

SUPREME COURT OF NEBRASKA

State v. Dunlap

271 Neb. 314 (2006) · No. No. S-05-578 · Decided March 24, 2006

SUMMARY

The Nebraska Supreme Court dismissed the State’s appeal from an order disqualifying the Douglas County Attorney’s Office because the order was not a final, appealable order under Neb. Rev. Stat. § 29-2315.01. The court declined to apply an exception permitting interlocutory review because the State’s prosecutorial interests were protected by the appointment of special counsel.

CASE DETAILS

COURT	Supreme Court of Nebraska
WRITING FOR THE COURT	Wright, J.; Hendry, C.J.; Connolly, J.; Gerrard, J.; Stephan, J.; McCormack, J.; Miller-Lerman, J.
JURISDICTION	Nebraska
DECIDED	March 24, 2006
DOCKET	No. S-05-578
DISPOSITION	dismissed
PROCEDURAL POSTURE	The State appealed under Neb. Rev. Stat. § 29-2315.01 from a district court order disqualifying the Douglas County Attorney's office from prosecuting Dunlap and appointing special counsel.
STANDARD OF REVIEW	A jurisdictional question not involving a factual dispute is determined as a matter of law.
PRECEDENTIAL VALUE	Published opinion; precedential Nebraska Supreme Court decision
PARTIES	State of Nebraska v. James A. Dunlap

TOPICS

- appellate jurisdiction
- final judgment rule
- interlocutory appeal
- appellate procedure
- criminal procedure

PRACTICE AREAS

- criminal procedure
- appellate procedure
- appellate jurisdiction

QUESTIONS PRESENTED

1. Whether the State's appeal from an order disqualifying the entire county attorney's office was authorized under Neb. Rev. Stat. § 29-2315.01.
2. Whether the disqualification order was a final, appealable order.
3. Whether an exception to the final-order rule permitted interlocutory review of the disqualification order in this criminal case.

HOLDINGS

1. An order disqualifying the county attorney's office before trial, conviction, or sentencing is not a final order because further action is required to completely dispose of the criminal cause.
2. The exception to the final-order rule for orders disqualifying counsel did not permit interlocutory review because the State's interest in prosecuting the case was protected by the appointment of special counsel.
3. The Nebraska Supreme Court lacked jurisdiction because the State did not appeal from a final order as required by § 29-2315.01; the appeal therefore had to be dismissed.

KEY QUOTATIONS

“The district court's order disqualifying the county attorney's office was not a final order, and an exception to the final order rule does not apply in this case.” ([6])

“Because the State did not appeal from a final order as required by § 29-2315.01, we lack jurisdiction over this appeal.” ([6])

FACTUAL BACKGROUND

Dunlap was charged with attempted burglary and possession of burglar tools, and the State amended the information to charge him as a habitual criminal based on two prior felony convictions. Dunlap asserted that a current deputy county attorney had represented him in one of the predicate prior convictions, creating a conflict of interest for the entire county attorney's office. The district court disqualified the office and appointed special counsel to prosecute the case.

PROCEDURAL HISTORY

Dunlap was charged with attempted burglary and possession of burglar tools, and the State later amended the information to allege habitual criminal status. Dunlap moved to disqualify the entire Douglas County Attorney's office based on an alleged conflict involving a deputy county attorney who had previously represented him. The district court granted the motion and appointed special counsel. The Nebraska Supreme Court dismissed the State's appeal for lack of jurisdiction because the disqualification order was not final and no exception to the final-order rule applied.

DISPOSITION

dismissed

CASES CITED

- State v. Bao, 269 Neb. 127, 690 N.W.2d 618 (2005)
- State v. Wieczorek, 252 Neb. 705, 565 N.W.2d 481 (1997)
- State v. Hall, 252 Neb. 885, 566 N.W.2d 121 (1997)
- State v. Martinez, 198 Neb. 347, 252 N.W.2d 630 (1977)
- State v. Taylor, 179 Neb. 42, 136 N.W.2d 179 (1965)
- Richardson v. Griffiths, 251 Neb. 825, 560 N.W.2d 430 (1997)
- Malolepszy v. State, 270 Neb. 100, 699 N.W.2d 387 (2005)

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