

# Neb. High Court Rejects Appeal

BY MARGERY A. BECK  
Associated Press

OMAHA, Neb. — The Nebraska Supreme Court on Friday rejected an appeal for post-conviction relief by a Lincoln man serving life in prison for bludgeoning his mother to death with an ax.

Matthew Fox, 24, had argued that he should be released from prison because a lower court judge denied his request for post-conviction relief without holding an evidentiary hearing on his arguments. Fox had claimed in his motion that his lawyers were ineffective.

Specifically, he argued that his trial lawyer failed to object to what he said was a faulty jury instruction and should have called a second expert witness who could have testified to his competence to stand trial. He also argued that his appellate lawyer failed to raise the question of faulty instruction to the jury.

Post-conviction relief motions are filed after all other appeals have been exhausted. Last year, the Nebraska Supreme Court rejected Fox's appeal, in which he argued he shouldn't have been declared competent to stand trial.

Fox was sentenced to life in prison for first-degree murder in the death of his mother, Sherry Fox. Prosecutors say Matthew Fox, who was 19 years old at the time, hit his mother with an ax 14 times in the basement of their home on Oct. 25, 2008.

He was found incompetent to stand trial twice and spent more than a year in a state psychiatric hospital before the lower court found him competent in 2010.

Earlier this year, a Lancaster County district judge rejected Fox's post-conviction arguments without holding a hearing on them, saying Fox's claims of ineffective legal representation were without merit.

On Friday, the state's high court

agreed, saying a review of the jury instructions in Fox's case showed them to be proper. As for his argument that his trial lawyer should have called an additional expert witness to testify that he was insane, the high court said Fox's claim failed to identify the expert who would have been called or what testimony that expert would have given.

"Fox's motion alleged only that his counsel's failure to pursue an additional expert opinion caused him prejudice," Nebraska Supreme Court Judge William Cassel wrote in Friday's opinion.

Because the evidence shows instructions to his jury were not improper, his appeal attorney can't be faulted for failing to make that claim on appeal, the high court said.

Fox represented himself in his latest appeal. He could not immediately be reached in prison for comment on Friday's opinion.

## Hookah Falls Under SD's Smoking Ban

RAPID CITY (AP) — A Rapid City judge says hookah consumption does fall under South Dakota's ban on smoking in public places.

Circuit Court Judge Jeff Davis's ruling means the Ifrits Hookah Lounge in Rapid City can no longer sell alcohol.

The statewide smoking ban prohibits businesses that sell tobacco from also selling booze. Hookah involves using water pipes with burning charcoal to ingest tobacco.

City attorneys say the byproduct of hookah is smoke. Ifrits contends that vapor — not smoke — is exhaled. Judge Davis disagreed.

Ifrits Hookah Lounge has a month to appeal to the South Dakota Supreme Court.

## ID Of Suspect Shot By Officer Released

OMAHA, Neb. (AP) — Authorities have released the name of a man shot by an Omaha police officer near the scene of another shooting.

Police say 30-year-old Deandre E. Crittenden is in critical condition at Creighton University Medical Center, but he is expected to survive.

Police say officers in northeast Omaha heard gunshots Thursday night and followed a suspicious sport utility vehicle. Officers eventually stopped the SUV, which was driven by Crittenden. He got out and fled on foot.

Two officers chased Crittenden, and one noted the suspect was armed with a gun. Officer Paul Hasiak says he later fired at Crittenden after the suspect allegedly raised a handgun gun at him.

No officers were injured. Hasiak and Officer Eric Meads were placed on paid administrative leave. The case remains under investigation.

# Neb. Jobless Rate Drops In October

LINCOLN, Neb. (AP) — Nebraska's preliminary unemployment rate was 3.9 percent in October, matching the year-ago figure and down from 4.1 percent in September, according to a state report released Friday.

The September unemployment rate was one-tenth of a percentage point lower than the rate in August. The state Department of Labor released two months' worth of employment data, because the September report was delayed by the federal government's partial shutdown.

Nebraska's October rate

was well below the national unemployment rate of 7.3 percent. The national rate increased by one-tenth of a percentage point from September.

Nebraska's nonfarm employment grew to 981,281 in October, an increase of 4,561 from the previous month. The three industries with the largest increases were trade, transportation and utilities; education and health services; and other services. Over the year, nonfarm employment is up 11,312.

The report said there were 1,027,092 people in the state labor force last month,

compared with 1,032,026 in September. The number of unemployed dropped to 40,283 from 42,411 in September. In October 2012 the figure was 39,749.

In Omaha, the preliminary unemployment rate dropped to 3.8 percent from 4 percent in September. The rate was 4 percent in October 2012. Lincoln's October rate was 3.1 percent, a tenth of a point lower than September's 3.2 percent and two-tenths of a point below the October 2012 mark of 3.3 percent.

The unemployment rates for Lincoln and Omaha are

not seasonally adjusted, so they cannot be directly compared to the state unemployment rate.

Here are preliminary area labor market unemployment rates for October, followed by the revised September rates:

- Beatrice: 3.8, 4.1
- Columbus: 2.9, 3.0
- Fremont: 3.6, 4.0
- Grand Island: 3.0, 3.3
- Hastings: 3.2, 3.3
- Kearney: 2.6, 2.7
- Lexington: 3.7, 4.0
- Norfolk: 3.0, 3.2
- North Platte: 2.8, 3.1
- Red Willow: 2.7, 2.8
- Scotts Bluff: 3.7, 4.0

# Lincoln Chancellor Decries Racial Incidents

LINCOLN, Neb. (AP) — The University of Nebraska-Lincoln chancellor has sent a campuswide email deploring the use of racial slurs at a student government meeting and decrying other race-based incidents on his campus in the state capital.

"Racial epithets and racial impersonations are not acceptable anywhere and especially in an institution devoted to education and progress," Chancellor Harvey Perlman said in his email Thursday. "These acts are not funny. They are not symbolic. They are only cruel. They reflect either malevolence or ignorance," Perlman said.

The university intends to begin a special campaign against such racially insensitive actions and words, using words included in Perlman's email: "Not here, now now."

A student senator, Cameron Murphy, had used the N-word and other epithets at a Nov. 13 meeting while discussing a proposed resolution. Murphy was objecting to a resolution pledging the stu-

dent senators' support for stopping the use of derogatory language in their everyday speech. He criticized the resolution as an attack on free speech.

Another student senator, Annie Himes, wants Murphy to face a hearing before the student senate executive committee, to be followed by a senate vote on whether to remove Murphy from office.

Himes told the Lincoln Journal Star that she tried to stop Murphy's remarks but was told that, under senate debate rules, she could not interrupt.

She said Murphy used the N-word while quoting comedian Chris Rock. She said he also criticized the university's Mexican American Student Association for complaining about students' use of sombreros during homecoming skits.

"He was allowed to go on until he felt he was done," Himes said. "This was definitely very offensive and racist."

Murphy told Omaha television sta-

tion KETV that he was standing up for freedom of speech.

"If they want to take away free speech at UNL, then take it away," Murphy said.

UNL spokesman Steve Smith said Perlman's outrage was sparked by other racially charged incidents, including the discovery this week of the N-word written in chalk on a campus sidewalk.

"This doesn't happen often here, but one (incident) is too many," Smith said.

Andre Fortune, director of the Jackie Gaughan Multicultural Center, told the Journal Star that he's heard from several minority students about racial incidents at the university. He said Murphy's statements reflect a larger societal acceptance of the use of racist terminology.

"I don't feel there's something unique happening on our campus," Fortune said. "I would hope that our campus community reinforces the statements by our chancellor."

# Officials Moving Forward With Vets Home

BY GRANT SCHULTE  
Associated Press

LINCOLN, Neb. (AP) — Nebraska officials are moving forward with plans to build a new veterans' home in Kearney, but design and construction work won't begin until federal funding is approved.

State officials held a meeting this week with 26 different architectural and engineering firms that are interested in the project. The state issued two formal requests — one on Nov. 11 and one on Monday — for a contractor to help design and construct the \$121 million facility.

The state could select a firm by late December, but won't formally hire one until officials are certain that the project will receive federal funding, said Gerry Oligmueller, acting director of

the Department of Administrative Services.

"We have to be in a position to engage the design consultants once the project's been approved by the federal government," Oligmueller said. "We have to be ready to go, is what it boils down to."

The decision to build the home in Kearney faces opposition from many residents in Grand Island, where it's been located for 126 years. Nebraska officials awarded veterans home project to Kearney in July.

Grand Island, Kearney, Hastings and North Platte all competed for the project to replace the outdated, 225-bed Grand Island facility. The current home has about 375 employees, and a new facility is expected to generate millions in fresh economic activity.

The state sent its pro-

posal to Washington in August, asking the U.S. Department of Veterans Affairs to pay 65 percent of the cost.

In September, a Grand Island-based veterans' service officer sent a letter to the department, urging it to withhold funding on the Kearney project until further study was completed. Donald Shuda said renovations could help the home stay in Grand Island, an argument rejected by state officials. Gov. Dave Heineman said the mixed signals could jeopardize federal funding for the project.

Darren Robinson, president of the Economic Development Council of Buffalo County, said Kearney-area officials have already started work on roads and other infrastructure to make way for the veterans' home. In October, development began with a \$430,000 roadway exten-

sion near the project's planned site.

Kearney city officials have agreed to commit \$8.5 million in direct funding and utility cost reductions for the project. The commitment came on top of \$1 million approved by Buffalo County officials, \$100,000 from an economic development group, and \$500,000 promised by a veterans' memorial committee.

"Nebraska's project is shovel ready, pending federal approval," Robinson said.

The Department of Veterans Affairs has said it will respect Heineman's right to choose the facility's location, as long as the state can demonstrate that a new facility will serve the current veteran population's needs while meeting VA standards.

# Attorney Who Divulged Info Suspended

OMAHA, Neb. (AP) — The Nebraska Supreme Court on Friday indefinitely suspended an Omaha attorney after she called a prosecutor to divulge incriminating information about a former client who had fired her from his criminal case.

The state's high court suspended the Nebraska law license of Donna Tonderum for a minimum of three years.

The high court's Counsel for Discipline, which investigates complaints against lawyers, presented the case. It said in its complaint that Tonderum last year was representing a client charged

with first-degree sexual assault when the client fired her.

About two weeks later, according to the complaint, Tonderum called the prosecutor in the case, saying she knew her former client was guilty of the charge and that wanted to see him go to prison. The counsel says Tonderum then gave the prosecutor the names of several witnesses in the case, stated what their testimonies would be and stated what she expected her former client's defense strategy to be.

The prosecutor then reported the call

to state authorities, as well as the new attorney for Tonderum's former client. A special prosecutor had to be appointed to handle the rape case.

The Counsel for Discipline said it mailed a grievance to Tonderum in September 2011, outlining the complaint against her. Court records say Tonderum replied by mail to the grievance, saying she had spoken to the prosecutor, but denying that she had made the statements attributed to her.

## Oil Crew Camps Becoming An Issue

BELLE FOURCHE (AP) — Large camps built to house oil field workers have become a common site in western North Dakota, and now they're starting to materialize in western South Dakota.

Two applications for crew camps are being processed in Harding County, one has been submitted in Meade County, and the Butte County Commission plans a special meeting in mid-December to consider ordinances regulating camps in case they materialize there, the *Black Hills Pioneer* reported.

Many workers in the North Dakota oil patch commute from northwestern South Dakota, and the Keystone XL pipeline proposed to carry oil from western Canada to the Texas Gulf Coast would pass through western South Dakota.

"I think we better get in gear on this," Butte County Commissioner Cal Geis said.

Butte County Commission Chairman Kim Kling said a temporary housing ordinance could address safety and health aspects of crew camps.

"I also think we need to look at the nuisance (ordinance)," Geis said.

Harding County already has an ordinance addressing crew camps. The two proposed camps in that county both are near Buffalo. Each would have about 1,200 people working on the proposed Keystone XL, which is still awaiting federal approval.



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