

SUPREME COURT OF NEBRASKA

State v. Beitel

296 Neb. 781 (2017) · No. No. S-16-098 · Decided June 2, 2017

SUMMARY

The Nebraska Supreme Court affirmed the denial of Roger Beitel’s motion for absolute discharge based on the statutory speedy-trial requirement. The court held that the codefendant exclusion under Neb. Rev. Stat. § 29-1207(4)(e) does not create a unitary speedy-trial clock and requires joinder, a reasonable delay, and good cause for not granting severance. The court concluded that the eight-day delay before the joint trial was reasonable and that good cause supported denying severance.

CASE DETAILS

COURT	Supreme Court of Nebraska
WRITING FOR THE COURT	Stacy, J.; Heavican, C.J.; Wright, J.; Miller-Lerman, J.; Cassel, J.; Kelch, J.; Funke, J.
JURISDICTION	Nebraska
DECIDED	June 2, 2017
DOCKET	No. S-16-098
DISPOSITION	affirmed
PROCEDURAL POSTURE	Roger Beitel appealed the Scotts Bluff County District Court's denial of his motion for absolute discharge on statutory speedy-trial grounds. The Nebraska Supreme Court granted his petition to bypass the Nebraska Court of Appeals and affirmed.
STANDARD OF REVIEW	The determination whether charges should be dismissed on speedy-trial grounds is reviewed for clear error when treated as a factual question. Statutory interpretation is reviewed independently as a question of law.
PRECEDENTIAL VALUE	Published Nebraska Supreme Court opinion; precedential.
PARTIES	Roger Beitel v. State of Nebraska

TOPICS

- speedy trial
- criminal procedure
- statutory interpretation
- appellate procedure
- standard of review

PRACTICE AREAS

Criminal procedure

Speedy trial

Statutory interpretation

Appellate procedure

QUESTIONS PRESENTED

1. Whether Neb. Rev. Stat. § 29-1207(4)(e) creates a unitary speedy-trial clock for joined codefendants.
2. Whether a joined defendant waives the statutory right to speedy trial by failing to request severance before the individual speedy-trial period expires.
3. How the period of delay under the codefendant exclusion should be calculated when a joint trial is set for a date certain.
4. Whether the State proved that the codefendant exclusion's requirements of joinder, a reasonable delay, and good cause for not granting severance were satisfied.
5. Whether the district court properly denied Beitel's motion for absolute discharge.

HOLDINGS

1. The Nebraska codefendant exclusion does not impose a unitary speedy-trial clock on all joined codefendants. The statutory right to speedy trial is personal and is not lost merely because a defendant is joined with a codefendant whose speedy-trial period has not expired.
2. Neb. Rev. Stat. § 29-1207(4)(e) applies only when the defendant's case is joined for trial with a codefendant whose speedy-trial time has not run, the period of delay is reasonable, and there is good cause for not granting a severance.
3. A joined codefendant's failure to request severance before the individual speedy-trial period expires waives the possibility of obtaining a severance, but does not waive the statutory right to speedy trial.
4. When a joint trial is set for a date certain at the time a motion for absolute discharge is filed, the court must first calculate the defendant's speedy-trial period without the codefendant exclusion and then calculate the number of days between that expiration date and the scheduled joint trial.
5. The State proved by a preponderance of the evidence that the 8-day delay was reasonable and that good cause existed for not granting a severance. The district court therefore did not clearly err in applying the codefendant exclusion.

KEY QUOTATIONS

“This standard emphasizes that the right to a speedy trial is a personal right which is not lost merely by the defendant being joined for trial with other defendants as to whom the running of the time limitations has been interrupted.” (at 788)

“The primary burden of bringing an accused person to trial within the time provided by law is upon the State.” (at 790)

“while it is correct that Roger’s failure to request a severance before his speedy trial time expired had the practical effect of waiving the possibility of a severance, it is incorrect to say the procedure he used resulted in a waiver of his right to speedy trial.” (at 792)

FACTUAL BACKGROUND

Roger Beitel and his father, Allen Beitel, were separately charged with criminal conspiracy to commit felony theft involving more than \$1,500. Roger's information was filed July 15, 2015, and the cases were joined for trial after Allen sought a continuance and waived his speedy-trial right. The joint trial was set to begin February 1, 2016; Roger's individual speedy-trial period, absent the codefendant exclusion, would have expired January 24. Roger objected to the February trial date but did not move to sever, instead filing a motion for absolute discharge on January 27.

PROCEDURAL HISTORY

Beitel was charged with criminal conspiracy to commit felony theft. His case was joined for trial with the case against his father, Allen Beitel, whose speedy-trial period had not expired. Beitel objected to the scheduled trial date but did not file a motion to sever before filing a motion for absolute discharge after his individual speedy-trial period allegedly expired. The district court denied discharge, finding the codefendant exclusion applicable, and the Nebraska Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- State v. Vela-Montes, 287 Neb. 679, 844 N.W.2d 286 (2014)
- State v. Brooks, 285 Neb. 640, 828 N.W.2d 496 (2013)
- State v. Covey, 290 Neb. 257, 859 N.W.2d 558 (2015)
- State v. Abdulkadir, 286 Neb. 417, 837 N.W.2d 510 (2013)
- State v. Sikes, 286 Neb. 38, 834 N.W.2d 609 (2013)
- State v. Parks, 282 Neb. 454, 803 N.W.2d 761 (2011)
- State v. Warriner, 267 Neb. 424, 675 N.W.2d 112 (2004)
- State v. Gartner, 263 Neb. 153, 638 N.W.2d 849 (2002)
- State v. Mucia, 292 Neb. 1, 871 N.W.2d 221 (2015)
- State v. Huff, 282 Neb. 78, 802 N.W.2d 77 (2011)
- State v. Lafler, 225 Neb. 362, 405 N.W.2d 576 (1987)
- State v. Oldfield, 236 Neb. 433, 461 N.W.2d 554 (1990)
- State v. Alcaraz, 8 Neb. Ct. App. 215, 590 N.W.2d 414 (1999)
- State v. Alvarez, 189 Neb. 281, 202 N.W.2d 604 (1972)
- United States v. Payden, 620 F. Supp. 1426 (S.D.N.Y. 1985)
- Henderson v. United States, 476 U.S. 321 (1986)
- United States v. Piteo, 726 F.2d 50 (2d Cir. 1983)
- United States v. Campbell, 706 F.2d 1138 (11th Cir. 1983)
- State v. Betancourt-Garcia, 295 Neb. 170, 887 N.W.2d 296 (2016)

- State v. Knudtson, 262 Neb. 917, 636 N.W.2d 379 (2001)
- Miller v. State, 706 P.2d 336 (Alaska App. 1968)
- People v. Hernandez, 829 P.2d 392 (Colo. App. 1991)
- State v. Kolbjornsen, 295 Neb. 231, 888 N.W.2d 153 (2016)
- United States v. Maryea, 704 F.3d 55 (1st Cir. 2013)

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