

SUPREME COURT OF NEBRASKA

State v. Liming

306 Neb. 475 (2020) · No. No. S-19-928 · Decided July 10, 2020

SUMMARY

The Nebraska Supreme Court affirmed the denial of James E. Liming’s motion for absolute discharge based on an alleged violation of Nebraska’s statutory speedy-trial requirement. The court held that the period resulting from a settlement-conference continuance granted with defense counsel’s consent was excludable under Neb. Rev. Stat. § 29-1207(4)(b). After counting the excluded periods, the court concluded that Liming’s motion was filed before the adjusted speedy-trial deadline expired.

CASE DETAILS

COURT	Supreme Court of Nebraska
WRITING FOR THE COURT	Papik, J.; Heavican, C.J.; Miller-Lerman, J.; Cassel, J.; Stacy, J.; Funke, J.; Freudenberg, J.
JURISDICTION	Nebraska
DECIDED	July 10, 2020
DOCKET	No. S-19-928
DISPOSITION	affirmed
PROCEDURAL POSTURE	James E. Liming appealed from the Richardson County District Court’s order overruling his motion for absolute discharge based on an alleged violation of Nebraska’s statutory speedy-trial requirements.
STANDARD OF REVIEW	The determination whether charges should be dismissed on speedy-trial grounds is generally reviewed for clear error because it presents a factual question. Statutory interpretation is reviewed independently as a question of law.
PRECEDENTIAL VALUE	Published Nebraska Supreme Court opinion; precedential.
PARTIES	James E. Liming v. State of Nebraska

TOPICS

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

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether a period of delay resulting from a continuance of a settlement conference, granted at the State's request but with the consent of the defendant's counsel, is excludable under Neb. Rev. Stat. § 29-1207(4)(b).
2. Whether, after accounting for all excludable periods, Liming was entitled to absolute discharge because the State failed to bring him to trial within the statutory speedy-trial period.

HOLDINGS

1. A period of delay resulting from a continuance of a court-ordered settlement conference is excludable under § 29-1207(4)(b) when the continuance is granted with the consent of the defendant or defense counsel. The statute does not restrict excludable continuances to particular types of proceedings or to continuances that directly postpone a trial date.
2. Liming was not entitled to absolute discharge because the applicable excludable periods extended the statutory deadline to November 2, 2019, and he filed his motion for absolute discharge on September 23, 2019.

KEY QUOTATIONS

“To calculate the deadline for trial under the speedy trial statutes, a court must exclude the day the State filed the information, count forward 6 months, back up 1 day, and then add any time excluded under § 29-1207(4).” (480)

“For essentially the same reason we rejected the defendant’s argument in Lovvorn, we find that the delay caused by the continuance of the settlement conference in this case resulted in excluded time under § 29-1207(4)(b).” (482)

FACTUAL BACKGROUND

The State filed a five-count information against Liming on October 16, 2018. Several periods were excluded from the statutory speedy-trial calculation because of Liming's plea in abatement and defense-requested continuances. The State also obtained a continuance of a court-ordered settlement conference after Liming's counsel stated that he did not object. Liming filed a motion for absolute discharge on September 23, 2019, asserting that the six-month speedy-trial deadline had expired.

PROCEDURAL HISTORY

The State filed a five-count information on October 16, 2018. After proceedings involving a plea in abatement, amended information, arraignment, pretrial scheduling, and continuances, the district court scheduled trial for September 24, 2019. Liming moved for absolute discharge the day before trial, arguing that the statutory six-month speedy-trial period had expired. The district court denied the motion, and the Nebraska Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- State v. Lovvorn, 303 Neb. 844, 932 N.W.2d 64 (2019)
- State v. Vela-Montes, 287 Neb. 679, 844 N.W.2d 286 (2014)
- State v. Murphy, 255 Neb. 797, 587 N.W.2d 384 (1998)
- State ex rel. Peterson v. Creative Comm. Promotions, 302 Neb. 606, 924 N.W.2d 664 (2019)
- In re Estate of Radford, 304 Neb. 205, 933 N.W.2d 595 (2019)

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