

IN THE NEBRASKA COURT OF APPEALS

**MEMORANDUM OPINION AND JUDGMENT ON APPEAL
(Memorandum Web Opinion)**

STATE V. SPENCER

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.

BERNARD J. SPENCER, APPELLANT.

Filed October 13, 2026. No. A-25-855.

Appeal from the District Court for Douglas County: J RUSSELL DERR, Judge. Affirmed.

Bernard J. Spencer, pro se.

Michael T. Hilgers, Attorney General, and P. Christian Adamski for appellee.

BISHOP, WELCH, and FREEMAN, Judges.

WELCH, Judge.

INTRODUCTION

Bernard J. Spencer appeals from the Douglas County District Court's order denying his motion for postconviction relief without an evidentiary hearing. For the reasons stated herein, we affirm.

STATEMENT OF FACTS

Spencer was convicted of terroristic threats, use of a deadly weapon to commit a felony, and two counts of possession of a deadly weapon by a prohibited person. He was sentenced to an aggregate term of 63 to 66 years' imprisonment.

On direct appeal, Spencer assigned as error that (1) the district court erred in denying his request for a continuance of his jury trial, (2) the district court erred in denying him a hearing on a subsequently filed motion to suppress, (3) the district court erred in allowing the jury to have unfettered access during deliberations to a 911 call, (4) the evidence was insufficient to support

his convictions for terroristic threats and use of a firearm to commit a felony, and (5) the sentences imposed were excessive. His convictions and his sentences except as to terroristic threats were affirmed on direct appeal. See *State v. Spencer*, No. A-23-628, 2024 WL 3873810 (Neb. App. Aug. 20, 2024) (selected for posting to court website). His sentence for terroristic threats was vacated and remanded for the district court to impose an indeterminate sentence not to include a period of post-release supervision. The mandate was issued October 21, 2024. The district court resentenced Spencer on the terroristic threats conviction on November 7.

On June 23, 2025, Spencer filed a pro se motion to vacate and set aside his conviction and sentence in what he asserted was an “amended [p]ostconviction motion” alleging a claim of ineffective assistance of counsel. Although Spencer’s motion contained a notary stamp, it did not include any language stating that Spencer believed the facts stated in the pleading to be true. On June 24, the court ordered the State to respond to Spencer’s motion within 60 days. On August 12, the State responded to Spencer’s motion. Thereafter, on September 8 and 12, Spencer filed a 205-page brief and an amended response to the State’s response asserting numerous errors during the trial.

On October 15, 2025, the district court, in an order denying Spencer’s motion for postconviction relief, noted that Spencer filed a 205-page brief arguing issues not raised in his motion. The district court stated, “[t]he Court will confine its analysis to the issues raised in [Spencer’s] Motion.” Thereafter, the district court found that Spencer’s ineffective assistance of trial and appellate counsel claims were either not pled with specific facts or that the record affirmatively showed that Spencer’s claims were without merit and/or were procedurally barred. Spencer has timely appealed from the district court’s order denying his motion for postconviction relief.

ASSIGNMENTS OF ERROR

Spencer assigns that the district court erred in (1) denying his June 2025 motion for postconviction relief without an evidentiary hearing, (2) denying his subpoenas during the initial trial, and (3) denying him a continuance during the initial trial.

We note that Spencer also assigns as error that the court erred in failing to have a hearing and adjudicate his motion for postconviction relief filed on March 6, 2025. The March motion for postconviction relief is not in the record on appeal and Spencer does not argue this assignment of error. For an alleged error to be considered by an appellate court, an appellant must both assign and specifically argue the alleged error in the party’s initial brief. *State v. Gray*, 307 Neb. 418, 949 N.W.2d 320 (2020). Further, it is the appellant’s burden to create a record for the appellate court which supports the errors assigned. *In re Interest of Mechi J.*, 321 Neb. 455, 35 N.W.3d 35 (2026).

STANDARD OF REVIEW

In appeals from postconviction proceedings, an appellate court reviews de novo a determination that the defendant failed to allege sufficient facts to demonstrate a violation of his or her constitutional rights or that the record and files affirmatively show that the defendant is entitled to no relief. *State v. Britt*, 310 Neb. 69, 963 N.W.2d 533 (2021).

When reviewing a question of law, an appellate court reaches a conclusion independent of the lower court's ruling. *State v. Burries*, 310 Neb. 688, 969 N.W.2d 96 (2022).

ANALYSIS

The State raises numerous issues in response to Spencer's brief on appeal. Those include the following: Spencer elected to represent himself at trial but desires to raise ineffective assistance of counsel claims; Spencer fails to argue certain assigned errors; Spencer assigns certain errors not included in his postconviction motion; and that Spencer's postconviction motion fails because it was not properly verified. Before addressing Spencer's assigned errors, we first consider the State's claim that Spencer's postconviction motion fails for having failed to provide a verification in connection with his postconviction motion.

Neb. Rev. Stat. § 29-3001 (Cum Supp. 2024) provides in relevant part that:

A prisoner in custody under sentence and claiming a right to be released on the ground that there was such a denial or infringement of the rights of the prisoner as to render the judgment void or voidable under the Constitution of this state or the Constitution of the United States, may **file a verified motion**, in the court which imposed such sentence, stating the grounds relied upon and asking the court to vacate or set aside the sentence.

(Emphasis supplied).

Verification of a motion filed under § 29-3001 is undisputedly required. *State v. Burries, supra*. In the normal course of civil procedure, the failure of a litigant to object to the lack of a verified petition waives any argument with respect to that lack of verification. *Id.* However, we conclude that this usual rule is inapplicable in postconviction actions. *Id.*

Here, in Spencer's motion to vacate and set aside his conviction and sentence, which the district court treated as a motion for postconviction relief, Spencer asserted claims of ineffective assistance of trial and appellate counsel related to trial counsel's failure to file a motion to quash and appellate counsel's failure to preserve the same on appeal. This motion was not verified in either the motion or any subsequent filings. See *State v. Anthony*, 320 Neb. 757, 30 N.W.3d 187 (2026) (holding that defendant's affirmation attached to third filings was sufficient).

In *State v. Anthony*, 320 Neb. at 762, 30 N.W.3d at 192, the Nebraska Supreme Court stated:

Section 29-3001(1) provides that "[a] prisoner in custody under sentence and claiming a right to be released . . . may file a verified motion . . . stating the grounds relied upon and asking the court to vacate or set aside the sentence." As we observed in *Burries*, § 29-3001 does not define "verified," but the concept is discussed elsewhere in Nebraska law: "Until 1969, all pleadings filed in Nebraska were required to be verified. Historically, 'verified,' for the purpose of a pleading, has meant that the signer 'believed the facts stated in the pleading to be true.' Verification stands in contrast to 'acknowledgment,' which is 'the act by which a party who has executed an instrument goes before a competent officer and declares or acknowledges the same as his or her genuine and voluntary act and deed.' 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.”

A signature section, which contains only affiant’s signature, the date, and the notary’s signature and stamp, serves only as an acknowledgment rather than a verification. *State v. Rush*, 31 Neb. App. 1, 975 N.W.2d 541 (2022).

Although the State did not raise this claim in connection with its initial response to Spencer’s motion in the district court, as the Nebraska Supreme Court stated in *State v. Burries*, 310 Neb. 688, 692-93, 969 N.W.2d 96, 99 (2022),

verification of a motion filed under § 29-3001 is undisputedly required. In the normal course of civil procedure, the failure of a litigant to object to the lack of a verified petition waives any argument with respect to that lack of verification. However, we conclude that this usual rule is inapplicable in postconviction actions.

See also *State v. Rush, supra* (challenge to verification in postconviction action cannot be waived). Accordingly, the State’s initial failure to object to the unverified motion does not waive any argument to lack of verification in a postconviction setting. The State does raise the argument in connection with Spencer’s appeal which allows this court to address the merits of that claim.

Here, Spencer’s motion does not contain language stating that he believed the contents of the pleading to be true. Thus, his pleading lacks any affirmation satisfying the verification requirement. Because Spencer failed to file a verified motion pursuant to § 29-3001, we find that the district court did not err in dismissing Spencer’s motion without an evidentiary hearing. Although the district court’s reasoning for dismissal was not based upon lack of verification, a correct result will not be set aside merely because the lower court applied the wrong reasoning in reaching that result. *State v. Burries, supra*. Accordingly, Spencer’s defect in verification supports the district court’s dismissal, and we affirm.

Having determined that the lack of verification disposes of this appeal, we need not consider Spencer’s assignments of error. An appellate court is not obligated to engage in an analysis that is not necessary to adjudicate the case and controversy before it. *State v. Brennauer*, 314 Neb. 782, 993 N.W.2d 305 (2023).

CONCLUSION

As stated above, because we find that Spencer’s motion for postconviction relief was not verified, we find no error in the district court’s dismissal of that motion without an evidentiary hearing.

AFFIRMED.