

Extended Case Summary for:

A 23-0922 – State v. Pollock (Appellant)

After a bench trial, Appellant was convicted in county court on one count of DUI – First Offense. Following his conviction and sentence, he filed the proper notice that he was appealing the decisions of the county court to the district court. However, to finalize his appeal, he still needed to file an appellate brief that laid out the purported errors made by the county court and his arguments for each assigned error.

Appellant proceeded to request three extensions for filing his appellate brief. After each request, he was granted 14 additional days. However, in granting Appellant’s third request for additional time, the district court stated: “This is the last extension the Court will grant Defendant for submission of his brief. It is due on October 2, 2023.”

On October 2, 2023, Appellant filed another motion requesting additional time to file his appellate brief. This motion was not ruled upon until October 17. However, Appellant did not file his appellate brief until October 11, which bypassed the previously imposed deadline. On October 17, the district court formally denied Appellant’s latest motion for additional time and dismissed his appeal because it did not receive his appellate brief before the October 2<sup>nd</sup> deadline.

Appellant now appeals the district court’s decision to dismiss his appeal due to an untimely filed brief. He argues the district court did not abide by the Nebraska Court Rules of Appellate Practice because it did not provide sufficient notice that his appeal would be dismissed if he bypassed the briefing deadline. Section 2-110(A) of those rules state:

If appellant fails to file its brief within the time allowed and no extension of brief date has been granted, the Clerk shall provide notice to all self-represented litigants and all attorneys of record that appellant is in default for failure to file a brief and is required to file a brief within 10 days after receipt of such notice. Appellant’s failure to file a brief within the 10-day period subjects the appeal to dismissal. *If appellant has sought and obtained an extension of brief date and the court’s order granting the extension subjects the appeal to dismissal without further notice, failure to file the brief within the extended time allowed may result in dismissal of the appeal without further notice.* Under no circumstances shall more than one notice of default be required.

Appellant asserts the district court’s order granting his third motion for additional time did not provide the requisite notice that his appeal would be dismissed without further notice if he did not file his brief by the imposed deadline.