

SUPREME COURT OF NEBRASKA

State of Nebraska v. Perry D. Davis, 277 Neb. 161

762 N.W.2d 287 (2009) · No. S-08-316 · Decided February 13, 2009

SUMMARY

The Supreme Court of Nebraska reviewed Perry D. Davis's convictions for first degree sexual assault and sexual assault of a child. The court held that sufficient evidence supported both convictions and rejected Davis's challenges to the victim's testimony and the statutory elements. It modified the minimum sentence for the sexual-assault-of-a-child conviction from 4 years to 20 months based on an intervening sentencing amendment, and otherwise affirmed.

CASE DETAILS

COURT	Supreme Court of Nebraska
WRITING FOR THE COURT	Connolly, J.; Heavican, C.J.; Wright, J.; Gerrard, J.; Stephan, J.; McCormack, J.; Miller-Lerman, J.
JURISDICTION	Nebraska
DECIDED	February 13, 2009
DOCKET	S-08-316
DISPOSITION	affirmed
PROCEDURAL POSTURE	Davis appealed jury convictions for first degree sexual assault and sexual assault of a child, challenging the sufficiency of the evidence and the excessiveness of his sentences. The Nebraska Supreme Court affirmed the convictions and sentences as modified, reducing the minimum term on the sexual-assault-of-a-child conviction.
STANDARD OF REVIEW	For sufficiency of the evidence, the court viewed the evidence in the light most favorable to the prosecution and asked whether any rational trier of fact could have found the essential elements beyond a reasonable doubt; it did not resolve evidentiary conflicts, assess witness credibility, or reweigh evidence. Sentences within statutory limits were reviewed for abuse of discretion.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Perry D. Davis v. State of Nebraska

TOPICS

criminal procedure

evidence

statutory interpretation

sentencing

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PRACTICE AREAS

criminal law

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QUESTIONS PRESENTED

1. Whether the evidence was sufficient to support Davis's conviction for first degree sexual assault when the conviction rested principally on the victim's testimony and lacked corroboration.
2. Whether the evidence was sufficient to support the sexual-assault-of-a-child conviction, including whether the State had to prove serious personal injury.
3. Whether the minimum sentence imposed for the sexual-assault-of-a-child conviction was lawful after an amendment mitigating the applicable Class IV felony sentencing range.
4. Whether the imposed sentences were excessive and constituted an abuse of discretion.

HOLDINGS

1. The victim's testimony alone was legally sufficient to support the first degree sexual assault conviction if believed by the fact finder; corroboration was not required.
2. Serious personal injury was not a statutory element of sexual assault of a child under the applicable version of Nebraska law.
3. When a criminal sentencing statute is amended to mitigate punishment after the offense but before final judgment, the defendant is entitled to the benefit of the amended punishment unless the Legislature provides otherwise.
4. The 20-to-30-year sentence for first degree sexual assault and the modified 20-month-to-5-year sentence for sexual assault of a child were not excessive or an abuse of discretion because they fell within the applicable statutory ranges and were supported by the relevant sentencing factors.

KEY QUOTATIONS

“When reviewing a criminal conviction for sufficiency of the evidence to sustain the conviction, the relevant question for an appellate court is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” (290-291)

“where a criminal statute is amended by mitigating the punishment, after the commission of a prohibited act but before final judgment, the punishment is that provided by the amendatory act unless the Legislature has specifically indicated otherwise.” (293)

FACTUAL BACKGROUND

The victim testified that Davis sexually assaulted her beginning when she was four years old and continuing through age twelve, including digital penetration and other sexual touching. She did not disclose the abuse until

adolescence and ultimately reported it to a school guidance counselor in 2006. Davis denied all inappropriate contact, but the jury convicted him of first degree sexual assault and sexual assault of a child.

PROCEDURAL HISTORY

A jury convicted Davis in September 2007. In March 2008, the district court sentenced him to 20 to 30 years' imprisonment for first degree sexual assault and 4 to 5 years' imprisonment for sexual assault of a child, with consecutive sentences. On appeal, the Nebraska Supreme Court rejected his sufficiency and excessive-sentence arguments but found plain error in the minimum sentence imposed for the Class IV felony and modified that sentence.

DISPOSITION

affirmed

CASES CITED

- State v. Davis, 276 Neb. 755, 757 N.W.2d 367 (2008)
- State v. Iromuanya, 272 Neb. 178, 719 N.W.2d 263 (2006)
- State v. Schreiner, 276 Neb. 393, 754 N.W.2d 742 (2008)
- State v. Ramsay, 257 Neb. 430, 598 N.W.2d 51 (1999)
- State v. Rhea, 262 Neb. 886, 636 N.W.2d 364 (2001)
- State v. Urbano, 256 Neb. 194, 589 N.W.2d 144 (1999)
- State v. Gales, 265 Neb. 598, 658 N.W.2d 604 (2003)
- State v. Hedglin, 192 Neb. 545, 222 N.W.2d 829 (1974)
- State v. Reid, 274 Neb. 780, 743 N.W.2d 370 (2008)
- State v. Riley, 242 Neb. 887, 497 N.W.2d 23 (1993)