

NEBRASKA SUPREME COURT

State v. Garcia

301 Neb. 912 (2018) · No. No. S-17-1217 · Decided December 14, 2018

SUMMARY

The Nebraska Supreme Court affirmed the denial of Alejandro Garcia’s motion to withdraw a no contest plea under Neb. Rev. Stat. § 29-1819.02. The court held that the statute permits withdrawal only when the trial court failed to provide all or part of the required immigration advisement and the defendant faces an unadvised immigration consequence; an alleged translation error does not independently satisfy the statute. The court also reaffirmed that trial courts may consider such motions even after the defendant has completed the sentence.

CASE DETAILS

COURT	Nebraska Supreme Court
WRITING FOR THE COURT	Papik, J.; Heavican, C.J.; Miller-Lerman, J.; Cassel, J.; Stacy, J.; Funke, J.; Freudenberg, J.
JURISDICTION	Nebraska
DECIDED	December 14, 2018
DOCKET	No. S-17-1217
DISPOSITION	affirmed
PROCEDURAL POSTURE	Garcia appealed the Platte County District Court's affirmance of the county court's denial of his motion to vacate his no contest plea and withdraw it under Neb. Rev. Stat. § 29-1819.02(2). The Nebraska Supreme Court removed the appeal to its docket on its own motion.
STANDARD OF REVIEW	A refusal to permit withdrawal of a previously entered plea is reviewed for abuse of discretion. Issues of statutory interpretation and other questions of law are reviewed independently.
PRECEDENTIAL VALUE	published and precedential Nebraska Supreme Court opinion
PARTIES	Alejandro Garcia v. State of Nebraska

TOPICS

- criminal procedure
- statutory interpretation
- immigration
- appellate procedure
- standard of review

PRACTICE AREAS

criminal procedure plea withdrawal immigration consequences of criminal convictions
statutory interpretation appellate procedure

QUESTIONS PRESENTED

1. Whether a trial court may entertain a motion under Neb. Rev. Stat. § 29-1819.02(2) after the defendant has completed the sentence associated with the plea.
2. Whether § 29-1819.02(2) authorizes withdrawal of a guilty or no contest plea when the court gave the required immigration advisement but the defendant alleges an error in the translation of that advisement.
3. Whether Garcia's motion presented a due process claim based on the alleged translation error.

HOLDINGS

1. Section 29-1819.02(2) authorizes a trial court to consider a motion to withdraw a qualifying guilty or no contest plea regardless of whether the defendant has completed the sentence.
2. A defendant may withdraw a guilty or no contest plea under § 29-1819.02(2) only by showing that the court failed to give all or part of the required advisement and that the defendant faces an immigration consequence not included in the advisement. The statute does not authorize withdrawal based solely on an alleged inadequacy in the translation of an advisement that the court gave.
3. The court did not decide whether the alleged translation error violated due process because Garcia's motion did not allege a due process violation or seek withdrawal on that basis.

KEY QUOTATIONS

“We are neither well-equipped nor authorized to develop answers to them on our own.” (at 923)

“To withdraw a plea under § 29-1819.02, all a defendant must show is (1) that the court failed to give all or part of the advisement and (2) that the defendant faces an immigration consequence which was not included in the advisement given.” (at 924)

FACTUAL BACKGROUND

In 2011, Garcia was charged in Platte County with third degree domestic assault, false reporting, and obstructing government operations. Before accepting his no contest plea to the domestic assault charge, the county court gave the statutory advisement that a conviction could result in removal from the United States or denial of naturalization, and Garcia stated that he understood his rights. Garcia later sought to withdraw the plea under § 29-1819.02(2), asserting that the interpreter translated "removal" as the Spanish term for "expatriate," although he conceded that the court itself gave the required advisement.

PROCEDURAL HISTORY

Garcia pleaded no contest in county court to third degree domestic assault pursuant to a plea agreement, and the remaining charges were dismissed. After completing his 60-day sentence, he moved to withdraw his plea, asserting that the immigration advisement had been inadequately translated into Spanish. The county court

denied relief, the district court affirmed on law-of-the-case grounds, and the Nebraska Supreme Court affirmed on the statutory merits.

DISPOSITION

affirmed

CASES CITED

- State v. Gach, 297 Neb. 96, 898 N.W.2d 360 (2017)
- State v. Medina-Liborio, 285 Neb. 626, 829 N.W.2d 96 (2013)
- State v. Rodriguez, 288 Neb. 714, 850 N.W.2d 788 (2014)
- State v. Rodriguez-Torres, 275 Neb. 363, 746 N.W.2d 686 (2008)
- State v. Yos-Chiguil, 278 Neb. 591, 772 N.W.2d 574 (2009)
- State v. Mena-Rivera, 280 Neb. 948, 791 N.W.2d 613 (2010)
- Kozal v. Nebraska Liquor Control Comm., 297 Neb. 938, 902 N.W.2d 147 (2017)
- Heckman v. Marchio, 296 Neb. 458, 894 N.W.2d 296 (2017)
- State v. Alarcon-Chavez, 295 Neb. 1014, 893 N.W.2d 706 (2017)
- Tapia-Reyes v. Excel Corp., 281 Neb. 15, 793 N.W.2d 319 (2011)
- State v. Yos-Chiguil, 281 Neb. 618, 798 N.W.2d 832 (2011)
- Linda N. v. William N., 289 Neb. 607, 856 N.W.2d 436 (2014)
- State v. Coble, 299 Neb. 434, 908 N.W.2d 646 (2018)
- Smith v. State, 287 Ga. 391, 697 S.E.2d 177 (2010)