

SUPREME COURT OF NEBRASKA

State v. McAleese

311 Neb. 243 (2022) · No. No. S-21-255 · Decided March 25, 2022

SUMMARY

The Nebraska Supreme Court affirmed the district court’s determination that the county court lacked subject matter jurisdiction to adjudicate Andrew McAleese’s postjudgment motion seeking to vacate and correct his sentence. The court held that no recognized criminal procedure authorized reopening a final criminal judgment nine years after sentencing to correct an alleged failure to impose an ignition-interlock restriction. The alleged sentencing error did not render the judgment void.

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               | March 25, 2022                                                                                                                                                                                                                                                                   |
| DOCKET                | No. S-21-255                                                                                                                                                                                                                                                                     |
| DISPOSITION           | affirmed                                                                                                                                                                                                                                                                         |
| PROCEDURAL POSTURE    | McAleese appealed the county court's denial of his postjudgment motion to reopen the criminal case, vacate his final sentence, and impose an ignition-interlock restriction. The district court affirmed, and the Nebraska Supreme Court granted the State's petition to bypass. |
| STANDARD OF REVIEW    | Jurisdictional issues not involving factual disputes, including subject matter jurisdiction, are reviewed as matters of law independently of the lower court's decision.                                                                                                         |
| PRECEDENTIAL VALUE    | Published Nebraska Supreme Court opinion; precedential.                                                                                                                                                                                                                          |
| PARTIES               | Andrew McAleese v. State of Nebraska                                                                                                                                                                                                                                             |

TOPICS

- criminal procedure
- post-conviction relief
- appellate procedure
- sentencing
- standard of review

PRACTICE AREAS

## QUESTIONS PRESENTED

1. Whether a Nebraska sentencing court has subject matter jurisdiction to consider an unauthorized postjudgment motion filed years after a criminal judgment became final to reopen the case, vacate the sentence, and correct an alleged sentencing error.
2. Whether the failure to impose a vehicle restriction required by Neb. Rev. Stat. § 60-6,197.01 rendered McAleese's sentence or criminal judgment void and subject to collateral attack.

## HOLDINGS

1. A sentencing court lacks subject matter jurisdiction to adjudicate an unauthorized postjudgment motion seeking to reopen a criminal case and vacate or modify a sentence after the judgment has become final, because Nebraska criminal procedure statutes provide no recognized procedure authorizing that relief.
2. The sentencing court's failure to impose the statutory vehicle restriction did not render the sentence or criminal judgment void because the court had jurisdiction over McAleese and the DUI offense, and the alleged error concerned only the sentence's compliance with a statutory requirement.

## KEY QUOTATIONS

*"We likewise conclude the county court lacked subject matter jurisdiction to adjudicate the motion filed by McAleese, as there is no recognized criminal procedure which authorizes a sentencing court to reopen a criminal case after the judgment has become final in order to vacate and correct an alleged sentencing error."* (311 Neb. at 248)

*"This alleged error or irregularity is not one which rendered the judgment and sentence void, and McAleese's claim to the contrary is meritless."* (311 Neb. at 249)

## FACTUAL BACKGROUND

In 2008, McAleese was convicted in Adams County Court of third-offense driving under the influence and sentenced to probation, including jail time, a fine, and a two-year license revocation. After probation was revoked, he was resentenced in 2010 to 120 days in jail, a fine, and a 15-year license revocation. Although the applicable statutory scheme required the sentencing court to impose one of two restrictions on vehicles owned by him, neither the original nor resentencing order imposed such a restriction. The judgment became final without an appeal, and McAleese sought correction of the alleged sentencing error approximately nine years later.

## PROCEDURAL HISTORY

McAleese was convicted and sentenced in Adams County Court in 2008 for third-offense driving under the influence. After his probation was revoked, he was resentenced in 2010, but the court did not impose either of the vehicle restrictions required by the applicable statute. Nearly nine years after the judgment became final, McAleese filed a motion seeking to reopen the case and correct the sentence. The county court denied the

motion for lack of legal authority, the district court affirmed, and the Nebraska Supreme Court affirmed the district court.

## DISPOSITION

affirmed

## CASES CITED

- State v. Coble, 299 Neb. 434, 908 N.W.2d 646 (2018)
- State v. Greer, 309 Neb. 667, 962 N.W.2d 217 (2021)
- State v. Chojolan, 288 Neb. 760, 851 N.W.2d 661 (2014)
- State v. Beyer, 260 Neb. 670, 619 N.W.2d 213 (2000)
- Caradori v. Hamilton, 193 Neb. 500, 227 N.W.2d 850 (1975)
- State v. Jonsson, 192 Neb. 730, 224 N.W.2d 181 (1974)
- State v. Sikes, 286 Neb. 38, 834 N.W.2d 609 (2013)
- State v. Hense, 276 Neb. 313, 753 N.W.2d 832 (2008)
- State v. Melton, 308 Neb. 159, 953 N.W.2d 246 (2021)
- State v. Dunster, 270 Neb. 773, 707 N.W.2d 412 (2005)
- State v. Louthan, 257 Neb. 174, 595 N.W.2d 917 (1999)
- State v. Miller, 240 Neb. 297, 481 N.W.2d 580 (1992)
- State v. Rodriguez, 288 Neb. 714, 850 N.W.2d 788 (2014)
- State v. Irish, 298 Neb. 61, 902 N.W.2d 669 (2017)
- State v. Barnes, 303 Neb. 167, 927 N.W.2d 64 (2019)
- Sanders v. Frakes, 295 Neb. 374, 888 N.W.2d 514 (2016)
- Gray v. Kenney, 290 Neb. 888, 863 N.W.2d 127 (2015)
- Peterson v. Houston, 284 Neb. 861, 824 N.W.2d 26 (2012)
- Rehbein v. Clarke, 257 Neb. 406, 598 N.W.2d 39 (1999)
- In re Carbino, 117 Neb. 107, 219 N.W. 846 (1928)
- Keller v. Davis, 69 Neb. 494, 95 N.W. 1028 (1903)
- In re Ream, 54 Neb. 667, 75 N.W. 24 (1898)
- State v. Ratumaimuri, 299 Neb. 887, 911 N.W.2d 270 (2018)
- Meyer v. Frakes, 294 Neb. 668, 884 N.W.2d 131 (2016)
- State v. Woodruff, 205 Neb. 638, 288 N.W.2d 754 (1980)
- Hickman v. Fenton, 120 Neb. 66, 231 N.W. 510 (1930)
- McElhaney v. Fenton, 115 Neb. 299, 212 N.W. 612 (1927)
- In re Fanton, 55 Neb. 703, 76 N.W. 447 (1898)
- State v. Gunther, 271 Neb. 874, 716 N.W.2d 691 (2006)
- State v. Conover, 270 Neb. 446, 703 N.W.2d 898 (2005)

- State v. Rouse, 206 Neb. 371, 293 Neb. 83 (1980)
- State v. Alford, 6 Neb. App. 969, 578 N.W.2d 885 (1998)

---

Retrieved from lawtools.ai · <https://lawtools.ai/cases/state/nebraska-supreme-court-of-nebraska/2022/state-v-mcaleese-p2hspjv>