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State of Nebraska, appellee, v. Devante Castellaw, appellant.

___ N.W.3d ___

Filed October 9, 2026. No. S-25-830.

1. **Right to Counsel: Appeal and Error.** An appellate court reviews a trial court's ruling on a motion to withdraw as appointed counsel and appoint substitute counsel for an abuse of discretion.
2. **Judgments: Appeal and Error.** When an appellate court reviews a trial court's ruling for an abuse of discretion, it is considering whether the ruling exceeded the bounds of permissible choice, given the evidence presented and the applicable law.
3. **Pleas: Appeal and Error.** A trial court is afforded discretion in deciding whether to accept guilty pleas, and an appellate court will reverse the trial court's determination only in a case of an abuse of discretion.
4. **Effectiveness of Counsel: Appeal and Error.** An appellate court resolves claims of ineffective assistance of counsel on direct appeal only where the record is sufficient to conclusively determine whether trial counsel did or did not provide effective assistance and whether the defendant was or was not prejudiced by counsel's alleged deficient performance as matters of law.
5. ____: ____. An ineffective assistance of counsel claim will not be addressed on direct appeal if it requires an evidentiary hearing.
6. ____: ____. Whether a claim of ineffective assistance of counsel may be determined on direct appeal is a question of law.
7. **Right to Counsel.** When a defendant becomes dissatisfied with court-appointed counsel, unless he or she can show good cause to the court for the removal of counsel, his or her only alternative is to proceed pro se if he or she is competent to do so.
8. ____. An indigent defendant's right to have counsel does not give the defendant the right to choose his or her own counsel.
9. ____. Mere distrust of, or dissatisfaction with, appointed counsel is not enough to secure the appointment of substitute counsel.

10. **Conflict of Interest: Good Cause: Proof.** Good cause can be shown if the defendant shows that trial counsel has a conflict of interest that renders counsel incompetent.
11. **Conflict of Interest: Words and Phrases.** A conflict of interest exists when a defense attorney is placed in a situation inherently conducive to divided loyalties.
12. **Attorney and Client: Conflict of Interest: Words and Phrases.** The phrase "conflict of interest" denotes a situation in which regard for one duty tends to lead to disregard of another, where a lawyer's representation of one client is rendered less effective by reason of his or her representation of another client, or where it becomes a lawyer's duty on behalf of one client to contend for that which the lawyer's duty to another client would require him or her to oppose.
13. **Conflict of Interest.** Whether a conflict of interest exists is a case-by-case determination to be made on the facts of the particular case.
14. **Pleas: Waiver.** In order to support a finding that a plea of guilty or nolo contendere has been entered freely, intelligently, voluntarily, and understandingly, the court must (1) inform the defendant concerning (a) the nature of the charge, (b) the right to assistance of counsel, (c) the right to confront witnesses against the defendant, (d) the right to a jury trial, and (e) the privilege against self-incrimination; and (2) examine the defendant to determine that he or she understands the foregoing. Additionally, the record must establish that (1) there is a factual basis for the plea and (2) the defendant knew the range of penalties for the crime with which he or she is charged. A voluntary and intelligent waiver of the above rights must affirmatively appear from the face of the record.
15. **Pleas: Mental Competency.** A defendant cannot voluntarily enter a plea if the defendant is not competent.
16. **Trial: Pleas: Mental Competency.** A person is competent to plead or stand trial if he or she has the capacity to understand the nature and object of the proceedings against him or her, to comprehend his or her own condition in reference to such proceedings, and to make a rational defense.
17. **Trial: Mental Competency.** The competency standard includes both (1) whether the defendant has a rational as well as factual understanding of the proceedings against him or her and (2) whether the defendant has sufficient present ability to consult with his or her lawyer with a reasonable degree of rational understanding.
18. **Mental Competency.** There are no fixed or immutable signs of incompetence, and a defendant can meet the modest aim of legal competency,

despite paranoia, emotional disorders, unstable mental conditions, and suicidal tendencies.

19. **Pleas: Mental Competency.** A court is not required to make a competency determination in every case in which a defendant seeks to plead guilty. A specific competency inquiry and determination is necessary only when a court has reason to doubt the defendant's competence.
20. **Effectiveness of Counsel: Proof: Appeal and Error.** When reviewing an ineffective assistance of counsel claim on direct appeal, the question is whether the record affirmatively shows that the defendant's trial counsel's performance was deficient and that the deficient performance actually prejudiced the defendant's defense.
21. **Effectiveness of Counsel: Records: Appeal and Error.** On direct appeal, an appellate court only addresses claims of ineffective assistance of counsel that can be conclusively determined from the record.
22. **Effectiveness of Counsel: Proof.** A court may examine performance and prejudice in any order and need not examine both prongs if a defendant fails to demonstrate either.
23. ____: ____. To show deficient performance, the defendant must show that counsel's performance did not equal that of a lawyer with ordinary training and skill in criminal law.
24. ____: ____. To show prejudice, the defendant must demonstrate a reasonable probability that, but for counsel's deficient performance, the result of the proceeding would have been different.
25. **Words and Phrases.** A reasonable probability is a probability sufficient to undermine confidence in the outcome.
26. **Effectiveness of Counsel: Presumptions: Appeal and Error.** There is a strong presumption that counsel acted reasonably, and an appellate court will not second-guess reasonable strategic decisions.
27. **Effectiveness of Counsel: Records: Appeal and Error.** The record on appeal is sufficient if it establishes either that trial counsel's performance was not deficient, that the appellant will not be able to establish prejudice as a matter of law, or that trial counsel's actions could not be justified as a part of any plausible trial strategy.
28. ____: ____: ____. An ineffective assistance of counsel claim will not be addressed on direct appeal if it requires examination of facts not contained in the record.
29. **Effectiveness of Counsel: Postconviction: Records: Appeal and Error.** 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; otherwise, the issue will be procedurally barred in a subsequent postconviction proceeding.

30. **Effectiveness of Counsel: Proof: Appeal and Error.** When a claim of ineffective assistance of 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.
31. **Courts: Juvenile Courts: Jurisdiction.** A motion to transfer a case from the district court to juvenile court under Neb. Rev. Stat. § 29-1816 (Cum. Supp. 2024) requires the district court to consider the criteria set forth in Neb. Rev. Stat. § 43-276 (Cum. Supp. 2024).
32. **Pleas: Proof.** The right to withdraw a plea previously entered is not absolute, and the defendant has the burden to show the grounds for withdrawal by clear and convincing evidence.
33. **Pleas.** When a defendant moves to withdraw his or her plea before sentencing, a court, in its discretion, may sustain the motion for any fair and just reason, provided that such withdrawal would not substantially prejudice the prosecution.
34. ____. A defendant's change of mind alone is not a fair and just reason to withdraw a guilty or no contest plea.
35. **Effectiveness of Counsel: Proof: Appeal and Error.** General allegations that trial counsel performed deficiently or that trial counsel was ineffective are insufficient to preserve the issue for later review.
36. **Effectiveness of Counsel: Pleas: Appeal and Error.** A broad allegation that trial counsel was deficient for failing to move to withdraw a plea, without articulating the legal basis upon which such a motion should have been based, is too general to preserve the issue.
37. **Plea Bargains: Appeal and Error.** A broad allegation that a defendant was coerced or threatened into accepting a plea bargain is not sufficient to preserve the issue.
38. **Attorneys at Law: Effectiveness of Counsel.** A defense attorney has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary.

Appeal from the District Court for Scotts Bluff County: ANDREA D. MILLER, Judge. Affirmed.

Kenneth Jacobs, of Hug and Jacobs, L.L.C., for appellant.

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

FUNKE, C.J., CASSEL, STACY, PAPIK, FREUDENBERG, BERGEVIN, and VAUGHN, JJ.

Freudenberg, J.

I. INTRODUCTION

The defendant appeals his conviction for second degree murder pursuant to a guilty plea. He argues that the district court erred in overruling his court-appointed trial counsel's motion to withdraw after the appellant sent a complaint letter to the Counsel for Discipline of the Nebraska Supreme Court. He also argues the district court erred by accepting his guilty plea despite it allegedly not being voluntary, knowing, or free from force or coercion. Finally, the defendant asserts his trial counsel was ineffective for allowing the defendant to enter a plea while a neuropsychological evaluation was pending, failing to investigate witnesses and potential third-party perpetrators, and failing to file motions to transfer his case to juvenile court and withdraw his plea. We affirm.

II. BACKGROUND

Following a fatal stabbing, Devante Castellaw, who was 17 years old at all relevant times, was charged in adult court with use of a deadly weapon, other than a firearm, to commit a felony, a Class II felony, and second degree murder, a Class IB felony. He was represented by court-appointed defense counsel. After an initial plea of not guilty, Castellaw, pursuant to a plea agreement, pled guilty to second degree murder, a Class IB felony.[1]

The charges against Castellaw stemmed from events on January 20, 2025. According to the factual basis provided by the State, three individuals fled from a stolen Mercury Mariner after it struck a tree while evading law enforcement's pursuit of the vehicle. Wyatt Reeb, the victim of the stabbing, was one of the three individuals. Castellaw was a passenger in another vehicle, a red Mitsubishi, which had also been pursuing the stolen Mariner. After the Mariner crashed, Castellaw and two others from the Mitsubishi pursued Reeb on foot and eventually caught up to him. Surveillance video showed an

[1] Neb. Rev. Stat. §§ 28-105 (Cum. Supp. 2024) and 28-304 (Reissue 2016).

individual identified as Castellaw strike Reeb three times in the chest with what appeared to be a knife. After the attack, Castellaw and the others from the Mitsubishi got back into that vehicle and drove away.

1. Adolescent Brain Development Expert's Neuropsychological Evaluation of Castellaw

Before Castellaw changed his plea to guilty, the trial court granted his trial counsel's motion for court appointment of Valerie Sims, Psy.D., an expert in "adolescent brain development," and authorized Sims to perform a neuropsychological evaluation on Castellaw, which would include information regarding Castellaw's "cognitive and emotional development and his present and future treatment needs." Castellaw's counsel asserted that Sims' testimony would be "relevant both to [Castellaw's] capacity to form intent and to mitigation." Castellaw's trial counsel elaborated:

> I am certain it would be helpful for this Court whether in guilt or in sentencing to have more than just my comments about such matters as adolescent brain development as to the impact of good and bad influences in somebody's life when they are 17 years old and not in school and struggling about the particular level of development that this young man is at right now . . . .

Castellaw's trial counsel acknowledged at the hearing that Castellaw's case would remain in "adult court," implying she would not pursue a motion to transfer Castellaw's case to juvenile court.

Sims performed her neuropsychological evaluation of Castellaw before Castellaw entered his guilty plea, but she had not yet submitted her written report to the court. Sims submitted the report of her findings in September 2025, before Castellaw was sentenced, and it was made part of the presentence investigation report.

Sims set forth in her neuropsychological evaluation report that the purpose of her evaluation was "to provide insight into

[Castellaw's] neuropsychological profile and provide recommendations regarding the type of treatment to his attorney." Sims' report generally described Castellaw as polite, cooperative, and responsive during the evaluation. Sims indicated that Castellaw understood the gravity of the charges against him and was remorseful for his role in the situation.

Sims detailed Castellaw's academic struggles, including learning disorders in math, reading, and reading comprehension, related in part to his absenteeism. Sims also detailed Castellaw's difficult upbringing, which included exposure to trauma, violence, drugs, and alcohol. Sims explained that these factors culminated in severe psychological distress manifesting as post-traumatic stress disorder, alcohol use disorder, and multiple suicide attempts. Sims opined that Castellaw's specific neurodevelopmental disorders, combined with his young age, made him particularly vulnerable to peer influence. Sims noted that, despite these issues, Castellaw had made promising progress in the time he was incarcerated, which was 6 months at the time of her evaluation.

2. Plea Agreement

Under the terms of the plea agreement, in exchange for Castellaw's guilty or no contest plea to second degree murder, the State agreed to drop the use of a deadly weapon to commit a felony charge, as well as a separate case pending against Castellaw for third degree assault. At the plea hearing, the district court conducted a plea colloquy with Castellaw in which the court confirmed Castellaw had discussed the plea agreement with his trial counsel, Castellaw understood the terms of the plea agreement, and that no one had made any "promises, threats, [or] inducements" to get Castellaw to change his plea. Castellaw stated he had chosen to enter a plea of either guilty or no contest of his own free will.

The district court also ensured that Castellaw understood the potential penalties he would face for pleading guilty or no contest to the second degree murder charge, as well as the

rights he would be waiving. Castellaw affirmed that he had enough time to think about his change of plea, discuss the decision with his family, and discuss with counsel the facts of the case and the decision to enter a change of plea.

The district court found beyond a reasonable doubt that a factual basis existed for Castellaw's guilty plea and that Castellaw understood the nature of the allegations and possible penalties associated therewith. The court also expressly found beyond a reasonable doubt that Castellaw "knowingly, intelligently, and voluntarily entered a plea of guilty to the charge." Accordingly, the court accepted Castellaw's plea and found him guilty of murder in the second degree.

3. Trial Counsel's Motion to Withdraw

After Castellaw entered his guilty plea but before the sentencing hearing, Castellaw's trial counsel moved to withdraw at Castellaw's request. In conjunction with the motion to withdraw, Castellaw had apparently filed a complaint letter with the Counsel for Discipline regarding trial counsel's representation. The complaint letter was never offered below and is not part of the record on appeal.

Trial counsel indicated in the motion to withdraw that Castellaw and his family were dissatisfied with her work, though she did not know exactly why. Castellaw's trial counsel had initially been hired with a $10,000 retainer by Castellaw's father, and the court approved Castellaw's application for her appointment after the retainer was exhausted and the family could not continue to pay.

In an affidavit supporting the motion to withdraw, Castellaw's trial counsel responded to complaints made by Castellaw and his family. Trial counsel explained in her affidavit that the decision not to file a motion to transfer Castellaw's case to juvenile court was informed by her prior experience as defense attorney in *State v. Leroux*,[2] a case she described

[2] *State v. Leroux*, 26 Neb. App. 76, 916 N.W.2d 903 (2018).

as having several factual similarities to Castellaw's case. Trial counsel explained that, based on *Leroux* and subsequent Nebraska case law, she decided not to file a motion to transfer Castellaw's case.

Trial counsel acknowledged in her affidavit that she had received a copy of the complaint letter, which was sent by Castellaw to both the Counsel for Discipline and the district court. According to trial counsel's affidavit, the complaint letter alleged that trial counsel and her paralegal "'laughed at'" Castellaw, told Castellaw a jury would not believe him, coerced him into entering a guilty plea, and asked him to lie to the court reporter. Castellaw's trial counsel denied the accusations.

Castellaw spoke at the hearing on the motion to withdraw. He claimed that his trial counsel had done unprofessional "things" but did not explain further.

The court denied the motion to withdraw. The court found that Castellaw's comments showed mere distrust or dissatisfaction with appointed counsel, which was not enough to secure appointment of substitute counsel without a showing of good cause. The court ordered that trial counsel stay on the case unless Castellaw chose to retain private counsel.

Trial counsel stayed on the case until after sentencing and filing the notice of appeal, when she was allowed to withdraw and be replaced.

4. Sentencing

At the sentencing hearing, the court considered arguments from both the State and Castellaw's trial counsel, along with the presentence investigation report, including Sims' report, and victim impact statements from the victim's family. The court found as mitigating factors that Castellaw had a traumatic childhood, was surrounded by violent people and violent events, and was negatively impacted by his peers, leading him to experience mental health issues. Nevertheless, the district court sentenced Castellaw to a term of imprisonment

of 55 years to life. The court explained as significant factors in its sentencing decision the level of violence involved in the crime and Castellaw's minimizing his responsibility for the victim's death.

Castellaw appeals.

III. ASSIGNMENTS OF ERROR

With new counsel on appeal, Castellaw assigns, restated, that the district court erred in (1) overruling trial counsel's motion to withdraw, knowing that he sent a complaint letter to the Counsel for Discipline, and (2) accepting his plea despite it not being voluntary, knowing, or free from force or coercion. Castellaw also assigns that trial counsel was ineffective by (3) failing to file a motion to transfer his case to juvenile court, (4) failing to file a motion to withdraw his plea after he indicated he was forced and coerced into entering the plea, (5) failing to investigate witnesses and other potential third-party perpetrators provided by Castellaw and his family, and (6) allowing Castellaw to enter a plea while a neuropsychological evaluation was pending.

IV. STANDARD OF REVIEW

[1,2] An appellate court reviews a trial court's ruling on a motion to withdraw as appointed counsel and appoint substitute counsel for an abuse of discretion.[3] When an appellate court reviews a trial court's ruling for an abuse of discretion, it is considering whether the ruling exceeded the bounds of permissible choice, given the evidence presented and the applicable law.[4]

[3] A trial court is afforded discretion in deciding whether to accept guilty pleas, and an appellate court will reverse the trial court's determination only in a case of an abuse of discretion.[5]

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[3] See *State v. Figures*, 308 Neb. 801, 957 N.W.2d 161 (2021).

[4] *State v. Damore*, 320 Neb. 914, 31 N.W.3d 604 (2026).

[5] *State v. Mead*, 313 Neb. 892, 987 N.W.2d 271 (2023).

[4] An appellate court resolves claims of ineffective assistance of counsel on direct appeal only where the record is sufficient to conclusively determine whether trial counsel did or did not provide effective assistance and whether the defendant was or was not prejudiced by counsel's alleged deficient performance as matters of law.[6]

[5] An ineffective assistance of counsel claim will not be addressed on direct appeal if it requires an evidentiary hearing.[7]

[6] Whether a claim of ineffective assistance of counsel may be determined on direct appeal is a question of law.[8]

V. ANALYSIS

1. District Court's Denial of Trial Counsel's Motion to Withdraw

Castellaw first asserts that the district court abused its discretion in denying his court-appointed trial counsel's motion to withdraw after Castellaw sent a complaint letter to the Counsel for Discipline concerning his trial counsel's representation. We find that the district court acted within its discretion in denying Castellaw's court-appointed trial counsel's motion to withdraw.

[7-9] When a defendant becomes dissatisfied with court-appointed counsel, unless he or she can show good cause to the court for the removal of counsel, his or her only alternative is to proceed pro se if he or she is competent to do so.[9] An indigent defendant's right to have counsel does not give the defendant the right to choose his or her own counsel.[10] Mere distrust of, or dissatisfaction with, appointed counsel is not enough to secure the appointment of substitute counsel.[11]

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[6] *State v. Kruger*, 320 Neb. 361, 27 N.W.3d 398 (2025).

[7] *Id.*

[8] *State v. Lopez*, 321 Neb. 118, 32 N.W.3d 868 (2026).

[9] *State v. Figures, supra* note 3.

[10] *Id.*

[11] *Id.*

[10-12] Castellaw argues that his complaint letter to the Counsel for Discipline regarding his court-appointed trial counsel created a "potential" conflict of interest that "could" render trial counsel incompetent and require termination of representation.[12] Good cause can be shown if the defendant shows that trial counsel has a conflict of interest that renders counsel incompetent.[13] A conflict of interest exists when a defense attorney is placed in a situation inherently conducive to divided loyalties.[14] The phrase "conflict of interest" denotes a situation in which regard for one duty tends to lead to disregard of another, where a lawyer's representation of one client is rendered less effective by reason of his or her representation of another client, or where it becomes a lawyer's duty on behalf of one client to contend for that which the lawyer's duty to another client would require him or her to oppose.[15]

Castellaw does not assert how the complaint letter created an actual conflict of interest or impacted his trial counsel's performance. Nor does he explain how his trial counsel was incompetent in any other way. In sum, he appears to suggest that any complaint letter to the Counsel for Discipline creates a per se conflict that renders counsel incompetent. We disagree with this argument.

[13] Castellaw relies on *State v. Weathers*[16] and *State v. McGuire*[17] to support his contention that a complaint letter to the Counsel for Discipline created a potential conflict of interest that was disqualifying. These cases both involve conflicts of interest, but not the kind of conflict of interest alleged

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[12] Brief for appellant at 21.

[13] *State v. Weathers*, 304 Neb. 402, 935 N.W.2d 185 (2019).

[14] *State v. Mata*, 321 Neb. 566, 36 N.W.3d 432 (2026).

[15] *Id.*

[16] *State v. Weathers, supra* note 13.

[17] *State v. McGuire*, 286 Neb. 494, 837 N.W.2d 767 (2013).

here. As we have recognized in another context, whether a conflict of interest exists is a case-by-case determination to be made on the facts of the particular case.[18]

In *McGuire*, an indigent defendant's counsel moved to withdraw from representation because he had been hired by the office prosecuting the indigent defendant. After the district court allowed counsel to withdraw, the indigent defendant challenged that decision on appeal. On appeal, the State argued that counsel became incompetent to represent the defendant because of his new employment with the prosecutor's office. We agreed and held that the district court did not abuse its discretion in allowing trial counsel to withdraw because trial counsel had a conflict of interest that rendered him incompetent because of his new employment with the prosecutor's office.[19]

In *Weathers*, we held that the trial court did not abuse its discretion by denying an indigent defendant's motion to dismiss his trial counsel, who worked for the public defender's office. The defendant alleged there was a conflict of interest because the defendant had raised an ineffective assistance of counsel claim against another attorney in the same public defender's office in a separate case.[20] We found that the separate ineffective assistance of counsel claim against the other attorney was not imputed to the defendant's current trial counsel. There was thus no conflict of interest rendering counsel incompetent and thereby requiring removal.[21]

Neither of these cases suggests that filing a complaint letter to the Counsel for Discipline against one's own counsel, without more, creates a disqualifying conflict of interest.

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[18] *State ex rel. Condon v. Braaten*, 320 Neb. 214, 26 N.W.3d 532 (2025).

[19] *State v. McGuire, supra* note 17.

[20] *State v. Weathers, supra* note 13.

[21] *Id.*

We agree with other jurisdictions that hold it does not.[22] In *Hutchinson v. State*,[23] for example, the Florida Supreme Court held that a bar complaint against appointed defense counsel does not per se constitute a conflict of interest. Rather, the defendant must demonstrate how the alleged conflict based on the bar complaint impacted counsel's performance. Likewise, in *P.M. v. State, Dept. of Hlth. & Soc. Servs.*,[24] the Alaska Supreme Court explained in a footnote that "[f]iling a bar grievance against an attorney does not by itself destroy the attorney-client relationship or require the attorney to withdraw from representation."[25]

Accordingly, we conclude that the district court did not abuse its discretion by denying Castellaw's court-appointed trial counsel's motion to withdraw. Castellaw's filing of a complaint letter to the Counsel for Discipline and expressing unhappiness with trial counsel showed mere distrust or dissatisfaction with her representation, not a disqualifying conflict of interest. Castellaw did not show that the complaint letter resulted in trial counsel's disregarding her duty to represent Castellaw. Castellaw did not show that his filing of the complaint letter impacted counsel's performance as to render her incompetent. Under these facts, the district court acted within its discretion in denying Castellaw's court-appointed trial counsel's motion to withdraw.

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[22] See, *Hutchinson v. State*, 17 So. 3d 696 (Fla. 2009); *P.M. v. State, Dept. of Hlth. & Soc. Servs.*, 42 P.3d 1127 (Alaska 2002); *Jefferson v. State*, 133 Nev. 874, 410 P.3d 1000 (Nev. App. 2017); *Holsey v. State*, 291 Ga. App. 216, 661 S.E.2d 621 (2008); *State v. Michael*, 161 Ariz. 382, 778 P.2d 1278 (Ariz. App. 1989).

[23] *Hutchinson v. State, supra* note 22.

[24] *P.M. v. State, Dept. of Hlth. & Soc. Servs., supra* note 22.

[25] *Id.* at n.19 (citing Michigan Comm. on Prof. & Judicial Ethics, Informal Op. 84 (1991) and ABA Comm. on Ethics & Prof. Responsibility, Formal Op. 384 (1994)).

2. District Court's Acceptance of Castellaw's Guilty Plea

Castellaw next asserts that the district court erred by accepting his guilty plea before Sims' report from her neuropsychological evaluation of Castellaw was complete. We disagree and find the district court acted within its discretion to accept Castellaw's guilty plea as freely, intelligently, voluntarily, and understandingly made.

[14] In order to support a finding that a plea of guilty or nolo contendere has been entered freely, intelligently, voluntarily, and understandingly, the court must (1) inform the defendant concerning (a) the nature of the charge, (b) the right to assistance of counsel, (c) the right to confront witnesses against the defendant, (d) the right to a jury trial, and (e) the privilege against self-incrimination; and (2) examine the defendant to determine that he or she understands the foregoing.[26] Additionally, the record must establish that (1) there is a factual basis for the plea and (2) the defendant knew the range of penalties for the crime with which he or she is charged.[27] A voluntary and intelligent waiver of the above rights must affirmatively appear from the face of the record.[28]

[15-18] A defendant cannot voluntarily enter a plea if the defendant is not competent.[29] We have held that a person is competent to plead or stand trial if he or she has the capacity to understand the nature and object of the proceedings against him or her, to comprehend his or her own condition in reference to such proceedings, and to make a rational defense.[30] The competency standard includes both (1) whether the defendant has a rational as well as factual understanding of

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[26] *State v. Mead, supra* note 5.

[27] *Id.*

[28] *Id.*

[29] See *Oyague v. Artuz*, 393 F.3d 99 (2d Cir. 2004).

[30] *State v. Kellogg*, 321 Neb. 502, 35 N.W.3d 442 (2026).

the proceedings against him or her and (2) whether the defendant has sufficient present ability to consult with his or her lawyer with a reasonable degree of rational understanding.[31] There are no fixed or immutable signs of incompetence, and a defendant can meet the modest aim of legal competency, despite paranoia, emotional disorders, unstable mental conditions, and suicidal tendencies.[32]

[19] A court is not required to make a competency determination in every case in which a defendant seeks to plead guilty.[33] A specific competency inquiry and determination is necessary only when a court has reason to doubt the defendant's competence.[34]

Castellaw does not challenge that the district court engaged in the required plea colloquy; instead, Castellaw argues the district court, sua sponte, should have inquired further into his competency before accepting his plea, because the results of Sims' neuropsychological evaluation were still pending when his guilty plea was entered. Reading his argument generously, Castellaw suggests that the pending neuropsychological evaluation gave the court reason to doubt his competence.

But there was no showing that Sims' evaluation of Castellaw was intended to inquire into his competency to plead or stand trial. Instead, the record shows that Sims' evaluation was done for the purpose of understanding adolescent cognitive development, as applied to Castellaw, in determining "guilt or in sentencing." Sims' report ultimately detailed Castellaw's traumatic upbringing, detailed how that upbringing affected him cognitively and developmentally, and recommended treatment options moving forward. In no part of Sims' evaluation did she ultimately make any conclusions or findings related

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[31] *Id.*

[32] *Id.*

[33] *State v. Haas*, 317 Neb. 919, 12 N.W.3d 787 (2024).

[34] See *id.*

to Castellaw's ability to understand the legal proceedings, to enter a plea, or to stand trial.

We disagree with Castellaw's argument that because the neuropsychological evaluation report was still pending, the district court abused its discretion in finding, without further inquiry into his competency, that Castellaw knowingly, intelligently, and voluntarily entered a guilty plea. The district court, after having the opportunity to observe and question Castellaw, was satisfied that he was competent to plead and accepted his guilty plea.[35] The pending results of Sims' neuropsychological evaluation, which was not related to Castellaw's competency to plead or stand trial, were immaterial.

3. Ineffective Assistance of Trial Counsel

Represented by new counsel on direct appeal, Castellaw asserts that his trial counsel was ineffective for four reasons: (1) failing to file a motion to transfer his case to juvenile court, (2) failing to file a motion to withdraw his guilty plea, (3) failing to investigate witnesses and other potential suspects, and (4) allowing him to enter a guilty plea while a neuropsychological evaluation was pending. We first discuss the general legal principles of ineffective assistance of counsel before addressing each claim in turn.

[20-22] When reviewing an ineffective assistance of counsel claim on direct appeal, the question is whether the record affirmatively shows that the defendant's trial counsel's performance was deficient and that the deficient performance actually prejudiced the defendant's defense.[36] On direct appeal, an appellate court only addresses claims of ineffective assistance of counsel that can be conclusively determined from the record.[37] A court may examine performance and

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[35] See *id.* (noting that district court had benefit of observing accused during plea hearing).

[36] *State v. Kruger, supra* note 6.

[37] *Id.*

prejudice in any order and need not examine both prongs if a defendant fails to demonstrate either.[38]

[23-26] To show deficient performance, the defendant must show that counsel's performance did not equal that of a lawyer with ordinary training and skill in criminal law.[39] To show prejudice, the defendant must demonstrate a reasonable probability that, but for counsel's deficient performance, the result of the proceeding would have been different.[40] A reasonable probability is a probability sufficient to undermine confidence in the outcome.[41] There is a strong presumption that counsel acted reasonably, and an appellate court will not second-guess reasonable strategic decisions.[42]

[27,28] The record on appeal is sufficient if it establishes either that trial counsel's performance was not deficient, that the appellant will not be able to establish prejudice as a matter of law, or that trial counsel's actions could not be justified as a part of any plausible trial strategy.[43] Conversely, an ineffective assistance of counsel claim will not be addressed on direct appeal if it requires examination of facts not contained in the record.[44]

[29,30] 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; otherwise, the issue will be procedurally barred in a subsequent postconviction proceeding.[45] When a

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[38] *Id.*

[39] *Id.*

[40] *Id.*

[41] *Id.*

[42] *Id.*

[43] *Id.*

[44] *Id.*

[45] *Id.*

claim of ineffective assistance of 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.[46]

(a) Failing to File Motion to Transfer to Juvenile Court

Castellaw first argues that his trial counsel was ineffective for failing to file a motion to transfer his case to juvenile court. We find that the trial record is sufficient to conclude that trial counsel's decision not to file a motion to transfer was not unreasonable and, therefore, trial counsel was not deficient for failing to file a motion to transfer.

[31] A motion to transfer a case from the district court to juvenile court under Neb. Rev. Stat. § 29-1816 (Cum. Supp. 2024) requires the district court to consider the criteria set forth in Neb. Rev. Stat. § 43-276 (Cum. Supp. 2024). "After considering all the evidence and reasons presented by both parties, the case shall be transferred to juvenile court unless a sound basis exists for retaining the case in county court or district court."[47]

While trial counsel's strategic decisionmaking is not usually in the trial record, in this case, trial counsel explained on the record that her decision not to file a motion to transfer Castellaw's case to juvenile court was based on her experience as counsel in *Leroux*[48] and her "inability to find any post-*Leroux* Nebraska cases in which a juvenile charged with murder [had their case] transferred to juvenile court." In *Leroux*, the Nebraska Court of Appeals affirmed the district court's decision to not transfer a 15-year-old defendant's case to

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[46] *State v. Miller*, 315 Neb. 951, 2 N.W.3d 345 (2024).

[47] § 29-1816(3)(a). See *State v. Jeremiah T.*, 319 Neb. 133, 21 N.W.3d 313 (2025).

[48] *State v. Leroux, supra* note 2.

juvenile court. The juvenile defendant in *Leroux* was charged with murder in the second degree and use of a deadly weapon to commit a felony after he stabbed the victim several times in the chest during an argument, ultimately resulting in the victim's death. The juvenile defendant in that case did not have a history of being a violent and aggressive offender, had only one misdemeanor in his criminal history, and was responsive to services made available to him during the pendency of his case.[49] Nonetheless, the district court found, and the Court of Appeals affirmed, that the juvenile defendant's case should be retained in the district court.[50] The district court and Court of Appeals were most concerned with the severity of the offense charged, the perceived threat to public safety, and the concern that rehabilitation could not be completed before the juvenile defendant reached the age of majority.[51]

Here, trial counsel was not deficient by failing to file a motion to transfer. She made this decision based on her experience and research of relevant Nebraska law. It cannot be said on this record that trial counsel's performance did not equal that of a lawyer with ordinary training and skill in criminal law when she made the informed decision not to file a motion to transfer Castellaw's second degree murder case to juvenile court.

(b) Failing to File Motion to Withdraw Guilty Plea

[32-34] Castellaw next argues that his trial counsel was ineffective for failing to file a motion to withdraw his guilty plea. The right to withdraw a plea previously entered is not absolute, and the defendant has the burden to show the grounds for withdrawal by clear and convincing evidence.[52]

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[49] *Id.*

[50] *Id.*

[51] *Id.*

[52] See *State v. Miller, supra* note 46.

When a defendant moves to withdraw his or her plea before sentencing, a court, in its discretion, may sustain the motion for any fair and just reason, provided that such withdrawal would not substantially prejudice the prosecution.[53] A defendant's change of mind alone is not a fair and just reason to withdraw a guilty or no contest plea.[54]

Castellaw concedes that he did not ask trial counsel to withdraw his plea. Still, he claims his desire to do so was "clear," "even if he did not state it in those exact terms."[55] This clear desire to withdraw his plea allegedly comes from his letter to the Counsel for Discipline, in which he allegedly complained that trial counsel "coerced" him into accepting the State's plea agreement. Castellaw complains that, rather than move to withdraw as counsel, trial counsel should have moved to withdraw his plea. Castellaw does not specifically assert on appeal that his trial counsel in fact coerced him into entering a plea, and he gives no explanation as to how she might have coerced him into the plea agreement. He does not argue any other basis for a motion to withdraw his plea.

[35-37] General allegations that trial counsel performed deficiently or that trial counsel was ineffective are insufficient to preserve the issue for later review.[56] As explained in *State v. Liner*,[57] a broad allegation that trial counsel was deficient for failing to move to withdraw a plea, without articulating the legal basis upon which such a motion should have been based, is too general to preserve the issue. Similarly, a broad allegation that a defendant was coerced or threatened into accepting a plea bargain is not sufficient to preserve the issue.[58] The record affirmatively shows that trial counsel's

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[53] *Id.*

[54] *Id.*

[55] Brief for appellant at 32.

[56] See *State v. Filholm*, 287 Neb. 763, 848 N.W.2d 571 (2014).

[57] See *State v. Liner*, 24 Neb. App. 311, 886 N.W.2d 311 (2016).

[58] See *id.*

performance was not deficient by failing to move to withdraw Castellaw's plea.

(c) Failing to Investigate Witnesses and Potential Third-Party Perpetrators

Castellaw also argues that his trial counsel was ineffective for failing to investigate witnesses and potential third-party perpetrators identified by Castellaw's family. Specifically, Castellaw points to one individual, identified by name, who was allegedly in the same vehicle as Castellaw during the pursuit of the stolen vehicle but was apparently not arrested or charged. Castellaw's argument on appeal does not seem to be that the uncharged individual was the one who committed the murder of the victim but that he was involved and should have been investigated by Castellaw's trial counsel. We find that the trial record is insufficient to resolve this claim on direct appeal.

[38] A defense attorney has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary.[59] We have insufficient information in the trial record concerning whether or to what extent Castellaw's trial counsel investigated the uncharged individual identified in Castellaw's brief or what strategic decisionmaking was involved in counsel's level of investigation. The uncharged individual's name appears several times throughout the presentence investigation report, including in Castellaw's trial counsel's sentencing memorandum, but it is unclear why the uncharged individual was not charged and if Castellaw's case would have been different had trial counsel investigated the uncharged individual.

Accordingly, we conclude that this allegation of deficient performance was alleged with sufficient particularity, but the record on direct appeal is insufficient to resolve it.

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[59] *State v. Stricklin*, 300 Neb. 794, 916 N.W.2d 413 (2018).

(d) Allowing Castellaw to Enter Plea While Neuropsychological Evaluation Was Pending

Finally, Castellaw argues that his trial counsel was ineffective for permitting him to enter a guilty plea while the results of his neuropsychological evaluation were pending. We find no merit to this allegation based on the trial record, because, as a matter of law, Castellaw cannot show that he was prejudiced.

Had Castellaw's counsel waited until after the results of the neuropsychological evaluation were complete before "permitting" him to enter a guilty plea, the results would have been the same, if not worse. As discussed above, the reasons for the requested neuropsychological evaluation were not related to competency. And the results from the neuropsychological evaluation demonstrated that Castellaw's competency to plead or stand trial was not at issue. Castellaw cannot show that had his trial counsel waited to proceed with the guilty plea until after the results of the evaluation were complete, there was a reasonable probability that the result of the proceeding would have been different.

It is also worth noting that, prior to the plea agreement, Castellaw faced charges for use of a deadly weapon to commit a felony, a Class II felony, and for third degree assault, a Class I misdemeanor. By accepting the plea agreement, Castellaw avoided facing these charges in addition to the second degree murder charge.

Because Castellaw cannot show prejudice from trial counsel's decision to permit him to enter a guilty plea while a neuropsychological evaluation was pending, this assignment of error fails.

VI. CONCLUSION

For the foregoing reasons, the district court did not err in denying Castellaw's trial counsel's motion to withdraw or in accepting Castellaw's guilty plea as knowing and voluntary. We affirm.

AFFIRMED.