

SUPREME COURT OF NEBRASKA

Zeleny v. State

298 Neb. 244 (2017) · No. No. S-16-953 · Decided December 1, 2017

SUMMARY

The Nebraska Supreme Court affirmed the denial of James R. Zeleny’s petition for a writ of prohibition seeking to prevent sentencing on a driving under the influence conviction. The court held that the appeal properly challenged only the denial of prohibition, not the county court’s denial of the motion to arrest judgment. It further held that prohibition was unavailable because the county court had jurisdiction to sentence Zeleny and other adequate remedies existed for his claimed lack of a sufficient factual basis for the plea.

CASE DETAILS

COURT	Supreme Court of Nebraska
WRITING FOR THE COURT	Heavican, C.J.; Miller-Lerman, J.; Cassel, J.; Stacy, J.; Kelch, J.; Funke, J.
JURISDICTION	Nebraska
DECIDED	December 1, 2017
DOCKET	No. S-16-953
DISPOSITION	affirmed
PROCEDURAL POSTURE	Zeleny appealed the Fillmore County District Court's denial of his petition for a writ of prohibition seeking to restrain the county court from sentencing him after his guilty plea to driving under the influence. He also assigned error to the county court's denial of his motion to arrest judgment, but the Nebraska Supreme Court held that issue was not within its appellate jurisdiction in this proceeding.
STANDARD OF REVIEW	The propriety of an order granting relief by writ of prohibition is generally reviewed de novo.
PRECEDENTIAL VALUE	Published Nebraska Supreme Court opinion; precedential
PARTIES	James R. Zeleny v. State of Nebraska

TOPICS

- writ of certiorari
- appellate jurisdiction
- final judgment rule
- appellate procedure
- criminal procedure

PRACTICE AREAS

appellate procedure

criminal procedure

extraordinary writs

QUESTIONS PRESENTED

1. Whether the Nebraska Supreme Court had jurisdiction in this appeal to review the county court's denial of Zeleny's motion to arrest judgment.
2. Whether a writ of prohibition was available to prevent the county court from sentencing Zeleny after his guilty plea.
3. Whether the county court's exercise of sentencing authority was unauthorized by law and whether Zeleny lacked another adequate remedy.

HOLDINGS

1. The court lacked jurisdiction to decide Zeleny's assignment of error concerning the county court's denial of his motion to arrest judgment because the appeal was from the district court's final order denying prohibition, not from the county court order.
2. Zeleny was not entitled to a writ of prohibition because the county court's sentencing authority was authorized by law and other adequate remedies were available.
3. A writ of prohibition generally requires proof that the respondent is about to exercise judicial or quasi-judicial power, that the exercise is unauthorized by law, and that it will cause injury for which no other adequate remedy exists.

KEY QUOTATIONS

"In other words, while an appellate court can reverse, vacate, or modify a final order, it cannot address issues that do not bear on the correctness of the final order upon which its appellate jurisdiction is based." (248)

"Prohibition is a preventative remedy rather than a corrective one." (249)

"Zeleny could move to withdraw his plea, or he could appeal from his conviction following sentencing." (250)

FACTUAL BACKGROUND

Zeleny was charged with driving under the influence, initially with an enhanced allegation based on his alcohol concentration, and later entered a guilty plea to a verbally amended charge of driving under the influence, first offense, under .15. The factual basis indicated that Zeleny had driven after a single-vehicle accident, exhibited signs of intoxication, failed preliminary breath and field sobriety tests, and had a blood-alcohol content of .297. Before sentencing, he argued that the factual basis was insufficient because the charge referenced a breath measurement while the factual basis referenced a blood measurement.

PROCEDURAL HISTORY

Zeleny was charged in county court with driving under the influence and entered a guilty plea after the charge was verbally amended as part of a plea agreement. Before sentencing, he moved to arrest judgment, arguing that

the factual basis involved a blood-alcohol measurement even though the charge referred to a breath measurement; the county court denied the motion. The district court denied Zeleny's petition for a writ of prohibition, and the Nebraska Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- State, ex rel. Wright, v. Barney, 133 Neb. 676, 276 N.W. 676 (1937)
- State v. Loyd, 269 Neb. 762, 696 N.W.2d 860 (2005)
- Conkling v. Delany, 167 Neb. 4, 91 N.W.2d 250 (1958)
- State of Nebraska ex rel. Line v. Kuhlman, 167 Neb. 674, 94 N.W.2d 373 (1959)
- Line v. Rouse, 241 Neb. 779, 491 N.W.2d 316 (1992)