

NEBRASKA SUPREME COURT

State of Nebraska v. Jesus A. Chacon

296 Neb. 203 (2017) · No. Nos. S-16-419, S-16-425 · Decided March 31, 2017

SUMMARY

The Nebraska Supreme Court reviewed Jesus A. Chacon’s excessive-sentence challenges arising from convictions for possession of controlled substances and second-offense driving under the influence. The court affirmed the sentences in case No. S-16-419 and the DUI sentence in case No. S-16-425, but vacated the possession sentence in case No. S-16-425 and remanded for resentencing under 2016 Neb. Laws, L.B. 1094.

CASE DETAILS

COURT	Nebraska Supreme Court
WRITING FOR THE COURT	Kelch, J.; Heavican, C.J.; Wright, J.; Miller-Lerman, J.; Cassel, J.; Stacy, J.; Funke, J.
JURISDICTION	Nebraska
DECIDED	March 31, 2017
DOCKET	Nos. S-16-419, S-16-425
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Consolidated appeals from sentences imposed after Chacon pleaded no contest to two counts of possession of a controlled substance and one count of driving under the influence, second offense. Chacon challenged the sentences as excessive.
STANDARD OF REVIEW	A sentence within statutory limits is reviewed for abuse of discretion, including whether the sentencing court considered and applied relevant factors and applicable legal principles. Statutory interpretation is reviewed independently as a question of law. The court may review plain error even if it was not assigned or argued below.
PRECEDENTIAL VALUE	Published precedential opinion
PARTIES	Jesus A. Chacon v. State of Nebraska

TOPICS

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PRACTICE AREAS

criminal law

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statutory interpretation

QUESTIONS PRESENTED

1. Whether Chacon's sentence for possession of a controlled substance in case No. S-16-419 was excessive or constituted an abuse of discretion.
2. Whether the sentence for possession of a controlled substance in case No. S-16-425 was subject to retroactive relief under 2016 Neb. Laws, L.B. 1094 and the Randolph doctrine.
3. Whether the court should review the DUI sentence in case No. S-16-425 when the alleged excessiveness was not specifically argued in the appellate brief.

HOLDINGS

1. The sentence was within the statutory limits, and the district court did not abuse its discretion by imposing a sentence of 20 months to 5 years' imprisonment after considering the relevant sentencing factors and Chacon's history and treatment needs.
2. L.B. 1094 applied retroactively to Chacon's nonfinal sentence because it mitigated the applicable punishment, did not create a new crime, and the Legislature did not provide that the amendment would not apply to offenders under sentence on its effective date.
3. The court could recognize the sentencing error as plain error even though Chacon did not assign it, and Chacon was entitled to resentencing under L.B. 1094.
4. The court would not consider the propriety of the DUI sentence because the alleged error was not specifically argued in Chacon's brief.

KEY QUOTATIONS

“Where a sentence imposed within the statutory limits is alleged on appeal to be excessive, the appellate court must determine whether the sentencing court abused its discretion in considering and applying the relevant factors as well as any applicable legal principles in determining the sentence to be imposed.” (at 210)

“Although L.B. 1094 was not in effect at the time of sentencing, the plain language of the statute and the Randolph doctrine compel us to apply it to Chacon’s sentence for possession of a controlled substance in case No. S-16-425.” (at 214)

FACTUAL BACKGROUND

Chacon pleaded no contest to possession of methamphetamine in two cases and to driving under the influence, second offense, in one of those cases. The offenses occurred in July and December 2015, and the district court sentenced him concurrently after considering his extensive criminal history, failed probationary terms, substance-abuse issues, mental-health history, and need for treatment. The possession sentence in case No. S-16-425 was imposed after L.B. 605 took effect but before L.B. 1094 became effective while the appeal was pending.

PROCEDURAL HISTORY

The Hall County District Court accepted Chacon's no-contest pleas under a plea agreement, dismissed other charges, and imposed concurrent sentences. Chacon appealed both cases, and the Nebraska Supreme Court consolidated the appeals. The Supreme Court affirmed the sentence in case No. S-16-419, affirmed the DUI sentence in case No. S-16-425, and vacated and remanded the possession sentence in case No. S-16-425 based on plain error and the retroactive application of 2016 Neb. Laws, L.B. 1094.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Vacate the possession-of-a-controlled-substance sentence in case No. S-16-425 and resentence Chacon consistently with Neb. Rev. Stat. § 29-2204.02(4), L.B. 1094, and the standard described in *State v. Artis*. The judgment in case No. S-16-419 and the DUI sentence in case No. S-16-425 remain affirmed.

CASES CITED

- *State v. Aguallo*, 294 Neb. 177, 881 N.W.2d 918 (2016)
- *State v. Oldson*, 293 Neb. 718, 884 N.W.2d 10 (2016)
- *State v. Samayoa*, 292 Neb. 334, 873 N.W.2d 449 (2015)
- *State v. Draper*, 289 Neb. 777, 857 N.W.2d 334 (2015)
- *State v. Smith*, 286 Neb. 77, 834 N.W.2d 799 (2013)
- *State v. Raatz*, 294 Neb. 852, 885 N.W.2d 38 (2016)
- *State v. Randolph*, 186 Neb. 297, 183 N.W.2d 225 (1971)
- *State v. Duncan*, 291 Neb. 1003, 870 N.W.2d 422 (2015)
- *State v. Artis*, ante p. 172 (2017)
- *State v. Filholm*, 287 Neb. 763, 848 N.W.2d 571 (2014)