

SUPREME COURT OF NEBRASKA

State v. Vela, 272 Neb. 287

721 N.W.2d 631 (2006) · No. S-06-595 · Decided September 8, 2006

SUMMARY

The Supreme Court of Nebraska dismissed Erick Fernando Vela’s appeal from the denial of his motion to preclude the death penalty based on mental retardation. The court held that the order was not final and appealable because it did not affect a substantial right and was not issued in a special proceeding. The court concluded that the issue could be reviewed after sentencing and that the appeal therefore had to be dismissed for lack of jurisdiction.

CASE DETAILS

COURT	Supreme Court of Nebraska
WRITING FOR THE COURT	Hendry, C.J.; Wright, J.; Connolly, J.; Gerrard, J.; Stephan, J.; McCormack, J.; Miller-Lerman, J.
JURISDICTION	Nebraska
DECIDED	September 8, 2006
DOCKET	S-06-595
DISPOSITION	dismissed
PROCEDURAL POSTURE	The defendant appealed from the Madison County District Court's order overruling his verified motion to preclude imposition of the death sentence because of mental retardation. The Nebraska Supreme Court sua sponte ordered briefing on whether the appeal should be dismissed for lack of jurisdiction.
STANDARD OF REVIEW	The Nebraska Supreme Court independently determined whether it had appellate jurisdiction and whether the challenged order was final and appealable.
PRECEDENTIAL VALUE	Published opinion of the Supreme Court of Nebraska; binding precedent in Nebraska.
PARTIES	Erick Fernando Vela v. State of Nebraska

TOPICS

- appellate jurisdiction
- final judgment rule
- appellate procedure
- sentencing
- cruel and unusual punishment

PRACTICE AREAS

Appellate jurisdiction

Criminal procedure

Capital sentencing

Eighth Amendment

QUESTIONS PRESENTED

1. Whether the district court's order overruling Vela's motion to preclude imposition of the death sentence because of mental retardation was a final, appealable order.
2. Whether the order affected a substantial right under Nebraska's final-order statute.
3. Whether a hearing under Nebraska Revised Statute section 28-105.01(4) constituted a special proceeding for purposes of appellate jurisdiction.

HOLDINGS

1. The order was not a final, appealable order because Vela had not yet been sentenced and the order neither affected a substantial right nor arose from a special proceeding.
2. The order did not affect a substantial right because any error could be reviewed after sentencing and Vela retained the ability to present mental-capacity evidence as a mitigating circumstance.
3. The hearing was not a special proceeding because it was part of the capital-sentencing process and helped determine the merits of the sentence to be imposed.

KEY QUOTATIONS

“Because it neither affected a substantial right nor was made in a special proceeding, the court's order overruling the defendant's motion to preclude imposition of a death sentence because of mental retardation was not a final, appealable order.” (at 638)

“The court, on its own motion, hereby dismisses the above-captioned appeal.” (at 638)

FACTUAL BACKGROUND

Vela was charged with five counts of first-degree murder, five counts of use of a deadly weapon to commit a felony, robbery, burglary, and another weapons charge. He pleaded guilty to all 13 charges, and a jury later found all alleged aggravating circumstances proved beyond a reasonable doubt for each murder. Before sentencing, Vela moved to preclude the death penalty on the ground of mental retardation; after an evidentiary hearing, the district court found that he had not proved mental retardation under Nebraska law or *Atkins v. Virginia*.

PROCEDURAL HISTORY

Vela pleaded guilty to 13 criminal charges, including five counts of first-degree murder and related offenses. After a jury found the alleged aggravating circumstances for each murder, the district court held an evidentiary hearing on Vela's motion under Nebraska Revised Statute section 28-105.01 and found that he had not proved mental retardation. Vela appealed before he had been sentenced, and the Nebraska Supreme Court dismissed the appeal for lack of a final, appealable order.

DISPOSITION

dismissed

CASES CITED

- State v. Ehlers, 262 Neb. 247, 631 N.W.2d 471 (2001)
- In re Guardianship of Sophia M., 271 Neb. 133, 710 N.W.2d 312 (2006)
- State v. Dunlap, 271 Neb. 314, 710 N.W.2d 873 (2006)
- State v. Campbell, 247 Neb. 517, 527 N.W.2d 868 (1995)
- State v. Beyer, 260 Neb. 670, 619 N.W.2d 213 (2000)
- State v. Loyd, 269 Neb. 762, 696 N.W.2d 860 (2005)
- State v. Jacques, 253 Neb. 247, 570 N.W.2d 331 (1997)
- State v. Sinsel, 249 Neb. 369, 543 N.W.2d 457 (1996)
- State v. Sklenar, 269 Neb. 98, 690 N.W.2d 631 (2005)
- State v. Lauck, 261 Neb. 145, 621 N.W.2d 515 (2001)
- State v. Pruett, 258 Neb. 797, 606 N.W.2d 781 (2000)
- State v. Meese, 257 Neb. 486, 599 N.W.2d 192 (1999)
- State v. Cisneros, 14 Neb. App. 112, 704 N.W.2d 550 (2005)
- State v. Gibbs, 253 Neb. 241, 570 N.W.2d 326 (1997)
- State v. Milenkovich, 236 Neb. 42, 458 N.W.2d 747 (1990)
- Atkins v. Virginia, 536 U.S. 304, 122 S. Ct. 2242, 153 L. Ed. 2d 335 (2002)
- State v. Vasquez, 271 Neb. 906, 716 N.W.2d 443 (2006)