

SUPREME COURT OF NEBRASKA

State v. Space

312 Neb. 456 (2022) · No. No. S-21-837 · Decided September 16, 2022

SUMMARY

The Nebraska Supreme Court held that setting an initial trial date outside the statutory six-month speedy-trial period, with the defendant's consent, does not constitute a continuance under Neb. Rev. Stat. § 29-1207(4)(b). The court also rejected the State's invited-error argument and affirmed the defendant's absolute discharge because the State failed to establish an applicable excludable period. The court overruled the State's exception proceeding.

CASE DETAILS

COURT	Supreme Court of Nebraska
WRITING FOR THE COURT	Stacy, J.; Heavican, C.J.; Miller-Lerman, J.; Cassel, J.; Funke, J.; Papik, J.; Freudenberg, J.
JURISDICTION	Nebraska
DECIDED	September 16, 2022
DOCKET	No. S-21-837
DISPOSITION	other
PROCEDURAL POSTURE	The State docketed an exception proceeding challenging the district court's order granting Tracy L. Space's motion for absolute discharge on statutory speedy-trial grounds.
STANDARD OF REVIEW	A trial court's determination concerning dismissal on speedy-trial grounds is reviewed for clear error. Statutory interpretation is reviewed independently as a question of law.
PRECEDENTIAL VALUE	Published precedential opinion
PARTIES	State of Nebraska v. Tracy L. Space

TOPICS

- speedy trial
- criminal procedure
- statutory interpretation
- appellate procedure
- standard of review

PRACTICE AREAS

- criminal procedure
- speedy trial
- statutory interpretation
- appellate procedure

QUESTIONS PRESENTED

1. Whether an initial trial date set outside Nebraska's 6-month statutory speedy-trial period becomes an excludable period of delay under Neb. Rev. Stat. § 29-1207(4)(b) merely because the defendant or defense counsel agrees that the date works.
2. Whether the defendant's agreement to an initial trial date beyond the statutory deadline constituted a continuance, a statutory waiver, or invited error preventing absolute discharge.
3. Whether the district court erred in granting absolute discharge under Neb. Rev. Stat. § 29-1208.

HOLDINGS

1. A continuance under § 29-1207(4)(b) is the postponement of a proceeding previously set for one date to a future date. Setting an initial trial date outside the statutory 6-month period is not a continuance, even when the defendant or defense counsel agrees that the proposed date works, and the resulting period is not excludable under § 29-1207(4)(b).
2. A defendant's consent to an initial trial date set outside the statutory 6-month period does not invoke the waiver provision in the last sentence of § 29-1207(4)(b). That provision applies when a defendant requests a continuance that moves a trial date originally set within the statutory period to a date beyond that period.
3. The invited error doctrine did not bar Space from seeking absolute discharge. Her counsel did not invite the trial court to commit a speedy-trial error by answering a scheduling question affirmatively when neither the State nor the court raised the speedy-trial deadline.
4. Because the State failed to bring Space to trial within 6 months after the information was filed, as extended by the single established excludable day, Space was entitled to absolute discharge under § 29-1208.

KEY QUOTATIONS

““continuance,” as it is used in § 29-1207(4)(b), does not broadly refer to the continuous passage of time. Instead, we hold that “continuance” refers to the circumstance where a court proceeding set for one date is postponed to a future date.” (467)

“On this record, the trial court correctly found there was just 1 day of excludable time under § 29-1207(4), and it correctly concluded the State failed to bring Space to trial before the running of the 6-month speedy trial period. Under § 29-1208, Space was entitled to absolute discharge.” (472)

FACTUAL BACKGROUND

The State filed an information against Tracy L. Space on March 5, 2021. The district court later set an initial jury trial date of September 20, 2021, more than 6 months after the information was filed, and defense counsel responded affirmatively when asked whether the date worked. The speedy-trial issue was not discussed at the scheduling hearing. Space moved for absolute discharge on September 13, 2021; the district court found only one excludable day arising from her discovery motion and concluded that the statutory deadline had expired.

PROCEDURAL HISTORY

Space was charged by information with aggravated driving under the influence, third offense, and refusal to submit to a preliminary breath test. At a July 22, 2021, scheduling hearing, the district court set an initial jury trial date of September 20, 2021, after defense counsel agreed that the date would work. Space later moved for absolute discharge, asserting that the statutory 6-month speedy-trial period had expired. The district court found only one excludable day, granted the motion, and the State filed an exception proceeding. The Nebraska Supreme Court overruled the exception.

DISPOSITION

other

CASES CITED

- State v. Abernathy, 310 Neb. 880, 969 N.W.2d 871 (2022)
- State v. Chase, 310 Neb. 160, 964 N.W.2d 254 (2021)
- State v. Coomes, 309 Neb. 749, 962 N.W.2d 510 (2021)
- State v. Gnanaprakasam, 310 Neb. 519, 967 N.W.2d 89 (2021)
- State v. Washington, 269 Neb. 728, 695 N.W.2d 438 (2005)
- State v. Covey, 267 Neb. 210, 673 N.W.2d 208 (2004)
- State v. Craven, 17 Neb. App. 127, 757 N.W.2d 132 (2008)
- State v. Liming, 306 Neb. 475, 945 N.W.2d 882 (2020)
- State v. Lovvorn, 303 Neb. 844, 932 N.W.2d 64 (2019)
- Nebraska Republican Party v. Shively, 311 Neb. 160, 971 N.W.2d 128 (2022)
- State v. Liming, 306 Neb. 475, 945 N.W.2d 882 (2020)
- State v. Amaya, 305 Neb. 36, 938 N.W.2d 346 (2020)
- Stone Land & Livestock Co. v. HBE, 309 Neb. 970, 962 N.W.2d 903 (2021)
- State ex rel. Peterson v. Creative Comm. Promotions, 302 Neb. 606, 924 N.W.2d 664 (2019)
- State v. Riessland, 310 Neb. 262, 965 N.W.2d 13 (2021)
- State v. Gill, 297 Neb. 852, 901 N.W.2d 679 (2017)
- State v. Gutierrez, 260 Neb. 1008, 620 N.W.2d 738 (2001)
- State v. Thomas, 303 Neb. 964, 932 N.W.2d 713 (2019)
- State v. Kinstler, 207 Neb. 386, 299 N.W.2d 182 (1980)
- State v. Williams, 277 Neb. 133, 761 N.W.2d 514 (2009)
- State v. Alvarez, 189 Neb. 281, 202 N.W.2d 604 (1972)
- State v. Hernandez, 309 Neb. 299, 959 N.W.2d 769 (2021)
- State v. Brock, 245 Neb. 315, 512 N.W.2d 389 (1994)
- State v. Zima, 237 Neb. 952, 468 N.W.2d 377 (1991)
- Barker v. Wingo, 407 U.S. 514 (1972)

