

SUPREME COURT OF NEBRASKA

State v. Rodriguez

288 Neb. 714 (2014) · No. No. S-13-325 · Decided August 1, 2014

SUMMARY

The Nebraska Supreme Court held that a district court has jurisdiction under Neb. Rev. Stat. § 29-1819.02 to consider a motion to withdraw a guilty plea and vacate a conviction based on an inadequate immigration advisement, even after the defendant has completed the sentence. The court disapproved any contrary limitation suggested in State v. Rodriguez-Torres and reversed and remanded the dismissal for lack of jurisdiction. The court did not address Rodriguez’s alternative common-law jurisdiction argument.

CASE DETAILS

COURT	Supreme Court of Nebraska
WRITING FOR THE COURT	Wright, J.; Heavican, C.J.; Connolly, J.; Stephan, J.; McCormack, J.; Miller-Lerman, J.; Cassel, J.
JURISDICTION	Nebraska
DECIDED	August 1, 2014
DOCKET	No. S-13-325
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Rodriguez appealed the Sarpy County District Court's dismissal for lack of subject matter jurisdiction of his motion to withdraw his guilty plea and vacate his 2004 conviction based on an allegedly deficient immigration advisement.
STANDARD OF REVIEW	Subject matter jurisdiction is a question of law reviewed independently of the lower court's decision.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Francisco C. Rodriguez v. State of Nebraska

TOPICS

- criminal procedure
- immigration
- post-conviction relief
- statutory interpretation
- appellate jurisdiction

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether Neb. Rev. Stat. § 29-1819.02(2) gives a court jurisdiction to consider a motion to withdraw a guilty plea and vacate a conviction when the plea was accepted on or after July 20, 2002 but the defendant completed the sentence before filing the motion.
2. Whether the court should decide Rodriguez's alternative argument that jurisdiction existed under a common-law procedure for withdrawing a plea.

HOLDINGS

1. For pleas accepted on or after July 20, 2002, § 29-1819.02(2) gives a court jurisdiction to consider a motion to withdraw the plea and vacate the judgment regardless of whether the defendant completed the sentence before filing the motion.
2. The court did not decide whether an alternative common-law procedure supplied jurisdiction because jurisdiction existed under § 29-1819.02(2), making the alternative issue unnecessary to the case's disposition.

KEY QUOTATIONS

“To the extent that our statement in Rodriguez-Torres can be interpreted to limit the relief provided in § 29-1819.02(2) to a defendant whose sentence has not been completed, such interpretation is expressly disapproved.” (723)

“The only time-based limitation imposed by the statute is that the plea sought to be withdrawn must have been accepted on or after July 20, 2002.” (726)

FACTUAL BACKGROUND

In 2004, Rodriguez entered a guilty plea to attempted possession of a controlled substance, a Class I misdemeanor, after the charge was reduced pursuant to a plea agreement. Before accepting the plea, the district court warned him generally that a felony plea might cause deportation, but it did not give the statutory advisement concerning removal or denial of naturalization. Rodriguez was sentenced to two years' probation, completed his sentence, and later moved to withdraw his plea after immigration authorities took him into custody.

PROCEDURAL HISTORY

Rodriguez pleaded guilty in 2004 to attempted possession of a controlled substance and received two years' probation. After completing his sentence, he moved in 2013 to withdraw his plea and vacate the conviction, alleging that the court had failed to provide the advisement required by Neb. Rev. Stat. § 29-1819.02(1) and that he faced immigration consequences. The district court dismissed the motion for lack of jurisdiction, and the Nebraska Supreme Court reversed and remanded.

DISPOSITION

REMAND INSTRUCTIONS

The district court must consider Rodriguez's motion to withdraw his guilty plea and vacate his conviction on the merits under § 29-1819.02(2), rather than dismissing it for lack of jurisdiction.

CASES CITED

- State v. Clark, 278 Neb. 557, 772 N.W.2d 559 (2009)
- State v. Hernandez, 283 Neb. 423, 809 N.W.2d 279 (2012)
- State v. Magallanes, 284 Neb. 871, 824 N.W.2d 696 (2013), cert. denied, 133 S. Ct. 2359 (2013)
- State v. Nelson, 276 Neb. 997, 759 N.W.2d 260 (2009)
- State v. Yos-Chiguil, 278 Neb. 591, 772 N.W.2d 574 (2009)
- State v. Rodriguez-Torres, 275 Neb. 363, 746 N.W.2d 686 (2008)
- State v. Medina-Liborio, 285 Neb. 626, 829 N.W.2d 96 (2013)
- State v. Mena-Rivera, 280 Neb. 948, 791 N.W.2d 613 (2010)
- State v. Dunster, 270 Neb. 773, 707 N.W.2d 412 (2005)
- State v. Keen, 272 Neb. 123, 718 N.W.2d 494 (2006)
- In re Involuntary Dissolution of Wiles Bros., 285 Neb. 920, 830 N.W.2d 474 (2013)
- State ex rel. Wagner v. Gilbane Building Co., 276 Neb. 686, 757 N.W.2d 194 (2008)
- Lozier Corp. v. Douglas County Board of Equalization, 285 Neb. 705, 829 N.W.2d 652 (2013)
- State v. Gonzalez, 285 Neb. 940, 830 N.W.2d 504 (2013)
- Holdsworth v. Greenwood Farmers Co-op, 286 Neb. 49, 835 N.W.2d 30 (2013)
- State v. Chiroy Osorio, 286 Neb. 384, 837 N.W.2d 66 (2013)
- State v. Yuma, 286 Neb. 244, 835 N.W.2d 679 (2013)
- State v. Huff, 282 Neb. 78, 802 N.W.2d 77 (2011)
- United States v. Tateo, 377 U.S. 463, 84 S. Ct. 1587, 12 L. Ed. 2d 448 (1964)
- Smith v. State, 287 Ga. 391, 697 S.E.2d 177 (2010)
- Padilla v. Kentucky, 559 U.S. 356, 130 S. Ct. 1473, 176 L. Ed. 2d 284 (2010)