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STATE OF NEBRASKA, APPELLANT, V. ASIME W. PRINCE, ALSO KNOWN AS SINCERE A. PRINCE, APPELLEE.

___ N.W.3d ___

Filed October 23, 2026. No. S-25-496.

1. **Sentences: Appeal and Error.** Whether an appellate court is reviewing a sentence for its leniency or its excessiveness, a sentence imposed by a district court that is within the statutorily prescribed limits will not be disturbed on appeal unless there appears to be an abuse of the trial court's discretion.
2. **Sentences: Judges: Words and Phrases: Appeal and Error.** A sentence imposed within the statutory limits will not be disturbed on appeal in the absence of an abuse of discretion by the trial court. A judicial abuse of discretion exists only when the reasons or rulings of a trial judge are clearly untenable, unfairly depriving a litigant of a substantial right and denying a just result in matters submitted for disposition.
3. **Jurisdiction: Appeal and Error.** Before reaching the legal issues presented for review, it is the duty of an appellate court to determine whether it has jurisdiction over the matter before it.
4. **Criminal Law: Statutes: Appeal and Error.** The State's right to appeal in a criminal case is extremely limited. The right of appeal is purely statutory, and absent specific statutory authorization, the State generally has no right to appeal an adverse ruling in a criminal case.
5. **Statutes: Legislature: Presumptions: Judicial Construction.** When the Legislature enacts a law affecting an area which is already the subject of other statutes, it is presumed that it did so with full knowledge of the preexisting legislation and the decisions of the Supreme Court construing and applying that legislation.
6. **Sentences: Probation and Parole: Words and Phrases.** When a court places a defendant on probation pursuant to Neb. Rev. Stat. § 29-2292 (Supp. 2025), it has imposed a "sentence" for purposes of Neb. Rev. Stat. § 29-2320 (Reissue 2016).

7. **Criminal Law: Sentences: Statutes.** In Nebraska, all crimes and their corresponding sentences are defined and governed by statute.
8. **Sentences: Appeal and Error.** It is well established that an appellate court will not disturb sentences within the statutory limits unless the district court abused its discretion in establishing the sentences.
9. ____: ____. When sentences imposed within statutory limits are alleged on appeal to be excessive, the appellate court must determine whether the sentencing court abused its discretion in considering well-established factors and any applicable legal principles.
10. **Sentences.** The appropriateness of a sentence is necessarily a subjective judgment that includes the sentencing judge's observations of the defendant's demeanor and attitude and all the facts and circumstances surrounding the defendant's life.
11. **Judges: Sentences.** A sentencing judge has broad discretion as to the source and type of information, including personal observations, which may be used as assistance in determining the kind and extent of the punishment to be imposed.
12. **Courts: Plea Bargains.** In Nebraska, a court is never bound by the plea agreement made between a defendant and the government.
13. **Prosecuting Attorneys: Sentences.** Although a prosecutor may participate in the sentencing proceedings, the prosecutor may not control or decide what a guilty offender's punishment shall be.

Appeal from the District Court for Sarpy County: NATHAN B. COX, Judge. Affirmed in part, and in part dismissed.

Rachel G. Bolton, Deputy County Attorney, and Ryan P. Watson for appellant.

Eric M. Hagen, of Liberty Law Group, for appellee.

FUNKE, C.J., CASSEL, STACY, PAPIK, FREUDENBERG, BERGEVIN, and VAUGHN, JJ.

VAUGHN, J.

I. INTRODUCTION

In June 2024, the State of Nebraska filed an information charging Asime W. Prince, also known as Sincere A. Prince, with one count of unlawful discharge of a firearm, a Class ID felony. Pursuant to a plea agreement, the State filed an

amended information reducing Prince's charge to one count of criminal attempt of unlawful discharge of a firearm, a Class II felony. The district court accepted Prince's guilty plea. At sentencing, the district court granted Prince's motion for deferred judgment and ordered Prince to serve a 5-year term of probation, which was to be facilitated through the Second Judicial District Veterans Treatment Court. The State has appealed both rulings, contending that Prince's sentence is excessively lenient. For the following reasons, we affirm in part, and in part dismiss.

II. BACKGROUND

1. Plea Agreement

On May 15, 2024, Prince fired a "warning shot" with his Glock 17 handgun at his neighbor's occupied mobile home. Prince was arrested and taken into custody without incident and charged with one count of unlawful discharge of a firearm and one count of use of a firearm to commit a felony. Pursuant to a plea agreement, the State amended Prince's charges, and at the plea hearing, Prince pled guilty to one count of attempted unlawful or intentional discharge of a firearm, a Class II felony. There was no agreement as to sentencing. After Prince entered his plea, the district court advised Prince of his rights, confirmed he was aware of the voluntary nature of the plea agreement, and explained some of the possible sentencing outcomes:

> THE COURT: The penalty as I have indicated is that of [a] Class II felony, a maximum of 50 years and a minimum of one year. It is not a mandatory minimum. It is — if the Court imposed jail, it has to be a minimum of one year imprisonment. Do you understand this?
>
> [Prince:] Yes, Judge.
>
> THE COURT: And you understand that while probation is a possible sentence, the Court is under no obligation to sentence you to probation?

[Prince:] Yes, Judge.

The State confirmed that Prince's guilty plea was consistent with the law and the facts of the case. To prove its burden and substantiate the terms of the plea agreement, the State, through its counsel, provided the following factual basis:

> On May 15th, 2024, law enforcement responded to a residence in Bellevue, Sarpy County, Nebraska, for a report of trespassing.
>
> Upon arrival, law enforcement made contact with the reporting party who was identified as . . . Prince, the defendant in this case. . . . Prince indicated to law enforcement that there were two male individuals that were on the property that were not supposed to be there.
>
> Law enforcement then spoke with the community manager at an office nearby the residence. While law enforcement was speaking with the community manager at that office, [Prince] entered the office and stated that one of the male parties had exited the residence and flipped him off, and that he then fired one round at the residence in response to the male party flipping him off.
>
> Further investigation substantiated . . . Prince's claim that he had fired a gun at the residence that a male had just entered.

With no objection from either party, the district court accepted Prince's guilty plea, ordered the preparation of a presentence investigation report, and set a date for the sentencing hearing.

2. Presentence Investigation Report

Per the district court's order, a probation officer submitted a presentence investigation report. Attached to the report were police reports, letters in support of Prince's character, and certificates of completion for the rehabilitative programs he completed during the 300 days he had spent in jail. Also included was Prince's written statement, in which he described his relationship with his neighbor and the events

that took place on the night of the shooting. A request for a victim impact statement was sent to Prince's neighbor, but the neighbor did not respond. An investigating officer also attempted to contact Prince's neighbor over the phone, but the neighbor did not answer.

In preparation of the report, the probation officer conducted a face-to-face interview with Prince. During the interview, Prince explained that his neighbor had once threatened to kill him and that although Prince had filed a protection order, the neighbor continued to harass Prince by knocking over his garbage cans, vandalizing his vehicle, and driving slowly past his home, which Prince believed was to intimidate his family. This caused Prince to feel paranoid, to the extent that he did not feel comfortable living in his own home. Prince said that he feared for his family's safety and that when he fired his gun at his neighbor's mobile home, it was a legitimate act of self-defense.

Prince also provided information about his medical and employment history. A combat veteran, Prince joined the U.S. Air Force in October 2007 and was honorably discharged in 2018. Through the U.S. Department of Veterans Affairs, Prince was being treated for depression, anxiety, and "Unspecified Psychotic Disorder," which was related to his time spent in the military and childhood trauma. At the time of the shooting, Prince was unemployed and receiving disability benefits due to complications related to his mental health issues, but he stated that he was not otherwise struggling financially. Prince expressed he was hopeful that with further treatment, his psychological conditions would improve, and that a sentence of probation would help him get back on the "right track" and once again become a productive member of society.

In addition to the interview with Prince, the probation officer conducted multiple standardized assessments, including the "Level of Service/Case Management Inventory," the "Adult Probation Substance Abuse Questionnaire," the

"Simple Screening Instrument," and a "Mental Health Screen" to determine whether Prince was suited for probation. The probation officer found that Prince was in the "medium/high" risk to reoffend but that Prince was in the "action" stage of his rehabilitation. The probation officer also noted that Prince had never been arrested prior to this incident. The report did not include any specific sentencing recommendations, but the probation officer did provide several proposed terms of probation.

The presentence investigation report and all of its attachments were submitted to and reviewed by the district court prior to Prince's sentencing.

3. Sentencing Hearing

At sentencing, the district court also addressed Prince's motion for deferred judgment. Through counsel, Prince advocated for a sentence of probation in lieu of jail time, pointing to Prince's military history and resulting trauma, his willingness to engage in mental health treatment, his completion of rehabilitative programs during the approximately 300 days he had already spent in custody, his lack of criminal history, and his neighbor's repeated acts of provocation. Speaking on his own behalf, Prince stated that he was "hoping and praying" for probation, because he believed it could "turn [his] life around."

In response, the State noted that Prince had already benefited from the plea agreement and the corresponding reduction of his potential sentence. It emphasized that Prince's actions—firing a gun at an occupied building in response to a rude gesture—were "most concerning." It posited that Prince's disproportionate response to an otherwise minimal provocation suggested it was more likely than not that he would reoffend and that the level of supervision he would receive while on probation would not be sufficient. It argued that Prince's actions spoke to the "seriousness" of his crime

and recommended the district court sentence Prince to a term of incarceration of 5 to 10 years.

Before the district court entered Prince's sentence, it addressed the parties to explain its reasoning. It began by noting that this was "an interesting case" and found it significant that the shooting was not in response to an "isolated" incident. Instead, it was the culmination of an ongoing dispute. The district court also took into consideration Prince's military service, his mental health issues, and his "virtually nonexistent" criminal history, as well as that, prior to the incident, Prince had pursued other legal avenues to protect himself.

The district court then considered Prince's motion for deferred judgment, addressing each provision of Neb. Rev. Stat. § 29-2260 (Reissue 2016), in turn. The district court found that Prince did not intend to cause any serious harm because he had fired a "warning shot"; that Prince's actions were in response to his neighbor's provocation; that Prince's military history and mental health issues constituted substantial grounds to justify or excuse his commission of the crime; that Prince's neighbor's actions, including his disregard for the protection order, induced the shooting; that Prince had no previous criminal history; that Prince's willingness to participate in treatment and his completion of several rehabilitative programs suggested it was unlikely Prince would commit another crime; that Prince would have a positive response to the treatment he would receive while on probation; and that imprisonment would be an excessive hardship.

The district court granted Prince's motion for deferred judgment and entered an order of deferred judgment placing Prince on a term of probation for a period of 5 years. The probation term was subject to many conditions, including every condition the probation officer proposed in the presentence investigation report. The district court also ordered that Prince participate in veterans treatment court, which it considered

a "very heightened form of probation," because the district court felt that Prince would benefit from the services veterans treatment court could provide.

III. ASSIGNMENTS OF ERROR

The State assigns, restated, that the district court erred by (1) imposing an excessively lenient sentence, (2) granting Prince's motion for deferred judgment, (3) exceeding its statutory authority when it ordered Prince to participate in veterans treatment court, and (4) violating the constitutional separation of powers when it granted Prince's motion for deferred judgment over the State's objection.

IV. STANDARD OF REVIEW

[1] Whether an appellate court is reviewing a sentence for its leniency or its excessiveness, a sentence imposed by a district court that is within the statutorily prescribed limits will not be disturbed on appeal unless there appears to be an abuse of the trial court's discretion. *State v. Gibson*, 302 Neb. 833, 925 N.W.2d 678 (2019).

[2] A sentence imposed within the statutory limits will not be disturbed on appeal in the absence of an abuse of discretion by the trial court. A judicial abuse of discretion exists only when the reasons or rulings of a trial judge are clearly untenable, unfairly depriving a litigant of a substantial right and denying a just result in matters submitted for disposition. *State v. Morton*, 310 Neb. 355, 966 N.W.2d 57 (2021).

V. ANALYSIS

1. Appellate Jurisdiction

[3] Before reaching the legal issues presented for review, it is the duty of an appellate court to determine whether it has jurisdiction over the matter before it. *Powers v. Board of Directors of Elmwood Tower*, 320 Neb. 906, 31 N.W.3d 599 (2026). In this case, the State seeks to appeal the district court's entry of a deferred judgment pursuant to Neb. Rev.

Stat. § 29-2292 (Supp. 2025). The State primarily argues that we have jurisdiction over this appeal pursuant to Neb. Rev. Stat. § 29-2294 (Cum. Supp. 2024), which provides that an entry of deferred judgment under § 29-2292 "is a final order as defined in [Neb. Rev. Stat. §] 25-1902 [(Reissue 2016)]."

[4] But while this statute makes clear that the entry of deferred judgment was a final order, that alone is insufficient to give us jurisdiction over this appeal filed by the State. The State's right to appeal in a criminal case is extremely limited. The right of appeal is purely statutory, and absent specific statutory authorization, the State generally has no right to appeal an adverse ruling in a criminal case. See *State v. Guzman*, 305 Neb. 376, 940 N.W.2d 552 (2020). Because § 29-2294 does not specifically confer on the State a right to appeal, such authorization must be provided elsewhere. We consider now whether such authorization exists.

The State initially purported to appeal pursuant to Neb. Rev. Stat. §§ 29-2320 to 29-2325 (Reissue 2016). Those statutes give the State specific authorization to appeal a sentence if it has a reasonable belief that the sentence is excessively lenient. Prince, however, challenges the State's right to pursue an appeal under the excessive leniency statutes.

Prince argues that in this case, no "sentence" has been imposed. He argues that § 29-2292 enables a sentencing court to defer the entry of a "judgment of conviction" and the imposition of a "sentence" and place a defendant on a term of probation. He argues that because a "sentence" was deferred in this case, the excessive leniency statutes do not authorize the State to appeal. Prince also points to language in *State v. Gnewuch*, 316 Neb. 47, 3 N.W.3d 295 (2024), stating that when a court enters a deferred judgment, it defers a sentence, rather than entering one. See *id.* at 63, 3 N.W.3d at 309-10 (court entering deferred judgment "does not *sentence* the defendant *to* probation, as it does when it enters a judgment of conviction and imposes sentence") (emphasis in original).

While we acknowledge that some language from *Gnewuch* can be read to suggest that when a court imposes a deferred judgment, it does not enter a sentence, we ultimately disagree with Prince's contention that the State may not challenge the deferred judgment imposed by the district court under the excessive leniency statutes. The issue in *Gnewuch* was the constitutionality of the deferred judgment statutes. We had no reason in that case to consider the relevant question before us here: whether a term of probation pursuant to § 29-2292 is a "sentence" for purposes of § 29-2320. For multiple reasons, we conclude that it is.

We first find an indication that a term of probation pursuant to § 29-2292 is a sentence in § 29-2292(5). That subsection sets forth a procedure that is to be followed if a defendant violates a condition of probation entered under § 29-2292. It states that if such a violation occurs, the court may, among other things, "pronounce judgment and impose such *new sentence* as might have been originally imposed for the offense for which the defendant was convicted." § 29-2292(5) (emphasis supplied). In our view, the language providing that a court may impose a "new sentence" if a defendant violates a condition of probation demonstrates that the initial order of probation was itself a sentence. It is natural to conclude that a court imposing a "new sentence" has already imposed a sentence.

[5] In addition, under Nebraska law generally, probation is recognized as a sentence. This court has observed on many occasions that probation is a sentence. See, e.g., *State v. Perry*, 318 Neb. 613, 17 N.W.3d 504 (2025); *State v. Kramer*, 231 Neb. 437, 436 N.W.2d 524 (1989); *State v. Kinney*, 217 Neb. 701, 350 N.W.2d 552 (1984). When the Legislature enacts a law affecting an area which is already the subject of other statutes, it is presumed that it did so with full knowledge of the preexisting legislation and the decisions of the Supreme Court construing and applying that legislation. *Espinoza v. Job Source USA*, 313 Neb. 559, 984 N.W.2d 918 (2023). Here, we

believe it fair to presume that when the Legislature authorized courts to impose probation when entering a deferred judgment pursuant to § 29-2292, it was giving courts the same authority to enter a sentence as do other statutes authorizing courts to impose probation as a sentence.

[6] For these reasons, we conclude that when a court places a defendant on probation pursuant to § 29-2292, it has imposed a "sentence" for purposes of § 29-2320. Accordingly, the State may challenge that term of probation as excessively lenient. We will consider that challenge below.

That conclusion, however, does not permit us to review each of the State's assignments of error in this case. The statutes that authorize the State to challenge a sentence as excessively lenient provide a narrow avenue for review. They direct that an appellate court may consider whether a sentence imposed is excessively lenient with regard to various factors. See § 29-2322. Those statutes also provide that if the appellate court concludes that the sentence imposed is excessively lenient, it may remand for imposition of a greater sentence, remand for further sentencing proceedings, or impose a greater sentence itself. See § 29-2323.

In this case, the State assigns two errors that go beyond a mere contention that a sentence imposed was excessively lenient. The State argues that the district court lacked statutory authority to order Prince to participate in veterans treatment court. It also raises a challenge to the constitutionality of the deferred judgment statutes. The excessive leniency statutes do not authorize the State to raise such challenges.

The State likely could have raised these latter challenges via an exception proceeding pursuant to Neb. Rev. Stat. § 29-2315.01 (Cum. Supp. 2024). See, e.g., *State v. Jones*, 320 Neb. 766, 30 N.W.3d 293 (2026). There is no dispute, however, that the State did not follow the prescribed procedures to bring such a proceeding in this case. Therefore, we dismiss its appeal in part as to those assignments of error.

2. Excessively Lenient Sentence

(a) Legally Permissible Sentences

[7-9] In Nebraska, all crimes and their corresponding sentences are defined and governed by statute. See *State v. Pauly*, 311 Neb. 418, 972 N.W.2d 907 (2022). It is well established that an appellate court will not disturb sentences within the statutory limits unless the district court abused its discretion in establishing the sentences. *State v. Morton*, 310 Neb. 355, 966 N.W.2d 57 (2021). When sentences imposed within statutory limits are alleged on appeal to be excessive, the appellate court must determine whether the sentencing court abused its discretion in considering well-established factors and any applicable legal principles. *Id*.

The same is true when we determine whether a sentence is excessively lenient. See, e.g., *Pauly, supra*; *Morton, supra*; *State v. Gibson*, 302 Neb. 833, 925 N.W.2d 678 (2019). The State contends the district court abused its discretion when it granted Prince's motion for deferred judgment and sentenced him to a term of probation. Accordingly, to determine whether Prince's sentence is appropriate, we must first determine whether Prince's sentence is statutorily permissible.

Prince was convicted of criminal attempt of unlawful discharge of a firearm, a Class II felony. Pursuant to Neb. Rev. Stat. § 28-105 (Cum. Supp. 2024), a Class II felony is punishable by a maximum sentence of 50 years' imprisonment with a minimum sentence of 1 year's imprisonment. Since 2001, this court has held that a minimum sentence as prescribed in § 28-105 is not equivalent to a mandatory minimum. As such, those convicted of a Class II felony are eligible for probation. See, *Gibson, supra*; *State v. Hamik*, 262 Neb. 761, 635 N.W.2d 123 (2001). In addition, Neb. Rev. Stat. § 24-1302(3) (Cum. Supp. 2024) expressly states that an individual may participate in a problem-solving court, such as veterans treatment court, as a term of probation.

The district court entered a deferred judgment pursuant to § 29-2292. The offense Prince has been convicted of is eligible

for probation and does not fall under the deferred judgment prohibitions under § 29-2292(2).

The district court's sentence of probation and participation in veterans treatment court was legally permissible.

(b) Excessive Leniency

[10,11] Next, we will address whether the district court's sentence was excessively lenient and reflects the seriousness of Prince's offense. The appropriateness of a sentence is necessarily a subjective judgment that includes the sentencing judge's observations of the defendant's demeanor and attitude and all the facts and circumstances surrounding the defendant's life. *State v. Lara*, 315 Neb. 856, 2 N.W.3d 1 (2024), *cert. denied* ___ U.S. ___, 144 S. Ct. 2608, 219 L. Ed. 2d 1256. Moreover, a sentencing judge has broad discretion as to the source and type of information, including personal observations, which may be used as assistance in determining the kind and extent of the punishment to be imposed. *State v. Harrison*, 255 Neb. 990, 588 N.W.2d 556 (1999).

Prior to sentencing, the district court reviewed the presentence investigation report, which provided a detailed accounting of Prince's social, familial, and financial background. It also contained the results of the many evaluations the probation officer performed to assess Prince's mental health and the likelihood of recidivism. Attached to the report were the police reports detailing the events that took place on the night of the shooting and the subsequent investigation, Prince's written statement, and letters in support of his character. At sentencing, the district court heard the parties' arguments and provided a thorough analysis of each requirement of § 29-2260 to justify its reasoning. It cited to Prince's military background and the many other factors it weighed when determining his sentence.

[12,13] In Nebraska, a court is never bound by the plea agreement made between a defendant and the government. *State v. Gnewuch*, 316 Neb. 47, 3 N.W.3d 295 (2024). Although a prosecutor may participate in the sentencing proceedings, the

prosecutor may not control or decide what a guilty offender's punishment shall be. See *id.* The State had no obligation to offer a plea agreement wherein probation was a legal possibility. The district court had no obligation to adopt the State's recommended sentence.

Prince's sentence was the result of a voluntary plea agreement negotiated by the State and is within the statutory sentencing limits. Based upon the available evidence and the numerous other relevant factors the district court considered at sentencing, we do not find that Prince's sentence is untenable, unreasonable, or a miscarriage of justice. The district court did not abuse its discretion, and Prince's sentence is not excessively lenient.

VI. CONCLUSION

We conclude that we have appellate jurisdiction to review the State's contention that the district court imposed an excessively lenient sentence but lack jurisdiction to review the State's other assignments of error. Additionally, we find that the district court did not impose an excessively lenient sentence. For the foregoing reasons, we affirm in part, and in part dismiss.

Affirmed in part, and in part dismissed.

Cassel, J., dissenting in part, and in part concurring in the result.

I adhere to the view expressed in my dissenting opinion in *State v. Gnewuch*[1] that the deferred judgment statute[2] is unconstitutional. An unconstitutional statute is a nullity, is void from its enactment, and is incapable of creating any rights or obligations.[3] And a decision from this court erroneously refusing

[1] *State v. Gnewuch*, 316 Neb. 47, 3 N.W.3d 295 (2024) (Cassel, J., dissenting in part, and in part concurring in the result).

[2] Neb. Rev. Stat. § 29-2292 (Supp. 2025).

[3] *State ex rel. Stenberg v. Omaha Expo. & Racing*, 263 Neb. 991, 644 N.W.2d 563 (2002).

to declare a statute unconstitutional and void does not make it any less so. Because I believe there is no valid sentence from which an appeal can be taken, I would simply dismiss the entire appeal.

Bergevin, J., dissenting in part, and in part concurring.

I dissent to the extent that the majority opinion concludes that the district court imposed a "sentence" for purposes of Neb. Rev. Stat. § 29-2320 (Reissue 2016). Based on how this court constructed the deferred judgment statutes in *State v. Gnewuch*,[1] I disagree with the majority that there is a sentence for the State to appeal as excessively lenient when a court has deferred the entry of a judgment pursuant to Neb. Rev. Stat. § 29-2292 (Supp. 2025). Therefore, I would dismiss the appeal in its entirety. In my view, this court should revisit its decision in *Gnewuch* in a future case where the constitutionality of the deferred judgment statutes is again properly before us.

[1] *State v. Gnewuch*, 316 Neb. 47, 3 N.W.3d 295 (2024).

Stacy, J., dissenting.

Because the entry of a deferred judgment under Neb. Rev. Stat. § 29-2292 (Supp. 2025) necessarily means there has not yet been a sentence imposed, I do not think the State can appeal from a deferred judgment under Neb. Rev. Stat. § 29-2320 (Reissue 2016), claiming the sentence imposed was excessively lenient. Rather than address the merits of the State's appeal, I would dismiss it for lack of jurisdiction.

This court has often recognized that in the absence of specific statutory authorization, the State has no right to appeal an adverse ruling in a criminal case.[1] Here, the State's appeal of the deferred judgment rests exclusively on § 29-2320, which provides:

> Whenever a defendant is found guilty of a felony following a trial or the entry of a plea of guilty . . . , the

[1] See *State v. Jones*, 320 Neb. 766, 30 N.W.3d 293 (2026).

> prosecuting attorney . . . may appeal *the sentence imposed* if there is a reasonable belief, based on all of the facts and circumstances of the particular case, that the sentence is excessively lenient.

(Emphasis supplied.) The jurisdictional question presented in this appeal, then, is whether the entry of a deferred judgment pursuant to § 29-2292 is a "sentence imposed" for purposes of the State's right to appeal an excessively lenient sentence under § 29-2320. In my opinion, the answer to that question is no.

Historically, this court has given the phrase "may appeal the sentence imposed" in § 29-2320 its plain and ordinary meaning and has strictly construed it to require imposition of a felony sentence before a prosecuting attorney can appeal under § 29-2320.[2] In *State v. Caniglia*,[3] the district court terminated a defendant's probation "'as unsuccessful,'" and the State appealed that ruling as an excessively lenient sentence under § 29-2320. This court dismissed the State's appeal for lack of jurisdiction, explaining that "no sentence had been imposed by the district court in the violation of probation proceeding and there was no sentence from which the prosecuting attorney could appeal under § 29-2320."[4] In doing so, we disapproved of the Nebraska Court of Appeals' reasoning that even though the district court "'did not technically impose a sentence,'"[5] the disposition was "'the practical equivalent of revoking probation and imposing a new sentence of no imprisonment.'"[6] *Caniglia* teaches that it is not enough for a disposition to be similar to a sentence; the court must actually impose a sentence to support appellate jurisdiction under § 29-2320.

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[2] See *State v. Caniglia*, 272 Neb. 662, 724 N.W.2d 316 (2006).

[3] *Id.* at 665, 724 N.W.2d at 318.

[4] *Id.* at 668, 724 N.W.2d at 321.

[5] *Id*. at 665, 724 N.W.2d at 319.

[6] *Id*.

When considering whether the entry of a deferred judgment imposes a sentence for purposes of § 29-2320, I begin with the plain text of § 29-2292(1), which states:

> Upon a finding of guilt for which a judgment of conviction may be rendered, a defendant may request the court defer the entry of judgment of conviction. Upon such request . . . the court may *defer the entry of a judgment of conviction and the imposition of a sentence* and place the defendant on probation, upon conditions as the court may require under section 29-2262.

(Emphasis supplied.) In *State v. Gnewuch*,[7] after quoting the text of § 29-2292, the controlling opinion described a deferred judgment as a "conditional order," explaining:

> Under the current deferred judgment procedure of § 29-2292, the court defers the entry of a judgment of conviction and imposition of a sentence and instead enters a conditional order placing the defendant on probation. *It does not sentence the defendant to probation, as it does when it enters a judgment of conviction and imposes sentence.*

Although four justices in *Gnewuch* would have found the deferred judgment framework to be an unconstitutional delegation of executive authority, I do not understand the dissenting justices to have disagreed with the controlling opinion's statutory interpretation or with its conclusion that a deferred judgment under § 29-2292(1) does not impose a sentence.[8]

I think the statutory interpretation in *Gnewuch* was correct, but I also think that even without *Gnewuch*, the plain language of § 29-2292(1) is dispositive of the jurisdictional

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[7] *State v. Gnewuch*, 316 Neb. 47, 62-63, 3 N.W.3d 295, 309-10 (2024) (emphasis omitted) (emphasis supplied).

[8] See *id.* at 86, 3 N.W.3d at 323 (Papik, J., dissenting in part; Cassel, Funke, and Freudenberg, JJ., join) (noting that "when a court defers judgment and places a defendant on probation . . . , it is not imposing a sentence, but is instead *deferring* entry of a sentence") (emphasis in original).

question presented here. Simply put, when a court enters a deferred judgment under § 29-2292(1), it defers both the entry of a judgment of conviction and "the imposition of a sentence." And when there has been no sentence imposed, there is no sentence for the State to appeal as excessively lenient under § 29-2320.

I read the majority opinion to offer two reasons why a deferred judgment under § 29-2292 can nevertheless be treated as a "sentence imposed" for purposes of the State's right to appeal excessively lenient sentences under § 29-2320. I am not persuaded by either reason.

One reason relies on cases where we have recognized the general principle that "probation is a sentence."[9] According to the majority opinion, it is fair to presume from these cases that when the Legislature authorized courts to enter deferred judgments pursuant to § 29-2292, it was "giving courts the same authority to enter a sentence" of probation. But the cases observing that "probation is a sentence" did not involve defendants who were placed on probation pursuant to a deferred judgment under § 29-2292, and I see little to be gleaned from them, particularly when "[p]robation" is statutorily defined to include not only "a sentence" of probation but also "a deferred judgment under section 29-2292."[10] Although the majority correctly notes that courts are authorized to sentence an offender to probation,[11] the Nebraska Legislature has also authorized courts to defer the imposition of a sentence and place a defendant on probation under § 29-2292. Because only the latter type of probation is at issue here, cases discussing sentences of probation do not speak to the question at hand.

Another reason offered by the majority opinion for its conclusion that a deferred judgment can be treated as a

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[9] See, e.g., *State v. Perry*, 318 Neb. 613, 625, 17 N.W.3d 504, 513 (2025). Accord *State v. Kramer*, 231 Neb. 437, 436 N.W.2d 524 (1989).

[10] Neb. Rev. Stat. § 29-2246(4) (Cum. Supp. 2024).

[11] See Neb. Rev. Stat. § 29-2262 (Cum. Supp. 2024).

"sentence imposed" is the language of the probation revocation provisions in § 29-2292(5). That section states that if a defendant on a deferred judgment is found to have violated a condition of his or her probation, the court is authorized to "enter any order authorized by section 29-2268 or pronounce judgment and impose such new sentence as might have been originally imposed for the offense for which the defendant was convicted."[12] This statutory language is similar to the probation revocation provisions that apply to sentences of probation.[13] But according to the majority, the reference in § 29-2292(5) to imposing a "new sentence" upon revocation is an indication that "the initial order of probation was itself a sentence." Respectfully, I do not find this reasoning persuasive.

When construing a statute, a court's analysis always begins with the text, which is given its plain and ordinary meaning.[14] It is the court's duty to discover, if possible, legislative intent from the statute itself, and courts should consider the statutory objective to be accomplished, the problem to be remedied, or the purpose to be served, and then place on the statute a reasonable construction which best achieves its purpose.[15] Statutes pertaining to the same subject matter should be construed in pari materia, as if they were one law, and effect must be given to every provision.[16] To give effect to all parts of a statute, a court will attempt to reconcile different provisions so they are consistent, harmonious, and sensible

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[12] § 29-2292(5).

[13] See Neb. Rev. Stat. § 29-2268(1) (Cum. Supp. 2024) ("[i]f the court finds that the probationer, other than a probationer serving a term of post-release supervision, did violate a condition of his or her probation, it may revoke the probation and impose on the offender such new sentence as might have been imposed originally for the crime of which he or she was convicted").

[14] See *In re Interest of Johnny H.*, 320 Neb. 675, 29 N.W.3d 808 (2026).

[15] See *id.*

[16] See *State v. Jones*, 317 Neb. 559, 10 N.W.3d 747 (2024).

and will avoid rejecting as superfluous or meaningless any word, clause, or sentence.[17]

The majority opinion does not recite these or any other principles of statutory construction when considering whether entry of a deferred judgment under § 29-2292 can be treated as imposing a sentence for purposes of appealing under § 29-2320. Instead, it singles out one statutory provision—the "new sentence" language in § 29-2292(5)—and concludes the language indicates that the entry of a deferred judgment is "itself a sentence." There is no acknowledgment that this reasoning contradicts the plain text of § 29-2292(1), which states in no uncertain terms that when a defendant is placed on probation pursuant to a deferred judgment, both "the entry of a judgment of conviction *and the imposition of a sentence*" are deferred. (Emphasis supplied.) And there is no attempt to harmonize these provisions or to consider whether treating a deferred judgment as imposing a sentence would frustrate the purpose to be served by the deferred judgment statute. Instead, the majority allows the State to appeal from the entry of a deferred judgment under § 29-2320 by reasoning that when a court *defers* imposition of a sentence under § 29-2292(1), it effectively *imposes* a sentence.

Applying the principles of statutory construction recited above, I reach a different conclusion. Because the entry of a deferred judgment under § 29-2292 necessarily means the district court has not yet entered a judgment of conviction or imposed a sentence, I do not think the State can appeal a deferred judgment as an excessively lenient sentence under § 29-2320. Given the interlocutory nature of deferred judgments under § 29-2292, I would therefore dismiss this appeal for lack of jurisdiction.

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[17] *Id.*