

SUPREME COURT OF NEBRASKA

State v. Vanness

300 Neb. 159 (2018) · No. No. S-17-687 · Decided June 8, 2018

SUMMARY

The Nebraska Supreme Court affirmed Kelly A. Vanness's convictions and modified several sentences imposed after her guilty pleas to operating a vehicle during suspension, two drug-possession offenses, and possession of drug paraphernalia. The court held that some ineffective-assistance claims were refuted by the record, while the conflict-of-interest claim could not be resolved on direct appeal. The court also found plain error because determinate sentences were required for three counts and modified those sentences accordingly.

CASE DETAILS

COURT	Supreme Court of Nebraska
WRITING FOR THE COURT	Miller-Lerman, J.; Heavican, C.J.; Cassel, J.; Stacy, J.; Funke, J.; Strong, District Judge
JURISDICTION	Nebraska
DECIDED	June 8, 2018
DOCKET	No. S-17-687
DISPOSITION	affirmed
PROCEDURAL POSTURE	Direct appeal from convictions and sentences entered after the defendant pleaded guilty to four charges. The Nebraska Supreme Court reviewed ineffective-assistance claims and challenges to the sentences, including plain error identified by the State.
STANDARD OF REVIEW	Whether an ineffective-assistance claim may be decided on direct appeal is a question of law. On direct appeal, the court determines only whether the undisputed record is sufficient to conclusively resolve counsel's effectiveness and prejudice. A sentence within statutory limits is reviewed for abuse of discretion, including whether the sentencing court considered the relevant factors and legal principles. Plain error may be corrected when an obvious, unassigned error prejudicially affects a substantial right and threatens the integrity, reputation, or fairness of the judicial process.
PRECEDENTIAL VALUE	Published Nebraska Supreme Court opinion; precedential.

TOPICS

ineffective assistance

sentencing

appellate procedure

standard of review

sixth amendment

PRACTICE AREAS

criminal procedure

criminal appeals

ineffective assistance of counsel

sentencing

QUESTIONS PRESENTED

1. Whether Vanness's ineffective-assistance claims could be resolved on the direct-appeal record.
2. Whether trial counsel's multiple representation created an actual conflict of interest requiring relief.
3. Whether the record refuted Vanness's claims that counsel failed to investigate an innocence defense or promised lenient sentencing.
4. Whether the sentences were excessive or an abuse of discretion.
5. Whether the district court's incorrect advisement of the maximum penalty for a Class IV felony prejudiced Vanness.
6. Whether the district court plainly erred by imposing indeterminate rather than determinate sentences on Counts 1, 2, and 3.

HOLDINGS

1. An ineffective-assistance claim may be decided on direct appeal only when the record is sufficient to conclusively determine whether counsel performed deficiently and whether the defendant was prejudiced. Claims must be stated with enough particularity to permit that determination and to identify the claim in later postconviction proceedings.
2. Multiple representation alone is not a per se violation of the Sixth Amendment. When a defendant did not object at trial, the defendant must show an actual conflict of interest; if an actual conflict is shown, prejudice is presumed.
3. The record affirmatively refuted Vanness's claims that counsel failed to investigate a possible innocence defense or promised her a lenient sentence.
4. The sentences were within the statutory limits, and the district court did not abuse its discretion in considering the relevant sentencing factors or in ordering the sentences to run concurrently or consecutively.
5. A sentence stated as identical minimum and maximum terms remains indeterminate. A determinate sentence must be imposed as a single term of years; an indeterminate sentence states a minimum and maximum term or a range of incarceration. The district court plainly erred by imposing indeterminate sentences on Counts 1, 2, and 3 where determinate sentences were required, so the Supreme Court modified those sentences to single terms of years.

6. The district court's incorrect advisement that a Class IV felony carried a five-year maximum did not require reversal because Vanness was not prejudiced; the sentences imposed were below both the actual statutory maximum and the incorrectly stated maximum.

KEY QUOTATIONS

“A determinate sentence is imposed when the defendant is sentenced to a single term of years” (169)

“We reaffirm the rule in Artis that a determinate sentence is a single term of years and an indeterminate sentence is a minimum term and maximum term or a range of time for which a defendant is to be incarcerated, even if the minimum and maximum number are the same.” (170)

FACTUAL BACKGROUND

Vanness was charged with driving during suspension, possession of methamphetamine, possession of hydrocodone, and possession of drug paraphernalia based on conduct occurring on September 13, 2015. She pleaded guilty to all four counts after acknowledging possession of the drugs and paraphernalia and confirming that she understood her rights and was satisfied with counsel. Following termination from a problem-solving court, the district court imposed concurrent and consecutive sentences, including identical minimum and maximum terms on three counts and postrelease supervision on two felony counts.

PROCEDURAL HISTORY

Vanness pleaded guilty in the Holt County District Court to operating a motor vehicle during suspension, two counts of possession of a controlled substance, and possession of drug paraphernalia. After her participation in a problem-solving court was terminated, the district court imposed sentences totaling 22 to 22 months' imprisonment, with postrelease supervision on two felony counts. Vanness appealed, and the Nebraska Supreme Court affirmed the convictions and modified the sentences on Counts 1, 2, and 3 from indeterminate formulations to single-term determinate sentences.

DISPOSITION

affirmed

CASES CITED

- State v. Mora, 298 Neb. 185, 903 N.W.2d 244 (2017)
- State v. Ramirez, 287 Neb. 356, 842 N.W.2d 694 (2014)
- State v. Lane, 299 Neb. 170, 907 N.W.2d 737 (2018)
- State v. Narcisse, 260 Neb. 55, 615 N.W.2d 110 (2000)
- State v. Cotton, 299 Neb. 650, 910 N.W.2d 102 (2018)
- State v. Casares, 291 Neb. 150, 864 N.W.2d 667 (2015)
- State v. Hunt, 299 Neb. 573, 909 N.W.2d 363 (2018)
- State v. Artis, 296 Neb. 172, 893 N.W.2d 421 (2017), modified on denial of rehearing, 296 Neb. 606, 894 N.W.2d 349 (2017)

- State v. White, 256 Neb. 536, 590 N.W.2d 863 (1999)
- State v. Marrs, 272 Neb. 573, 723 N.W.2d 499 (2006)
- State v. Urbano, 256 Neb. 194, 589 N.W.2d 144 (1999)
- State v. Russell, 291 Neb. 33, 863 N.W.2d 813 (2015)
- Johnson v. Clarke, 258 Neb. 316, 603 N.W.2d 373 (1999)

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