

IN THE DISTRICT COURT OF HOLT COUNTY, NEBRASKA

THE STATE OF NEBRASKA,
Plaintiff,

Case No. CR01-27

vs.

ORDER OF PROBATION

HOWARD M. OBERLE,
Defendant.

DATE OF SENTENCING: January 7, 2002.

APPEARANCES:

For plaintiff: Thomas P. Herzog, Holt County Attorney.
For defendant: Rodney W. Smith, Holt County Public Defender, with defendant.

THIS CASE CAME ON FOR SENTENCING. The Court finds that the defendant was adjudged guilty of the charge(s) of: Count No. 2, Assault on an Officer in the Third Degree, a Class IIIA felony, Count No. 3, Assault by a Confined Person, a Class IIIA felony, Count No. 4, Resisting Arrest, a Class I misdemeanor, and Count No. 10, Willful Reckless Driving, a Class III misdemeanor, on October 29, 2001. Allocution had: defendant showed no sufficient reason why sentence should not be pronounced.

IT IS THEREFORE ORDERED AND ADJUDGED that the defendant is hereby sentenced to concurrent terms of Probation for a period of five (5) years on Counts Nos. 2 and 3, and a period of two (2) years on Counts Nos. 4 and 10, from and after the commencement of probation under the supervision of a State Probation Officer. The terms of probation shall be deemed to commence upon the first to occur of the following: (1) defendant’s acceptance in writing of the conditions of probation, (2) the expiration of 30 days from the date of entry of this order if no appeal is taken, or, (3) the entry of judgment upon the mandate of the appellate court if appeal is timely perfected within 30 days after the date of entry of this order. As conditions of probation, the defendant shall:

1. Not violate any laws, and refrain from disorderly conduct or acts injurious to others.
2. Avoid social contact with those persons having criminal records or who are on probation or parole.
3. Report to your probation officer in person as required by the probation officer, at such reasonable times and places to be fixed by the probation officer. If the defendant is arrested or cited for any violation of law, report such arrest or citation to the probation officer by the next working day.

4. Truthfully answer questions and allow the probation officer to visit you at all reasonable times and places. Generally cooperate with the reasonable requests of the probation officer for information. Show ordinary business courtesy toward the probation officer.
5. With regard to amounts of money ordered paid by defendant under this order, this paragraph shall apply unless this order specifies the date by which, or the length of time during which, the payment is to be made. Such amounts shall be paid in compliance with a reasonable installment payment schedule at the rate of \$20.00 per month, the first installment due on the first day of the month following the date of commencement of probation, and a like payment on the first day of each consecutive month thereafter until paid in full. The payments shall be applied: first, to the current month's share of drug and alcohol testing cost; second, to court costs; third, to future months' shares of drug and alcohol testing costs; and, finally, to any other amounts ordered paid by this sentence to probation.
6. Obtain and maintain suitable employment, or provide adequate proof to the probation officer that the probationer is diligently seeking employment.
7. If required by the probation officer, such proof of search for employment shall include, at a minimum, registration with the Nebraska Job Service, and weekly reports in writing of at least two (2) bona fide personal contacts with prospective employers listing: (a) the name of the prospective employer, (b) the name of the person contacted; (c) the date and time of the contact; (d) the position for which employment was sought; (e) the job description of such position or a list of the skills required therefor; and, (f) such additional reasonable information as the probation officer may require from time to time.
8. Meet your family responsibilities. If you have been or are hereafter ordered by any court to pay child or spousal support, pay all such amounts as directed by the court before the same become delinquent.
9. Obtain permission from this court or the probation officer before any change of address or employment.
10. Furnish the Clerk of the District Court for this county, in writing, with defendant's address (including specific street address or other physical location, in addition to mailing address), telephone number, and social security number, and the name, address, and telephone number of defendant's employer. The defendant shall also be required to advise the clerk in writing of any changes in such information between the time of entry of this order and release from probation, within ten (10) days after the effective date of such change.
11. Not leave the State of Nebraska without written permission of the court or the probation officer.
12. Not have possession of any firearms, ammunition, or illegal weapons. Not be personally present with anyone who has possession of any firearms, ammunition, or illegal weapons.

13. Submit, from time to time, to any reasonable search and seizure of premises, person or vehicle, with or without probable cause, by or upon request of the probation officer or any law enforcement officer.
14. Concerning alcohol and drugs:
 - A. Not use or possess any alcoholic liquor or beverages.
 - B. Not use or possess any controlled substance except when prescribed by a licensed physician.
 - C. Submit to the following tests and examinations:
 - (1) Roadside sobriety test;
 - (2) Alco-sensor test;
 - (3) Chemical test for alcohol or drug content of your blood, breath or urine; and/or,
 - (4) Tests to determine the loss of mental function or physical agility due to the use of alcohol or drugs.
 - (5) Such tests may be administered at any time and from time to time, with or without probable cause, upon request of the probation officer, or any law enforcement officer.
 - D. Pay to the clerk of the sentencing court \$300.00 (based upon \$5.00 per month) for chemical testing while on probation (included in installment payments). If additional testing is required by this order which is not included in the standard fee above, pay to the clerk of the sentencing court the actual cost of such testing as certified by the probation officer from time to time (included in installment payments).
15. Continue the existing counseling program and not discontinue counseling or change counselors without advance written permission of the probation officer. The defendant shall provide the counselor with irrevocable written instructions waiving any privilege and directing the counselor to:
 - (1) provide reports to the probation officer from time to time regarding counseling progress at the request of the probation officer, and,
 - (2) notify the probation officer as soon as practical electronically, with subsequent written verification, of: (a) any cessation or termination of counseling prior to successful completion of the program, or, (b) any missed appointments not rescheduled by the end of that business day.
16. Continue the existing medication program to the extent that the defendant's psychiatrist continues to determine such program to be medically appropriate and not discontinue such medication program without advance written permission of the probation officer upon the recommendation of the defendant's psychiatrist. The defendant shall advise the probation officer at least once each week of the prescribed medications and shall verify compliance with the medication schedule through any reasonable reporting and/or verification mechanism required by the probation officer. The defendant shall provide the psychiatrist with irrevocable written instructions waiving any privilege and directing the psychiatrist to:
 - (1) provide reports to the probation officer from time to time regarding treatment progress at the request of the probation officer, and,
 - (2) notify the probation officer as soon as practical electronically, with subsequent written verification, of: (a) any cessation or termination of the medication treatment program prior to successful completion of the

treatment program, or, (b) any missed appointments not rescheduled by the end of that business day.

17. Continue to reside at Anchor House until successful completion of the program and obtaining written permission for removal therefrom of the probation officer. The defendant shall provide the administrator of Anchor House with irrevocable written instructions waiving any privilege and directing the administrator to: (1) provide reports to the probation officer from time to time regarding recovery program progress at the request of the probation officer, and, (2) notify the probation officer as soon as practical electronically, with subsequent written verification, of: (a) any substantial violation of the program rules or regulations, (b) any termination of residential status determined by the facility, or, (c) any unauthorized absence of the defendant from the facility.
18. If so directed by the probation officer in writing at any time during the term of probation, immediately enter in-patient psychiatric treatment upon voluntary commitment to a secure facility, and continue such in-patient psychiatric treatment until a change of program is authorized by the treating psychiatrist. The probation officer shall so direct upon receipt of notice from any counselor, psychiatrist, or administrator pursuant to any one or more of the three preceding paragraphs.
19. Pay for the costs of any tests, evaluations, treatments, counseling, programs, classes, courses, meetings, or exercises required under the terms of this order or as required by the probation officer as a part of the administration of the terms of probation.
20. There was no jail time served before sentencing.
21. The defendant is sentenced to 180 days in the Holt County Jail regarding the terms of probation on Counts Nos. 2 and 3, to be served on consecutive days commencing on January 7, 2006, unless advanced or waived as provided below, as follows:
 - A. Upon request of the probation officer, the court may advance the date for service of this portion of the jail sentence at any time without further hearing.
 - B. This portion of the jail sentence may be waived by the court upon the recommendation of the probation officer.
 - C. This portion of the sentence is subject to reduction under Neb. Rev. Stat. § 47-502. Assuming no good time for which defendant is eligible is lost, the defendant must serve 124 days on this portion of the sentence before mandatory release.
 - D. Unless advanced or waived, commitment shall issue by the clerk on or before December 31, 2005, for execution of sentence by the sheriff. If advanced or waived, the clerk shall issue commitment as directed by such order. If advanced, the clerk shall mail a copy of the order advancing sentence to the defendant's last known address by regular mail. The Holt County Attorney shall provide the form of commitment to the clerk.
 - E. Unless the sentence is waived, the defendant shall appear and surrender to the Holt County Sheriff at the time required by this order or by the order advancing date of sentence. Failure to appear and surrender shall constitute a violation of probation, with such consequences as may be imposed by law, and may further result in a separate prosecution

for the crime of Failure to Appear, with a separate and additional penalty, and may also result in the issuance of a bench warrant.

22. No restitution was sought by the plaintiff.
23. Pay to the clerk of the sentencing court the costs of prosecution taxed in the amount of \$ _____ (part of installment payments).
24. [not used.]
25. Upon revocation of probation, the defendant shall not drive any motor vehicle for any purpose for a period of one year from the date of revocation of probation, and the defendant's operator's license shall be revoked for a like period.
26. The defendant shall not enter the County of Holt except upon advance written permission of the probation officer.
27. In addition to any order of revocation, suspension, or limited driving imposed by law, the defendant's motor vehicle operator's license shall be impounded and the driving privileges of the defendant shall be limited as follows:
 - A. The defendant shall not operate a motor vehicle, except:
 - (1) to drive between the place of residence and employment by the most direct route,
 - (2) during the course of employment for employment purposes only,
 - (3) to and from probation and counseling appointments by the most direct route,
 - (4) to and from AA/NA meetings by the most direct route, and,
 - (5) emergencies.
 - B. This period of impoundment shall be for a period of two (2) years from date of commencement of probation.
 - C. The probation officer may terminate this period of impoundment at any time, or may grant exceptions from time to time.
 - D. The defendant shall deliver his motor vehicle operator's license to the probation officer, who shall hold the same during the period of this limitation, and who shall provide the defendant with a photocopy thereof with these restrictions endorsed thereon.
 - E. This paragraph does not grant any driving privileges and does not affect any more restrictive order of revocation, suspension, or non-driving entered pursuant to law.
28. The defendant shall consent to any stop of any motor vehicle operated by the defendant at any time by any law enforcement officer effectuated to assure compliance with the requirements of the two preceding paragraphs including all subparagraphs thereof. The defendant shall notify all law enforcement agencies regularly operating in the County of Holt of the existence of this requirement.
29. Bail, if any, shall be released upon defendant's acceptance in writing of the terms and conditions of probation.

IT IS FURTHER ORDERED that during the term of this probation, the Court, upon application of the probation officer or the defendant, or upon its own motion, may modify or eliminate any of the above conditions or add further conditions.

BY THE COURT:

William B. Cassel, District Judge

I hereby accept probation and agree to abide by all the conditions of probation ordered by the court. Any violation of the above conditions is cause for revocation of my probation and may result in a sentence to confinement and/or other authorized punishment. I do hereby waive extradition to the State of Nebraska if, at the time of my apprehension, I am in another state. If probation supervision is transferred to another state, I do hereby agree to abide by additional rules and regulations that may be imposed by the receiving state.

I received a copy of the above order on _____, 2002.

Defendant