

IN THE NEBRASKA COURT OF APPEALS

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

STATE V. NAVARRETTE

NOTICE: THIS OPINION IS NOT DESIGNATED FOR PERMANENT PUBLICATION
AND MAY NOT BE CITED EXCEPT AS PROVIDED BY NEB. CT. R. APP. P. § 2-102(E).

STATE OF NEBRASKA, APPELLEE,

v.

DANIEL R. NAVARRETTE

Filed October 20, 2026. No. A-26-248.

Appeal from the District Court for Lincoln County: CINDY R. VOLKMER, Judge. Affirmed
as modified.

Kasey L. Hahn, Lincoln County Public Defender's Office, for appellant.

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

BISHOP, WELCH, and FREEMAN, Judges.

BISHOP, Judge.

INTRODUCTION

Daniel R. Navarrette pled no contest to three counts of child abuse, and the Lincoln County District Court sentenced him to 5 years' imprisonment on each count, with the sentences to run consecutively. Navarrette appeals, claiming that his sentences were excessive and that the district court failed to follow the notification requirement of the Sex Offender Registration Act (SORA), Neb. Rev. Stat. §§ 29-4001 to 29-4014 (Reissue 2016, Cum. Supp. 2024 & Supp. 2025). Although we affirm, we find plain error in the district court's handling of credit for time served and modify accordingly.

BACKGROUND

On July 16, 2025, the State filed an information charging Navarrette with 15 counts: counts I-IV, first degree sexual assault of a child, a Class IB felony, in violation of Neb. Rev. Stat.

§ 28-319.01 (Reissue 2016); count V, third degree sexual assault of a child, a Class IIIA felony, in violation of Neb. Rev. Stat. § 28-320.01 (Reissue 2016); counts VI-IX, incest with a minor, a Class IIA felony, in violation of Neb. Rev. Stat. § 28-703 (Reissue 2016); counts X-XIV, “child abuse, felony exploitation,” a Class IIIA felony, in violation of Neb. Rev. Stat. § 28-707 (Reissue 2016); and count XV, “felony child abuse, intentional,” a Class IIIA felony, in violation of § 28-707. All charged crimes were alleged to have occurred “on or about June 1, 2012, through August 31, 2015.” G.N., born in 2005, was the named victim in counts I-IV, VI-IX, and XI-XIV. The named victim in counts V and X was born in 2007. And the named victim in count XV was also born in 2007.

At a hearing on January 5, 2026, Navarrette pled no contest to three counts of “child abuse, felony exploitation” (counts XI, XII, and XIII). In exchange for the plea, all other counts in the information were dismissed with prejudice on the State’s motion. According to the factual basis provided by the State, “The victim, GN, born in 2005 was exposed to sexual behavior and contact by [Navarrette] between the years of 2012 through 2015 when [Navarrette] was over the age of 19 years,” and all events occurred in Lincoln County, Nebraska. The district court accepted Navarrette’s no contest plea to counts XI, XII, and XIII of the information and found him guilty of the same. The matter was set for sentencing.

Subsequently, at a hearing on March 9, 2026, the district court sentenced Navarrette to 5 years’ imprisonment on each of the three counts of “child abuse, felony exploitation,” with the sentences to run consecutively. Navarrette was given 235 days of credit on count XI for time already served. The sentences were memorialized in a written “judgment” entered on March 17.

Navarrette appeals.

ASSIGNMENTS OF ERROR

Navarrette assigns that the district court (1) abused its discretion by imposing excessive sentences, and (2) “failed to provide any notification of the requirement to register on his new charges at arraignment or 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. Hagens*, 320 Neb. 65, 26 N.W.3d 174 (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.*

ANALYSIS

EXCESSIVE SENTENCE

Navarrette was convicted of three counts of “child abuse, felony exploitation,” a Class IIIA felony in violation of § 28-707. G.N. was the named victim in each count. At the time of his crimes, Class IIIA felonies were punishable by up to 5 years’ imprisonment, a \$10,000 fine, or both. See

Neb. Rev. Stat. § 28-105 (Cum. Supp. 2014). Navarrette was sentenced to 5 years' imprisonment on each count, with the sentences to run consecutively.

We note that changes were made to the penalties for Class IIIA felonies by 2015 Neb. Laws, L.B. 605, § 6, effective August 30, 2015. As a result of that legislative bill, Class IIIA felonies were punishable by up to 3 years' imprisonment and 18 months' post-release supervision, or \$10,000 fine, or both; there was no minimum term for imprisonment, but there was a minimum of 9 months' post-release supervision if imprisonment was imposed. See § 28-105 (Supp. 2015). But "[t]he changes made to the penalties for Class . . . IIIA . . . felonies by Laws 2015, LB605, do not apply to any offense committed prior to August 30, 2015, as provided in section 28-116." § 28-105(8) (Reissue 2016 & Supp. 2025). Neb. Rev. Stat. § 28-116 (Reissue 2016 & Supp. 2025) states:

The changes made to the sections listed in this section by Laws 2015, LB605, shall not apply to any offense committed prior to August 30, 2015. Any such offense shall be construed and punished according to the provisions of law existing at the time the offense was committed. For purposes of this section, an offense shall be deemed to have been committed prior to August 30, 2015, if any element of the offense occurred prior to such date. The following sections are subject to this provision: Sections . . . 28-105, . . . 28-707, ...

The information in this case alleged that Navarrette's crimes occurred "on or about June 1, 2012, through August 31, 2015." However, the police report in the presentence investigation states that, based on the information provided by G.N. and a records check with "HHS" "for a timeline when [Navarrette] and his family were living where," the reported incidents occurred between 2012 and 2015, and were "over prior to 1-7-15." Because the offenses were committed prior to August 30, 2015, the changes made to the penalties for Class IIIA felonies by "Laws 2015, LB605" do not apply in this case.

Navarrette's sentences in this case were within the applicable statutory range of § 28-105 (Cum. Supp. 2014). As such, we review the district court's sentencing determination only for an abuse of discretion. See *State v. Sutton*, 319 Neb. 581, 24 N.W.3d 43 (2025) (where sentence imposed within 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.*

Navarrette was 36 years old at the time of sentencing. According to the presentence investigation report (PSR), he was divorced with two children; he reported having his first child when he was 13 years old. Navarrette was currently living with his girlfriend of 12 years. He had

a 6th grade education and was working at a fast-food restaurant prior to his arrest in this case. He reported that prior to his arrest he used methamphetamine daily and marijuana every other day.

Navarrette's criminal history includes numerous convictions, including minor in possession in 2008 (fine); possession of marijuana, 1 oz or less, in 2009 (fine); violating a protection order twice in 2015 (8 days' jail); violating a protection order, 2nd offense, in 2015 (30 days' jail); "Theft - Shoplifting \$0-\$200" in 2015 (fine and restitution); "theft – Unlawful Taking \$0-\$500" in 2015 (14 days' jail); "Theft – Unlawful Taking \$501-\$1499, 2nd Offense" amended to "Theft – Unlawful Taking \$501-\$1499" in 2015 (14 days' jail and restitution); "Theft - Shoplifting \$0-\$500, 3rd Offense" amended to 2nd offense twice in 2016 (first--45 days' jail; second--12 months' probation and restitution (probation revoked and 60 days' jail)); driving under suspension in 2017 (2 days' jail); "Theft - Deception \$0-\$500, 3rd Offense" amended to 2nd offense in 2017 (60 days' jail); "Theft - Shoplifting \$0-\$500, 3rd Offense" amended to 2nd offense twice in 2018 (30 days' jail and 130 days' jail); second degree trespass twice in 2018 (fines); "Theft - Shoplifting \$0-\$500, 3rd Offense" in 2019 and 2022 (280 days' jail and 180 days' jail); and "Theft – Unlawful Taking \$501-\$1499" in 2020 (280 days' jail).

Details regarding the current offenses are revealed in a police report contained in the PSR. In February 2025, G.N. (born in 2005) reported that she was repeatedly sexually assaulted by her uncle, Navarrette, when she was a child. G.N. reported that she and Navarrette's daughter (also born in 2005) were repeatedly made to perform oral sex on Navarrette, and he penetrated them both digitally and with a "long handled back massager." G.N. reported that during one of those incidents, Navarrette also had G.N. and his daughter engage in sexual acts with his son (born in 2007); G.N.'s sister (also born in 2007), reported that Navarrette "made her get naked and watch," and when he told her to "join in" she "got uncomfortable and just sat on the bed and did not participate." The police report states, "All 4 kids were interviewed and corroborated this information." According to the police report, based on the information provided by G.N. and a records check with "HHS" "for a timeline when [Navarrette] and his family were living where," the reported incidents occurred between 2012 and 2015, and were "over prior to 1-7-15." When interviewed by law enforcement in May 2025, Navarrette denied any wrongdoing and claimed that "everyone but him was lying about these incidents."

As part of the presentence investigation, a "Level of Service/Case Management Inventory" was conducted, and Navarrette "scored 32 overall . . . which indicates a significantly increased level to reoffend." He scored in the "[v]ery [h]igh" risk range in the criminogenic risk factor domain for companions. He scored in the "[h]igh" risk range in the domains for criminal history, education/employment, leisure/recreation, alcohol/drug problems, procriminal attitude, and antisocial pattern. He scored in the "[m]edium" risk range in the domain for family/marital. Navarrette was also assessed utilizing the "Vermont Assessment for Sex Offender Risk-2 (VASOR-2)" and the "Sex Offender Treatment Intervention and Progress Scale (SOTIPS)"; he "scored moderate-high risk on the VASOR-2 assessment and high risk on the SOTIPS assessment, resulting in a combined high risk."

In the PSR, the probation officer stated that "probation is not recommended."

At the sentencing hearing in March 2026, Navarrette's counsel pointed out that although Navarrette had a long criminal history, there "was nothing in terms of any sexual crimes," "any child abuse crimes," or "any serious drug charges." Counsel argued that the events that happened

in the current case “happened 14 years ago,” “[a]nd the reason that we dismissed so many charges” was because in depositions Navarrette’s children “actually changed their stories to the point of where they were denying that any of this happened.” Counsel requested that Navarrette be sentenced to either probation or time served; “[h]e does have 235 days.”

The State requested that Navarrette be sentenced to “the maximum” on each count, to be served consecutively. The State argued that “anything short of the maximum depreciates the seriousness of the crime.” “[T]he victim had to go through a lot, depositions and the like, along with the trauma created by this,” and “anything short of consecutive and the maximum would be heart-wrenching to her given what [Navarrette] did.”

The district court stated that it had reviewed the PSR and considered all the relevant sentencing factors. The court found that imprisonment was necessary for protection of the public, the risk was substantial that during any period of probation Navarrette would engage in additional criminal conduct, and a lesser sentence would depreciate the seriousness of the crime and promote disrespect for the law. The court found “substantial and compelling reasons” for a period of incarceration, including Navarrette’s “LSCMI” score “indicating a significant increased risk to re-offend” and his “high risk and moderate high risk [scores] on two sex offender risk assessments.” Past probation revocations and “the nature of the offenses” also supported incarceration. The court considered “some mitigating factors,” including the fact that Navarrette entered a plea, saving the time and expense of trial, “and the statements made today that the other witnesses have changed their stories.” The court then sentenced Navarrette as set forth previously.

On appeal, Navarrette argues that the district court abused its discretion in imposing the sentences by “unfairly not taking in to account the lack of prior convictions for violent or sexual offenses and the length of time that has passed since the commission of the crime,” as well as failing to consider “any mitigating factors.” Brief for appellant at 12-13. The State contends that “the district court reviewed the [PSR] and considered the required sentencing factors.” Brief for appellee at 8. And the State points out that “Navarrette benefited greatly from his plea deal that resulted in an aggregate sentence of 15 years of imprisonment” because he “originally faced fifteen charges, four of which exposed him to a mandatory minimum of [15] years of imprisonment and a maximum of life imprisonment.” *Id.* See *State v. Russell*, 291 Neb. 33, 863 N.W.2d 813 (2015) (range of penalties for sexual assault of child in first degree, first offense, under subsection 28-319.01 is 15 years’ to life imprisonment). See, also, *State v. Morton*, 310 Neb. 355, 966 N.W.2d 57 (2021) (in deciding appropriate sentence, sentencing court can account for fact that defendant received substantial benefit from plea bargain agreement).

Having reviewed the record, we cannot say that the district court abused its discretion in sentencing Navarrette. 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).

PLAIN ERROR IN CREDIT FOR TIME SERVED

Although not raised by either party, we find that the district court committed plain error in its handling of credit for time served. In its “Judgment,” the court ordered that Navarrette should receive 235 days’ credit on count XI for time previously served. We are 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 judgment to state that “Navarrette is entitled to 235 days of credit for time served against the aggregate of all terms imposed.” And we direct the district court, upon spreading the mandate, to modify the commitment accordingly using the same language.

SORA NOTIFICATION

It is undisputed that SORA was applicable to Navarrette. SORA applies to any person who on or after January 1, 2010, has ever pled guilty to, pled nolo contendere to, or been found guilty of child abuse pursuant to § 28-707(1)(d) or (e). See § 29-4003(1)(b)(i)(A)(XV). Navarrette pled no contest to three counts of child abuse in violation of § 28-707, and the charging language in those counts included, in part, language from § 28-707(1)(e) (knowingly and intentionally caused or permitted minor child to be placed in situation to be sexually abused as defined in §§ 28-319, 28-319.01, or 28-320.01). While Navarrette does not challenge the applicability of SORA, he claims that the district court failed to provide SORA notification as mandated by § 29-4007. “A[s] such, Mr. Navarrette’s sentence should be remand[ed] for resentencing in compliance with[] § 29-4007.” Brief for appellant at 14.

Pursuant to § 29-4007(1)(a), when sentencing a person convicted of a registrable offense under § 29-4003, the court shall provide written notification of the duty to register under SORA at the time of sentencing to any defendant who has pled guilty or has been found guilty of a registrable offense under § 29-4003. Section 29-4007(1)(a) also sets forth what the written notification is to include. Additionally, the court shall require the defendant to read and sign the registration form stating that the duty of the defendant to register under SORA has been explained. See § 29-4007(1)(b).

The record does not reflect that the district court provided written notification to Navarrette of his duty to register under SORA at the time of the sentencing hearing on March 9, 2026, or in the March 17 written “Judgment.” However, the record before this court shows that the district court ultimately provided the written notification to Navarrette; Navarrette signed the notification on March 31, and it was filed on April 3.

In *State v. Pathod*, 269 Neb. 155, 690 N.W.2d 784 (2005), the defendant pled no contest to sexual assault and was later sentenced. The State filed an application for leave to docket an appeal and was allowed to do so. It contended that because the district court failed to inform the defendant, in writing, at sentencing about his duty to register under SORA, the cause should be remanded for sentencing. The Nebraska Supreme Court determined that under the plain language of § 29-4007, the written notification requirements are mandatory. The record on appeal did not show that the district court provided written notification to the defendant of his SORA requirements at sentencing. However, the day after sentencing the defendant signed a notification of registration responsibilities under SORA and the notification was also signed by the district court judge. The record also showed that the defendant had completed serving his sentence when

the appeal was heard. Under the circumstances, the Nebraska Supreme Court concluded that the district court's failure to provide written notification at sentencing was harmless error.

In *State v. Lane*, 299 Neb. 170, 907 N.W.2d 737 (2018), the defendant pled no contest to incest and was sentenced to 4 to 4 years' imprisonment, with credit for 11 days served, and a term of 2 years' post-release supervision. On appeal, the Nebraska Supreme Court determined on the record before it that the district court failed to complete the SORA notification requirements of § 29-4007. The Supreme Court stated, "Unlike *Pathod*, the record in the instant case does not show whether Lane ultimately received proper advisements regarding his SORA duties, and we do not assume that he did. We agree with the State that the district court plainly erred by failing to comply with SORA notification requirements." *State v. Lane*, 299 Neb. at 177, 907 N.W.2d at 743. "Accordingly, we vacate Lane's sentence and remand the cause for resentencing compliant with § 29-4007." *State v. Lane*, 299 Neb. at 177, 907 N.W.2d at 743.

We find that because Navarrette ultimately received the proper advisements regarding his SORA duties, the district court's failure to provide written notification at sentencing was harmless error.

To the extent that Navarrette claims the district court was required to advise him of SORA registration requirements at the time of "arraignment" at the plea hearing on January 5, 2026, we find no such requirement in the SORA statutes. See, also, *State v. Lane, supra* (defendant's duties to register as sex offender are collateral consequence to defendant's sentence; because registration duties under SORA are not punitive, trial court may inform defendant of duties imposed under act before accepting pleas of guilty or no contest, but is not required to do so, and plea is not rendered involuntary or unintelligent because defendant was not aware of his or her registration duties).

CONCLUSION

For the reasons stated above, we conclude that Navarrette's sentences are not excessive; however, we modify the judgment to state that "Navarrette is entitled to 235 days of credit for time served against the aggregate of all terms imposed." Accordingly, we affirm his sentences as modified.

AFFIRMED AS MODIFIED.