

IN THE NEBRASKA COURT OF APPEALS

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

STATE V. ALVAREZ

NOTICE: THIS OPINION IS NOT DESIGNATED FOR PERMANENT PUBLICATION
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STATE OF NEBRASKA, APPELLEE,

v.

RICARDO A. ALVAREZ, APPELLANT.

Filed September 22, 2026. Nos. A-25-967, A-25-969.

Appeals from the District Court for Platte County: JASON S. DOELE, Judge. Sentence in A-25-967 vacated, and cause remanded for resentencing. Sentence in A-25-969 affirmed.

Nathan J. Stratton and Bryce T. Sealock, of Stratton, DeLay, Carlson & Stratton, P.C., L.L.O., for appellant.

Michael T. Hilgers, Attorney General, and Jacob M. Waggoner for appellee.

RIEDMANN, Chief Judge, and BISHOP and FREEMAN, Judges.

FREEMAN, Judge.

INTRODUCTION

Ricardo A. Alvarez appeals his plea-based convictions entered by the district court for Platte County. We address two appeals in this opinion. For case No. A-25-969 (first assault), Alvarez appeals his convictions for first degree assault, use of a deadly weapon, and possession of a deadly weapon by a prohibited person. For case No. A-25-967 (second assault), Alvarez appeals his conviction for assault by a confined person. He argues that the sentencing court erred in imposing his sentences and that his counsel was ineffective.

Because the sentencing court imposed a sentence that exceeds the statutory limit in case No. A-25-967, we remand the cause for resentencing on Alvarez' sentence. For the reasons explained below, we otherwise affirm the sentences imposed in case No. A-25-969.

BACKGROUND

On March 20, 2025, Alvarez was charged by information with attempted second degree murder, a Class II felony; first degree assault, a Class II felony; second degree assault, a Class IIA felony; three counts of use of a deadly weapon to commit a felony, each a Class II felony; and possession of a deadly weapon by a prohibited person, a Class III felony. Pursuant to a plea agreement for the first assault, Alvarez plead no contest to first degree assault, a Class II felony; one count of use of a deadly weapon to commit a felony, a Class II felony; and possession of a deadly weapon by a prohibited person, a Class III felony. The State dismissed the remaining charges.

At the plea hearing, the State provided a factual basis. On February 6, 2025, Alvarez' mother, M.G., contacted the police department and stated that she had been assaulted by her son at her residence in Columbus, Nebraska. M.G. was stabbed by a knife multiple times in her chest, abdomen, and face after she told Alvarez to leave her residence. Alvarez threw M.G. to the ground, choked her, and told her she was going to die. M.G. grabbed the knife from Alvarez and escaped. Alvarez fled the scene and was later found and taken into custody. Alvarez was previously convicted of distribution of a controlled substance, a Class II felony.

The sentencing court ordered a presentence investigation report (PSR) to be completed, which included a mental health evaluation.

On May 6, 2025, Alvarez was charged by information with second degree assault, a Class IIA felony. Pursuant to a separate plea agreement for the second assault, Alvarez pled no contest to an amended charge of assault by a confined person, a Class IIIA felony.

At the plea hearing, the State provided a factual basis. On April 30, 2025, in the Platte County Detention Facility in Columbus, inmate Larry Weddle threw the first punch that started a fight between him and Alvarez. Alvarez also landed punches against Weddle, causing bruising and swelling to Weddle's left eye. Alvarez waived his right to a separate PSR on the record and requested that the sentencing court schedule sentencing for the charges arising from his first assault and second assault at the same time.

At sentencing, the State requested that the sentence for the second assault be ordered consecutive to the first assault, consistent with the plea agreement and state law. Alvarez' counsel stated that Alvarez was requesting the sentencing court to consider a total of 10 to 15 years' imprisonment. When given the opportunity, Alvarez did not refute this statement.

The court stated that it had reviewed the PSR and its attachments. It considered the factors of Neb. Rev. Stat. § 29-2260 (Reissue 2016) including age, mentality, education and experience, social and cultural background, past criminal record, motivation for the offense, nature of the offense, and the amount of violence involved in the commission of the offense. It also considered how the sentence would be a deterrent.

For the first assault, it sentenced Alvarez to a term of 10 to 20 years' imprisonment for first degree assault, a Class II felony; 5 to 10 years' imprisonment for use of a deadly weapon, a Class II felony, to be served consecutive to his sentence for first degree assault; and 2 to 3 years' imprisonment for possession of a deadly weapon by a prohibited person, a Class III felony, to be served consecutive to his sentence for use of a deadly weapon.

For the second assault, it sentenced Alvarez to a term of 2 to 4 years' imprisonment for assault by a confined person, a Class IIIA felony, to be served consecutive to his sentences related to the first assault.

Alvarez appeals.

ASSIGNMENTS OF ERROR

For both cases, Alvarez assigns that the sentencing court erred by imposing excessive sentences.

Alvarez separately assigns for case No. A-25-967 that the sentencing court erred by imposing a sentence that exceeds the statutory limit.

For case No. A-25-969, he assigns that his counsel "was ineffective in failing to argue for a lower sentence at sentencing."

STANDARD OF REVIEW

An appellate court will not disturb a sentence imposed within the statutory limits absent an abuse of discretion by the trial court. *State v. Flores*, 321 Neb. 284, 34 N.W.3d 106 (2026). An abuse of discretion occurs when a trial court's decision is based upon reasons that are untenable or unreasonable or if its action is clearly against justice or conscience, reason, and evidence. *Id.*

Whether a claim of ineffective assistance of trial counsel may be determined on direct appeal is a question of law. *State v. Reeves*, 321 Neb. 427, 35 N.W.3d 46 (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

Excessive Sentences.

Alvarez argues that the sentencing court imposed excessive sentences. He separately argues that the sentencing court erred by imposing a sentence that exceeds the statutory limit for his assault by a confined person conviction.

A Class IIIA felony is punishable by a maximum of 3 years' imprisonment and 18 months' post-release supervision or \$10,000 fine, or both. See Neb. Rev. Stat. § 28-105(1) (Cum. Supp. 2024).

For his second assault, Alvarez was sentenced to a term of 2 to 4 years' imprisonment for assault by a confined person, a Class IIIA felony, to be served consecutive to his sentences related to his first assault. As acknowledged by the State, this sentence exceeds the statutory limit. The sentencing court erred in imposing an improper sentence. This sentence is vacated, and the cause is remanded for resentencing on Alvarez' charge for assault by a confined person. See *State v. Alba*, 270 Neb. 656, 707 N.W.2d 402 (2005).

We note that Alvarez argues that the sentencing court did not order a separate and updated PSR for his second assault. However, this alleged error was not specifically assigned and will not be addressed. See *State v. Lopez*, 321 Neb. 118, 32 N.W.3d 868 (2026) (alleged error must be both

specifically assigned and specifically argued in brief of party asserting error to be considered by appellate court).

We next consider whether the sentencing court imposed an excessive sentence for Alvarez' remaining sentences. Alvarez claims that the sentencing court should have imposed lesser sentences because of his age, mental health and drug use, education, family, and criminal record. He also claims that lesser sentences would have satisfied his rehabilitative needs and would not have depreciated the seriousness of his crimes.

A Class II felony is punishable by a minimum 1 year of imprisonment to a maximum of 50 years' imprisonment. See § 28-105(1). A Class III felony is punishable by a maximum of 4 years' imprisonment and 2 years' post-release supervision or \$25,000 fine, or both. See *id.*

For his first assault, Alvarez was sentenced to a term of 10 to 20 years' imprisonment for first degree assault, a Class II felony; 5 to 10 years' imprisonment for use of a deadly weapon, a Class II felony, to be served consecutive to his sentence for first degree assault; and 2 to 3 years' imprisonment for possession of a deadly weapon by a prohibited person, a Class III felony, to be served consecutive to his sentence for use of a deadly weapon. These sentences imposed are within the statutory limits; we therefore review the sentences for an abuse of discretion.

Where a sentence imposed within the statutory limits is alleged on appeal to be excessive, the appellate court must determine whether the sentencing court abused its discretion in considering and applying the relevant factors, as well as any applicable legal principles in determining the sentence to be imposed. *State v. Flores*, 321 Neb. 284, 34 N.W.3d 106 (2026). When imposing a sentence, the sentencing court is to consider the defendant's (1) age, (2) mentality, (3) education and experience, (4) social and cultural background, (5) past criminal record or record of law-abiding conduct, and (6) motivation for the offense, as well as (7) the nature of the offense and (8) the amount of violence involved in the commission of the crime. *Id.* A sentencing court is not limited to any mathematically applied set of factors, but the appropriateness of the sentence is necessarily a subjective judgment that includes the sentencing judge's observations of the defendant's demeanor and attitude and all the facts and circumstances surrounding the defendant's life. *Id.*

At sentencing, the sentencing court stated it had reviewed the PSR and the legally required factors when fashioning the sentences. It also considered how the sentences would be a deterrent.

The remaining sentences imposed are within statutory limits. There is no indication the sentencing court considered any inappropriate factors when fashioning the sentences. Therefore, the sentencing court did not abuse its discretion in imposing Alvarez' remaining sentences.

Ineffective Assistance of Counsel.

Alvarez assigns that his "trial counsel was ineffective in failing to argue for a lower sentence at sentencing."

An 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. *State v. Rupp*, 320 Neb. 502, 28 N.W.3d 74 (2025). This requires a description of the specific conduct alleged to constitute deficient performance. *Id.* An assignment is specific when it addresses a specific issue that does not require additional information to understand precisely what the assignment attacks. *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.*

Here, Alvarez' assignment fails to identify what argument his counsel should have made and for what "lower sentence." Even the argument section of his brief lacks specificity when Alvarez claims that "there were mitigating factors at hand warranting a lesser sentencing recommendation." Brief for appellant in case No. A-25-969 at 12. This court has previously declined to address an assigned error that counsel failed to produce "mitigating information at sentencing which would have resulted in a lesser sentence" because the assignment did not specify the mitigating evidence to be presented. *State v. Woodruff*, 30 Neb. App. 193, 205-07, 965 N.W.2d 836, 847-48 (2021). Accordingly, Alvarez' claim that his trial counsel was ineffective is insufficient to garner further review. And regardless of the sufficiency of the assignment, as determined above, Alvarez' sentences related to his first assault were not excessive. See also *State v. Ezell*, 314 Neb. 825, 993 N.W.2d 449 (2023) (sentencing is subjective judgment left to trial court's discretion).

This assignment of error is insufficiently assigned and is not preserved for postconviction review.

CONCLUSION

In case No. A-25-967, we conclude that the sentencing court erred in imposing a sentence that exceeds the statutory limit. Therefore, we vacate the sentence imposed on Alvarez for assault by a confined person, a Class IIIA felony, and remand the cause for resentencing.

In case No. A-25-969, we conclude that the sentencing court did not abuse its discretion in the sentences imposed. Alvarez' assignment for ineffective assistance of counsel is insufficiently assigned.

SENTENCE IN NO. A-25-967 VACATED, AND
CAUSE REMANDED FOR RESENTENCING.

SENTENCES IN NO. A-25-969 AFFIRMED.