

SUPREME COURT OF NEBRASKA

State v. Burries

310 Neb. 688 (2022) · No. No. S-20-551 · Decided January 14, 2022

SUMMARY

The Nebraska Supreme Court affirmed the denial of Anthony L. Burries’ motion for default judgment and the dismissal of his second amended motion for postconviction relief. The court held that Nebraska’s Postconviction Act does not authorize default judgments and that the failure to verify the postconviction motion supported dismissal.

CASE DETAILS

COURT	Supreme Court of Nebraska
WRITING FOR THE COURT	Heavican, C.J.; Miller-Lerman, J.; Cassel, J.; Stacy, J.; Funke, J.; Papik, J.; Harder, D.J.
JURISDICTION	Nebraska
DECIDED	January 14, 2022
DOCKET	No. S-20-551
DISPOSITION	affirmed
PROCEDURAL POSTURE	Burries appealed the Douglas County District Court's denial of his motion for default judgment and its overruling or dismissal of his second amended motion for postconviction relief.
STANDARD OF REVIEW	Questions of law are reviewed independently, with the appellate court reaching its own conclusion without reference to the lower court's ruling.
PRECEDENTIAL VALUE	Published precedential opinion
PARTIES	Anthony L. Burries v. State of Nebraska

TOPICS

- state post-conviction relief
- post-conviction relief
- default judgment
- pleadings
- appellate procedure

PRACTICE AREAS

- post-conviction relief
- criminal procedure
- appellate procedure
- pleadings

QUESTIONS PRESENTED

1. Whether the Nebraska Postconviction Act authorizes a default judgment when the State fails to respond to a postconviction motion.
2. Whether the district court erred by denying Burries an opportunity to be heard on his motion for default judgment.
3. Whether the district court properly overruled or dismissed Burries' second amended motion for postconviction relief because it was not verified.

HOLDINGS

1. The Nebraska Postconviction Act does not authorize a district court to enter a default judgment or grant postconviction relief solely because the State failed to file a response.
2. A motion filed under Neb. Rev. Stat. § 29-3001 must be verified by a statement that the signer believes the facts stated in the motion are true; notarization or acknowledgment of the signature alone is not sufficient.
3. The ordinary rule that failure to object to an unverified pleading waives the defect does not apply in Nebraska postconviction actions.
4. An amended pleading supersedes the original pleading, so verification of an earlier postconviction motion does not satisfy the verification requirement for a later amended motion.

KEY QUOTATIONS

“Accordingly, the Nebraska Postconviction Act does not authorize a district court to enter a default judgment.” (692)

“In other words, to “verify” a pleading is to say that the signer believes the facts contained therein are truthful and to “acknowledge” means that the signer of the pleading appears before a notary or other officer, who then confirms that the signer is who the signer purports to be.” (693)

“To the extent that our decision in State v. Crawford might suggest that an earlier verified motion is sufficient, it is disapproved.” (694)

FACTUAL BACKGROUND

Burries was convicted of first degree murder and received a life sentence in 2015. In 2018, he sought postconviction relief based on alleged ineffective assistance of trial and appellate counsel, and he later filed multiple amended and pro se pleadings after conflicts with appointed counsel. His second amended pro se motion was signed and notarized but did not contain a statement verifying that he believed its factual allegations to be true. The district court denied his motion for default judgment and later overruled the second amended motion after he failed to file a third amended motion.

PROCEDURAL HISTORY

Burries was convicted of first degree murder and sentenced to life imprisonment in 2015, and the Nebraska Supreme Court affirmed on direct appeal. He later filed successive postconviction pleadings alleging ineffective

assistance of trial and appellate counsel. After counsel withdrew, Burries filed a pro se motion for default judgment, which the district court denied, and the court subsequently overruled his second amended postconviction motion after he failed to file a third amended motion. The Nebraska Supreme Court affirmed, holding that default judgment is unavailable under the Nebraska Postconviction Act and that the unverified second amended motion supported dismissal.

DISPOSITION

affirmed

CASES CITED

- State v. Burries, 297 Neb. 367, 900 N.W.2d 483 (2017)
- State v. Munoz, 309 Neb. 285, 959 N.W.2d 806 (2021)
- State v. Britt, ante p. 69, 963 N.W.2d 533 (2021)
- AVG Partners I v. Genesis Health Clubs, 307 Neb. 47, 948 N.W.2d 212 (2020)
- Harden v. A. & N. R.R., 4 Neb. 521 (1876)
- In re Interest of L.D. et al., 224 Neb. 249, 398 N.W.2d 91 (1986)
- State v. Crawford, 291 Neb. 362, 865 N.W.2d 360 (2015)
- In re Interest of Rondell B., 249 Neb. 928, 546 N.W.2d 801 (1996)
- State v. Billingsley, 309 Neb. 616, 961 N.W.2d 539 (2021)
- State v. Hill, 308 Neb. 511, 955 N.W.2d 303 (2021)
- State v. Amaya, 298 Neb. 70, 902 N.W.2d 675 (2017)
- Foman v. Davis, 371 U.S. 178, 83 S. Ct. 227, 9 L. Ed. 2d 222 (1962)
- Conley v. Gibson, 355 U.S. 41, 78 S. Ct. 99, 2 L. Ed. 2d 80 (1957)

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