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Equal Protection Clause of the Nebraska Constitution. Without addressing the merits of Melissa's equal protection challenge, we find the constitutional question is not properly before this court.

[9] As we did in *Givens v. Anchor Packing*,[14] we refuse to address the merits of the constitutional challenge raised by Melissa. Section 24-219, which grants this court the authority to answer certified questions, limits our answers to questions of law which are certified.[15] There was no constitutional question within the question certified to us by the U.S. District Court. For this reason, we will not substantively address Melissa's constitutional challenge.

CONCLUSION

The answer to the certified question is no, a child conceived after her biological father's death through intrauterine insemination using the father's sperm and born within 9 months of his death cannot inherit from the father as his surviving issue under Nebraska intestacy law. Further, Melissa's constitutional challenge is not properly before this court and therefore cannot be substantively answered.

JUDGMENT ENTERED.

WRIGHT, J., not participating.

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[14] *Givens v. Anchor Packing*, 237 Neb. 565, 466 N.W.2d 771 (1991).

[15] See *id*.

STATE OF NEBRASKA, APPELLEE, V.
AREVALO RAMIREZ, APPELLANT.
823 N.W.2d 193

Filed November 16, 2012. No. S-12-178.

1. **Effectiveness of Counsel: Records: Appeal and Error.** The fact that an ineffective assistance of counsel claim is raised on direct appeal does not necessarily mean that it can be resolved. The determining factor is whether the record is sufficient to adequately review the question.
2. **Trial: Effectiveness of Counsel: Evidence: Appeal and Error.** An ineffective assistance of counsel claim will not be addressed on direct appeal if it requires an evidentiary hearing.

3. **Sentences: Appeal and Error.** An appellate court will not disturb a sentence imposed within the statutory limits absent an abuse of discretion by the trial court.
4. **Effectiveness of Counsel: 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.
5. **Sentences.** 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.
6. ____. In imposing a sentence, the sentencing court is not limited to any mathematically applied set of factors.
7. ____. 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.

Appeal from the District Court for Douglas County: GREGORY M. SCHATZ, Judge. Affirmed.

Sean M. Conway, of Dornan, Lustgarten & Troia, P.C., L.L.O., for appellant.

Jon Bruning, Attorney General, and George R. Love for appellee.

HEAVICAN, C.J., WRIGHT, CONNOLLY, STEPHAN, MCCORMACK, MILLER-LERMAN, and CASSEL, JJ.

WRIGHT, J.

NATURE OF CASE

Arevalo Ramirez pled no contest to first degree sexual assault. He was sentenced to 25 to 30 years' imprisonment with credit for 224 days served. The two issues presented for review in this appeal are whether Ramirez' trial counsel was ineffective and whether Ramirez received an excessive sentence.

SCOPE OF REVIEW

[1] The fact that an ineffective assistance of counsel claim is raised on direct appeal does not necessarily mean that it can be resolved. The determining factor is whether the record is

sufficient to adequately review the question. *State v. Sidzyik*, 281 Neb. 305, 795 N.W.2d 281 (2011).

[2] An ineffective assistance of counsel claim will not be addressed on direct appeal if it requires an evidentiary hearing. *State v. Freemont, ante* p. 179, 817 N.W.2d 277 (2012).

[3] An appellate court will not disturb a sentence imposed within the statutory limits absent an abuse of discretion by the trial court. *State v. Bauldwin*, 283 Neb. 678, 811 N.W.2d 267 (2012).

FACTS

On July 11, 2011, Ramirez was charged by information in Douglas County District Court with one count of first degree sexual assault, a Class II felony, and one count of first degree false imprisonment, a Class IIIA felony. On November 21, he pled no contest to the first degree sexual assault charge and the remaining charge was dismissed by the State.

As a factual basis for the plea, the State advised the district court that on June 22, 2011, Ramirez agreed to pick up the victim, J.F., and give her a ride home. Rather than driving J.F. home, Ramirez drove to a park and sexually assaulted J.F. in the back seat of his vehicle. J.F. later escaped.

In announcing Ramirez' sentence on January 31, 2012, the district court noted that J.F. was Ramirez' niece, that she was 16 years old at the time of the crime, and that according to the presentence investigation report, Ramirez also had sexual contact with J.F. when she was 13 years old. Ramirez was sentenced to 25 to 30 years' imprisonment with credit for 224 days served. He was also required to register under Nebraska's Sex Offender Registration Act, Neb. Rev. Stat. §§ 29-4001 to 29-4014 (Reissue 2008 & Cum. Supp. 2012).

At sentencing, the district court inquired as to Ramirez' citizenship status. Defense counsel replied: "Judge, he is a legal permanent resident. However, with the conviction of such a serious felony, it will be at the discretion of Immigration whether or not to proceed with removal once he's done with his sentence. And normally on a case like this they would do that."

Ramirez timely filed his notice of appeal on February 29, 2012. The State moved for summary affirmance on May 23,

but the motion was overruled. This court moved the case to its docket pursuant to our authority to regulate the dockets of the appellate courts of this state. See Neb. Rev. Stat. § 24-1106(3) (Reissue 2008). Pursuant to Neb. Ct. R. App. P. § 2-111(E)(5)(a) (rev. 2008), the case was submitted without oral argument.

ASSIGNMENTS OF ERROR

Ramirez assigns as error that he received ineffective assistance of counsel and that his sentence is excessive.

ANALYSIS

Ineffective Assistance of Counsel

In this appeal, Ramirez contends that his trial counsel was ineffective in failing to inform him prior to his plea that a sexual assault conviction would result in mandatory deportation.

[4] Ramirez is represented by different counsel on appeal than he was in the district court. When a defendant's trial counsel is different from his or her counsel on direct appeal, the defendant must raise on direct appeal any issue of trial counsel's ineffective performance which is known to the defendant or is apparent from the record. Otherwise, the issue will be procedurally barred. *State v. Molina*, 279 Neb. 405, 778 N.W.2d 713 (2010). Therefore, as he has done, Ramirez was required to raise his ineffective assistance of counsel claim on direct appeal.

The fact that an ineffective assistance of counsel claim is raised on direct appeal does not necessarily mean that it can be resolved. The determining factor is whether the record is sufficient to adequately review the question. *State v. Sidzyik*, 281 Neb. 305, 795 N.W.2d 281 (2011). An ineffective assistance of counsel claim will not be addressed on direct appeal if it requires an evidentiary hearing. *State v. Freemont*, *ante* p. 179, 817 N.W.2d 277 (2012).

The evidence in the record of defense counsel's alleged ineffectiveness is a statement by counsel to the district court: "Judge, he is a legal permanent resident. However, with the

conviction of such a serious felony, it will be at the discretion of Immigration whether or not to proceed with removal once he's done with his sentence. And normally on a case like this they would do that." This statement was made at the sentencing hearing, after Ramirez' plea had been entered. Thus, it is not possible to evaluate whether defense counsel was ineffective, because the record contains insufficient evidence of what defense counsel told Ramirez before the plea was entered. Because the record is insufficient to address this assignment of error, we decline to address it on direct appeal. See, *id.*; *State v. Sidzyik, supra*.

Excessive Sentence

[5] Ramirez argues that the district court did not properly consider all the sentencing factors set forth in *State v. Timmens*, 263 Neb. 622, 641 N.W.2d 383 (2002). These factors were reiterated in *State v. Bauldwin*, 283 Neb. 678, 811 N.W.2d 267 (2012). 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. *Id.*

[6,7] In imposing a sentence, the sentencing court is not limited to any mathematically applied set of factors. *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.* An appellate court will not disturb a sentence imposed within the statutory limits absent an abuse of discretion by the trial court. *Id.*

Ramirez was found guilty of a Class II felony, which carries a sentence of 1 to 50 years' imprisonment. See Neb. Rev. Stat. § 28-105(1) (Cum. Supp. 2012). He was sentenced to 25 to 30 years' imprisonment. Ramirez' sentence falls well within the statutory range. As such, we review the district court's decision for an abuse of discretion. See *State v. Bauldwin, supra*. 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*.

In announcing Ramirez' sentence, the district court noted that the victim was Ramirez' niece and that she was 16 years old when the crime occurred. The court further noted that the presentence investigation report indicated Ramirez also had sexual contact with J.F. when she was 13. The court agreed with a probation officer's assessment that Ramirez was a high-risk candidate for community supervision and that a substantial sentence was required.

The presentence investigation report contains several evaluation scores. Ramirez scored in the "very high risk" range for "procriminal attitude/orientation" and in the "high risk" range for "leisure/recreation." Additionally, the presentence investigation report indicated that Ramirez was at a high risk for rearrest. It also included a victim impact statement addressing the fears and changed family relationships J.F. has experienced as a result of the incident.

In *State v. Archie*, 273 Neb. 612, 733 N.W.2d 513 (2007), the defendant, who was convicted of first degree sexual assault on a child and incest, alleged he received excessive sentences. He claimed the trial court failed to properly consider that he had no sexual offenses on his record and that a test indicated he did not have an established pattern of sexual interest in children. This court noted that the defendant had a propensity for violence and that he inflicted pain and fear on his victim. We further noted that "[s]exual assault on a child is a serious and deplorable crime, and the injury that results from this type of assault is well established." *Id*. at 646, 733 N.W.2d at 539. This court concluded that the defendant's concurrent sentences of 25 to 30 years in prison for first degree sexual assault on a child and 10 to 20 years in prison for incest were not an abuse of discretion.

Ramirez sexually assaulted his 16-year-old niece. This was a serious and deplorable crime, see *id*., and the sentence Ramirez received was well within the statutory range. We cannot say that the district court abused its discretion in imposing this sentence.

CONCLUSION

The record is insufficient to review on direct appeal Ramirez' claim of ineffective assistance of counsel, and accordingly, we decline to address it. The district court did not abuse its discretion in sentencing Ramirez to 25 to 30 years' imprisonment for first degree sexual assault. The judgment of the district court is affirmed.

AFFIRMED.