

**IN THE DISTRICT COURT OF HOLT COUNTY, NEBRASKA**

**THE STATE OF NEBRASKA,**  
Plaintiff,

vs.

**DARRICK E. NEKUDA,**  
Defendant.

Case No. CR01-33

**ORDER OF PROBATION**

**DATE OF SENTENCING:** January 28, 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, Possession of Defaced Firearm, a Class IV felony, on November 19, 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 Probation for a period of three (3) years from and after the commencement of probation under the supervision of a State Probation Officer. The term 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, except that this condition shall not apply to Gary Cadwallader.
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 each amount ordered paid by the defendant, such amount 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.
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. Obtain permission from this court or the probation officer before any change of address or employment.
9. 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.
10. Not leave the State of Nebraska without written permission of the court or the probation officer.
11. 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.
12. 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.
13. Concerning alcohol and drugs:
  - A. Not use or possess any alcoholic liquor or beverages.
  - B. Neither be found in nor enter any tavern, club, bar, or restaurant wherein there is an on-sale liquor license in effect.

- C. Not use or possess any controlled substance except when prescribed by a licensed physician.
  - D. 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.
  - E. Pay to the clerk of the sentencing court \$180.00 (based upon \$5.00 per month) for chemical testing while on probation. 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.
14. 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.
15. The defendant is sentenced to 90 days, less four (4) days credit for time served before sentencing, in the Holt County Jail, to be served on consecutive days commencing on January 28, 2004, 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 62 days, less four days credit for time served before sentencing, on this portion of the sentence before mandatory release.
  - D. Unless advanced or waived, commitment shall issue by the clerk on or before January 20, 2004, 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 county attorney shall submit the form of commitment prior to the time specified for issuance.
  - 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.

16. No restitution was sought by the plaintiff.
17. Pay to the clerk of the sentencing court the costs of prosecution taxed in the amount of \$\_\_\_\_\_.
18. Pay to the clerk of the sentencing court, for disbursement to Holt County for partial reimbursement of the cost of defense counsel, the sum of \$180.00.
19. 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 one (1) year from date of sentencing.
  - 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.
20. The defendant shall, within 20 days after commencement of the probationary term, cause a display advertisement to be published:
  - A. In the Atkinson Graphic, or other newspaper in general circulation in Stuart, Nebraska approved by the probation officer;
  - B. Consisting of at least 20 column inches;
  - C. With the form and content to be approved in advance by the probation officer, and to include, at a minimum:
    - (1) the defendant's name;

- (2) a picture of the defendant showing a reasonable likeness to the defendant's then current appearance;
  - (3) a statement that the defendant has pleaded guilty to the charge of possession of defaced firearm;
  - (4) a statement that the defendant has been placed on probation;
  - (5) any public apology the defendant desires to include that does not dispute the essential nature of the conviction or the convicted offense;
  - (6) a statement that the defendant's probation prohibits the defendant from:
    - (a) using or possessing alcohol;
    - (b) entering any tavern, bar, club, or restaurant where beer or liquor is sold by the drink;
    - (c) operating a motor vehicle for any purpose other than driving between the place of residence and employment by the most direct route, during the course of employment for employment purposes only, to and from probation and counseling appointments by the most direct route, to and from AA/NA meetings by the most direct route, and, emergencies;
  - (7) the name, address, and telephone number(s) of the probation officer(s) having supervisory responsibility for the defendant;
  - (8) requesting any member of the public observing any violation of probation to immediately report the matter to the probation officer or any law enforcement officer; and,
  - (9) a statement that the advertisement is being published at the defendant's expense by order of the District Court of the Eighth Judicial District as a condition of probation.
- D. The defendant shall, within 10 days after date of publication, provide a copy of the published notice from the newspaper to the probation officer.
- E. The defendant shall pay all costs of publication and copying.
21. 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:

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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.

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Defendant