

SUPREME COURT OF NEBRASKA

State v. Archie

305 Neb. 835 (2020) · No. No. S-19-930 · Decided May 15, 2020

SUMMARY

The Nebraska Supreme Court affirmed David L. Archie’s conviction and 18-to-20-year sentence for attempted first degree sexual assault. The court held that the sentence was within statutory limits and was not an abuse of discretion, including because the district court considered Archie’s rehabilitation arguments and criminal history. The court declined to consider his ineffective-assistance claim because his initial appellate assignment of error did not specifically allege deficient performance, and that defect could not be cured in a reply brief.

CASE DETAILS

|                       |                                                                                                                                                                                                                                     |
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| COURT                 | Supreme Court of Nebraska                                                                                                                                                                                                           |
| WRITING FOR THE COURT | Papik, J.; Heavican, C.J.; Miller-Lerman, J.; Cassel, J.; Stacy, J.; Funke, J.; Freudenberg, J.                                                                                                                                     |
| JURISDICTION          | Nebraska                                                                                                                                                                                                                            |
| DECIDED               | May 15, 2020                                                                                                                                                                                                                        |
| DOCKET                | No. S-19-930                                                                                                                                                                                                                        |
| DISPOSITION           | affirmed                                                                                                                                                                                                                            |
| PROCEDURAL POSTURE    | Archie appealed his conviction and 18-to-20-year sentence entered after his no contest plea to attempted first degree sexual assault. He challenged the sentence as excessive and asserted ineffective assistance of trial counsel. |
| STANDARD OF REVIEW    | A sentence imposed within statutory limits will not be disturbed absent an abuse of discretion by the trial court.                                                                                                                  |
| PRECEDENTIAL VALUE    | Published Nebraska Supreme Court opinion; precedential                                                                                                                                                                              |
| PARTIES               | David L. Archie v. State of Nebraska                                                                                                                                                                                                |

TOPICS

- sentencing
- ineffective assistance
- appellate procedure
- standard of review
- criminal procedure

PRACTICE AREAS

## QUESTIONS PRESENTED

1. Whether the district court abused its discretion by imposing an excessive 18-to-20-year sentence within the statutory limits.
2. Whether the court should consider Archie's ineffective-assistance-of-counsel claim when his initial appellate assignment of error generally alleged ineffective assistance without specifically identifying deficient performance, but his reply brief supplied specific allegations.

## HOLDINGS

1. The district court did not abuse its discretion by imposing an 18-to-20-year sentence for attempted first degree sexual assault because the sentence was within the statutory limits and the record showed that the court considered the relevant sentencing factors, including Archie's rehabilitation argument.
2. An ineffective-assistance-of-trial-counsel assignment on direct appeal must specifically allege deficient performance; a general assignment cannot be cured by a reply brief or by asking the appellate court to search the argument section for specific allegations.

## KEY QUOTATIONS

*"assignments of error on direct appeal regarding ineffective assistance of trial counsel must specifically allege deficient performance, and an appellate court will not scour the remainder of the brief in search of such specificity."* (841)

*"An appellate court will not disturb a sentence imposed within the statutory limits absent an abuse of discretion by the trial court."* (839)

## FACTUAL BACKGROUND

The State alleged that Archie sexually assaulted T.A. during a period when she was between 7 and 15 years old. After T.A. reported the assaults in 2019, she recorded a telephone conversation in which Archie admitted having sexual intercourse with her when she was between 10 and 15 years old. At sentencing, Archie emphasized rehabilitation efforts undertaken during incarceration for a prior conviction, but the district court found that his statements in the recorded conversation demonstrated a continuing lack of insight and danger to children.

## PROCEDURAL HISTORY

Archie was initially charged with first degree sexual assault. Pursuant to a plea agreement, the State filed an amended information charging attempted first degree sexual assault, to which Archie pleaded no contest. The Lancaster County District Court accepted the plea, entered a finding of guilt, and imposed an 18-to-20-year imprisonment sentence. The Nebraska Supreme Court affirmed and declined to consider the ineffective-assistance claim because the assignment of error was not sufficiently specific.

## DISPOSITION

affirmed

#### CASES CITED

- State v. Leahy, 301 Neb. 228, 917 N.W.2d 895 (2018)
- State v. Manjikian, 303 Neb. 100, 927 N.W.2d 48 (2019)
- State v. Mrza, 302 Neb. 931, 926 N.W.2d 79 (2019)
- Linscott v. Shasteen, 288 Neb. 276, 847 N.W.2d 283 (2014)
- State v. Guzman, ante p. 376, 940 N.W.2d 552 (2020)

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