

IN THE NEBRASKA COURT OF APPEALS

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

STATE V. CICHOWSKI

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.

JEREMY R. CICHOWSKI, APPELLANT.

Filed March 26, 2024. No. A-23-256.

SUPPLEMENTAL OPINION

Appeal from the District Court for Douglas County: J RUSSELL DERR, Judge, on appeal thereto from the County Court for Douglas County: STEPHANIE R. HANSEN, Judge. Former opinion modified. Motion for rehearing overruled.

Sarah M. Mooney for appellant.

Kevin J. Slimp, Omaha City Prosecutor, for appellee.

RIEDMANN, BISHOP and WELCH, Judges.

PER CURIAM.

This case is before us on a motion for rehearing filed by appellant, Jeremy Cichowski, concerning our opinion reported in *State v. Cichowski*, No. A-23-256, 2023 WL 8888595 (Neb. App. Dec. 26, 2023) (selected for posting to court website). We overrule the motion, but we modify the opinion as follows:

In the “Analysis” section, we strike the first paragraph and replace it with the following: “As a preliminary issue, we note that the district court indicated it was confined to a plain error review due to Cichowski’s failure to file a statement of errors; however, it appears that the district court used an abuse of discretion standard of review when considering Cichowski’s sentence, the

*Strickland* two-part test when considering the ineffective assistance of counsel claims, and no particular standard of review when considering whether the county court should have struck certain statements in the PSR. Accordingly, we will apply an abuse of discretion standard in analyzing Cichowski’s sentence and in determining whether the county court should have struck the statements in the PSR. See *State v. Lara*, 315 Neb. 856, 2 N.W.3d 1 (2024) (applying abuse of discretion standard when considering trial court’s rulings as to source and type of evidence and information that may be used in determining kind and extent of punishment to be imposed). Because Cichowski failed to comply with the requirements of *State v. Mrza*, 302 Neb. 931, 926 N.W.2d 79 (2019), we do not address his ineffective assistance of counsel claim.”

In the last paragraph of our analysis under the subsection entitled “Motion to Strike,” we strike the phrase “commit plain error” and replace it with the phrase “abuse its discretion.”

We strike the last sentence of the second paragraph under the subsection entitled “Excessive Sentence.” We strike the word “plain” in the last sentence of the final paragraph of this subsection and we strike the word “plain” from our Conclusion.

The remainder of the opinion shall remain unmodified.

FORMER OPINION MODIFIED.

MOTION FOR REHEARING OVERRULED.