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STATE OF NEBRASKA, APPELLEE, V. JONATHAN S. BECKER, APPELLANT.

804 N.W.2d 27

Filed September 30, 2011. No. S-11-041.

1. **Statutes: Appeal and Error.** Statutory interpretation is a question of law that an appellate court resolves independently of the court below.
2. **Sentences.** Whether a defendant is entitled to credit for time served is a question of law.
3. **Statutes: Legislature: Intent.** When construing a statute, courts look to give effect to the legislative intent of the enactment.
4. **Statutes.** Courts generally give words in a statute their ordinary meaning.
5. **Sentences: Words and Phrases.** Under Neb. Rev. Stat. § 83-1,106(1) (Reissue 2008), "in custody" means judicially imposed confinement in a governmental facility authorized for detention, control, or supervision of a defendant before, during, or after trial on a criminal charge.
6. **Sentences.** Under Neb. Rev. Stat. § 83-4,145 (Reissue 1999), credit is given for time actually served in an incarceration work camp program.
7. **Probation and Parole: Sentences.** Under Neb. Rev. Stat. § 29-2268 (Reissue 2008), if a court finds that a probationer violated a condition of his probation, the court may revoke the probation and impose on the offender such new sentence as might have been imposed originally for the crime of which he was convicted.
8. **Homicide: Motor Vehicles: Licenses and Permits: Revocation: Time.** While Neb. Rev. Stat. § 28-306 (Cum. Supp. 2002) requires a license revocation regardless of whether the defendant is sentenced to probation or incarceration, the court may, in some cases, also do so as a condition of probation for a period of 5 years.
9. **Probation and Parole.** Under Neb. Rev. Stat. § 29-2262(2)(r) (Cum. Supp. 2004), the court may attach any condition reasonably related to the rehabilitation of the offender to his or her probation.
10. **Sentences: Legislature: Licenses and Permits: Revocation.** The Legislature has not given credit for prior license revocations.

Appeal from the District Court for Douglas County: THOMAS A. OTEPKA, Judge. Sentence vacated, and cause remanded for resentencing.

Thomas C. Riley, Douglas County Public Defender, Kelly M. Steenbock, and Timothy P. Burns for appellant.

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

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

CONNOLLY, J.

In 2005, Jonathan S. Becker pleaded guilty to one count of motor vehicle homicide. The court sentenced him to 5 years of probation, which included a requirement that Becker participate in a "work ethic camp." The court also revoked his driver's license for 5 years as a condition of probation. Becker later violated his probation, and the court revoked it. The court then sentenced Becker to 5 years in prison. At the same time, the court again revoked Becker's license, this time for 15 years. This appeal presents two questions: whether Becker will receive credit for time served at a work ethic camp; and whether he will receive credit for his previous license revocation. We conclude that Becker should receive credit for the time served at the work ethic camp but reject his argument that he should receive credit for the time his license was revoked while he was on probation.

BACKGROUND

In 2004, Becker, while intoxicated, crashed his vehicle into a concrete sign. His passenger died from injuries caused by the accident. The State charged Becker with one count of motor vehicle homicide.[1] Becker pleaded guilty to the charge, and the court sentenced Becker to 5 years of probation. One of the conditions of Becker's probation was that he successfully complete a program at a work ethic camp. The court also imposed a condition that Becker not drive and revoked his driver's license for 5 years from the date of sentencing.

Although Becker successfully completed his 125-day term at the work ethic camp, he eventually violated his probation by testing positive for alcohol, missing drug-testing dates, skipping Alcoholics Anonymous meetings, and failing to attend mental health counseling. Becker admitted to violating his probation.

After Becker had admitted his probation violation, the court sentenced Becker to 5 years in prison. The court gave Becker credit for 128 days he had served in jail, but did not give him credit for the 125 days served in the work ethic camp.

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[1] See Neb. Rev. Stat. § 28-306 (Cum. Supp. 2002).

The court also revoked Becker's driver's license for 15 years. The court gave no credit for the revocation that was a part of Becker's probation.

ASSIGNMENTS OF ERROR

Becker assigns that the court erred in:

(1) refusing to grant Becker credit for the 125 days he spent at the work ethic camp; and

(2) refusing to give Becker credit for the 5 years that his license was previously suspended.

STANDARD OF REVIEW

[1,2] Statutory interpretation is a question of law that we resolve independently of the court below.[2] Whether a defendant is entitled to credit for time served is also a question of law.[3]

ANALYSIS

Credit for Time Served at the Work Ethic Camp

Becker first argues that the court erred when it did not give him credit for the 125 days he spent at the work ethic camp. The State agrees and concedes that the court erred. We agree.

[3,4] When construing a statute, we look to give effect to the legislative intent of the enactment.[4] In doing so, we generally give words in a statute their ordinary meaning.[5]

[5] Neb. Rev. Stat. § 83-1,106(1) (Reissue 2008) states that "[c]redit against the maximum term and any minimum term shall be given to an offender for the time spent in custody . . . as a result of the conduct on which such a charge is based." We have previously defined "in custody" to mean judicially imposed confinement in a governmental facility authorized for detention, control, or supervision of a defendant before, during, or after trial on a criminal charge.[6] Under this definition,

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[2] See *State v. Mena-Rivera*, 280 Neb. 948, 791 N.W.2d 613 (2010).

[3] *State v. Alford*, 278 Neb. 818, 774 N.W.2d 394 (2009).

[4] See *Mena-Rivera, supra* note 2.

[5] See *id.*

[6] *State v. Jordan*, 240 Neb. 919, 485 N.W.2d 198 (1992).

Becker was "in custody"; as part of his sentence, the court had ordered him to a facility run by the Department of Correctional Services for detention and supervision.[7]

[6] Moreover, the Legislature has explicitly stated that inmates are to get credit for time they spend in work camps. Neb. Rev. Stat. § 83-4,145 (Reissue 1999), which authorizes a court to sentence one who has failed to complete a work camp program to any sentence the court could have initially imposed, states that "[c]redit shall be given for time actually served in the incarceration work camp program."

The court erred in not awarding Becker credit for the time he spent at the work ethic camp. The court should have allowed Becker credit for the 125 days he served at the camp.

Credit for the Driver's License Revocation

Becker next argues that the court erred in revoking his license for an additional 15 years without granting him credit for the 5 years that his license was revoked as part of his probation. Becker argues that if the court does not give him credit for these 5 years, the total length of his revocation will be 20 years, which exceeds the statutory limit.[8]

[7] Neb. Rev. Stat. § 29-2268(1) (Reissue 2008) states that if a court finds that a probationer violated a condition of his probation, the court "may revoke the probation and impose on the offender such new sentence as might have been imposed originally for the crime of which he was convicted."

[8,9] While § 28-306 requires a license revocation regardless of whether the defendant is sentenced to probation or incarceration, the court may, in some cases, also do so as a condition of probation for a period of 5 years.[9] Under Neb. Rev. Stat. § 29-2262(2)(r) (Cum. Supp. 2004), the court may attach any condition "reasonably related to the rehabilitation of the offender" to his or her probation. We have previously held that revoking a driver's license and ordering a defendant not

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[7] See Neb. Rev. Stat. § 83-4,142 (Reissue 1999).

[8] See § 28-306.

[9] See Neb. Rev. Stat. § 29-2263 (Reissue 2008).

to drive were reasonably related to a defendant's rehabilitation after his conviction for driving under the influence.[10] Similarly, it could be viewed as reasonably related to the rehabilitation of a defendant who killed his passenger while driving drunk. The court's order makes clear that it imposed the revocation because it thought that the revocation was related to Becker's rehabilitation. Because the court's order of revocation was a condition of Becker's probation, the court could revoke his probation and impose a new sentence under § 29-2268. And at the time that the court initially sentenced Becker, § 28-306 provided that a convicted defendant's license could be revoked for anywhere from 60 days to 15 years. Applying the plain language of § 29-2268, the court had authority to revoke Becker's license for 15 years.

[10] Becker argues that the court should have given him credit for his previous license revocation. But we note that the statute allowing a court to revoke probation and impose a new sentence, § 29-2268, makes no provision for awarding credit. Further, Becker has not directed us to any other statute that would award credit and we have not found one either. Apparently, unlike for time served in custody,[11] the Legislature has not given credit for prior license revocations. As we pointed out in *State v. Nelson*,[12] "[t]he Legislature has demonstrated that it can and will specify when credit should be given for similarly imposed restrictions." It has not done so here.

Summing up, the court imposed Becker's license revocation as a condition of his probation. When Becker violated his probation, the court was free to revoke that probation and impose any sentence it could have initially imposed. This includes the 15-year license revocation under § 28-306.

CONCLUSION

The court should have given Becker credit for the time he spent at the work ethic camp. But he is not entitled to credit for

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[10] See *State v. Seaman*, 237 Neb. 916, 468 N.W.2d 121 (1991).

[11] See § 83-1,106(1).

[12] *State v. Nelson*, 276 Neb. 997, 1003, 759 N.W.2d 260, 266 (2009). See, also, Neb. Rev. Stat. § 60-6,197.05 (Reissue 2010).

his license revocation. We vacate the sentence and remand the cause for resentencing.

SENTENCE VACATED, AND CAUSE REMANDED FOR RESENTENCING.

STATE OF NEBRASKA, APPELLEE, V.
JERAD N. PARKS, APPELLANT.
803 N.W.2d 761

Filed September 30, 2011. No. S-11-092.

1. **Criminal Law: Courts: Juvenile Courts: Jurisdiction: Appeal and Error.** A trial court's denial of a motion to transfer a pending criminal proceeding to the juvenile court is reviewed for an abuse of discretion.
2. **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.
3. **Jurisdiction: Appeal and Error.** Jurisdictional questions can be raised by the Nebraska Supreme Court sua sponte.
4. ____: ____. A jurisdictional question which does not involve a factual dispute is determined by an appellate court as a matter of law.
5. **Criminal Law: Courts: Juvenile Courts: Jurisdiction.** Under Neb. Rev. Stat. § 43-247 (Reissue 2008), when a juvenile has been charged with a felony, the district court and the juvenile court have concurrent jurisdiction.
6. **Juvenile Courts: Jurisdiction.** The juvenile court's jurisdiction over any individual adjudged to be within the provisions of Neb. Rev. Stat. § 43-247 (Reissue 2008) shall continue until the individual reaches the age of majority or the court otherwise discharges the individual from its jurisdiction.
7. **Juvenile Courts: Words and Phrases.** For purposes of the Nebraska Juvenile Code, "age of majority" means 19 years of age and "juvenile" means any person under the age of 18.
8. **Statutes.** Absent a statutory indication to the contrary, words in a statute will be given their ordinary meaning.
9. **Statutes: Appeal and Error.** An appellate court will not read anything plain, direct, or unambiguous out of a statute.
10. **Statutes.** A court must attempt to give effect to all parts of a statute, and if it can be avoided, no word, clause, or sentence will be rejected as superfluous or meaningless.
11. ____. A court must place on a statute a reasonable construction which best achieves the statute's purpose, rather than a construction which would defeat that purpose.
12. **Statutes: Intent: Appeal and Error.** In construing a statute, an appellate court looks to the statutory objective to be accomplished, the evils and mischiefs sought to be remedied, and the purpose to be served.