IN THE NEBRASKA COURT OF APPEALS

MEMORANDUM OPINION AND JUDGMENT ON APPEAL
(Memorandum Web Opinion)

STATE V. ROBINSON

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STATE OF NEBRASKA, APPELLEE,

V.

JAMISON N. ROBINSON, APPELLANT.

Filed November 24, 2026. No. A-26-146.

Appeal from the District Court for Adams County: TIMOTHY E. HOEFT, Judge. Affirmed.

Carson K. Messersmith, of Klein, Brewster, Brandt & Messersmith, for appellant.

Michael T. Hilgers, Attorney General, Jacob M. Waggoner, and Cooper Nally, Senior Certified Law Student, for appellee.

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

FREEMAN, Judge.

I. INTRODUCTION

Jamison N. Robinson appeals from his plea based conviction in the Adams County District Court for aggravated driving under the influence of alcohol, fourth offense, a Class IIA felony. He contends that the sentence imposed is excessive and that his trial counsel was ineffective in various respects. For the reasons set forth herein, we affirm.

II. BACKGROUND

On July 4, 2025, a Hastings police officer responded to a home after a resident reported that an intoxicated man had blocked his driveway with a vehicle, refused to leave, and acted aggressively. Upon arrival, the officer made contact with Robinson, who exhibited slurred speech, bloodshot eyes, and a strong odor of alcohol. Robinson was holding onto the tailgate of a pickup truck to steady himself and appeared disoriented. The officer observed steam coming from the

vehicle's radiator, consistent with a recent collision. Upon questioning, Robinson admitted that he had driven the vehicle blocking the driveway.

Robinson was arrested for driving under the influence and transported to a hospital, where Robinson refused blood and breath tests. During the inventory of the vehicle, officers found open alcohol containers. A subsequent investigation revealed that a nearby stop sign had recently been run over. At the scene of the accident, officers located vehicle debris and a license plate from the vehicle Robinson had been driving.

On August 13, 2025, the State charged Robinson with driving under the influence of alcohol, fourth offense, a Class IIA felony; driving under revocation, a Class IV felony; leaving the scene of an accident, second offense, a Class I misdemeanor; and possession of an alcoholic beverage container, an infraction. At arraignment, the district court advised Robinson of the charges and noted that the information alleged a fourth offense driving under the influence with refusal of a chemical test.

On August 27, 2025, Robinson filed a motion for change of counsel, alleging a conflict of interest, unprofessional conduct, and discrimination. Then, on September 15, Robinson filed a second motion for change of counsel, again alleging a conflict of interest.

At the October 2025 pretrial hearing, the parties advised the district court that they had reached a plea agreement. Robinson changed his plea and entered a no contest plea to driving under the influence of alcohol. The State noted that the offense was an aggravated fourth offense based on the refusal, which both Robinson and his counsel acknowledged. Before accepting Robinson's plea, the district court advised Robinson of the charge to which he was pleading, the consequences associated with the charge against him, and the constitutional rights he was waiving by entering his plea of no contest. Robinson affirmed that he was satisfied with counsel's representation and that he had sufficient time to discuss possible defenses with counsel. The district court took judicial notice of the warrantless arrest affidavit, which provided the factual basis as previously set forth. The State then dismissed the remaining charges consistent with the plea agreement.

Thereafter, the district court proceeded to enhancement. The State offered three exhibits representing three prior DUI convictions. The court found that the prior convictions were valid and enhanced the current DUI offense to a fourth offense. The court ordered a presentence investigation report (PSR) to be completed and set a sentencing hearing.

During the sentencing hearing in January 2026, the district court noted that it had reviewed the PSR and the required relevant factors. The court determined that Robinson was not a fit candidate for probation and that a lesser sentence would depreciate the seriousness of the crime or promote disrespect for the law. The district court sentenced Robinson to 6 to 10 years' imprisonment on the aggravated driving under the influence, fourth offense, charge and revoked his operator's license for a period of 15 years. Robinson received credit for 207 days served.

Robinson appeals, represented by new counsel.

III. ASSIGNMENTS OF ERROR

Robinson assigns that the district court erred by (1) imposing an excessive sentence. He also assigns that trial counsel was (2) ineffective for failing to (a) communicate with him and the district court did not hear his request for new counsel, (b) meaningfully communicate with him or

provide access to discovery, and (c) inform him that he was pleading to driving under the influence, fourth offense.

IV. STANDARD OF REVIEW

Absent an abuse of discretion by the trial court, an appellate court will not disturb a sentence imposed within the statutory limits. *State v. Jones*, 318 Neb. 840, 19 N.W.3d 499 (2025).

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*.

V. ANALYSIS

1. EXCESSIVE SENTENCE

Robinson first assigns that the sentence imposed by the district court was excessive and constituted an abuse of discretion. Specifically, Robinson argues that the court did not take into consideration the appropriate factors with respect to sentencing, including his mentality, motivation to change, the need for medium/high intensity residential treatment, lack of violence involved in the crime, and resources available through probation.

The sentence imposed was within the statutory limits, and Robinson does not contend otherwise. Where a sentence imposed within the statutory limits is alleged on appeal to be excessive, the appellate court must determine whether a sentencing court abused its discretion in considering and applying the relevant factors and applicable legal principles. *State v. Lopez*, 321 Neb. 118, 32 N.W.3d 868 (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. *State v. Geller*, 318 Neb. 441, 16 N.W.3d 365 (2025).

When imposing a sentence, a sentencing judge should 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. *State v. Jones, supra*. 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 the time of sentencing, Robinson was 45 years old and had four dependents. Robinson had a substantial criminal history spanning Nebraska, Iowa, Kansas, and South Dakota. Robinson's prior criminal convictions in Nebraska include driving under the influence and minor in possession (1999, 6 months' probation, unsatisfactorily release); leaving the scene of an accident or failing to furnish information (2009, 7 days in jail); possession of marijuana (2011, fine); attempted theft and resisting arrest (2011, 90 days in jail); violation of a protection order (2012; 60 days in jail); disturbing the peace (2016, 21 days in jail); and multiple assault related offenses including assault and domestic assault (2010, 2011, 2012, 2017, jail time, fine). Robinson also has

felony convictions for burglary (2005, 24 months' federal prison, 3 years supervised release); escape (2008, 14 months' federal prison, 3 years supervised release, probation violation); and attempted robbery (2013, 3 to 5 years' incarceration). After violating federal supervision in 2008, he was sentenced to another 12 months' imprisonment.

In Iowa, Robinson's criminal history includes convictions for two thefts--fifth degree (2001, 2022, fine); child endangerment (2001, 10 days in jail, 1 year probation); open container (2001, fine); four different consumption/intoxications (2003, 2004, 2009, 2013, 1 day in jail); failure to have a valid license and to prove security against liability (2016, fine); operating while under the influence-second offense (2019, 7 days in jail, fine, 1 year probation, probation revoked, 60 days in jail); operating while under the influence-second offense (2019, 30 days in jail, fine, 2 years' probation, probation revoked, 60 days in jail); frequenting a disorderly house (2019, fine); voluntary absence from custody (2020, 10 days in jail, fine); trespass (2022, fine); public intoxication (2022, 1 day in jail); and multiple assault related offenses (2020, jail time, fine).

In Kansas and South Dakota, Robinson had multiple contacts with law enforcement with unknown dispositions for the related charges. Robinson has one known conviction from South Dakota for driving under the influence (2018; 60 days in jail).

Robinson scored in the very high-risk range to reoffend on the overall Level of Service/Case Management Inventory (LS/CMI) assessment. He scored in the high-risk range in the domains of criminal history, education/employment, family/marital, leisure/recreation, alcohol/drug problems, and procriminal attitude; and in the medium-risk range in the domains of companions and antisocial pattern. Robinson was also diagnosed with severe alcohol use disorder, stimulant use disorder-amphetamine type-moderate/full remission, and depressive disorder. The PSR indicated that he should be treated at medium/high intensity in residential treatment.

At the sentencing hearing, the district court stated that it had considered the required statutory factors. It found substantial and compelling reasons existed for a period of incarceration. The court stated:

> I read through all of the information in the [PSR] including your criminal history. The Court noted that in December of 2022 you were arrested for driving under the influence in Saunders County, Nebraska, and that you had been sentenced to a period of incarceration of three to six years. You had been out on parole or supervised release. I believe from my review you were released on parole in June of 2025. This incident occurred on July 4th of 2025. So you were out for less than one month when this occurred, or roughly one month when this occurred.
>
> Your risk assessments, you scored a 30 on the LS/CMI. That puts you at the very high risk to reoffend. Your criminal history is high risk. Your education and employment is high risk. Your family you scored high risk. Leisure and recreation you scored high risk. Alcohol and drugs you scored high risk. Procriminal attitude you scored high risk. Sir, you basically scored high risk for reoffense on all of the assessments.
>
> Based on the Court's review of those assessments, your criminal history, and the things that I'm required to review by statute, the Court finds that you are not a suitable candidate for probation because to place you on probation would promote disrespect for the law and there's a strong likelihood that you would reengage in additional criminal conduct while on probation.

> The Court also notes that you had just been in the midst of a significant term of incarceration out of Saunders County for a similar offense when this offense occurred.

On appeal, Robinson argues that the district court failed to meaningfully consider certain mitigating circumstances. The information Robinson highlights was presented to the district court in the PSR. Robinson's contention that the district court failed to properly weigh the relevant factors related to sentencing is merely a request for this court to conduct its own de novo review of those factors. It is not the proper function of an appellate court to conduct a de novo review of the record to determine what sentence it would impose. *State v. Hagens*, 320 Neb. 65, 26 N.W.3d 174 (2025).

We also observe that Robinson received the benefit of a plea agreement wherein additional charges related to the same offense were dismissed in exchange for his no contest plea. These charges included driving under revocation, a Class IV felony; leaving the scene of an accident second offense, a Class I misdemeanor; and possession of an alcoholic beverage container, an infraction.

Based on the record before us, the district court considered the appropriate factors, including Robinson's criminal history and Robinson's very high-risk score to reoffend on the overall LS/CMI assessment. There is no indication the court failed to consider any applicable factors. Accordingly, we conclude the district court did not abuse its discretion in the sentences it imposed. Robinson's assignment of error fails.

2. Ineffective Assistance of Counsel

In his second assignment of error, Robinson raises several claims of ineffective assistance of counsel. We begin with a review of the governing principles.

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 that his or her counsel's performance was deficient and that this deficient performance actually prejudiced the defendant's defense. See *State v. Lopez*, 321 Neb. 118, 32 N.W.3d 868 (2026). 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*. 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. *State v. Blaha*, 303 Neb. 415, 929 N.W.2d 494 (2019).

The two prongs of the ineffective assistance of counsel test under *Strickland* may be addressed in either order. *Id.* Although prevailing on a claim of ineffective assistance under *Strickland* requires proving both that counsel's performance was deficient and that the deficient performance actually prejudiced the defendant, a defendant seeking to raise a claim of ineffective assistance on direct appeal is not required to make specific allegations of prejudice. *State v. Lopez, supra*. However, anytime a defendant seeks to raise an ineffective assistance claim, whether on direct appeal or in a postconviction motion, the defendant must specifically assign and specifically argue the alleged deficient performance and must do so with sufficient particularity. *Id*.

An allegation will be sufficiently specific "when it addresses a specific issue that does not require additional information to understand precisely what the assignment attacks." *Id.* at 149, 32 N.W.3d at 893 (quoting *State v. Rupp*, 320 Neb. 502, 518, 28 N.W.3d 74, 87 (2025)). Although the argument section of the brief should elaborate on the alleged deficiencies by discussing legal authority and its application to the trial record, the argument section should not be used to set forth, for the first time, what the allegedly deficient conduct was. *State v. Lopez, supra*. Rather, an assignment of error, standing alone, must specifically allege what conduct constituted deficient performance. See *State v. Rupp, supra*.

To sufficiently allege deficient performance, the assigned error must include a description of the specific conduct alleged to constitute deficient performance. See *id*. The description of deficient performance must be particular enough to (1) allow an appellate court to determine whether the claim can be decided upon the trial record and (2) allow a district court reviewing a later postconviction motion to recognize whether the claim was raised on direct appeal. *State v. Lopez, supra*.

With these principles in mind, we will address each of Robinson's claims in turn.

(a) Failure to Communicate and Request for New Counsel

Robinson assigns that his trial counsel "failed to communicate with Robinson[.]" He argues that his counsel had not "appropriately communicated with him prior to the plea" and "had not communicated with him any possible defenses." Brief for appellant at 13.

Robinson's assignment fails because it does not assign sufficient allegations of deficient performance. 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. Lopez*, 321 Neb. 118, 32 N.W.3d 868 (2026). Robinson's assignment that his trial counsel did not "communicate" does not specifically allege deficient conduct; he does not identify what issues trial counsel purportedly failed to communicate about. See *State v. Davis*, 31 Neb. App. 445, 456, 982 N.W.2d 261, 271 (2022) (refused to address assignment of error that counsel "did not effectively communicate with him").

In his argument, Robinson asserts that his trial counsel failed to communicate with him regarding possible defenses. Robinson argued that "between the lack of communication, last minute pressure tactics, and the lack of information regarding it being an aggravated driving under the influence fourth offense, he felt he had no choice but to take the plea offer." Brief for appellant at 13. However, Robinson did not include this specificity about trial counsel's deficient act in his assigned error. An appellate court will not scour the remainder of the appellant's brief in search of such specificity. See *State v. Mrza*, 302 Neb. 931, 926 N.W.2d 79 (2019), *disapproved on other grounds, State v. Hagens*, 320 Neb. 65, 26 N.W.3d 174 (2025). As such, his allegation of deficient performance is insufficiently alleged and therefore not preserved.

We note that within this same assigned error, Robinson also assigns that "he requested new counsel" and "that request was never heard by the district court." 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*. Although claims of ineffective assistance of counsel are not, technically speaking, assignments of error by the trial court, our cases require such claims to be included in the separate "assignments of error" section of the brief and to be

separately numbered and paragraphed. *Id*. Furthermore, in order to preserve an ineffective assistance of counsel claim on direct appeal, the claim must be stated with particularity in the assignment of error and then separately argued. See *State v. Rupp*, 33 Neb. App. 562, 19 N.W.3d 771 (2025).

Here, Robinson fails to separately assign and separately argue this prong of his claim. Rather than identify the court's alleged failure to consider his request for new counsel as a separate assignment of error, Robinson combined it with his ineffective assistance of counsel claim in a single assignment.

To the extent that Robinson's claim was sufficiently assigned, we find that it is not preserved. This portion of the assignment challenges the district court's conduct, not counsel's performance, and therefore does not support an ineffective assistance of counsel claim. Moreover, while Robinson filed two separate motions to change counsel, he did not object or otherwise attempt to obtain a ruling at the subsequent proceedings, which included the plea hearing and sentencing. The failure to make a timely objection waives the right to assert prejudicial error on appeal. *State v. Childs*, 309 Neb. 427, 960 N.W.2d 585 (2021). Robinson cannot avoid that preservation requirement by recasting an alleged district court error as an ineffective assistance of counsel claim.

(b) Failure to Communicate and Failure to Disclose Discovery

Next, Robinson assigns that his trial counsel "failed to communicate with [him] in any meaningful way, including not allowing him to see his discovery[,] making it impossible for him to aid in his defense." The State contends that Robinson's claim is insufficiently stated.

A broad conclusory allegation lacks the specificity required to raise a claim of ineffective assistance of counsel. See *State v. Lopez*, 321 Neb. 118, 32 N.W.3d 868 (2026). See, also, *State v. Rupp, supra* (any claim of ineffective assistance of counsel alleging deficient conduct must be more than generalities of inadequate preparation or failures to introduce beneficial evidence).

Robinson's assignment of error contains broad conclusory allegations that lack the specificity required. He alleges that trial counsel failed to "communicate with [him] in any meaningful way, including not allowing him to see his discovery, making it impossible for him to aid in his defense," but does not specify what discovery materials should have been reviewed with him. However, he argues in his brief that trial counsel sent him the "police reports and written discovery" but did not allow him to see the "video evidence related to his alleged crimes." Brief for appellant at 13. It seems Robinson possessed the necessary information to meet the specificity requirement, but he failed to include the requisite detail in his assigned error to "allow a district court reviewing a later postconviction motion to recognize whether the claim was raised on direct appeal." See *State v. Lopez*, 321 Neb. at 150, 32 N.W.3d at 893.

Both the Nebraska Supreme Court and this court have found that broad allegations like those in Robinson's assignment of error lack the specificity demanded on direct appeal. See *State v. Davis*, 31 Neb. App. 445, 456, 982 N.W.2d 261, 271 (2022) (assignment of error that trial counsel "did not effectively communicate with him" lacked sufficient specificity). See, also, *State v. Carroll*, No. A-24-776, 2025 WL 3760679 at *6 (Neb. App. Dec. 30, 2025) (selected for posting to court website) (assignment of error that "[t]rial counsel's performance was deficient because trial counsel failed to review vital discovery evidence with Carroll prior to trial preventing him

from aiding in his own defense" was insufficiently stated because it did not specify what discovery counsel had not shared with him or how it would have aided his defense).

In *State v. Dap*, 315 Neb. 466, 477, 997 N.W.2d 363, 373 (2023), the Supreme Court considered a similar allegation that trial counsel was ineffective for "[f]ailure to communicate and adequately review discovery with Dap." The Supreme Court questioned whether the claim was sufficiently pled. See *State v. Dap, supra*. Nevertheless, because both parties agreed that the appellate record was insufficient to resolve the claim, the court accepted their position without deciding whether Dap had alleged deficient performance with sufficient specificity. *Id*.

Here, the State challenges the specificity of Robinson's claim. Moreover, unlike in *State v. Dap, supra*, the existing record refutes Robinson's claim. Robinson affirmatively indicated to the court at the plea hearing that he had sufficient time to discuss the case with his attorney and that he had discussed all possible defenses with counsel prior to entering his pleas. Although his statements at the plea hearing do not establish that he personally reviewed the discovery material, they contradict his assertion that counsel's failure to communicate and provide discovery made it impossible for him to assist in his defense. Accordingly, we conclude that Robinson's claim is refuted by the record.

(c) Failure to Communicate Offense

Finally, Robinson assigns that his counsel failed to inform him of "the offense that [he] would be pleading to" and that he was unaware he was pleading to an aggravated enhancement. We determine that Robinson's claim is refuted by the record. At the plea hearing, the State clarified for the district court that the plea agreement involved Robinson pleading to a charge of driving under the influence, fourth offense aggravated, based on Robinson's refusal to test. Robinson confirmed that he understood the plea offer.

When asked about counsel's performance, Robinson stated that he was satisfied with counsel's work. Robinson also confirmed that he had enough time to speak with his attorney and discuss all possible defenses. In his brief on appeal, Robinson attempts to recant the affirmations he gave to the district court during the plea hearing. He argues that he believed he would be entering into a plea of driving under the influence, fourth offense, non-aggravated. He asserts that it was not until after the entry of his plea and the enhancement hearing that he became aware that the offense was aggravated. However, a defendant cannot secure relief by recanting assurances made to the trial court during the sanctity of a full and formal court proceeding "after the doors of the prison clang shut." See *State v. Vanderpool*, 286 Neb. 111, 118, 835 N.W.2d 52, 58 (2013). Consequently, this assignment fails.

VI. CONCLUSION

For the foregoing reasons, we find that the district court did not abuse its discretion and impose an excessive sentence, and Robinson's ineffective assistance of counsel claims fail to assign deficient performance by trial counsel or are refuted by the record. We therefore affirm Robinson's conviction and sentence.

AFFIRMED.