

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

**THE STATE OF NEBRASKA,**  
Plaintiff,

vs.

**NICHOLAS E. RUNYAN,**  
Defendant.

Case No. CR03-7

**JUDGMENT OF PROBATION**

**DATE OF SENTENCING:** December 12, 2003.

**APPEARANCES:**

For plaintiff: David M. Streich, Brown County Attorney.  
For defendant: Rodney J. Palmer with defendant.

**THIS CASE CAME ON FOR SENTENCING.** The Court finds that the defendant was adjudged guilty of the charge(s) of: Count No. 1, Burglary, a Class III felony, and, Count No. 2, Possession of a Controlled Substance, a Class IV felony, on October 17, 2003. 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 four years on each count 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 judgment 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 judgment. 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. Obtain and maintain suitable employment, or provide adequate proof to the probation officer that the probationer is diligently seeking employment, except that in the alternative to employment, the probationer may attend school in a suitable program approved by the probation officer directed toward completion of specific program or attainment of a specific diploma or degree. However, while attending school the defendant shall obtain full-time summer employment rather than attending summer classes in order to earn money to pay the amounts required by this judgment.
6. Obtain permission from this court or the probation officer before any change of address or employment.
7. 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.
8. 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.
9. 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 \$240.00 (based upon \$5.00 per month) for chemical testing while on probation, to be paid within two years after commencement of probation. If additional testing is required by this judgment 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.
  - E. Attend mandatory drug abuse treatment and counseling conducted by one of the community mental health facilities authorized by Chapter 71, article 50, of the Nebraska Revised Statutes, or other licensed drug treatment facility. (§ 28-416(14))
  - F. Obtain an evaluation by a qualified substance abuse facility approved by the probation officer, and if therapy is recommended by the facility, complete the required course. The evaluation shall be initiated within 60 days after commencement of probation.
  - G. If directed by the probation officer in writing at any time during the term of probation, initiate in-house substance abuse treatment at a facility approved by the probation officer within 30 days after being so directed, complete the required program, and pay the costs of such treatment to the facility before being released from probation.
10. Pay for the costs of any tests, evaluations, treatments, counseling, programs, classes, courses, meetings, or exercises required under the terms of this judgment or as required by the probation officer as a part of the administration of the terms of probation.
11. The defendant is sentenced to 90 days, less 4 days credit for time served before sentencing, in the Brown County Jail, to be served commencing on Friday, May 27, 2005, and shall continue for 86 consecutive days 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 4 days credit for time served before sentencing, on this portion of the sentence before mandatory release.
  - D. Unless advanced or waived, commitment in form to be submitted by the county attorney shall issue by the clerk on or before May 25, 2005, for

execution of sentence by the sheriff. If advanced or waived, the clerk shall issue commitment in form to be submitted by the county attorney 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.

- E. Unless the sentence is waived, the defendant shall appear and surrender to the Brown County Sheriff at the time required by this judgment 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.
12. The defendant shall apologize in writing to Link Pharmacy, the victim of the crime, within 30 days after the commencement of probation; and the defendant shall provide written verification to the probation officer within 10 days thereafter that the apology has been accomplished.
  13. The defendant shall pay to the clerk of the sentencing court, for disbursement to Link Pharmacy and Allied Insurance Company as insurer of Link Pharmacy, restitution in the amount of \$1,245.49, to be paid by the defendant in full on or before September 1, 2004, and disbursed to said Link Pharmacy in the amount of \$500.00 and the balance to Allied Insurance. Installments received by the clerk shall be paid first to Link Pharmacy, and upon satisfaction of the amount to be disbursed to Link Pharmacy, the balance shall be disbursed to Allied Insurance Company.
  14. Pay to the clerk of the sentencing court the costs of prosecution taxed in the amount of \$\_\_\_\_\_, to be paid within one year after commencement of probation.
  15. Pay to the clerk of the sentencing court the probation administrative enrollment fee of \$30.00, to be paid immediately upon commencement of probation.
  16. Pay to the clerk of the sentencing court the monthly probation programming fee of \$25.00 per month, to be paid by the 10th day of each month, for the duration of probation.
  17. Pay to the clerk of the sentencing court, for disbursement to Brown County for partial reimbursement of the cost of defense counsel, the sum of \$750.00, to be paid within three years after commencement of probation.
  18. During the term of probation, the defendant shall maintain a curfew and shall not be present outside of the defendant's home and its curtilage between the hours of 11:00 PM and 5:00 AM, except for emergencies, work-related activities approved in advance in writing by the probation officer, or other special family, church, school, or community activities approved in advance in writing by the probation officer.

**IT IS FURTHER ORDERED AND ADJUDGED** 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 judgment on \_\_\_\_\_, 2003.

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Defendant