

SUPREME COURT OF NEBRASKA

State v. Losinger

268 Neb. 660 (2004) · No. No. S-03-1304 · Decided September 24, 2004

SUMMARY

The Nebraska Supreme Court reviewed Daniel J. Losinger's challenge to consecutive sentences imposed for second degree murder and use of a deadly weapon to commit a felony. The court held that the sentences were within statutory limits and that the trial court did not abuse its discretion in considering the circumstances of the offense and Losinger's background.

CASE DETAILS

COURT	Supreme Court of Nebraska
WRITING FOR THE COURT	McCormack, J.; Hendry, C.J.; Wright, J.; Connolly, J.; Gerrard, J.; Stephan, J.; Miller-Lerman, J.
JURISDICTION	Nebraska
DECIDED	September 24, 2004
DOCKET	No. S-03-1304
DISPOSITION	affirmed
PROCEDURAL POSTURE	Losinger pleaded no contest to second degree murder and use of a deadly weapon to commit a felony. After the trial court imposed consecutive sentences, he timely appealed, contending that the sentences were excessive and constituted an abuse of discretion.
STANDARD OF REVIEW	A sentence imposed within statutory limits will not be disturbed absent an abuse of discretion. An abuse of discretion occurs when the sentencing court's reasons or rulings are clearly untenable and unfairly deprive the litigant of a substantial right and a just result.
PRECEDENTIAL VALUE	Published Nebraska Supreme Court opinion
PARTIES	Daniel J. Losinger v. State of Nebraska

TOPICS

- sentencing
- criminal procedure
- standard of review
- appellate procedure

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the trial court abused its discretion by imposing excessive sentences for second degree murder and use of a deadly weapon to commit a felony.

HOLDINGS

1. The trial court did not abuse its discretion by imposing consecutive sentences of 50 years to life for second degree murder and 10 to 20 years for use of a deadly weapon to commit a felony because the sentences were within the statutory limits and were supported by the relevant sentencing factors and the circumstances of the offenses.

KEY QUOTATIONS

“A sentence imposed within statutory limits will not be disturbed on appeal absent an abuse of discretion by the trial court.” (268 Neb. 660)

“In considering a sentence to be imposed, the sentencing court is not limited in its discretion to any mathematically applied set of factors.” (268 Neb. 660)

FACTUAL BACKGROUND

Losinger killed Vicki Soto, who was eight and one-half months pregnant, by cutting her throat at least three times with a sharp instrument, causing Soto's death and the death of her fetus. Soto sustained defensive wounds, and after her death Losinger amputated her legs below the knees and concealed the amputated portions in a storm sewer pipe. Losinger had a learning disability, an estimated IQ in the seventies, a history of alcohol and substance abuse, and a substantial criminal record, including four prior adult imprisonments.

PROCEDURAL HISTORY

Losinger was initially charged with first degree murder and use of a deadly weapon to commit a felony. Pursuant to a plea agreement, he pleaded no contest to second degree murder and use of a deadly weapon to commit a felony. The trial court sentenced him to 50 years to life for second degree murder and 10 to 20 years for use of a deadly weapon, to be served consecutively, with credit for 692 days served. The Nebraska Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- State v. Weaver, 267 Neb. 826, 677 N.W.2d 502 (2004)
- State v. Faber, 264 Neb. 198, 647 N.W.2d 67 (2002)
- State v. Hill, 255 Neb. 173, 583 N.W.2d 20 (1998)

- State v. McPherson, 266 Neb. 715, 668 N.W.2d 488 (2003)
- State v. Timmens, 263 Neb. 622, 641 N.W.2d 383 (2002)
- State v. Hubbard, 267 Neb. 316, 673 N.W.2d 567 (2004)
- State v. Roeder, 262 Neb. 951, 636 N.W.2d 870 (2001)

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