

SUPREME COURT OF NEBRASKA

State v. Hernandez

309 Neb. 299 (2021) · No. No. S-20-719 · Decided May 21, 2021

SUMMARY

The Nebraska Supreme Court held that the State failed to establish excludable time under Nebraska's statutory speedy-trial provisions. The court concluded that Hernandez's incarceration in Iowa and the issuance of an unserved bench warrant did not establish exclusion for absence or unavailability or for other proceedings. It reversed the district court's order and remanded with directions to dismiss the information.

CASE DETAILS

COURT	Supreme Court of Nebraska
WRITING FOR THE COURT	Cassel, J.; Heavican, C.J.; Miller-Lerman, J.; Stacy, J.; Funke, J.; Papik, J.; Freudenberg, J.
JURISDICTION	Nebraska
DECIDED	May 21, 2021
DOCKET	No. S-20-719
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Jaime A. Hernandez, Jr., appealed the Douglas County District Court's denial of his motion for absolute discharge based on an alleged violation of Nebraska's statutory speedy trial deadline.
STANDARD OF REVIEW	A trial court's determination whether charges should be dismissed on speedy trial grounds is reviewed for clear error. Statutory interpretation is reviewed independently as a question of law.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Jaime A. Hernandez, Jr. v. State of Nebraska

TOPICS

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

PRACTICE AREAS

- criminal procedure
- appellate procedure
- statutory interpretation
- speedy trial

QUESTIONS PRESENTED

1. Whether the State could rely on factual statements in Hernandez's motion for absolute discharge and statements by his counsel as judicial admissions to establish excludable time.
2. Whether Hernandez's Iowa incarcerations or the unserved bench warrant established an excludable period based on his absence or unavailability under Neb. Rev. Stat. § 29-1207(4)(d).
3. Whether Hernandez's Iowa incarceration established an excludable period based on other proceedings concerning him under Neb. Rev. Stat. § 29-1207(4)(a).
4. Whether the State brought Hernandez to trial within Nebraska's six-month statutory speedy trial period.

HOLDINGS

1. A defendant's deliberate, clear, and unequivocal factual statements in a motion for absolute discharge, and qualifying statements made by counsel during the proceedings, may operate as judicial admissions and may be used by the State to establish facts relevant to excludable speedy-trial time.
2. The Iowa incarceration periods and the unserved Nebraska bench warrant did not establish excludable time for absence or unavailability under § 29-1207(4)(d). A warrant does not automatically stop the statutory speedy-trial clock; absent proper notice of a required court appearance, the State must prove diligent efforts to serve the warrant or otherwise secure the defendant's presence.
3. Incarceration in another state, without evidence that the defendant was being held pursuant to a pending judicial proceeding, does not establish excludable time for 'other proceedings' under § 29-1207(4)(a).
4. Because the State failed to bring Hernandez to trial within the six-month statutory deadline and failed to establish any applicable excluded period, Hernandez was entitled to absolute discharge.

KEY QUOTATIONS

“A criminal defendant must be properly notified of the need to appear in court on a given date and time before failure to so appear can initiate a period of excludable time.” (307)

“The State failed to bring Hernandez to trial within its 6-month statutory deadline. The only evidence—Hernandez’ judicial admissions—did not prove or permit a reasonable inference of delay resulting from either “absence or unavailability” or “other proceedings.”” (309)

FACTUAL BACKGROUND

The State charged Hernandez with one count of possession of methamphetamine by information filed January 15, 2020. Hernandez was released pending trial under the 24/7 Sobriety Program, but the written plea did not specify a date on which he was required to appear. He was incarcerated in Iowa from February 21 to April 3, 2020, and again from June 3, 2020, beyond the filing of his motion; a Nebraska bench warrant issued on April 16 was never served, and the State presented no evidence of efforts to serve it or of any Iowa detainer. The district court treated 114 days as excludable and denied absolute discharge.

PROCEDURAL HISTORY

The State charged Hernandez by information with possession of methamphetamine on January 15, 2020. After the district court denied his motion for absolute discharge, finding time excludable because of his absence or unavailability and other proceedings, Hernandez perfected a timely appeal, which the Nebraska Supreme Court moved to its docket. The Supreme Court reversed and remanded with directions to dismiss the information.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Remand to the district court with directions to dismiss the information against Hernandez.

CASES CITED

- State v. Chapman, 307 Neb. 443, 949 N.W.2d 490 (2020)
- State v. Blocher, 307 Neb. 874, 951 N.W.2d 499 (2020)
- State v. Pullens, 281 Neb. 828, 800 N.W.2d 202 (2011)
- State v. Jennings, 308 Neb. 835, 957 N.W.2d 143 (2021)
- State v. Steele, 261 Neb. 541, 624 N.W.2d 1 (2001)
- State v. Gilliam, 292 Neb. 770, 874 N.W.2d 48 (2016)
- State v. Canady, 263 Neb. 552, 641 N.W.2d 43 (2002)
- State v. Burke, 23 Neb. App. 750, 876 N.W.2d 922 (2016)
- Wisner v. Vandelay Investments, 300 Neb. 825, 916 N.W.2d 698 (2018)
- State v. Richter, 240 Neb. 223, 481 N.W.2d 200 (1992)
- State v. Williams, 253 Neb. 619, 573 N.W.2d 106 (1997)
- State v. Tamayo, 280 Neb. 836, 791 N.W.2d 152 (2010)

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