

IN THE NEBRASKA COURT OF APPEALS

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

STATE V. WESSON

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

v.

MYLES L. WESSON, APPELLANT.

Filed September 29, 2026. No. A-26-162.

Appeal from the District Court for Douglas County: KIMBERLY MILLER PANKONIN, Judge.
Affirmed.

Jason E. Troia for appellant.

Michael T. Hilgers, Attorney General, and P. Christian Adamski for appellee.

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

FREEMAN, Judge.

INTRODUCTION

Myles L. Wesson appeals his plea-based conviction for violation of a protection order, second offense, in the district court for Douglas County. He assigns that his counsel was ineffective. For the reasons set forth herein, we affirm.

BACKGROUND

On July 2, 2025, Wesson was charged by information with violating a protection order, second offense, a Class IV felony. The parties reached a plea agreement, wherein Wesson agreed to plead no contest to the charged offense, after which the State would dismiss a separate docket and agree to a sentencing recommendation of 15 months' imprisonment.

At the plea hearing, Wesson entered a no contest plea to violation of a protection order. Before accepting Wesson's plea, the district court informed Wesson of his rights, including the

rights he would waive by entering his no contest plea, and of the consequences associated with the charge against him; Wesson indicated that he understood.

The State provided a factual basis to support Wesson's no contest plea, establishing that officers met with the victim at her home in Douglas County on June 25, 2025. She reported that Wesson showed up at the same bar where she was located. Wesson was asked to leave and told the victim's friends he was going to shoot the victim when she left the bar. Wesson then followed the victim home. While officers were at the victim's home, they saw Wesson drive by and initiated a traffic stop. Officers confirmed that the victim had an active issued and served domestic abuse protection order naming Wesson as the respondent and prohibiting him from contacting the victim or threatening or disturbing her peace.

The district court accepted Wesson's no contest plea, found him guilty of violating a protection order, and enhanced the charge to a second offense. Wesson waived the presentence investigation report. At the sentencing hearing, the district court sentenced Wesson to 15 months' imprisonment "in an institution under the jurisdiction of the Nebraska Department of Correctional Services" and granted him credit for 226 days served in custody.

Wesson appeals, represented by new counsel.

ASSIGNMENT OF ERROR

Wesson assigns, restated, that he received ineffective assistance of counsel when his counsel "failed to explain a key portion of the plea agreement."

STANDARD OF REVIEW

Whether a claim of ineffective assistance of counsel may be determined on direct appeal is a question of law. *State v. Lopez*, 321 Neb. 118, 32 N.W.3d 868 (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. *Id.*

ANALYSIS

Wesson assigns that his trial counsel was ineffective in "fail[ing] to explain a key portion of the plea agreement."

When a defendant's trial counsel is different from his or her counsel on direct appeal, the defendant must properly raise on direct appeal any issue of trial counsel's deficient performance which is either known to the defendant or is apparent from the record. *State v. Lopez, supra*. The fact that an ineffective assistance of counsel claim is raised on direct appeal does not necessarily mean that it can be resolved. See *State v. Clark*, 315 Neb. 736, 1 N.W.3d 487 (2024). The determining factor is whether the record is sufficient to adequately review the question. *Id.*

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, 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.* 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.*

To sufficiently allege deficient performance, the allegations must include a “description of the specific conduct alleged to constitute deficient performance.” *State v. Lopez, supra*. 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. *Id.* To allege deficient conduct with specificity requires more than generalities of inadequate preparation or failures to introduce beneficial evidence. *Id.*

Applying these standards to Wesson’s claim that trial counsel “failed to explain a key portion of the plea agreement,” we determine that Wesson’s assigned error is insufficiently alleged. In every appeal in Nebraska, 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*, 321 Neb. 118, 32 N.W.3d 868 (2026). 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.

Here, Wesson’s assignment of error fails to allege which portion of the plea agreement his trial counsel failed to explain. In his argument, Wesson asserts that his trial counsel failed to explain that the plea agreement contemplated a prison sentence, rather than a sentence of time served in county jail to which he believed he had agreed. According to Wesson, after his plea and sentencing, he was transported to a department of correctional services facility, issued a “prison number,” and released 4 days after sentencing. Brief for appellant at 13. Wesson maintained that had he understood the agreement, he would have rejected the plea and proceeded to trial. However, Wesson did not include the requisite specificity about trial counsel’s deficient act in his assigned error. While the argument section of the brief should elaborate on alleged deficiencies by discussing legal authority and its application to the trial record, it should not set forth, for the first time, what the allegedly deficient act was. See *State v. Lopez, supra*. As such, his allegation of deficient performance is insufficiently alleged and therefore not preserved.

CONCLUSION

We find that Wesson’s claim that his trial counsel was ineffective was insufficiently assigned as error and is not preserved. We affirm Wesson’s convictions and sentences.

AFFIRMED.