



## Supreme Court Considers a Mandamus Action Ordering State Patrol to Remove Arrest Record from Public Record Information

In *State ex rel. Rhiley v. Nebraska State Patrol*, 301 Neb. 241, --- N.W.2d --- (2018), a mandamus action was filed by an individual who had been arrested. The mandamus action sought an order commanding the Nebraska State Patrol remove his arrest material from public record information. The Supreme Court concluded the State Patrol's argument that the mandamus action was barred by sovereign immunity and thus the court lacked subject matter jurisdiction was meritorious.

The arrest record information that is the matter of concern was included in the NSP's Criminal Identification Division (CID). The CID serves as a repository of criminal history information in Nebraska as outlined in part as follows:

Criminal history record information [means] information collected by criminal justice agencies on individuals consisting of identifiable descriptions and notations of issuance of arrest warrants, arrests, detentions, indictments, charges by information, and other formal criminal charges, and any disposition arising from such arrests, charges, sentencing, correctional supervision, and release. See Neb. Rev. Stat. § 29-3506.

Neb. Rev. Stat. § 29-3523 generally outlines conditions in which information may be removed from the public record. Further, Neb. Rev. Stat. § 29-3528 authorizes a mandamus action to compel compliance with the Criminal History Act.

Prior to discussing the legal issues of the case, the court first determined whether it had jurisdiction to begin with. The Supreme Court outlined the following provisions related to sovereign immunity:

The 11th Amendment makes explicit reference to the states' immunity from suits "commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State." This court has, as a result, sometimes referred to the 11th Amendment when discussing Nebraska's sovereign immunity from suit. However, the sovereign immunity of a state neither derives from nor is limited by the terms of the 11th

Amendment. Rather, as we have recognized, a state's immunity from suit is a fundamental aspect of sovereignty.

Neb. Const. art. V, § 22, provides: "The state may sue and be sued, and the Legislature shall provide by law in what manner and in what courts suits shall be brought." Long ago, we held that this provision is not self-executing and that no suit may be maintained against the State unless the Legislature, by law, has so provided. Over time, we have examined the Legislature's limited waivers of the State's sovereign immunity, usually in the context of either the State Tort Claims Act or the Political Subdivisions Tort Claims Act.

In doing so, we have found it well settled that statutes that purport to waive the State's protection of sovereign immunity are strictly construed in favor of the sovereign and against the waiver. A waiver of sovereign immunity is found only where stated by the most express language of a statute or by such overwhelming implication from the text as will allow no other reasonable construction. Absent legislative action waiving sovereign immunity, a trial court lacks subject matter jurisdiction over an action against the State.

Mandamus is statutorily authorized by Neb. Rev. Stat. §§ 25-2156 to 25-2169. Mandamus is a law action and is defined as an extraordinary remedy, not a writ of right, issued to compel the performance of a purely ministerial act or duty, imposed by law upon an inferior tribunal, corporation, board, or person, where

- [1] the relator has a clear right to the relief sought,
- [2] there is a corresponding clear duty existing on the part of the respondent to perform the act, and
- [3] there is no other plain and adequate remedy available in the ordinary court of law.

The court rejected the contention of the State's sovereign immunity being waived as asserted by the individual desiring his arrest information be removed from the CID. As such, the district court lacked subject matter jurisdiction over the mandamus action against the NSP, a state agency. Since the lower court lacked jurisdiction so did the appellate court. Thus, the Supreme Court vacated the district court's judgment, and dismissed the case for lack of jurisdiction.

Citations omitted but to see the case in its entirety click [here](#).

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