

SUPREME COURT OF NEBRASKA

State v. Conover, 270 Neb. 446

703 N.W.2d 898 (2005) · No. No. S-04-576 · Decided September 30, 2005

SUMMARY

The Supreme Court of Nebraska held that the Legislature exceeded the scope of a 2002 special session by amending the penalty for a Class IA felony to include life imprisonment without parole. The court vacated Louis M. Conover II's sentences of life imprisonment without parole for two first degree murder convictions and remanded for resentencing to consecutive terms of life imprisonment, while affirming the convictions.

CASE DETAILS

|                       |                                                                                                                                                                                                                                                                                                                                               |
|-----------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Supreme Court of Nebraska                                                                                                                                                                                                                                                                                                                     |
| WRITING FOR THE COURT | Stephan, J.; Hendry, C.J.; Wright, J.; Connolly, J.; Gerrard, J.; McCormack, J.; Miller-Lerman, J.                                                                                                                                                                                                                                            |
| JURISDICTION          | Nebraska                                                                                                                                                                                                                                                                                                                                      |
| DECIDED               | September 30, 2005                                                                                                                                                                                                                                                                                                                            |
| DOCKET                | No. S-04-576                                                                                                                                                                                                                                                                                                                                  |
| DISPOSITION           | remanded                                                                                                                                                                                                                                                                                                                                      |
| PROCEDURAL POSTURE    | Direct appeal from sentences imposed by the district court for Adams County after Conover pleaded no contest to two counts of first degree murder.                                                                                                                                                                                            |
| STANDARD OF REVIEW    | The constitutionality of a statute is a question of law reviewed independently. Ordinarily, constitutional questions not raised in the trial court are not considered on appeal, but the court may notice plain error when a statute's constitutional invalidity is plain and doing so is necessary to a reasonable and sensible disposition. |
| PRECEDENTIAL VALUE    | published precedential opinion                                                                                                                                                                                                                                                                                                                |
| PARTIES               | Louis M. Conover II v. State of Nebraska                                                                                                                                                                                                                                                                                                      |

TOPICS

- constitutional law
- sentencing
- statutory interpretation
- appellate procedure
- criminal procedure

## PRACTICE AREAS

constitutional law

criminal law

criminal procedure

sentencing

appellate procedure

## QUESTIONS PRESENTED

1. Whether the Nebraska Legislature violated article IV, section 8, of the Nebraska Constitution by amending the penalty for a Class IA felony during the 2002 special legislative session.
2. Whether the district court could lawfully impose life imprisonment without parole under the 2002 amendment to Nebraska Revised Statutes section 28-105(1).
3. Whether Conover's sentences were erroneous but not void and should be vacated and remanded for resentencing.
4. Whether the court should address Conover's ineffective-assistance and consecutive-sentencing assignments on direct appeal.

## HOLDINGS

1. The 2002 amendments to Nebraska Revised Statutes sections 28-105(1) and 29-2520(1), which inserted the phrase "without parole" after "life imprisonment," were not related or germane to, and had no natural connection with, the purposes stated in the Governor's proclamation convening the special session. The Legislature therefore lacked constitutional authority to enact those amendments.
2. The district court had authority to impose life imprisonment on each conviction but lacked authority to add the phrase "without parole." The sentences of life imprisonment without parole were erroneous but not void.
3. On direct appeal, the Nebraska Supreme Court may remand a cause for imposition of lawful sentences when erroneous sentences have been pronounced.

## KEY QUOTATIONS

*"Thus, the 2002 amendments to §§ 28-105(1) and 29-2520(1), which insert the phrase "without parole" after "life imprisonment" contravene the constitutional directive that the "Legislature shall enter upon no business except that for which they were called together" in a special session."* (at 904)

*"Consequently, the sentences were erroneous but not void."* (at 904-05)

## FACTUAL BACKGROUND

Conover was charged in connection with the February 8 deaths of his parents. Pursuant to a plea agreement, he pleaded no contest to two counts of first degree murder, and the State did not seek the death penalty. The district court sentenced him to consecutive terms of life imprisonment without parole.

## PROCEDURAL HISTORY

Conover was charged with two counts of first degree murder and initially faced a potential death-penalty prosecution. Under a plea agreement, the State withdrew its notice of aggravating circumstances and agreed not to seek the death penalty. Conover pleaded no contest and was sentenced to two consecutive terms of life

imprisonment without parole. On direct appeal, the Nebraska Supreme Court reached the constitutional sentencing issue as plain error, affirmed the convictions, vacated the sentences, and remanded for resentencing.

#### DISPOSITION

remanded

#### REMAND INSTRUCTIONS

Vacate the sentences of life imprisonment without parole and resentence Conover to life imprisonment on each of the two convictions, with the sentences to run consecutively.

#### CASES CITED

- State v. Gales, 269 Neb. 443, 694 N.W.2d 124 (2005)
- State v. Bjorklund, 258 Neb. 432, 604 N.W.2d 169 (2000)
- State v. Bainbridge, 249 Neb. 260, 543 N.W.2d 154 (1996)
- State v. Goodseal, 186 Neb. 359, 183 N.W.2d 258 (1971)
- State v. Johnson, 269 Neb. 507, 695 N.W.2d 165 (2005)
- Ring v. Arizona, 536 U.S. 584, 122 S. Ct. 2428, 153 L. Ed. 2d 556 (2002)
- State v. Gales, 265 Neb. 598, 658 N.W.2d 604 (2003)
- State v. Mata, 266 Neb. 668, 668 N.W.2d 448 (2003)
- Arrow Club, Inc. v. Nebraska Liquor Control Commission, 177 Neb. 686, 131 N.W.2d 134 (1964)
- Chicago, B. & Q.R. Co. v. Wolfe, 61 Neb. 502, 86 N.W. 441 (1901)
- State v. Rouse, 206 Neb. 371, 293 N.W.2d 83 (1980)
- Draper v. Sigler, 177 Neb. 726, 131 N.W.2d 131 (1964)
- State v. Alford, 6 Neb. App. 969, 578 N.W.2d 885 (1998)
- State v. Mentzer, 233 Neb. 843, 448 N.W.2d 409 (1989)
- State v. Marshall, 269 Neb. 56, 690 N.W.2d 593 (2005)