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the Nebraska Rules of Professional Conduct. For the above reasons, we accept the recommendation of the referee and issue a public reprimand.

## CONCLUSION

The motion of the Counsel for Discipline is sustained in part and in part overruled. We adopt the referee's findings of fact and find by clear and convincing evidence that Orr violated DR 1-102(A)(1) and DR 6-101(A)(1) and (2) of the Code of Professional Responsibility and §§ 3-501.1 and 3-508.4(a) of the Nebraska Rules of Professional Conduct, as well as his oath of office as an attorney. It is the judgment of this court that Orr should be, and hereby is, publicly reprimanded.

JUDGMENT OF PUBLIC REPRIMAND.

WRIGHT and CONNOLLY, JJ., not participating.

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STATE OF NEBRASKA, APPELLEE, V.
TERRENCE D. MOORE, APPELLANT.
759 N.W.2d 698

Filed January 30, 2009. No. S-08-417.

1. **Statutes: Appeal and Error.** Statutory interpretation presents a question of law, for which an appellate court has an obligation to reach an independent conclusion irrespective of the determination made by the court below.
2. **Sentences: Appeal and Error.** A sentence imposed within statutory limits will not be disturbed on appeal absent an abuse of discretion by the trial court.
3. **Sentences.** When imposing a sentence, a sentencing judge should consider the defendant's (1) age, (2) mentality, (3) education and experience, (4) social and cultural background, (5) past criminal record or record of law-abiding conduct, and (6) motivation for the offense, as well as (7) the nature of the offense, and (8) the violence involved in the commission of the crime.
4. ____. In imposing a sentence, the sentencing court is not limited to any mathematically applied set of factors.
5. ____. The appropriateness of a sentence is necessarily a subjective judgment and includes the sentencing judge's observation of the defendant's demeanor and attitude and all the facts and circumstances surrounding the defendant's life.

Appeal from the District Court for Douglas County: W. MARK ASHFORD, Judge. Affirmed.

Thomas C. Riley, Douglas County Public Defender, Scott C. Sladek, Joseph J. Kehm, and Sean M. Conway for appellant.

Jon Bruning, Attorney General, and George R. Love for appellee.

HEAVICAN, C.J., WRIGHT, CONNOLLY, GERRARD, STEPHAN, MCCORMACK, and MILLER-LERMAN, JJ.

HEAVICAN, C.J.

## INTRODUCTION

Terrence D. Moore pled guilty to two counts of second degree murder and two counts of use of a firearm to commit a felony. The district court sentenced Moore to imprisonment for "a period of Life to Life" on one count of second degree murder and 50 to 50 years' imprisonment on the associated use of a deadly weapon to commit a felony conviction. As to the other count of second degree murder, Moore was sentenced to 30 to 45 years' imprisonment; on the associated use of a deadly weapon to commit a felony conviction, Moore was sentenced to 20 to 30 years' imprisonment. All sentences were ordered to be served consecutively. Moore appeals. We affirm.

## BACKGROUND

Moore pled guilty to two counts of second degree murder and two counts of use of a deadly weapon to commit a felony for the shooting deaths of Terry Jasper and Diane Caveye. A more detailed factual account can be found in our prior opinion in this case.[1]

Moore was originally sentenced on May 23, 2006. In a memorandum opinion filed on January 4, 2007, in case No. S-06-699, we vacated Moore's sentences and remanded the cause for resentencing. Resentencing took place on March 20, 2007. At that time, Moore was sentenced to 30 to 45 years' imprisonment on each count of second degree murder, sentences to be served concurrently, and 10 to 10 years' imprisonment on each use of a deadly weapon conviction,

[1] *State v. Moore*, 274 Neb. 790, 743 N.W.2d 375 (2008).

sentences to be served consecutively to one another and to the sentences for second degree murder. The State then appealed, arguing the sentences were excessively lenient. We agreed, vacated those sentences, and again remanded the cause for resentencing.[2]

Upon resentencing, Moore was sentenced to life to life imprisonment on the first count of second degree murder and 50 to 50 years' imprisonment on the associated use of a deadly weapon to commit a felony conviction. As to the second count of second degree murder, Moore was sentenced to 30 to 45 years' imprisonment; on the associated use of a deadly weapon to commit a felony conviction, Moore was sentenced to 20 to 30 years' imprisonment. All sentences were ordered to be served consecutively.

Moore appeals.

## ASSIGNMENTS OF ERROR

On appeal, Moore assigns, restated, that (1) the sentence imposed by the district court of life to life imprisonment for second degree murder is not an authorized sentence and (2) the sentences were excessive.

## STANDARD OF REVIEW

[1] Statutory interpretation presents a question of law, for which an appellate court has an obligation to reach an independent conclusion irrespective of the determination made by the court below.[3]

[2] A sentence imposed within statutory limits will not be disturbed on appeal absent an abuse of discretion by the trial court.[4] An abuse of discretion occurs when a trial court's decision is based upon reasons that are untenable or unreasonable or if its action is clearly against justice or conscience, reason, and evidence.[5]

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[2] *Id.*

[3] *State v. Marrs*, 272 Neb. 573, 723 N.W.2d 499 (2006).

[4] *State v. Reid*, 274 Neb. 780, 743 N.W.2d 370 (2008).

[5] *Id.*

## ANALYSIS

*Life to Life Imprisonment as Authorized Sentence for Class IB Felony.*

On appeal, Moore argues that the life to life sentence imposed by the district court was not an authorized penalty under Neb. Rev. Stat. § 29-2204(1)(a) (Reissue 2008), which provides in part that in imposing an indeterminate sentence upon an offender, the court shall

> (ii) Beginning July 1, 1998:
>
> (A) Fix the minimum and maximum limits of the sentence to be served within the limits provided by law for any class of felony other than a Class IV felony, except that when a maximum limit of life is imposed by the court for a Class IB felony, the minimum limit may be any term of years not less than the statutory mandatory minimum. If the criminal offense is a Class IV felony, the court shall fix the minimum and maximum limits of the sentence, but the minimum limit fixed by the court shall not be less than the minimum provided by law nor more than one-third of the maximum term and the maximum limit shall not be greater than the maximum provided by law[.]

In *State v. Marrs*,[6] we rejected the argument now advanced by Moore, that life to life imprisonment was not an authorized sentence. This court concluded that there was

> no statutory requirement that the affirmatively stated minimum term for a Class IB felony sentence be less than the maximum term [and that a]lthough § 29-2204(1)(a)(ii) permits a sentencing judge imposing a maximum term of life imprisonment for a Class IB felony to impose a minimum term of years not less than the statutory mandatory minimum, it does not require the judge to do so.[7]

We therefore held that a life to life sentence for second degree murder was a permissible sentence under § 29-2204.

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[6] *State v. Marrs, supra* note 3.

[7] *Id.* at 578, 723 N.W.2d at 504.

Moore acknowledges that *Marrs* is on point, but contends that we should revisit that decision. In support of this contention, Moore directs us to our opinion in *Poindexter v. Houston*.[8] Moore argues that in *Poindexter*, which was decided after *Marrs*, we concluded that a sentence with a minimum term of life is in effect a sentence of life imprisonment without parole. Moore argues that under Neb. Rev. Stat. § 28-105 (Reissue 2008), which sets forth the range of penalties for felonies, such a sentence is only permissible for a Class IA felony. Because Moore was convicted of a Class IB felony, he argues, his life to life sentence was in violation of § 28-105. We decline Moore's invitation to reverse *Marrs*.

As an initial matter, we disagree with Moore's characterization of our opinion in *Poindexter*. In *Poindexter*, we were presented with the question of whether Nebraska law required the commutation of a life sentence to a term of years before a defendant was eligible for parole; we concluded that in both 1969 and 2008, such was required. We made no finding that a life to life sentence was in effect a life sentence without parole.

And to the extent that Moore argues that his life to life sentence was in violation of § 28-105, we also reject that contention. Though admittedly not expressly addressed in *Marrs*, it is clear from a review of the *Marrs* decision that in interpreting § 29-2204, this court was aware of and considered § 28-105.

Moore's first assignment of error is without merit.

*Excessive Sentences.*

[3-5] Moore also argues that the sentences imposed by the district court were excessive. When imposing a sentence, a sentencing judge should consider the defendant's (1) age, (2) mentality, (3) education and experience, (4) social and cultural background, (5) past criminal record or record of law-abiding conduct, and (6) motivation for the offense, as well as (7) the nature of the offense, and (8) the violence involved

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[8] *Poindexter v. Houston*, 275 Neb. 863, 750 N.W.2d 688 (2008).

in the commission of the crime.[9] In imposing a sentence, the sentencing court is not limited to any mathematically applied set of factors.[10] The appropriateness of a sentence is necessarily a subjective judgment and includes the sentencing judge's observation of the defendant's demeanor and attitude and all the facts and circumstances surrounding the defendant's life.[11]

We have reviewed the record and conclude that the district court did not abuse its discretion in sentencing Moore as it did. Moore's argument that his sentences were excessive is also without merit.

## CONCLUSION

For the reasons discussed above, we conclude that Moore's arguments on appeal are without merit. We therefore affirm the judgment of the district court.

AFFIRMED.

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[9] *State v. Reid, supra* note 4.

[10] *Id.*

[11] *Id.*

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# MEHRUZ KAMAL, APPELLEE, V. SOHEL MOHAMMED IMROZ, APPELLANT.

759 N.W.2d 914

Filed January 30, 2009. No. S-08-491.

1. **Child Custody.** Neb. Rev. Stat. §§ 42-364(3) and 43-2923 (Reissue 2008) require the district court to devise a parenting plan and to consider joint legal and physical custody. The statutes do not require the district court to grant equal parenting time to the parents if such is not in the child's best interests.
2. **Child Custody: Appeal and Error.** The Nebraska Supreme Court reviews child custody determinations de novo on the record, but the trial court's decision will normally be upheld absent an abuse of discretion.
3. **Child Custody.** The fact that one parent might interfere with the other's relationship with the child is a factor that the trial court may consider in granting custody, but it is not a determinative factor.

Appeal from the District Court for Douglas County: SANDRA L. DOUGHERTY, Judge. Affirmed.