

IN THE DISTRICT COURT OF BOYD COUNTY, NEBRASKA

THE STATE OF NEBRASKA,
Plaintiff,

vs.

DUANE TIMOTHY KLASNA,
Defendant.

Case No. 4673

JUDGMENT ON APPEAL

DATE OF HEARING: March 10, 2000.

TYPE OF HEARING: in chambers without record.

DATE OF DECISION: March 16, 2000.

APPEARANCES:

For plaintiff: Carl Schuman, Boyd County Attorney.

For defendant: Forrest F. Peetz without defendant.

SUBJECT OF ORDER: Appeal from county court.

FINDINGS: The court finds and concludes that:

1. The defendant assigned only two errors: excessive sentence and license revocation imposed greater than authorized by statute. The plaintiff confesses that the county court erred in imposing a license revocation period greater than the period authorized by statute. The issue becomes the proper disposition of the appeal.

2. Upon review of the record, this court notes plain error. The record does not affirmatively show that the defendant understood that by pleading guilty he was waiving his right to confront witnesses, his right to a trial, and his privilege against self-incrimination. *State v. Hays*, 253 Neb. 467, 570 N.W.2d 823 (1997); *State v. Nichols*, 8 Neb. App. 654, ___ N.W.2d ___ (1999); *State v. Fochtman*, 7 Neb. App. 532, 584 N.W.2d 468 (1998), *petition for further review overruled* 255 Neb. xxix.

3. The bill of exceptions does not contain the proceedings at which the defendant first appeared and was advised of his rights, the nature of the charge, the possible penalties, the pleas available, and the resulting effects of those pleas. However, the journal entry from that hearing appears in the transcript and provides sufficient support that the defendant was properly advised. The absence of a similar

advisement at the time that the defendant changed his plea does not affect the validity of the subsequent guilty plea. However, the county court's failure to obtain the defendant's acknowledgment on the record that he understood the effect of the guilty plea on his *Boykin* rights was plain error under the case law cited above. Those cases require that the conviction and sentence be set aside.

ORDER: IT IS THEREFORE ORDERED AND ADJUDGED that:

1. The judgment of the county court is REVERSED AND REMANDED WITH DIRECTIONS to vacate the conviction and sentence and for further proceedings consistent with this judgment.

2. Costs on appeal shall be taxed to plaintiff.

3. Unless notice of appeal is filed and deposit of docket fee is made on or before April 17, 2000, the clerk of this court shall issue the mandate to the county court on April 18, 2000. If notice of appeal is timely made and docket fee timely deposited, the clerk shall issue the mandate to the county court upon further order of this court spreading the mandate of the higher appellate court.

Entered: March 16, 2000.

If checked, the Court Clerk shall:

- Mail a copy of this order to all counsel of record and to any pro se parties, **and deliver a copy to county court.**
Done on _____, 20__ by ____.
- At proper time, issue mandate in accordance with paragraph 3 of order.
Done on _____, 20__ by ____.
- Note the decision on the trial docket as: [date of filing] Signed
"Judgment on Appeal" entered.
Done on _____, 20__ by ____.

Mailed to:

BY THE COURT:

William B. Cassel
District Judge