

**IN THE DISTRICT COURT OF CHERRY COUNTY, NEBRASKA**

**THE STATE OF NEBRASKA,**  
Plaintiff,

vs.

**RANDY DRINKWALTER,**  
Defendant.

Case No. 9809

**ORDER ON PROCEDURES  
FOR PRELIMINARY  
CONSIDERATION**

**SUBJECT OF ORDER:** Transcription of record and preliminary consideration of defendant's motion for postconviction relief to determine whether an evidentiary hearing and appointment of counsel are required.

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

1. The defendant has filed a motion for postconviction relief. The court is first required to determine whether "the motion and the files and records of the case show to the satisfaction of the court that the prisoner is entitled to no relief . . . ." NEB. REV. STAT. § 29-3001 (Reissue 1995). The record made at the hearings subsequent to the decision of the Supreme Court must be considered as part of such records, and such record has not previously been transcribed and certified by the official court reporter. This order directs such transcription of the record and the further proceedings related to the court's initial determination.

2. The official court reporter is directed to duly transcribe and certify the record of all proceedings subsequent to the remand of the Supreme Court, consisting of hearings held on April 29, 1993, May 10, 1993, May 20, 1993, May 24, 1993, and July 9, 1993, and to include therein all original exhibits at such hearings. The officer court reporter shall duly certify such record as the official record of those proceedings, and the certified record shall be **filed** with the Clerk of the District Court of Cherry County, Nebraska, on **September 19,**

**2003.** The matter shall be deemed as taken under advisement as of the date of filing of such record.

3. The **parties** to this case are allowed until **September 19, 2003**, to submit to the undersigned judge, at PO Box 105, Ainsworth, Nebraska 69210 or by electronic mail to the judge's email address, any **brief** that a party desires to submit upon such initial determination. Pursuant to Uniform District Court Rule 5B, such briefs shall be presented to the judge and NOT filed with the clerk. No documents intended as filings for the court file shall be sent to the judge, as documents to be filed in the court file must be sent to the clerk and any such documents sent to the judge will be returned unfiled.

4. The cost of preparation of the record shall be certified by the official court reporter and shall be paid by the County of Cherry, Nebraska.

5. The initial determination of whether to grant an evidentiary hearing and to appoint counsel for defendant shall be made upon the court's review of the motion, files, and such record, together with any briefs timely submitted above. No oral arguments or other communications thereon will be permitted upon such initial determination.

**IT IS SO ORDERED.**

Signed in chambers at **Ainsworth**, Nebraska, on **August 27, 2003**;  
DEEMED ENTERED upon file stamp date by court clerk.

BY THE COURT:

If checked, the court clerk shall:

Mail a copy of this order to all counsel of record and any pro se parties (including the current county attorney and the defendant's current address as well as the last counsel of record).  
Done on \_\_\_\_\_, 20\_\_\_\_ by \_\_\_\_\_.

Note the decision on the trial docket as: [date of filing] **Signed "Order on Procedures for Preliminary Consideration" entered.**  
Done on \_\_\_\_\_, 20\_\_\_\_ by \_\_\_\_\_.

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William B. Cassel  
District Judge

Mailed to: