

SUPREME COURT OF NEBRASKA

State v. Paulsen

304 Neb. 21 (2019) · No. No. S-18-936 · Decided September 6, 2019

SUMMARY

The Nebraska Supreme Court held that an order denying a probationer's motion to modify or eliminate a probation condition is a final, appealable order because it affects a substantial right. The court concluded that Nebraska law permits modification of probation conditions based on changed circumstances but does not allow a probationer to use such a motion to raise arguments that could have been presented on direct appeal. Because Paulsen identified no sufficient change in circumstances, the court affirmed the denial of his motion to remove the firearms restriction.

CASE DETAILS

COURT	Supreme Court of Nebraska
WRITING FOR THE COURT	Heavican, C.J.; Miller-Lerman, J.; Cassel, J.; Stacy, J.; Funke, J.; Papik, J.; Freudenberg, J.
JURISDICTION	Nebraska
DECIDED	September 6, 2019
DOCKET	No. S-18-936
DISPOSITION	affirmed
PROCEDURAL POSTURE	Paulsen appealed from the Dawson County District Court's order denying his motion under Neb. Rev. Stat. § 29-2263(3) to modify or eliminate a firearms-related condition of probation.
STANDARD OF REVIEW	Jurisdictional questions not involving factual disputes are reviewed as a matter of law. For orders denying modification or elimination of probation conditions, claim-specific standards apply: constitutional challenges are reviewed for abuse of discretion, while whether a condition is authorized by statute is reviewed de novo. The court applied the claim-specific approach here.
PRECEDENTIAL VALUE	published, precedential
PARTIES	Larry Paulsen v. State of Nebraska

TOPICS

probation

appellate jurisdiction

final judgment rule

statutory interpretation

preservation of error

PRACTICE AREAS

criminal procedure

probation

appellate jurisdiction

statutory interpretation

QUESTIONS PRESENTED

1. Whether the order denying Paulsen's motion to modify or eliminate a probation condition was a final, appealable order under Neb. Rev. Stat. § 25-1902.
2. What standard of review governs an appeal from an order refusing to modify or eliminate a probation condition.
3. Whether Neb. Rev. Stat. § 29-2263(3) permits a probationer to challenge a probation condition based on arguments that could have been raised on direct appeal from the sentence.
4. Whether Paulsen's asserted facts, including his lack of a violence history and compliance with probation, constituted a sufficient change in circumstances to require removal of the firearms restriction.

HOLDINGS

1. An order denying a probationer's motion to modify or eliminate a probation condition is a final, appealable order when it affects a substantial right and is made on summary application after judgment under Neb. Rev. Stat. § 25-1902.
2. Neb. Rev. Stat. § 29-2263(3) gives a probationer the right to initiate a process by which the sentencing court may assess whether new circumstances warrant modification or elimination of probation conditions, subject to statutory and constitutional limits.
3. The claim-specific standards applicable to direct challenges to probation conditions also govern appeals from orders refusing to modify or eliminate probation conditions.
4. Section 29-2263(3) does not permit a probationer to use a modification motion to raise arguments that were available in a direct appeal from the original sentence and probation order.
5. Paulsen's allegations did not establish a sufficient change in circumstances requiring modification of the firearms condition; compliance with probation for approximately six months, by itself, is not enough.

KEY QUOTATIONS

“We understand § 29-2263(3) to allow trial courts to adjust probation terms during the course of probation as new circumstances warrant.” (304 Neb. at 27-28)

“The mere fact that a probationer has complied with the terms of probation for some period of time is not a sufficient change in circumstances so as to entitle a probationer to a modification of the conditions of probation.” (304 Neb. at 32)

FACTUAL BACKGROUND

Paulsen pleaded guilty to second-offense driving under the influence and received a sentence of 30 days in jail and 24 months of probation. One probation condition prohibited him from possessing or associating with anyone possessing firearms, ammunition, or illegal weapons. Approximately six months into probation, he sought removal of the condition, citing his status as a firearm collector, lack of violence history, lack of a connection between firearms and his DUI convictions, and his compliance with probation. The district court denied the motion, concluding that Paulsen had not shown a material change in circumstances.

PROCEDURAL HISTORY

Paulsen pleaded guilty to second-offense driving under the influence and was sentenced to 30 days in jail and 24 months of probation, including a condition barring possession of or association with persons possessing firearms, ammunition, or illegal weapons. More than six months later, he moved to modify the firearms condition; the district court denied the motion without a hearing, finding no material change in circumstances. The Nebraska Supreme Court held that the order was final and appealable but affirmed the denial on the merits.

DISPOSITION

affirmed

CASES CITED

- State v. McGuire, 301 Neb. 895, 921 N.W.2d 77 (2018)
- State v. Uhing, 301 Neb. 768, 919 N.W.2d 909 (2018)
- Simms v. Friel, 302 Neb. 1, 921 N.W.2d 369 (2019)
- State v. Thalmann, 302 Neb. 110, 921 N.W.2d 816 (2019)
- State v. Coble, 299 Neb. 434, 908 N.W.2d 646 (2017)
- State v. Rieger, 286 Neb. 788, 839 N.W.2d 282 (2013)
- State v. Marrs, 272 Neb. 573, 723 N.W.2d 499 (2006)
- Cattle Nat. Bank & Trust Co. v. Watson, 293 Neb. 943, 880 N.W.2d 906 (2016)
- State v. Volcek, 15 Neb. App. 416, 729 N.W.2d 90 (2007)
- State v. Dinslage, 280 Neb. 659, 789 N.W.2d 29 (2010)
- State v. Grimm, 240 Neb. 863, 484 N.W.2d 830 (1992)
- Sherman T. v. Karyn N., 286 Neb. 468, 837 N.W.2d 746 (2013)
- State v. Dill, 300 Neb. 344, 913 N.W.2d 470 (2018)
- State v. Parnell, 294 Neb. 551, 883 N.W.2d 652 (2016)

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