

IN THE NEBRASKA COURT OF APPEALS

**MEMORANDUM OPINION AND JUDGMENT ON APPEAL
(Memorandum Web Opinion)**

STATE V. LASSITER

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STATE OF NEBRASKA, APPELLEE,

V.

KEITH T. LASSITER, APPELLANT.

Filed October 13, 2026. Nos. A-25-928 through A-25-930.

Appeals from the District Court for Lancaster County: SUSAN I. STRONG, Judge. Affirmed.
Trevin H. Preble and Coehn W. Preble, of Preble Law Firm, P.C., L.L.O., for appellant.
Michael T. Hilgers, Attorney General, and Jacob M. Waggoner for appellee.

RIEDMANN, Chief Judge, and PIRTLE and PICCOLO, Judges.

RIEDMANN, Chief Judge.

INTRODUCTION

Keith T. Lassiter appeals from his convictions and sentences in three separate cases in the district court for Lancaster County. Lassiter filed a separate brief in each case, but upon the State's motion, this court consolidated the cases. Lassiter assigns in each case that his counsel was ineffective in three ways. Following our review, we affirm his convictions and sentences.

BACKGROUND

Lassiter entered into a global plea agreement to resolve several cases, three of which are involved in this appeal. Lassiter entered his pleas in all three cases at one hearing and was sentenced in all three cases at one hearing. In A-25-0928/CR24-416, Lassiter pled no contest to theft by deception, \$1,500-\$5,000, a Class IV felony. He was sentenced to 18 to 24 months' imprisonment. In A-25-0929/CR24-1311, Lassiter pled no contest to theft by deception, \$1,500-\$5,000, a Class IV felony. He was sentenced to 18 to 24 months' imprisonment. In

A-25-0930/CR25-274, Lassiter pled no contest to theft by deception, \$5,000 or more, a Class IIA felony. He was sentenced to 6 to 10 years' imprisonment. All sentences were to run consecutively.

ASSIGNMENTS OF ERROR

In each case, Lassiter assigns, restated, that he received ineffective assistance of trial counsel when counsel failed to (1) file a motion for a competency evaluation and allowed him to proceed with entering a plea, (2) obtain exculpatory evidence prior to Lassiter entering his plea, and (3) make an argument at the hearing on Lassiter's motion to withdraw his plea.

STANDARD OF REVIEW

Whether a claim of ineffective assistance of trial counsel may be determined on direct appeal is a question of law. *State v. Wilson*, 320 Neb. 728, 30 N.W.3d 165 (2026). In reviewing claims of ineffective assistance of counsel on direct appeal, an appellate court decides only whether the undisputed facts contained within the record are sufficient to conclusively determine whether counsel did or did not provide effective assistance and whether the defendant was or was not prejudiced by counsel's alleged deficient performance. *Id.*

ANALYSIS

Lassiter assigns three ways in which he claims counsel was ineffective. When a defendant's trial counsel is different from counsel on direct appeal, the defendant must raise on direct appeal any issue of trial counsel's ineffective performance which is known to the defendant or is apparent from the record, or else the claim will be procedurally barred. *State v. Rupp*, 320 Neb. 502, 28 N.W.3d 74 (2025).

To prevail on a claim of ineffective assistance of counsel under *Strickland v. Washington*, 466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984), the defendant must show that his or her counsel's performance was deficient and that this deficient performance actually prejudiced the defendant's defense. *Wilson, supra*. To show that counsel's performance was deficient, a defendant must show that counsel's performance did not equal that of a lawyer with ordinary training and skill in criminal law. *Id.* To show prejudice in a claim of ineffective assistance of counsel, the defendant must demonstrate a reasonable probability that but for counsel's deficient performance, the result of the proceeding would have been different. *Id.* When a conviction is based upon a plea of no contest, the prejudice requirement for an ineffective assistance of counsel claim is satisfied if the defendant shows a reasonable probability that but for the errors of counsel, the defendant would have insisted on going to trial rather than pleading no contest. *State v. Miller*, 315 Neb. 951, 2 N.W.3d 345 (2024).

To raise an ineffective assistance of counsel claim on direct appeal, the defendant must allege deficient performance with enough particularity for (1) an appellate court to make a determination of whether the claim can be decided upon the trial record and (2) a district court later reviewing a petition for postconviction relief to recognize whether the claim was brought before the appellate court. *Wilson, supra*. When a claim of ineffective assistance of counsel is raised in a direct appeal, the appellant is not required to allege prejudice; however, an appellant must make specific allegations of the conduct that he or she claims constitutes deficient

performance by trial counsel. *Id.* A generalized and vague assignment of error that does not advise an appellate court of the issue submitted for decision will not be considered. See *Rupp, supra*.

The assignment of error must, standing alone, permit an appellate court to determine if the claim can be decided upon the trial record and also permit a district court to later recognize that the claim was raised on direct appeal. See *id.* The argument section of the brief is to elaborate on these claims by discussing legal authority and its application to the trial record, not to set forth, for the first time, what the allegedly deficient act was. *Id.*

Competency Evaluation.

Lassiter assigns that trial counsel was ineffective when he “failed to file a Motion for Competency Evaluation and allowed [him] to proceed forward with entering a plea.” We find that the record on appeal establishes that Lassiter was not prejudiced by the absence of a motion for a competency hearing. A person is competent to plead or stand trial if he or she has the capacity to understand the nature and object of the proceedings against him or her, to comprehend his or her own condition in reference to such proceedings, and to make a rational defense. The competency standard includes both (1) whether the defendant has a rational as well as factual understanding of the proceedings against him or her and (2) whether the defendant has sufficient present ability to consult with his or her lawyer with a reasonable degree of rational understanding. *State v. Garcia*, 315 Neb. 74, 994 N.W.2d 610 (2023).

At the plea hearing, the district court engaged in a colloquy with Lassiter, asking about his age, education, and employment. The court confirmed that Lassiter was not, and had not been in the past, under psychiatric care. It found that Lassiter was following questions, giving suitable answers, that his eyes, speech, and hearing appeared normal, and that he was not under the influence of alcohol or narcotics. The court found Lassiter competent to proceed. Lassiter later confirmed to the court that it had not used any words, phrases, or sentences that he had not understood, and confirmed that he did not have questions about the rights explained to him.

Lassiter argues that at the time of the plea hearing, he was not in the proper mindset to enter a plea. Although Lassiter may have been experiencing stressful life issues at the time he entered his plea, this does not mean he was not competent to enter a plea. Based on his responses to the district court’s questions at the plea hearing, there is not a reasonable probability that Lassiter would have been found incompetent had counsel filed a motion to evaluate competency. Lassiter cannot show prejudice, and this claim fails.

Exculpatory Evidence.

Lassiter assigns that trial counsel was ineffective when he “failed to get exculpatory evidence prior to [him] entering his plea.” This claim is insufficiently stated. In *State v. Lopez*, 321 Neb. 118, 32 N.W.3d 868 (2026), the Nebraska Supreme Court found a claim that trial counsel was ineffective in failing to obtain exculpatory evidence regarding a certain incident was “a classic example of a broad, conclusory allegation that lacks the specificity required to raise a claim of ineffective assistance.” *Id.* at 151, 32 N.W.3d at 894. Here, the assigned error is broad and does not inform this court of the exculpatory evidence that counsel allegedly failed to obtain. This claim is insufficiently stated, and we do not address it. It is not preserved for postconviction review.

Motion to Withdraw Plea.

Lassiter assigns that trial counsel was ineffective when he “failed to make an argument at the hearing on [his] Motion to Withdraw Plea.” The record establishes that Lassiter cannot show prejudice.

The right to withdraw a plea previously entered is not absolute. *State v. Miller*, 315 Neb. 951, 2 N.W.3d 345 (2024). When a defendant moves to withdraw his or her plea before sentencing, a court, in its discretion, may sustain the motion for any fair and just reason, provided that such withdrawal would not substantially prejudice the prosecution. *Id.* The defendant has the burden to show the grounds for withdrawal by clear and convincing evidence. *Id.*

In A-25-0928/CR24-416 and A-25-0929/CR24-1311, Lassiter filed pro se motions seeking to withdraw his pleas based on a variety of reasons, including that the pleas were not voluntary because he was under pressure due to threats of the habitual criminal charge, that counsel failed to adequately represent him, and that he was under extraordinary personal stress at the time of the plea proceedings. In A-25-0928/CR24-416, prior counsel filed an amended motion to withdraw the plea that did not provide a reason for the request. In A-25-0930/CR25-274, counsel filed a motion to withdraw the plea, alleging a mutual mistake in that Lassiter had entered a plea to the second charge of the information, when the plea agreement actually included that Lassiter would plead to a different charge. Counsel filed an amended motion to withdraw the plea that did not provide a reason for the request.

At the hearing on the motions, trial counsel stated that he would submit the matter based on the motions, as well as comments Lassiter made in the presentence investigation report regarding why he felt the pleas were not knowingly, intelligently, and voluntarily entered. The district court noted that it had reviewed the transcript of the plea hearing, that it was consistent throughout on what Lassiter was pleading to, and it overruled the motion. The reasons listed in Lassiter’s pro se motions did not establish a sufficient basis to withdraw his pleas. As it relates to the allegation that there had been a mutual mistake in the plea agreement, the court reviewed the plea hearing transcript when it ruled on the motion and found it to be consistent. Lassiter cannot show that had counsel made an argument, the motions would have been granted. He cannot show prejudice, and this claim fails.

We note that Lassiter argues, but does not assign, that the district court abused its discretion in denying his motion to withdraw his pleas. An alleged error must be both specifically assigned and specifically argued in the brief of the party asserting the error to be considered by an appellate court. *State v. Lopez, supra*. As Lassiter did not assign this alleged error, we do not address it.

CONCLUSION

Lassiter cannot establish prejudice on his claims that counsel was ineffective in failing to move for a competency evaluation and in failing to make an argument on his motion to withdraw his plea. His claim that counsel was ineffective in failing to obtain exculpatory evidence prior to his entering a plea is not sufficiently stated. We do not address it, and it is not preserved for postconviction review. We affirm Lassiter’s convictions and sentences.

AFFIRMED.