

SUPREME COURT OF NEBRASKA

State v. Huston

298 Neb. 323 (2017) · No. No. S-17-267 · Decided December 1, 2017

SUMMARY

The Nebraska Supreme Court held that an amendment to Neb. Rev. Stat. § 60-4,108, which made driver's-license revocation discretionary for certain first-offense driving-during-revocation defendants placed on probation, applied retroactively because it mitigated punishment and took effect before final judgment. The court vacated Brianna L. Huston's sentence in its entirety and remanded for resentencing under the amended statute.

CASE DETAILS

COURT	Supreme Court of Nebraska
WRITING FOR THE COURT	Kelch, J.; Heavican, C.J.; Miller-Lerman, J.; Cassel, J.; Stacy, J.; Funke, J.
JURISDICTION	Nebraska
DECIDED	December 1, 2017
DOCKET	No. S-17-267
DISPOSITION	vacated
PROCEDURAL POSTURE	Huston pleaded guilty in the Hall County Court to first-offense driving during revocation and was sentenced to jail, probation, and a one-year driver's-license revocation. The Hall County District Court affirmed. The Nebraska Supreme Court reviewed the sentence while an amendment mitigating the license-revocation punishment took effect.
STANDARD OF REVIEW	A sentence within statutory limits will not be disturbed absent an abuse of discretion by the trial court. The court also reviewed the retroactivity issue as a question of law and addressed plain error.
PRECEDENTIAL VALUE	Published Nebraska Supreme Court opinion; precedential.
PARTIES	Brianna L. Huston v. State of Nebraska

TOPICS

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

PRACTICE AREAS

criminal law

criminal procedure

sentencing

appellate practice

QUESTIONS PRESENTED

1. Whether the 2017 amendment to Neb. Rev. Stat. § 60-4,108, which mitigated the punishment for first-offense driving during revocation by allowing discretion concerning license revocation for offenders placed on probation, applied retroactively to Huston's sentence.
2. Whether the county court's failure to exercise discretion concerning license revocation required vacatur and resentencing.
3. Whether the court needed to reach Huston's additional assignment of error concerning when the revocation should begin.

HOLDINGS

1. When a criminal statute is amended to mitigate punishment after the offense but before final judgment, the amended punishment applies unless the Legislature provides otherwise. Because the amendment to § 60-4,108 took effect before final judgment and mitigated Huston's punishment, it applied retroactively to her sentence.
2. Because the county court believed the former law required a one-year license revocation, it failed to exercise the discretion required by the amended statute. That failure constituted plain error entitling Huston to retroactive relief and resentencing.
3. The court was not required to analyze Huston's additional challenge concerning when the revocation should begin because retroactive application of the amended statute independently required vacatur and resentencing.

KEY QUOTATIONS

“Accordingly, the amended version of § 60-4,108 allows for a more lenient punishment, i.e., mitigates the punishment, and therefore it applies retroactively to Huston’s sentence.” (327)

“Because the county court was unable to exercise its discretion at the time of Huston’s sentencing, we vacate Huston’s sentence in its entirety and remand the cause to the district court with directions to remand it to the county court for resentencing consistent with the amended version of § 60-4,108.” (328)

FACTUAL BACKGROUND

Huston was charged with driving during revocation and pleaded guilty to an amended first-offense charge in November 2016. The county court sentenced her to 45 days in jail, six months' probation, and a one-year driver's-license revocation, believing that *State v. Frederick* required the revocation. While her sentence appeal was pending, Nebraska amended Neb. Rev. Stat. § 60-4,108 to permit discretion rather than require revocation when a first-time offender is placed on probation.

PROCEDURAL HISTORY

Huston was initially charged with second- or third-offense driving during revocation and later pleaded guilty to an amended first-offense charge. The county court imposed 45 days' imprisonment, six months' probation, and a one-year license revocation, concluding that revocation was mandatory under *State v. Frederick*. The district court affirmed the sentencing order. While Huston's appeal was pending, Legislative Bill 263 amended the governing statute to give sentencing courts discretion to order revocation when an offender is placed on probation. The Nebraska Supreme Court vacated the sentence and remanded for resentencing under the amended statute.

DISPOSITION

vacated

REMAND INSTRUCTIONS

Vacate Huston's sentence in its entirety and remand to the Hall County District Court with directions to remand the cause to the Hall County Court for resentencing consistent with the amended version of Neb. Rev. Stat. § 60-4,108. On resentencing, the county court must exercise discretion concerning whether to impose a period of driver's-license revocation.

CASES CITED

- *State v. Frederick*, 291 Neb. 243, 864 N.W.2d 681 (2015)
- *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. Lantz*, 290 Neb. 757, 861 N.W.2d 728 (2015)
- *State v. Chacon*, 296 Neb. 203, 894 N.W.2d 238 (2017)
- *Doty v. West Gate Bank*, 292 Neb. 787, 874 N.W.2d 839 (2016)