

State v. Paulsen

Case Number

S-18-0936

Case Audio

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April 29, 2019

Court Number

Dawson

Case Location

Scottsbluff

Case Summary

S-18-0936 State of Nebraska v. Larry Paulsen (Appellant)

Dawson County District Court, Judge James E. Doyle, IV

Attorneys: Christopher Ferdico, Erik Fern (Berry Law Firm, for Appellant) --- Siobhan Duffy (Office of the Attorney General, for Appellee)

Criminal: Plea; Modification of probation terms

Proceedings below: The trial court denied Appellant's motion for order modifying his probation terms to remove the firearm restrictions.

Issues: Whether the trial court erred in denying Appellant's motion for order modifying his probation terms to remove the firearm restrictions as a term and condition of his probation.

Facts: Appellant entered a plea to DUI, 2nd offense, BAC greater than .15. He was sentenced to 24 months' probation, 30 days jail, a \$1000 fine, and revocation of his license for 18 months. A term in his probation stated he shall "not have nor associate with anyone who has possession of firearms, ammunition, or illegal weapons." He did not file a direct appeal. On August 28, 2018, Appellant filed a motion to modify pursuant to Neb. Rev. Stat. § 29-2263(3). He sought to remove the provisions relating to firearms. He stated in his motion that during the term of probation his firearms will be kept in a locked room with the only keys kept by his counsel. He argued he could successfully complete probation with the removal of the terms. The motion was denied.

Appellee argues this is a non-final order, and thus not appealable. The State further contends that Appellant failed to file a direct appeal from the sentencing order setting forth the terms of probation. Appellant disagrees and argues this order affects a substantial right; a fundamental constitutional right to bear arms.

Appellant admits that by statute, a probation order may prohibit possession of weapons and firearms, but he argues this does not except the trial court from a requirement under both state and federal constitutions to evaluate the necessity of such restrictions. The Appellee argues that the trial court's analysis supported the finding that the term of probation was appropriate and should not be removed.
