. Cassel
District Judge