

SUPREME COURT OF NEBRASKA

State v. Washington

269 Neb. 728 (2005) · Decided April 28, 2005

SUMMARY

The Nebraska Supreme Court held that the period from the filing to the final disposition of a defendant's discovery motion is excluded from the statutory six-month speedy-trial calculation under Neb. Rev. Stat. § 29-1207(4)(a). Because excluding that period made Washington's motion to discharge timely before expiration of the speedy-trial period, the court sustained the State's exceptions and remanded for further proceedings.

CASE DETAILS

COURT	Supreme Court of Nebraska
WRITING FOR THE COURT	McCormack, J.; Connolly; Gerrard; Hendry; Lerman; McCormack; Miller; Stephan; Wright
JURISDICTION	Nebraska
DECIDED	April 28, 2005
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	The State sought leave to appeal from the district court's order sustaining Washington's motion to discharge and dismissing the criminal information on statutory speedy-trial grounds.
STANDARD OF REVIEW	A trial court's determination whether charges should be dismissed on speedy-trial grounds is reviewed for clear error. Issues of statutory interpretation and other questions of law are reviewed independently.
PRECEDENTIAL VALUE	Published precedential opinion
PARTIES	State of Nebraska v. Adrian C. Washington

TOPICS

- speedy trial
- criminal procedure
- statutory interpretation
- appellate procedure
- preservation of error

PRACTICE AREAS

- criminal procedure
- appellate procedure

QUESTIONS PRESENTED

1. Whether the period from the filing through the final disposition of Washington's motion for discovery was excludable from the six-month statutory speedy-trial period under Neb. Rev. Stat. § 29-1207(4)(a).
2. Whether the district court erred by sustaining Washington's motion to discharge and dismissing the information.

HOLDINGS

1. The entire period between the filing and final disposition of a defendant's discovery motion is excluded from the six-month statutory speedy-trial calculation under Neb. Rev. Stat. § 29-1207(4)(a).
2. Washington was not entitled to discharge because, after excluding the time during which his discovery motion was pending, the six-month statutory speedy-trial period had not expired when he filed his motion to discharge.

KEY QUOTATIONS

“*[T]he plain terms of § 29-1207(4)(a) exclude all time between the time of the filing of the defendant’s pretrial motions and their final disposition, regardless of the promptness or reasonableness of the delay.*”
(269 Neb. at 730)

“*“where the excludable period properly falls under § 29-1207(4)(a) rather than the catchall provision of § 29-1207(4)(f), no showing of reasonableness or good cause is necessary to exclude the delay,”*” (269 Neb. at 730-31)

FACTUAL BACKGROUND

Washington was charged with second degree assault by information filed December 4, 2003. On December 5, he waived physical appearance at arraignment and filed a motion for discovery. The motion remained pending until May 27, 2004, when the district court ordered mutual and reciprocal discovery. Washington filed a motion to discharge on June 9, 2004, arguing that the discovery period should not be excluded from the statutory speedy-trial calculation; the district court agreed and dismissed the information.

PROCEDURAL HISTORY

Washington was charged by information with second degree assault. He filed a discovery motion the day after the information was filed, and the district court ordered mutual and reciprocal discovery approximately six months later. The district court sustained Washington's motion to discharge, dismissed the information, and the State obtained leave to appeal. The Nebraska Supreme Court sustained the State's exceptions and remanded for further proceedings.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The cause was remanded to the district court for further proceedings because jeopardy had not attached.

CASES CITED

- State v. Petty, ante p. 205, 691 N.W.2d 101 (2005)
- State v. McHenry, 268 Neb. 219, 682 N.W.2d 212 (2004)
- State v. Steele, 261 Neb. 541, 624 N.W.2d 1 (2001)
- State v. Ward, 257 Neb. 377, 597 N.W.2d 614 (1999)
- State v. Feldhacker, 267 Neb. 145, 672 N.W.2d 627 (2004)
- State v. Brown, 214 Neb. 665, 335 N.W.2d 542 (1983)
- State v. Castillo, 11 Neb. App. 622, 657 N.W.2d 650 (2003)
- State v. Covey, 267 Neb. 210, 673 N.W.2d 208 (2004)