

SUPREME COURT OF NEBRASKA

State v. Dyer

298 Neb. 82 (2017) · No. S-16-742 · Decided October 27, 2017

SUMMARY

The Nebraska Supreme Court affirmed the Court of Appeals’ judgment upholding Anthony P. Dyer’s sentence for enticement by electronic communication device, a Class IV felony. The court held that determining whether substantial and compelling reasons justify withholding probation under Neb. Rev. Stat. § 29-2204.02(2)(c) is within the trial court’s discretion and that the sentencing record adequately supported imprisonment. The court clarified that Class IV felony sentencing generally favors probation but permits imprisonment when the statutory exception is satisfied.

CASE DETAILS

COURT	Supreme Court of Nebraska
WRITING FOR THE COURT	Heavican, C.J.; Wright, J.; Miller-Lerman, J.; Cassel, J.; Stacy, J.; Kelch, J.; Funke, J.
JURISDICTION	Nebraska
DECIDED	October 27, 2017
DOCKET	S-16-742
DISPOSITION	affirmed
PROCEDURAL POSTURE	Dyer pleaded no contest to enticement by electronic communication device, a Class IV felony, and appealed his sentence. The Nebraska Court of Appeals affirmed, and the Nebraska Supreme Court granted further review.
STANDARD OF REVIEW	A sentence within statutory limits will not be disturbed absent an abuse of discretion. The determination whether substantial and compelling reasons exist under Neb. Rev. Stat. § 29-2204.02(2)(c) to deny probation is reviewed for abuse of discretion.
PRECEDENTIAL VALUE	Published Nebraska Supreme Court opinion; precedential.
PARTIES	Anthony P. Dyer v. State of Nebraska

TOPICS

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

PRACTICE AREAS

criminal law

criminal sentencing

appellate law

QUESTIONS PRESENTED

1. Whether the district court abused its discretion by imposing imprisonment rather than probation for Dyer's Class IV felony under Neb. Rev. Stat. § 29-2204.02(2)(c).
2. Whether the district court sufficiently stated its reasoning on the record for finding substantial and compelling reasons to withhold probation under Neb. Rev. Stat. § 29-2204.02(3).
3. Whether the length of Dyer's sentence constituted an abuse of discretion.

HOLDINGS

1. Neb. Rev. Stat. § 29-2204.02(2) requires a court to impose probation for a Class IV felony unless one of the statutory exceptions applies, including substantial and compelling reasons why the defendant cannot effectively and safely be supervised in the community.
2. The considerations under Neb. Rev. Stat. § 29-2204.02(2)(c) include the traditional sentencing criteria in Neb. Rev. Stat. § 29-2260(2) and (3), including the nature of the crime and whether a lesser sentence would depreciate its seriousness or promote disrespect for the law, so long as those considerations support the conclusion that the particular defendant cannot be effectively and safely supervised in the community.
3. A sentencing order that merely lists reasons may be insufficient by itself to satisfy § 29-2204.02(3), but the requirement may be satisfied when the sentencing hearing and the order, considered together, sufficiently connect the record to the court's finding of substantial and compelling reasons.
4. The district court did not abuse its discretion by withholding probation or by imposing 2 years' imprisonment and 12 months' postrelease supervision.

KEY QUOTATIONS

“§ 29-2204.02(2) effectively adds a general limitation on a court’s discretion in choosing between probation and incarceration with respect to a Class IV felony, because it requires a court to impose a sentence of probation for a Class IV felony unless certain specified exceptions are present.” (89)

“Therefore, the appropriate considerations under § 29-2204.02(2)(c), when deciding whether the defendant can effectively and safely be supervised in the community, include the traditional reasons that a court is to consider when deciding whether to impose a sentence of imprisonment or a sentence of probation.” (90)

“Although the sentencing order itself merely listed the reasons and did not provide the “reasoning” required by § 29-2204.02(3), the district court’s comments at the sentencing hearing filled in the missing pieces of the court’s reasoning.” (91)

FACTUAL BACKGROUND

Dyer pleaded no contest pursuant to an agreement under which the State agreed not to pursue additional charges. He communicated online and by text with an investigator whom he believed to be a 13-year-old girl, discussed

sexual activity, sent a picture of his genitalia, arranged a meeting, and appeared at the meeting location, where he was arrested. The district court imposed the maximum Class IV felony sentence of 2 years' imprisonment and 12 months' postrelease supervision rather than probation, relying on the offense circumstances, public-protection concerns, and a risk assessment indicating a moderate-to-high risk of reoffending.

PROCEDURAL HISTORY

The Lancaster County District Court accepted Dyer's no-contest plea and sentenced him to 2 years' imprisonment and 12 months' postrelease supervision. The Court of Appeals affirmed the sentence, concluding that the district court did not abuse its discretion in withholding probation. The Nebraska Supreme Court granted further review to assess the Court of Appeals' application of the sentencing standards in Neb. Rev. Stat. § 29-2204.02 and affirmed.

DISPOSITION

affirmed

CASES CITED

- State v. Jones, 297 Neb. 557, 900 N.W.2d 757 (2017)
- State v. Baxter, 295 Neb. 496, 888 N.W.2d 726 (2017)
- State v. Dyer, 24 Neb. App. 514, 891 N.W.2d 705 (2017)

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