

Supreme Court, U.S.
FILED
DEC 18 2022
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No. 22A585

IN THE
Supreme Court of the United States

ISAAC D. KOCH,
Applicant,

v.

THE STATE OF NEBRASKA,
Respondent.

On Petition for a
Stay of Mandate in the
Supreme Court of Nebraska

PETITION FOR STAY OF MANDATE

Isaac D. Koch
Applicant
155 Morian St.
Richland, Neb. 68601
(402) 910-1581

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SUPREME COURT, U.S.

PARTIES

Isaac D. Koch, Applicant, is the defendant before the County Court of Platte county, Nebraska. Before the Nebraska Court of Appeals and Supreme Court, he is appellant.

Respondent here is the State of Nebraska, and before the lower courts, appellee.

PROCEEDINGS BELOW

Supreme Court of Nebraska, A-22-84, *State v. Koch*, Motion to stay mandate denied December 12, 2022, App.18a.

Supreme Court of Nebraska, A-22-84, *State v. Koch*, Petition for further review denied November 15, 2022, App.15a.

Court of Appeals of Nebraska, A-22-84, *State v. Koch*, Rehearing denied December 12, 2022, App.14a.

Court of Appeals of Nebraska, A-22-84, *State v. Koch*, Judgment affirmed December 12, 2022, App.6a.

District Court of Platte County, Nebraska, CR21-145, *State v. Koch*, Judgment affirmed January 14, 2022, App.3a.

Further proceedings possibly relevant to a petition for writ of certiorari are excluded here.

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To the Honorable Brett M. Kavanaugh,

Justice of the United States Supreme Court now allotted to the Eight Circuit

OPENING STATEMENT

COMES NOW THE APPLICANT, Isaac D. Koch, to pray for a stay in the proceedings below. This request is important because: (1) the lower court denied Applicant Koch's request to stay issuance of its mandate and (2) issuance of such mandate will produce confusion.

OPINIONS BELOW

Mr. Koch intends to file a petition for a writ of certiorari in Nebraska case no. A-22-84. The Nebraska Supreme Court entered its dispositive order on November 15, 2022 in this criminal case. Sustained it the opinion now reproduced at App.6a.

JURISDICTION

Writ of Certiori

The People of the united States vest in this Court jurisdiction to hear this matter under the U.S Constitution, Article III, Section 2, which states, in part:

The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution [and] the Laws of the United States

. . . [In these] the supreme Court shall have appellate jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.

The statutes, in 28 U.S.C. § 1257(a) provide for appellate jurisdiction when, as here, a

[f]inal judgment[] . . . rendered by the highest court of a State . . . [exists] where the validity of a statute of any State is drawn in question on the

ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States.

In 28 U.S.C. § 1254(1), the Congress allowed as possible the method of a writ of certiorari for review in this case. Applicant intends to follow this course.

Chapter 28 of the U.S. Code provides, in Section 2101(d), that the time limit for review in a criminal case shall be as Supreme Court rules provide. Rule 13.1 provides that a petition for writ of certiorari “is timely when it is filed with the Clerk of this Court within 90 days after entry of the judgment.”

Stay of Mandate

Regarding a stay of the mandate, from 28 U.S.C. § 1651(a), the Court obtains authority to

issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.

Satisfying Rule 23, Applicant shows that this Court is the only body that has the power to stay issuance of a mandate in the Supreme Court of Nebraska. For the purpose of Supreme Court rules governing document formatting, this document qualifies as an “application” under Part V, not a writ under Rule 20.

Costs

Pursuant to 28 U.S.C. § 1911, the fees for this action are fixed by court rule. Rule 38(a) prescribes a fee of \$300 for this action. No supersedeas bond is necessary. A money order of \$300 is submitted with the original of this petition to the Clerk.

STATEMENT OF CASE

Applicant intends to petition this Court for a writ of certiorari to review the Nebraska Supreme Court's disposition of criminal charges against him. After a state district court entered an order seeming to prohibit all communication, Mr. Koch soon found himself at odds with his neighbor. Shown is how he resolves the dilemma.

ARGUMENT

The Nebraska supreme court entered its dispositive order on November 15, 2022. But Supreme Court Rule 13.1 permits Applicant to petition for a writ of certiorari within 90 days, with the resulting deadline being February 13, 2023. Mr. Koch sought a stay of the mandate, which the Supreme Court overruled on December 12, 2022. *See App.18a.*

The Court gave two reasons: (1) the filing of a petition for a writ of certiorari does not stay proceedings, and (2) a voluntary plea waives all defenses. Your applicant is unpersuaded, first, because no such petition has yet been filed, and there are no more proceedings to have. The Applicant has served his sentence. *See App.3a.* Second, the plea was involuntary: that composes a substantial point in the appeal. But even if mistaken on both points, Applicant Koch is unpersuaded that a mandate has any effect on the jurisdiction of this Court.

The People of the united States vest in this Court jurisdiction to hear this matter under the U.S Constitution, Article III, Section 2, which states, in part:

The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution [and] the Laws of the United States

. . . [In these] the supreme Court shall have appellate jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.

The statutes, in 28 U.S.C. § 1257(a) provide for appellate jurisdiction when, as here, a

[f]inal judgment[] . . . rendered by the highest court of a State . . . [exists] where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States.

Respondent Nebraska obtained a verdict that Applicant was responsible for breaking a protection order purporting to prohibit, inter alia, all communication and any disturbance of certain subjects' preferred state of peace.

The case offers the Court the opportunity to address any one of the following issues, with more issues and defenses possible, namely:

First, Shall a state court prioritize any person's preferred peace above the peace of the State?

The U.S. Constitution's *Fifth Amendment* guarantees the government will afford due process to the accused, but elevating any person's peace above that of the State is destructive to this Right.

Second, Under what circumstances should a court allow the withdrawal of a plea?

Id. Due process does not accept involuntary pleas.

Third, Does the Court deem it necessary to clarify that no contest pleas are essentially appeals for mercy?

The U.S. Constitution's Fourteenth Amendment guarantees the government will afford equal protection of all its laws to all citizens. The citizenry obtains from justice the best results for the law-abiding and the accused when each appreciates the magnitude of the mercy obtained only through the "no contest plea."

Fourth, Might the Court reject the so-called Alford plea?

Id. Equal protection is abrogated when an accused evades reconciling his deeds with the law.

Fifth, Shall any state court be allowed to continue wresting from free persons their liberty with an injunction?

Fifth amendment. Liberty includes communication, and due process will not permit ordering a person to curtail his liberty.

Sixth, Shall the notion stand that an attempt statute might outlaw lawful behavior?

Id. Due process does not convict the accused for lawful behavior.

Seventh, Does the Court agree that a criminal protection order violation statute clearly protects the courts?

Fourteenth amendment. Equal protection, for the citizen wishing the blessings of civil government, means that the courts receive the highest regard.

Eighth, Is it not perfectly beneficial to the victim of a crime to profit from the court's powers of persuasion that the accused – not, is irretrievably and hopelessly reprehensible, but rather that he – is accused of a crime?

Id. If a crime be proven, the victim of the crime deserves equal protection on par with every person so obtaining justice.

The U.S. Supreme Court observed that “the suppliant for a stay must make out a clear case of hardship or inequity in being required to go forward, if there is even a fair possibility that the stay for which he prays will work damage to some one else.” *Landis et al. v. North American Co.*, 299 U.S. 248, 255 (1936). In the case at bar, our respondent State has secured a verdict that adjudged Respondent guilty. Respondent Nebraska obtained imprisonment of the accused, which sentence is served. Therefore, there remains no benefit to the sovereign Nebraska for obtaining a mandate in this case that is now already near its end.

The standard for granting this stay does not require pre-judging the petition for writ of certiorari. Such judgment would produce folly and shame: this petition for a stay is intended to succinctly address the mandate issue in the Nebraska supreme court. It is not analysis of the prompting grievance that is presented here, but only analysis of the relief denied in the Nebraska Supreme Court. But if the Court finds any benefit to the Applicant or the Court in the production of said petition, and if the Court cannot persuade the Applicant that it is impossible that the writ of certiorari will be granted, then this Court must grant the instant petition for a stay.

CONCLUSION

Under these circumstances, I pray for a stay of the proceedings below. Sensing the Respondent has nothing to lose from the Court's acquiescence, the Applicant prays moreover for clear instruction on point of his contention that the lower court's mandate will not divest this Court of its jurisdiction over his cry for redress of grievances. The applicant prays that both these requests be interpreted fairly and fulfilled liberally as justice does require.

Dated this 18th day of December, 2022.

Respectfully submitted,

Isaac Koch
Isaac D. Koch, applicant
155 Morian St.
Richland, Neb. 68601
(402) 910-1581

No. _____

IN THE
Supreme Court of the United States

ISAAC D. KOCH,
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APPENDIX

Isaac D. Koch
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IN THE DISTRICT COURT OF PLATTE COUNTY, NEBRASKA

No. CR21-145

THE STATE OF NEBRASKA,
Plaintiff/Appellee,

-v-

ISAAC D. KOCH,
Defendant/Appellant.

Filed: January 14, 2022

MEMORANDUM OPINION AND ORDER

On January 10, 2022, this case came on for hearing on the defendant/appellant's appeal. Jose Rodriguez appeared on behalf of the State of Nebraska as Deputy Platte County Attorney. The defendant/appellant, Isaac D. Koch, personally appeared in court and was self-represented. After hearing the arguments of Mr. Koch and the State, the defendant/appellant's appeal was taken under advisement.

The defendant/appellant appeals from his conviction and sentence of 60 days imprisonment for the offense of attempted violation of a domestic abuse protection order, a Class II misdemeanor. Under Nebraska law, a Class II misdemeanor is punishable by a maximum of six months imprisonment, or one thousand dollars fine, or both, with no minimum required penalty. As such, Koch's sentence of 60 days was well within the statutory limits. There is no dispute that Koch has fully served his 60-day sentence.

In an appeal of a criminal case from the county court, the district court acts as an intermediate court of appeals, and its review is limited to an examination of the record for error or abuse of discretion. *State v. Johnson*, 310 Neb. 527 (2021). See, also, Neb. Rev. Stat. §25-2733(1)(Reissue 2016). Both the district court and a higher appellate court generally review appeals from the county court for error appearing on the record. *State v. Johnson, supra*. When reviewing a judgment for errors appearing on the record, an appellate court's inquiry is whether the decision conforms to the law, is supported by competent evidence, and is neither arbitrary, capricious, nor unreasonable. *Id.*

Initially, because the defendant/appellant has served his 60-day sentence, the Court must determine if his appeal has been rendered moot. Generally, an appeal

of a criminal conviction is moot when a criminal defendant has completely served his or her sentence. *State v. Patterson*, 237 Neb. 198 (1991). There are, however, two relevant exceptions to this general mootness rule, namely, the Nebraska Supreme Court has held that a prisoner's appeal is not moot if he or she has fully served his or her sentence before his or her appeal reaches the court and there was no way the prisoner, using all reasonable methods, could have brought his or her case to the court before expiration of his or her sentence, or if the prisoner may suffer future state or federal penalties or disabilities as a result of the judgment. *Id.*

Here, the bill of exceptions was filed just last month, December 14, 2021, long after Koch had completed serving his sentence. As such, and without a bill of exceptions, there was no way Koch, using all reasonable methods, could have brought his case to this court on appeal prior to the expiration of his sentence. Because this exception to the general mootness doctrine applies, Koch's appeal is not moot.

Having determined Koch's appeal has not been rendered moot, the Court would further note that he has not filed a statement of errors as required by Neb. Ct. R. §6-1452(A)(7)(rev. 2001). That rule provides:

Statement of errors. Within 10 days of the filing of the bill of exceptions in the district court, the appellant shall file with the district court a statement of errors, which shall consist of a separate, concise statement of each error a party contends was made by the trial court. Each assignment of error shall be separately numbered and paragraphed. Consideration of the case will be limited to errors assigned and discussed. The district court may, at its option, notice a plain error not assigned. This rule shall not apply to small claims appeal. [sic]

The Nebraska Supreme Court has routinely held that where no timely statement of errors is filed in an appeal from a county court to a district court, appellate review is limited to plain error. See, e.g., *Federal Mortgage Assn. v. Marcuzzo*, 289 Neb. 301 (2014).

Because Koch has not filed a timely statement of errors, and having carefully reviewed the record for plain error, and finding none, Koch's conviction and sentence is affirmed.

AFFIRMED.

DATED THIS 14t[h] DAY OF JANUARY, 2022.

BY THE COURT:

/s/ Robert R. Steinke

ROBERT R. STEINKE, DISTRICT JUDGE

IN THE NEBRASKA COURT OF APPEALS

MEMORANDUM OPINION AND JUDGMENT ON APPEAL (Memorandum
Web Opinion)

STATE V. KOCH

NOTICE: THIS OPINION IS NOT DESIGNATED FOR PERMANENT
PUBLICATION AND MAY NOT BE CITED EXCEPT AS PROVIDED BY NEB. CT.
R. APP. P. § 2-102(E).

STATE OF NEBRASKA, APPELLEE,

v.

ISAAC D. KOCH, APPELLANT.

Filed September 13, 2022. No. A-22-084.

Appeal from the District Court for Platte County, ROBERT R. STEINKE, Judge,
on appeal thereto from the County Court for Platte County, FRANK J. SKORUPA,
Judge. Judgment of District Court affirmed.

Isaac D. Koch, pro se.

Douglas J. Peterson, Attorney General, and Matthew Lewis for appellee.

PIRTLE, Chief Judge, and BISHOP and WELCH, Judges.

WELCH, Judge.

INTRODUCTION

Isaac D. Koch appeals from Platte County District Court's affirmance of his plea-based conviction in the Platte County Court for attempted violation of a domestic abuse protection order, a Class II misdemeanor. He argues that the district court erred in refusing to grant a waiver or extension of time to file a statement of errors and in not finding plain error by the county court relating to his conviction and sentence. For the reasons stated herein, we affirm.

STATEMENT OF FACTS

In April 2021, Koch was charged in the Platte County Court with violation of a domestic abuse protection order, a Class I misdemeanor. See Neb. Rev. Stat. § 42-924(4) (Cum. Supp. 2020). Pursuant to a plea agreement, Koch pled no contest to a

reduced charge of attempted violation of a domestic abuse protection order. See Neb. Rev. Stat. § 28-201 (Reissue 2016) (criminal attempt). Additionally, pursuant to the plea agreement, the State dismissed a separate felony charge pending against Koch in the district court and agreed to recommend probation at sentencing. In support of the factual basis to support Koch's plea, the county court took notice of the probable cause affidavit which provided that, on January 12, 2021, officers were dispatched to a specific address located in Platte County in response to a witness report that he "had observed a male . . . in the basement and also secured a shotgun from the residence." Officers contacted the witness who had been invited into the residence by the victim and her two children. The witness stated that, while the victim was giving him a tour of the residence, he received a text from Koch stating that Koch "was being held hostage by [his wife (the victim)] and was tied [downstairs] in the basement." Upon going to the basement, the witness observed Koch sitting in a chair "tied up [with] duct tape around his mouth." The witness instructed the victim and the children to leave the residence, called 911, and secured a shotgun which he found "placed by the side door near the living room." When officers arrived at the residence and announced themselves, they heard "a muffled voice coming from the basement." Upon entering the basement, officers observed Koch "sitting in a chair facing away from the basement stairs" with "a yellow cord wrapped around his knees and left wrist" and duct tape over his mouth, which officers removed. Officers also observed a cell phone resting in Koch's lap. When asked who had tied him up, Koch admitted that "he had done this to himself because he wanted to show [the victim] . . . how he was feeling about the protection order and not [being] able to [see] his children." Koch also admitted that he had been at the residence "all day" and that the shotgun was for the victim "because she need[ed] something to protect herself and the children." The witness and the victim were initially unaware that Koch was in the basement of the residence and did not see Koch's vehicle parked on the property because Koch had parked the vehicle "behind an old barn away from the house." Koch admitted being aware that he was in violation of the protection order in favor of the victim and two children.

After accepting Koch's plea, the court ordered a presentence investigation report and mental health evaluation. Koch did not complete the mental health evaluation prior to sentencing as ordered. Additionally, prior to sentencing, Koch's counsel filed a motion to withdraw at Koch's request. Thereafter, Koch, appearing pro se, filed a motion to withdraw his plea, which motion was denied. At the sentencing on September 29, 2021, the county court stated:

Considering the nature of the charges and considering the absurdity of the way that you violated the protection order by tying yourself up in the basement of your wife's home with a gag and telling at least [the witness], according to the police report --

....

... [A]ccording to the police report contained in the presentence investigation that you had received -- that [the witness] said that he received ... a text stating that [Koch] was being held hostage by [the victim] and he was tied ... downstairs in the basement and to come and get [Koch], and the fact that you yourself as [sic] indicated that it was an attempt to communicate with [the victim] under the strangest way that I have ever heard of in my life, ... the fact that there was a gun involved and at least you indicate ... was provided for -- and I admit that you didn't have the gun with you at the time, that it was left in the house somewhere else, based on those circumstances the court finds that you are sentenced to a term of 60 days in the Platte County Jail.

On October 27, 2021, Koch filed a pro se notice of his intent to proceed with an appeal to the Platte County District Court along with a motion to proceed in forma pauperis. In support of his motion, Koch filed a poverty affidavit wherein he asserted his claims on appeal would include

(a) impossibility of attempting to violate a protection order[;] (b) that effectively awarding one year of custody is not issued in compliance with [Neb. Rev. Stat.] § 42-924[;] (c) an injunction presuming the power, for the state, to proscribe all speech and peaceful assembly, even against just one person, is unconstitutional and therefore, transparently invalid[;] (d) political speech, that being my self-restraint, is protected speech[;] (e) the court erred by selecting a few ... filings, based on content, as impermissible ... under a transparently invalid injunction, when imposing the sentence[;] (f) my plea was not knowingly and voluntarily entered[;] and (g) assistance of my counsel was effectively deficient.

Although he included allegations of error in the poverty affidavit, Koch did not file a separate statement of errors in the district court as required by county court and district court rules. See Neb. Ct. R. §§ 6-1452(A)(6) (uniform county court rules) and 6-1518(B) (uniform district court rules). As a result, the district court reviewed Koch's appeal for plain error and, finding none, affirmed Koch's conviction

and sentence. Koch then filed a motion to reconsider requesting the court excuse his lack of compliance with court rules as he was not represented by counsel and had substantially complied with the rules and alleged county court errors. The district court overruled his motion to reconsider. Koch has now appealed to this court.

ASSIGNMENTS OF ERROR

On appeal, Koch assigns as error that the district court erred in declining to extend his time to file a statement of errors and in reviewing his appeal for plain error only.

In his brief, Koch argues the following additional allegations of error: (1) "Is the Charge a Crime, One Specific?;" (2) "Does the Evidence Support a Conviction?" including subparts under which he argues that (a) the factual basis did not support his conviction, (b) he did not take a substantial step in committing the crime, (c) the injunction against him was unenforceable, and (d) the protection order prohibiting all contact and communication was an improper criminalization of his speech; and (3) "Can the Plea be Withdrawn?" under which he argues (a) his appeal was not understandingly or knowingly made, and (b) the court did not have time to examine his complaint regarding his minor child, that the separate felony charged dismissed in exchange for his plea was an "improper escalation of an admittedly incomplete stalking offense into an aggravated stalking offense," allowing withdrawal of his plea would not create additional expense for the county, and that his no contest plea permitted him to evade certain consequences. Koch failed to assign as error any of the arguments. An appellate court does not consider errors which are argued by [sic] not assigned. *State v. Nielsen*, 301 Neb. 88, 917 N.W.2d 159 (2018). Accordingly, we decline to consider the errors that were argued but not assigned as error. See *State v. Dixon*, 306 Neb. 853, 947 N.W.2d 563 (2020) (to be considered by appellate court, alleged error must be both specifically assigned and specifically argued in brief of party asserting error).

Further, these issues were not reviewed by the district court which dismissed the matter for failure to file a statement of errors following a plan [sic] error review. See *Miller v. Brunswick*, 253 Neb. 141, 571 N.W.2d 245 (1997) (appellate court, in reviewing decisions of district court which affirmed, reversed, or modified decisions of county court, will consider only those errors specifically assigned in appeal to district court and again assigned as error in appeal to this court). Due to Koch's failure to file a statement of errors, no errors were properly assigned to the district

court. Accordingly, this court will not consider these additional errors assigned on appeal. See *id.* We only consider the first two assignments of error set forth above.

STANDARD OF REVIEW

On appeal from the county court, a district court's ruling on a motion to extend the time for filing a statement of errors will be reviewed for an abuse of discretion. *Houser v. American Paving Asphalt*, 299 Neb. 1, 907 N.W.2d 16 (2018). An abuse of discretion occurs when a trial court's decision is based upon reasons that are untenable or unreasonable or if its action is clearly against justice or conscience, reason, and evidence. *Lombardo v. Sedlacek*, 299 Neb. 400, 908 N.W.2d 630 (2018).

In cases where no statement of errors was filed and the district court reviewed for plain error, the higher appellate court likewise reviews for plain error only. *Houser v. American Paving Asphalt*, *supra*.

ANALYSIS

Koch claims that the district court erred in refusing to suspend court rules or grant him an extension to file a statement of errors and in reviewing his appeal on plain error only. Koch asks this court to find that the district court erred in refusing to excuse his failure to file a statement of errors because his arguments were included within his poverty affidavit. Specifically, Koch argues:

Under these circumstances, [Koch] is precluded from separately addressing each of the errors, of which the District Court was aware, from his *Poverty Affidavit* (T13-15). "Th[e appellate] court, in reviewing decisions of the district court which affirmed, reversed, or modified decisions of the county court, will consider only those errors specifically assigned in the appeal to the district court and again assigned as error in the appeal to this court." *Miller v. Brunswick*, 253 Neb. 141 (1997). Therefore, losing the opportunity to argue them affects his substantial right.

Brief for appellant at 20.

Neb. Ct. R. § 6-1518 provides that:

[w]ithin 10 days of filing the bill of exceptions in an appeal to the district court, the appellant shall file with the district court a statement of errors which shall consist of a separate, concise statement of each error a party contends was made by the trial court. Each assignment of error shall be

separately numbered and paragraphed. Consideration of the cause will be limited to errors assigned, provided that the district court may, at its option, notice plain error not assigned.

However, “[u]pon the showing of good cause, a rule may be suspended in a particular instance in order to avoid a manifest injustice.” Neb. Ct. R. § 6-1519. In Nebraska, a pro se party is held to the same standards as one who is represented by counsel. *State v. Jaeger*, 311 Neb. 69, 970 N.W.2d 751 (2022).

In *Houser v. American Paving Asphalt*, 299 Neb. 1, 18-19, 907 N.W.2d 16, 28-29 (2018), the Nebraska Supreme Court stated that:

On the whole, our case law teaches that there is flexibility in applying the statement of errors rule. The district court has discretion to extend the time for filing a statement of errors. It has discretion to consider errors brought to its attention in ways other than a timely filed statement of errors. And in light of the purpose of this “procedural tool,” we see no reason to unduly constrict the district court’s discretion. Of course, this discretion is not unlimited. And we provide some guidance for the exercise of this discretion.

The situation here is analogous to one where an appellant’s brief in the Supreme Court or the Court of Appeals does not contain an assignments of error section. One of our court rules requires a section of the appellant’s brief to contain, under an appropriate heading, “[a] separate, concise statement of each error a party contends was made by the trial court. . . .” Like the district court’s statement of errors rule, our rule cautions that “consideration of the case will be limited to errors assigned and discussed,” but that “[t]he court may, at its option, notice a plain error not assigned.” In contrast to the district court’s rule, our rule is grounded in statute, which requires that “[t]he brief of appellant shall set out particularly each error asserted. . . .”

We have never interpreted § 2-109(D)(1)(e) to leave us powerless to consider errors that were not properly presented. But we have repeatedly stated that we may proceed as though the party failed to file a brief entirely or, alternatively, may examine the proceedings for plain error. We believe that the district court should have the same flexibility.

Thus, we hold that on appeal from the county court, a district court’s ruling on a motion to extend the time for filing a statement of errors will be reviewed for an abuse of discretion. Numerous situations are possible. For example, an appellant may recognize the omission before an opponent or the

court has responded. An opponent may have responded, but only in a summary fashion. An opponent may have submitted a full brief relying on the omission. Or the omission may not have been noted until after the appeal was submitted to the district court. The specific circumstances should drive the court's exercise of discretion. And it is important whether the circumstances are rooted in the moving party's own neglect.

Here, the only evidence before us in the record pertaining to Koch's failure to file the statement of errors is contained in Koch's motion to reconsider wherein he asked the district court to waive the statement of errors requirements and grant him additional time to provide one. However, the motion to reconsider was filed after the district court had already entered its order finding Koch failed to comply with Neb. Ct. R. § 6-1518. Further, it is apparent from the record that Koch's failure to file a separate statement of errors was the result of his own neglect. Although Koch eventually argued his lack of counsel created extenuating circumstances which should afford him some level of relief associated with his neglect, we note that his counsel withdrew at Koch's request prior to sentencing in the county court and Koch decided to represent himself thereafter. The Nebraska Supreme Court's pronouncements in *Houser v. American Paving Asphalt*, 299 Neb. 1, 907 N.W.2d 16 (2018), are instructive that the timing of a request to extend the filing of a statement of errors is material to the exercise of the court's discretion in granting such requests. Because Koch did not present his request to extend the statement of errors deadline until after the district court had ruled on the issue, we find that the district court did not abuse its discretion in refusing to grant a waiver or additional time to file a statement of errors or in limiting its review of Koch's appeal to plain error.

Having found no abuse of discretion in the district court's determination that its review was limited to plain error, our review of Koch's conviction and sentence is also limited to plain error. See *id.* (in cases where no statement of error was filed and district court review for plain error, higher appellate court likewise reviews for plain error only). Plain error exists where there is an error, plainly evident from the record but not complained of at trial, which prejudicially affects a substantial right of a litigant and is of such a nature that to leave it uncorrected would cause a miscarriage of justice or result in damage to the integrity, reputation, and fairness of the judicial process. *Id.*

Having reviewed the record for plain error, and finding none, we affirm the district court order affirming Koch's conviction and sentence.

AFFIRMED.

IN THE NEBRASKA COURT OF APPEALS

No. A-22-84

State v. Isaac D. Koch

Filed: October 17, 2022

ORDER

Motion of Appellant for rehearing overruled.

IN THE NEBRASKA SUPREME COURT

No. A-22-84

State v. Isaac D. Koch

Filed: November 15, 2022

Petition of Appellant for further review denied.

IN THE SUPREME COURT OF NEBRASKA

STATE OF NEBRASKA,)	Case No. A-22-84	
Plaintiff-appellee,)		
vs.)	PETITION TO STAY	Filed
)	MANDATE	November 21, 2022
ISAAC D. KOCH,)		
Defendant-appellant.)		

Comes now the defendant-appellant, Isaac Koch, to certify his intent to exercise his constitutional right of appeal to the appropriate federal court, to satisfy the conditions of Neb. Ct. R. App. P. § 2-114(A)(2), considering that the mandate has not yet issued. The same section provides that the Court may assess a bond for costs. It permits this Petition within seven days of the dispositive entry. The Court denied Defendant’s *Petition for Further Review* on November 15, 2022. The resulting deadline for this Petition is November 22, 2022.

Appellant shows the Court that a federal question is involved in at least one of the following important issues:

- No person may be convicted without due process, but the record does not sustain the trial court’s verdict.
- No person may be convicted without due process, but the crime charged is not actually a crime.
- No person may be convicted without due process, but the underlying behaviors were not crimes.
- The state constitution licenses state courts to publish only the truth, but the state court decreed against all communication.
- The state constitution licenses state courts to publish only the truth, but the state court applied labels to persons, instead of behavior.

Appellant’s list above cannot limit his constitutional right to petition for redress of grievances. He specifically disclaims any intent to limit his appeal to the issues summarized above. The issues summarized above are provided to this Court to satisfy the conditions of court rules.

No motion for rehearing is permitted on a summary order dismissing a petition for further review, per Neb. Ct. R. App. P. § 2-113(A).

WHEREFORE, Appellant Koch prays that this Court stay issuance of the mandate in this appeal, pending further Court review.

Dated this 19 day of November, 2022.

Respectfully submitted,

/s/ Isaac Koch

Isaac D. Koch, appellant

155 Morian St, Richland, NE 68601

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IN THE NEBRASKA SUPREME COURT

No. A-22-84

State v. Isaac D. Koch

Filed: December 12, 2022

ORDER

Appellant's motion to stay mandate overruled. See, Neb. Ct. R. App. P. § 2[-]114(A)(2); *State v. Abram*, 284 Neb. 55, 815 N.W.2d 897 (2012) (mere filing of petition for certiorari does not automatically stay proceedings in lower court); *State v. Blake*, 310 Neb. 769, 969 N.W.2d 399 (2022) (voluntary guilty plea or plea of no contest generally waives all defenses to criminal charge).

Case no. 22-_____

IN THE SUPREME COURT OF THE UNITED STATES

KOCH v. NEBRASKA

CERTIFICATE OF SERVICE

I sent, on this 18th day of December, 2022, a true and correct copy of the following:

To Matt Lewis, Attorney of Respondent Nebraska:

Petition for Stay of Mandate &

Appendix, to:

2115 Nebraska State Capitol, Lincoln, NE 68509-8920 by first-class mail, and
Matt.Lewis@nebraska.gov by email.

Isaac Koch
Isaac D. Koch