

SUPREME COURT OF NEBRASKA

State v. Clemens

300 Neb. 601 (2018) · No. No. S-17-872 · Decided July 27, 2018

SUMMARY

The Nebraska Supreme Court affirmed Nathan W. Clemens' plea-based conviction and sentence for attempted violation of Nebraska's Sex Offender Registration Act. The court held that whether a person is required to register as a sex offender in another jurisdiction is determined under that jurisdiction's law, without an additional requirement of a criminal conviction or an offense that would require registration in Nebraska. The court concluded that Clemens' actual Colorado registration supplied a sufficient factual basis for his guilty plea.

CASE DETAILS

COURT	Supreme Court of Nebraska
WRITING FOR THE COURT	Miller-Lerman, J.; Heavican, C.J.; Cassel, J.; Stacy, J.; Funke, J.; Papik, J.; Hall, District Judge
JURISDICTION	Nebraska
DECIDED	July 27, 2018
DOCKET	No. S-17-872
DISPOSITION	affirmed
PROCEDURAL POSTURE	Clemens appealed his plea-based conviction and sentence for attempted violation of Nebraska's Sex Offender Registration Act, arguing that the district court committed plain error by accepting an insufficient factual basis for his guilty plea and sentencing him.
STANDARD OF REVIEW	The acceptance of a guilty plea is reviewed for abuse of discretion. Statutory interpretation is reviewed independently as a question of law.
PRECEDENTIAL VALUE	Published Nebraska Supreme Court opinion; precedential.
PARTIES	Nathan W. Clemens v. State of Nebraska

TOPICS

- criminal procedure
- plea bargaining
- statutory interpretation
- plain meaning rule
- appellate procedure

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the factual basis was sufficient to support Clemens' guilty plea to attempted violation of Nebraska's Sex Offender Registration Act.
2. Whether Neb. Rev. Stat. § 29-4003(1)(a)(iv) requires Nebraska registration when a person is required to register as a sex offender under another jurisdiction's law, even if the other jurisdiction's registration requirement arose from a juvenile adjudication.
3. Whether the district court plainly erred by accepting the plea and imposing sentence.

HOLDINGS

1. Whether a person is required to register as a sex offender in another jurisdiction is determined under the law of that other jurisdiction, not under Nebraska law. The statute does not require that the out-of-state registration be based on a criminal conviction or an offense that would require registration in Nebraska.
2. The factual basis was sufficient to support Clemens' plea to attempted violation of SORA because it established that he was required to register and actually registered as a sex offender in Colorado, entered Nebraska, and failed to register in Nebraska within three working days.
3. After acceptance of a guilty or no-contest plea, a defendant is limited to challenging whether the plea was understandingly and voluntarily made or resulted from ineffective assistance of counsel; a challenge to the factual basis may be considered as part of the understanding-and-voluntary inquiry.

KEY QUOTATIONS

“whether one is “required to register as a sex offender” in another jurisdiction is determined under the laws of the other jurisdiction rather than under Nebraska law.” (611)

“As our statute now reads, we conclude § 29-4003(1)(a)(iv) requires registration based on a registration requirement from another state even if the requirement in the other state is based on a juvenile adjudication.” (615)

FACTUAL BACKGROUND

Clemens had been registered as a sex offender in Colorado and was still required to register there when he moved to Nebraska in June 2016. He lived and worked in Nebraska but never registered as a sex offender in Nebraska or Lancaster County. The State charged him under Nebraska's Sex Offender Registration Act, and he pleaded guilty to an amended charge of attempted violation.

PROCEDURAL HISTORY

Clemens was originally charged with violating Nebraska's Sex Offender Registration Act by failing to register after entering Nebraska. The charge was amended pursuant to a plea agreement, and Clemens pleaded guilty to attempted violation of the Act. The district court accepted the plea, imposed a sentence of 270 days' imprisonment and 9 months' postrelease supervision, and Clemens appealed.

DISPOSITION

affirmed

CASES CITED

- State v. Russell, 291 Neb. 33, 863 N.W.2d 813 (2015)
- State v. Jones, 297 Neb. 557, 900 N.W.2d 757 (2017)
- State v. Kennedy, 299 Neb. 362, 908 N.W.2d 69 (2018)
- State v. Wilkinson, 293 Neb. 876, 881 N.W.2d 850 (2016)
- State v. Jasa, 297 Neb. 822, 901 N.W.2d 315 (2017)
- A.W. by and through Doe v. State, 865 F.3d 1014 (8th Cir. 2017)
- State v. Frederick, 292 Kan. 169, 251 P.3d 48 (2011)
- Crabtree v. State, 389 S.W.3d 820 (Tex. Crim. App. 2012)
- Com. v. Bell, 83 Mass. App. 82, 981 N.E.2d 220 (2013)
- Murphy v. Commonwealth, 500 S.W.3d 827 (Ky. 2016)
- Skaggs v. Nebraska State Patrol, 282 Neb. 154, 804 N.W.2d 611 (2011)