

SUPREME COURT OF NEBRASKA

State v. Sinkey

303 Neb. 345 (2019) · No. No. S-18-717 · Decided June 7, 2019

SUMMARY

The Nebraska Supreme Court affirmed Jason P. Sinkey’s convictions for two counts of first degree sexual assault of a child and possession of a firearm by a prohibited person. The court held that the evidence was sufficient to support the sexual-assault convictions and that Sinkey’s ineffective-assistance claims were not stated with sufficient particularity for review on direct appeal.

CASE DETAILS

|                       |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
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| 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               | June 7, 2019                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| DOCKET                | No. S-18-717                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| DISPOSITION           | affirmed                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| PROCEDURAL POSTURE    | Direct appeal from convictions in the Douglas County District Court for two counts of first degree sexual assault of a child and one count of possession of a firearm by a prohibited person.                                                                                                                                                                                                                                                                                                                                                            |
| STANDARD OF REVIEW    | For sufficiency of the evidence, the court views the evidence in the light most favorable to the prosecution and asks whether any rational trier of fact could have found the essential elements beyond a reasonable doubt; it does not resolve evidentiary conflicts, assess witness credibility, or reweigh evidence. Whether an ineffective-assistance claim may be decided on direct appeal is a question of law, and the court considers whether the undisputed record is sufficient to conclusively determine deficient performance and prejudice. |
| PRECEDENTIAL VALUE    | Published Nebraska Supreme Court opinion; precedential.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| PARTIES               | Jason P. Sinkey v. State of Nebraska                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |

TOPICS

ineffective assistance

post-conviction relief

appellate procedure

evidence

criminal procedure

## PRACTICE AREAS

criminal law

criminal procedure

appellate practice

post-conviction relief

## QUESTIONS PRESENTED

1. Whether the evidence was sufficient to support Sinkey's convictions for first degree sexual assault of a child.
2. Whether the evidence was sufficient to support Sinkey's conviction for possession of a firearm by a prohibited person, or whether the issue was inadequately presented for appellate review.
3. Whether Sinkey sufficiently alleged ineffective assistance of trial counsel on direct appeal based on counsel's cross-examination and failure to present evidence or witnesses.

## HOLDINGS

1. The testimony of the victim, together with Sinkey's admission, was sufficient to establish sexual penetration and support the convictions for first degree sexual assault of a child.
2. Sinkey's bare assertion that the evidence was insufficient, without supporting argument, was inadequate to preserve the firearm-possession sufficiency issue for appeal.
3. Sinkey's ineffective-assistance claims were insufficiently particular because he alleged only general deficiencies and did not identify what counsel should have argued, what questions should have been asked, or what evidence or witnesses should have been presented.

## KEY QUOTATIONS

*"The relevant question for an appellate court is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt."* (348)

*"In order to avoid a procedural bar to a future postconviction proceeding, a claim of ineffective assistance of counsel must be presented with enough particularity for (1) an appellate court to make a determination of whether the claim can be decided upon the trial record and (2) a district court later reviewing a petition for postconviction relief to be able to recognize whether the claim was brought before the appellate court."* (350-351)

## FACTUAL BACKGROUND

Sinkey was romantically involved with the mother of an 8-year-old child, Z.P. Z.P. testified that Sinkey sexually touched her on multiple occasions, including using his tongue and finger on and in her vaginal area, and asked her to keep the conduct secret. Sinkey admitted to a detective that he had licked Z.P.'s vagina and touched her sexually; during execution of a search warrant, law enforcement found a rifle and ammunition in his residence, and the State also established that he had a prior felony conviction.

## PROCEDURAL HISTORY

Sinkey was charged, tried by a jury, and convicted of two counts of first degree sexual assault of a child and one count of possession of a firearm by a prohibited person. The district court sentenced him to 55 to 70 years' imprisonment on each sexual-assault conviction and 3 to 5 years' imprisonment on the firearm conviction, with the firearm sentence consecutive to one sexual-assault sentence and concurrent with the other. Sinkey appealed, arguing insufficient evidence and ineffective assistance of trial counsel. The Nebraska Supreme Court affirmed.

#### **DISPOSITION**

affirmed

#### **CASES CITED**

- State v. Mrza, 302 Neb. 931, 926 N.W.2d 79 (2019)
- State v. Filholm, 287 Neb. 763, 848 N.W.2d 571 (2014)
- State v. Abdullah, 289 Neb. 123, 853 N.W.2d 858 (2014)