

IN THE NEBRASKA COURT OF APPEALS

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

STATE V. MAY

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STATE OF NEBRASKA, APPELLEE,

V.

CHAD M. MAY, APPELLANT.

Filed September 29, 2026. Nos. A-26-103, A-26-104.

Appeals from the District Court for Adams County: TIMOTHY E. HOEFT, Judge. Affirmed as modified.

Remington S. Slama, of Klein, Brewster, Brandt & Messersmith, for appellant.

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

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

BISHOP, Judge.

I. INTRODUCTION

In these two consolidated cases, Chad M. May pled no contest to two counts of distribution of a controlled substance (methamphetamine). The Adams County District Court sentenced him to 20 to 22 years' imprisonment on each count. The sentences were ordered to be served concurrently. May appeals from both convictions, arguing that the sentences imposed are excessive and that his trial counsel was ineffective. Although we affirm, we find plain error in the district court's handling of credit for time served and modify accordingly.

II. BACKGROUND

On June 17, 2025, the State filed two separate informations, each charging May with one count of distribution of a controlled substance (methamphetamine), not less than 10 grams but not more than 28 grams, a Class ID felony, pursuant to Neb. Rev. Stat. § 28-416 (Cum. Supp. 2024).

The information filed in district court case No. CR25-191 (case No. A-26-103) related to events that allegedly occurred on December 16, 2024. The information filed in district court case No. CR25-192 (case No. A-26-104) related to events that allegedly occurred on December 11, 2024.

Pursuant to a global plea agreement, the State filed amended informations in both cases; each charged May with one count of distribution of a controlled substance (methamphetamine), a Class II felony, pursuant to § 28-416. On October 20, 2025, May pled no contest to the charges in each amended information, and the State dismissed proceedings against May in two other district court cases. The following factual basis was offered by the State in support of the pleas:

[W]ith respect to CR 25-191, if that had proceeded to trial the [S]tate would have presented evidence that on December 16th, 2024, that the defendant, Mr. May, delivered a quantifiable amount of methamphetamine to a confidential informant working with the drug task force in Hastings, Adams County, Nebraska. And with respect to CR 25-192 the [S]tate would have presented evidence that on December 11th, 2024, that the defendant, Chad May, delivered a quantifiable amount of methamphetamine to a confidential informant working with the drug task force in Hastings, Adams County, Nebraska.

The district court accepted May's pleas of no contest and found him guilty of the offenses in both amended informations.

A sentencing hearing took place on January 27, 2026. The district court sentenced May to 20 to 22 years' imprisonment in both cases. The sentences were ordered to run concurrently. Each order indicated that May was given credit for 65 days of time served.

May timely appealed his convictions, and upon the State's motion, this court consolidated the two cases for disposition.

III. ASSIGNMENTS OF ERROR

May assigns, in both cases, (1) that the district court abused its discretion by imposing an excessive sentence; and (2) that his trial counsel was ineffective for (a) "fail[ing] to truthfully advise [him] of the expected outcome of his case when advising [him] to plead rather than exercis[e] his right to trial, contrary to [his] intent that he expressed to counsel[.]" and for (b) "fail[ing] to communicate with [him] in any meaningful way, resulting in him not being able to effectively assist in his own defense." May's appellate briefs in both cases appear to be identical; therefore, our references to specific pages in May's appellate brief apply to both appeals.

IV. 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. Sutton*, 319 Neb. 581, 24 N.W.3d 43 (2025). 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.*

Plain error is error plainly evident from the record and of such a nature that to leave it uncorrected would result in damage to the integrity, reputation, or fairness of the judicial process. *State v. Brown*, 317 Neb. 273, 9 N.W.3d 871 (2024). A sentence that is contrary to the court's statutory authority is an appropriate matter for plain error review. *Id.*

Whether a claim of ineffective assistance of trial counsel may be determined on direct appeal is a question of law. *State v. Hagens*, 320 Neb. 65, 26 N.W.3d 174 (2025). 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.*

V. ANALYSIS

1. EXCESSIVE SENTENCES

We begin by considering May's claim that his sentences are excessive.

In both cases, May was convicted of one count of distribution of a controlled substance (methamphetamine), a Class II felony punishable by 1 to 50 years' imprisonment. See Neb. Rev. Stat. § 28-105 (Cum. Supp. 2024). He was sentenced to 20 to 22 years' imprisonment in each case, and the district court ordered the sentences to be served concurrently.

May's sentences are within the statutory range of § 28-105. As such, we review the district court's sentencing determination only for an abuse of discretion. See *State v. Sutton, supra* (where sentence imposed within the statutory limits is alleged to be excessive, appellate court must determine whether sentencing court abused its discretion in considering and applying relevant factors, as well as any applicable legal principles, in determining sentence to be imposed).

In determining a sentence to be imposed, relevant factors customarily considered and applied are 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.* The appropriateness of a sentence is necessarily a subjective judgment and includes the sentencing judge's observation of the defendant's demeanor and attitude and all the facts and circumstances surrounding the defendant's life. *Id.*

May was 38 years old at the time of sentencing. According to the presentence investigation report (PSR), he was single and had no dependents. He did not graduate high school but had obtained a GED. A co-occurring evaluation conducted in June 2025 attached to the PSR indicated that May "meets DSM V criteria" for "an alcohol use disorder (severe)," "cannabis use disorder (severe)," "a methamphetamine disorder (severe)," "schizophrenia and/or schizoaffective disorder," "dysthymia (persistent depressive disorder)," and "anxiety disorder unspecified."

May's criminal history includes numerous convictions, which we will not list in their entirety. Among his convictions are: "Assault – 3rd Degree" in 2004 (60 days' jail); "Obstruct a Peace Officer" in 2007 (30 days' jail); "Assault – 3rd Degree" in 2013 (270 days' jail); "Assault – 3rd Degree" in 2014 (30 days' jail); "Possess Controlled Substance" in 2014 (1 year jail); "Assault – Threaten/Menacing Manner" in 2016 (1 year jail); "Theft – Deception – 3rd/Subsequent" in 2018 (2 years' probation revoked, resentenced to 270 days' jail); "Domestic Assault – 3rd Degree" in 2019 (120 days' jail); "Domestic Assault" in 2022 (12 months' imprisonment); "Possess Controlled Substance" in 2022 (24 months' imprisonment); and "DUI - .15+" in 2022 (\$500 fine, 1 year driver's license revocation, and 60 days' imprisonment).

As part of the presentence investigation, a "Level of Service/Case Management Inventory" was conducted. May was assessed as an overall very high risk for recidivism.

At the sentencing hearing in January 2026, the State requested that the district court impose a “straight” sentence in both cases. The State argued that May’s convictions stemmed from “actual sales of methamphetamine,” which went beyond “drug-seeking behavior as part of an addiction.” It also highlighted May’s “extensive criminal history” and his “lack of success when given probation” in the past.

May’s trial counsel noted that during the presentence investigation, May was “pretty open” about “getting involved in these activities because he was in a very dark place in his life.” Counsel also explained that May had “some mental health issues that play into that, that he somehow tries to treat incorrectly with taking the wrong drugs.” Counsel told the district court that May wants to be “clean and sober” and “get back on the path of getting his life back in order.” Counsel requested that the court “consider placing [May] on probation” but also recommended that he be sentenced “more on the minimal end should he be sentenced to incarceration.”

May personally addressed the district court, stating, “Just like [counsel] said, you know, I’m trying to get back into treatment, you know, do whatever it takes to stay sober, stay clean.” The PSR also contained a written statement from May. It stated that he was in a “dark place” in his life, that he was “very hopeless” because he was “actively using drugs on a daily basis.” He acknowledged that his “life revolved around using drugs, finding drugs, and finding more money to get more drugs.” He explained that he was not taking medication for his “bipolar disorder,” was experiencing a “deep long-lasting depression that would not go away,” was not “attending therapy or seeing any doctor” to help with his “mental health,” and was not receiving any “recovery treatment.” He did not have “any healthy relationships” in his life, thought his girlfriend would leave him because he did not have any drugs, and “[m]ost of [his] reasoning for keeping drugs around was because [he] didn’t want to be alone.” He claimed to be “sober and recovering,” that his family supported him, that he had “healthier relationships” and a job, and that his life was “really good.”

The district court stated it had reviewed the PSR and considered “all of those things that [it’s] required to by law.” The court acknowledged May’s “extensive” criminal history, including convictions for “assaultive behavior” and drug-related felonies. The court also noted that his convictions in the current cases stemmed from distribution of “a significant quantity of methamphetamine,” “which the legislature has classified as a hazardous drug.” See Neb. Rev. Stat. § 28-401(29) (Cum. Supp. 2024) (defining “[e]xceptionally hazardous drug” to include methamphetamine). The court concluded that May was not a suitable candidate for probation, believing there was “a strong likelihood that [he] would reoffend” during any probationary period. The court then sentenced May as set forth previously.

On appeal, May argues that the district court provided no “insight into [its] subjective judgment of [him], his demeanor and attitude, nor the conclusions drawn [by] the [c]ourt when analyzing the factors that [it] is required to consider in determining an appropriate sentence.” Brief for appellant at 15. He claims that “without knowing what exactly the [c]ourt considered, it is impossible for [this court] to properly examine what factors the [trial court] considered and whether those factors support such a harsh sentence.” *Id.* However, it is well-settled that a sentencing court is not required to articulate on the record that it has considered each sentencing factor nor to make specific findings as to the facts pertaining to the factors or the weight given them. *State v. Greer*, 309 Neb. 667, 962 N.W.2d 217 (2021). Here, the court expressly indicated

on the record that it had considered the contents of the PSR and all statutory factors before announcing the sentences.

Having reviewed the record, we cannot say that the district court abused its discretion in sentencing May in either case. See *State v. Rivera-Meister*, 318 Neb. 164, 14 N.W.3d 1 (2024) (no abuse of discretion in sentence imposed when review of record shows sentencing court considered relevant sentencing factors and did not consider any inappropriate factors).

2. PLAIN ERROR IN CREDIT FOR TIME SERVED

Although not raised by either party, we find that the district court committed plain error in both cases in its handling of credit for time served. In its sentencing order in each case, the court ordered that May should receive 65 days' credit for time previously served. While not particularly problematic given the identical concurrent sentences imposed, we are nevertheless mindful of the Nebraska Supreme Court's directive that when a court imposes multiple sentences contemporaneously, whether such sentences are ordered to be served consecutively or concurrently, all available credit for time served under Neb. Rev. Stat. § 83-1,106(1) (Reissue 2024) is applied just once, to the aggregate of all terms imposed. See *State v. Nelson*, 318 Neb. 484, 16 N.W.3d 883 (2025). Although courts use aggregation principles when applying available jail credit, precision is still required when identifying how many days a defendant spent in custody, and on which charges, for purposes of calculating available credit under § 83-1,106(1). *State v. Nelson*, *supra*.

We therefore modify the sentencing orders in each case to state that "May is entitled to 65 days of credit for time served against the aggregate of all terms imposed in CR25-191 and CR25-192." And we direct the district court, upon spreading the mandate, to modify the commitment accordingly using the same language.

3. INEFFECTIVE ASSISTANCE OF COUNSEL

May next contends that his trial counsel was ineffective in two ways. Before addressing May's arguments, we first set forth the general principles governing claims of ineffective assistance of counsel on direct appeal.

A voluntary guilty plea or plea of no contest waives all defenses to a criminal charge. *State v. Blaha*, 303 Neb. 415, 929 N.W.2d 494 (2019). Thus, when a defendant pleads guilty or no contest, he or she is limited to challenging whether the plea was understandingly and voluntarily made and whether it was the result of ineffective assistance of counsel. *Id.* May has different counsel on direct appeal than he did in the district court. When a defendant's trial counsel is different from his or her 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. *State v. Lierman*, 305 Neb. 289, 940 N.W.2d 529 (2020). Once raised, the appellate court will determine whether the record on appeal is sufficient to review the merits of the ineffective performance claims. *Id.* A record is sufficient if it establishes either that trial counsel's performance was not deficient, that the appellant will not be able to establish prejudice, or that trial counsel's actions could not be justified as a part of any plausible trial strategy. *State v. Theisen*, 306 Neb. 591, 946 N.W.2d 677 (2020). When a claim of ineffective assistance of trial 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. *State v. Lierman, supra*.

Generally, 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 counsel's performance was deficient and that the deficient performance actually prejudiced the defendant's defense. *State v. Blaha, 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.* In a plea context, deficiency depends on whether counsel's advice was within the range of competence demanded of attorneys in criminal cases. *Id.* When a conviction is based upon a guilty or no contest plea, 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 guilty or no contest. *Id.* The two prongs of the ineffective assistance of counsel test under *Strickland* may be addressed in either order. *State v. Blaha, supra*.

(a) Failure to Advise

May first assigns that his trial counsel was ineffective for failing to "truthfully advise [him] of the expected outcome of his case when advising [him] to plead rather than exercising his right to trial, contrary to May's intent that he expressed to counsel." Brief for appellant at 6. The State argues that May's claim is insufficiently stated because his assignment of error does not allege how trial counsel failed to truthfully advise him. See *State v. Rupp*, 320 Neb. 502, 28 N.W.3d 74 (2025) (assignment of error is specific when it addresses specific issue that does not require additional information to understand precisely what assignment attacks). We disagree. May's assignment of error alleges that trial counsel failed to truthfully advise him "of the expected outcome of his case." The assignment specifically identifies what trial counsel purportedly failed to truthfully advise about and does not require additional information to understand what conduct May challenges. Accordingly, we consider the merits of May's claim.

In the argument section of his brief, May asserts that trial counsel told him that "he would lose" if he went to trial and "guaranteed" him sentences of probation if he entered no contest pleas. Brief for appellant at 12. May contends that "between the pressure tactics and the promise that he would get probation, he felt he had no choice but to take the plea offer." *Id.* He alleges that trial counsel "simply served words of contrivance to induce [him] to take a plea," so counsel "would not have to take his case to trial." *Id.*

The record refutes any claim that trial counsel falsely promised May a sentence of probation. During the plea colloquy, the district court asked May if "anybody ma[d]e any threats or promises to [him] in either of [his] cases to get [him] to enter" his no contest pleas. May responded in the negative. Further, even if we were to overlook May's statement and assume that his counsel was deficient in the ways alleged, he is unable to demonstrate prejudice. At the plea hearing, the court informed May that the charges in each amended information carried "a maximum [of] 50 years['] imprisonment" and "a minimum [of] one year[']s imprisonment." The court also advised that it was "not a party to the plea agreement" and was "not bound by the recommendation of [his] attorney or the State's attorney." Despite being told that the court was not bound by any recommendations made by counsel, May still decided to proceed and enter pleas

of no contest. Therefore, he cannot show a reasonable probability that but for the alleged errors of counsel, he would have insisted on going to trial rather than pleading no contest. May's first claim of ineffective assistance of counsel fails.

(b) Failure to Communicate

May also claims that his trial counsel was ineffective for failing to "communicate with [him] in any meaningful way, resulting in him not being able to effectively assist in his own defense." Brief for appellant at 6. The State again argues that May's claim is insufficiently stated. In this instance, we agree.

As mentioned previously, assignments of error on direct appeal regarding ineffective assistance of trial counsel must specifically allege the conduct that is claimed to constitute deficient performance. See *State v. Lierman*, *supra*. May's claim that his trial counsel did not "communicate with [him] in any meaningful way" does not specifically allege deficient conduct; the assignment lacks sufficient specificity regarding how trial counsel failed to communicate with him. See *State v. Davis*, 31 Neb. App. 445, 456, 982 N.W.2d 261, 271 (2022) (assignment of error that counsel "did not effectively communicate with him" found to lack sufficient specificity). See, also, *State v. Mora*, 298 Neb. 185, 200, 903 N.W.2d 244, 257 (2017) (defendant's claim that trial counsel did not "adequately communicate with him to prepare a defense and to explore his options" did not provide "sufficient allegations of deficient performance"). Accordingly, we find May's second claim of ineffective assistance of counsel to be insufficiently stated, and we do not consider it.

(c) Unassigned Claim of Ineffective Assistance of Counsel

As a final matter, we note that in the section of his brief titled "**SUMMARY OF ARGUMENT**," May claims that his trial counsel "failed to instruct the [district] court of [his] serious mental health issues, which could have made it so [he] could not enter a plea knowingly and voluntarily before allowing him to enter a no-contest plea to the amended information." Brief for appellant at 10. However, May did not assign this instance of counsel's alleged deficient performance as error, nor does he expand upon it in the argument portion of his brief. As such, we decline to address this unassigned and unargued claim of ineffective assistance of counsel. See *State v. Lopez*, 321 Neb. 118, 32 N.W.3d 868 (2026) (when defendant seeks to raise ineffective assistance of counsel claim, whether on direct appeal or in postconviction motion, he or she must specifically assign and specifically argue alleged deficient performance and must do so with sufficient particularity).

VI. CONCLUSION

For the foregoing reasons, we conclude that May's sentences are not excessive; however, we modify the sentencing order in each case to state that "May is entitled to 65 days of credit for time served against the aggregate of all terms imposed in CR25-191 and CR25-192." Further, May's claims of ineffective assistance of trial counsel either fail or are insufficiently stated. Accordingly, we affirm his convictions and sentences as modified.

AFFIRMED AS MODIFIED.