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IN THE SUPREME COURT OF IOWA

STATE OF IOWA, Plaintiff–Appellee, v. TAYLOR CHRISTOPHER SMITH, Defendant–Appellant.	Woodbury County Case No. FECR111571 S. CT. NO. 24–0053

APPEAL FROM THE IOWA DISTRICT COURT
FOR WOODBURY COUNTY
THE HONORABLE STEVEN ANDREASEN, JUDGE

APPELLANT'S BRIEF AND ARGUMENT

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STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

I. The district court abused its discretion when it sentenced Smith because the record establishes the court was unaware the minimum fine that applied to the offense was $1000, not $1370. Resentencing is required.

II. The district court's order prohibiting the use and possession of firearms, offensive weapons, and ammunition violates Smith's rights under the Second Amendment to the United States Constitution.

III. The district court's order prohibiting the use and possession of firearms, offensive weapons, and ammunition violates Smith's rights under the Article I, section 1A of the Iowa Constitution.

ROUTING STATEMENT

The Court should transfer this case to the Court of Appeals because it raises issues that involve the application of existing legal principles. Iowa R. App. P. 6.903(2)(*a*)(4), 6.1101(3)(*a*) (2024).

NATURE OF THE CASE

Defendant–Appellant Taylor Christopher Smith appeals his conviction, sentence, and judgment following a bench trial. The district court found Smith guilty of sexual abuse in the third degree, a class "C" felony, in violation of Iowa Code section 709.4(1)(*b*)(2)(*d*). D0077, Findings, Conclusions, and Verdict, at 1, 11 (10/20/2023). The district court sentenced Smith to a term not to exceed ten years in prison, a suspended fine of $1,370 and corresponding crime services surcharge, and the $90 sexual abuse surcharge. D0084, Sentencing Order, at 2, 4, 9 (01/05/2023). Additionally, the sentencing order contained a term prohibiting Smith from possessing, shipping, transporting, or receiving "a firearm, offensive weapons, or ammunition," (hereinafter referred to generally as the "arms prohibition"). D0084, at 9.

STATEMENT OF THE FACTS

K.S. testified that Smith touched her vagina and had sexual intercourse on the early morning of June 2, 2020, at her home in Sioux City. D0103, Bench Trial, at 23:16–25:7 (03/28/2023). K.S. was fourteen years old at the time. D0103, at 11:10–17, 28:18–19. Smith was twenty-three years old. D0103, at 11:10–17. K.S. became pregnant as a result of the encounter, and she had a baby in late February of 2021. D0103, at 12:12–17, 32:1–25, 34:3–37:25.

K.S. and her family were friends with the mother of Smith's two children. D0103, at 12:18–14:17. K.S. and her mother often babysat Smith's children, including keeping them overnight at K.S.'s house. D0103, at 14:11–17:10. K.S. testified that she and her mom were babysitting Smith's children on June 1, 2020. D0103, at 17:11–20:19). Smith was at K.S.'s house initially, but later left for several hours. D0103, at 19:35–23:16. However, prior to leaving, Smith arranged with K.S.'s mom to stay overnight at their house, along with his children; this was unusual, but Smith had gotten in an argument with his father and needed a place to spend the night. D0103, at 20:23–21:14.

Smith had not returned to K.S.'s house by his kids' bedtime. D0103, at 22:13–23:12. K.S. testified her mother made Smith "a little bed on the couch with a pillow and blanket" in the downstairs living room. D0103, at 21:12–23:4. K.S. put the two children to bed in her room, and she also fell asleep there in her own bed around 11:00 p.m. D0103, at 23:13–23:24, 41:8–10.

K.S. testified that around 3:00 or 4:00 in the morning she woke up to Smith having sex with her. D0103, at 23:16–15. She testified Smith had pushed her shorts to the side and was touching her vagina with his hands; Smith then inserted his penis into her vagina. D0103, at 24:8–25:7. K.S. testified she told him to stop, and he "shh[ed]" her. D0103, at 25:8–18. K.S. testified Smith was aware she was only fourteen years old, and he told her after that "he would marry [her] when [she] was at the right age." D0103, at 26:1–16.

K.S. did not tell anyone what had happened until approximately three weeks later when she needed a pregnancy test. D0103, at 32:1–18. K.S.'s mother telephoned Smith. D0103, at 33:1–5. Smith denied the incident, and he told K.S.'s mother she

"was tripping," which K.S. testified meant losing her mind. D0103, at 33:3–17. K.S.'s parents called the police and reported the incident. D0103, at 33:3–11. Approximately eight months later, K.S. had a baby. D0103, at 34:3–25. DNA testing established Smith "could not be eliminated as a possible father of [K.S.'s baby]. The probability of paternity is 99.9 as compared to randomly chosen untested unrelated men." D0103, at 36:17–25.

Smith testified at trial as well. He testified he smoked "a bunch of meth" before getting dropped off at the house. D0103, at 53:20–54:5. He had also drank some alcohol. D0103, at 53:20–54:5. Smith testified he remembered going into K.S.'s room around midnight because one of his children was "screaming bloody murder." D0103, at 54:6–14. The child had fallen out of a baby swing. D0103, at 54:6–24). Smith testified he calmed the child down and got the child back to sleep. D0103, at 54:10–17. Smith testified he then went to a different bedroom and slept with his other child there. D0103, at 55:10–15.

When asked if he had sex with K.S. that night, Smith replied "Nothing that I'm aware of. Nothing that I can recollect." D0103, at

55:3–5. Smith testified he did not remember anything and answered, “Potentially,” when asked if he thought he blacked out. D0103, at 55:3–9. When asked if he had an explanation on K.S.’s baby being his, Smith said,

> Other than, you know, being an addict or recovering addict and somebody that’s smoked a lot of meth to the point to where you can actually black out from it, you can fall out – the[ ] term[ ] they use is falling out. It is -- it's like the first sign of an overdose.

D0103, at 56:13–28. Smith testified he was “nowhere able to give consent, in the right mindset to give consent to anything.” D0103, at 57:4–7. By the time of trial, Smith had been sober approximately three years. D0103, at 57:21–23.

K.S. did corroborate Smith’s testimony that he was under the influence of methamphetamine that night. K.S. testified after Smith assaulted her she saw him outside smoking something in the backyard and “[i]t wasn’t a cigarette.” D0103, at 44:24–18. K.S. also stated her brother said Smith’s “eyes were dilated and that he was slurring his words.” D0103, at 44:9–14.

ARGUMENT

I. The district court abused its discretion when it sentenced Smith because the record establishes the court was unaware the minimum fine that applied to the offense was $1000, not $1370. Resentencing is required.

Preservation of Error: The Court may review a defendant's argument that the district court abused its discretion during his sentencing, even in the absence of an objection in the district court. *See State v. Thacker*, 862 N.W.2d 402, 405 (Iowa 2015) (citation omitted). Moreover, a district court's failure to properly recognize and exercise the correct scope of its sentencing discretion is "a defective sentencing procedure to which . . . error preservation rules do not apply." *State v. Ayers*, 590 N.W.2d 25, 27 (Iowa 1999) (citing *State v. Wilson*, 294 N.W.2d 824, 835 (Iowa 1980)).

Standard of Review: Review of a sentence imposed in a criminal case is for correction of errors at law. Iowa R. App. P. 6.907 (2023); *see also State v. Formaro*, 638 N.W.2d 720, 724 (Iowa 2002). Because Smith's sentence is within the statutory limits, the appellate court reviews the district court's decision for an abuse of discretion. *See State v. Cooley*, 587 N.W.2d 752, 754 (Iowa 1998)

(citation omitted). To demonstrate an abuse of discretion, the defendant must show that the sentencing court's discretion "was exercised on grounds or for reasons clearly untenable or to an extent clearly unreasonable." *State v. Buck*, 275 N.W.2d 194, 195 (Iowa 1979) (citation omitted).

Discussion: Iowa Code section 901.5 states that the sentencing court must consider its options only after examining all pertinent information. *See* Iowa Code § 901.5 (2023). In exercising its discretion, the district court has a duty to weigh this information when determining the appropriate sentence for a particular defendant for a particular offense. *See State v. Thompson*, 494 N.W.2d 239, 240 (Iowa 1992) (citation omitted). "When a sentence is not mandatory, the district court must exercise its discretion in determining what sentence to impose." *State v. Thomas*, 547 N.W.2d 223, 225 (Iowa 1996) (citation omitted).

At the sentencing hearing, neither party mentioned the amount of the applicable fines or surcharges. D0107, Sentencing Tr., at 13:17–17:3 (01/05/2024). Rather, the State argued for a prison term, while the defense requested the court place Smith on

probation. D0107, at 13:17–17:3. The presentence investigation report did not contain any information about the mandatory minimum fines or surcharges related to the offense, nor did the addendum. *See* D0075, Presentence Investigation Report, at 1–13 (12/11/2023); D0079, Presentence Investigation Report Addendum, at 1–4 (12/14/2023).

At the sentencing hearing, the district court ordered Smith to serve an indeterminate term in prison "not to exceed 10 years" and imposed "a fine of $1,370 plus a 15 percent criminal surcharge." D0107, at 18:17–21. Additionally, the district court imposed "the sexual abuse surcharge under Section 911.2B of $90." D0107, at 24:18–19. The written sentencing order also contained a provision outlining these financial obligations. D0084, at 2, 4.

In this case, Smith is entitled to a new sentencing hearing because the record establishes the district court was not aware it had the discretion regarding the amount of the fine. As discussed above, the behavior that constituted the charged offense occurred on June 2, 2020. *See* D0103, at 23:16–25. That date was uncontested; the State alleged it in the trial information and the

district court found “the crime occurred sometime in the late evening/early morning hours of June 1 – 2, 2020.” (D0009, Trial Information, at 1 (05/26/2021); D0077, at 1.

Pursuant to Iowa Code section 902.9, because Smith’s offense occurred in June of 2020, the district court could sentence him to a fine of not less than $1000, but not more than $10,000. *See* Iowa Code § 902.9(*d*) (2019). The legislature amended section 902.9 in 2020. *See* 2020 Iowa Legis. Serv. ch. 1074 § 45 (S.F. 457) (West). In part, that amendment, which went into effect on July 15, 2020, increased the mandatory minimum fine for a class D felony from at least one thousand dollars to one thousand three hundred seventy dollars. *See id.* § 93 (“Effective date. Unless otherwise provided, this Act takes effect July 15, 2020.”). Thus, Smith’s crime, which occurred prior to the amendment, carried the lower—one thousand dollars—mandatory minimum. *See State v. Louisell*, 865 N.W.2d 590, 604 (Iowa 2015) (Mansfield, J., concurring in part, dissenting in part) (“Generally, of course, criminal defendants are sentenced based on the law that was in effect at the time the crime was committed.”).

The record establishes that the district court was not aware it had the discretion to order a fine of $1000, which was lower than the mandatory minimum fine for the same offense when the court sentenced Smith. *See* Iowa Code § 902.9(e) ("A class "C" felon, not a habitual offender shall be confined for no more than ten years, and in addition shall be sentenced to a fine of at least one thousand twenty-five dollars but not more than ten thousand two hundred forty-five dollars."). Neither of the parties nor the judge mentioned the lesser penalties that could apply to the older offense at the sentencing hearing. Additionally, the record shows that none of the parties recognized that there were in fact different punishments for the offense because it occurred in June of 2020.

Rather, the record shows the district court was unaware that different punishments applied to the earlier offense. For example, the district court ordered Smith to pay the $90 sexual abuse surcharge, and it applied the 15% crime services surcharge to the imposed fine. D0084, at 2, 4. While these penalties are correct, they are only proper because of the ameliorative amendment clause in Iowa's general savings provision. *See* Iowa Code § 4.13(2) (2024);

State v. Chrisman, 514 N.W.2d 57, 61–62 (Iowa 1994). Rather, at the time of the offense, the crime carried a $100 sexual abuse surcharge and a 35% crime services surcharge on the fine. *See* Iowa Code § 911.1(1) (2019) (35% crime services surcharge); *id.* § 911.2B(1) ($100 sexual abuse surcharge). However, when the court ordered these lesser penalties, it did so without mentioning why it was doing so rather than imposing the 35% crime services surcharge and $100 sexual abuse surcharge that would have applied if Smith had been sentenced in June of 2020. *See* 2020 Iowa Legis. Serv. ch. 1074 § 18 (S.F. 457) (West) (reducing the crime services surcharge from 35% to 15% and the sexual abuse surcharge from $100 to $90). *Compare* Iowa Code § 911.1(1) (2024) and § 911.2B(1) (2024), *with* Iowa Code § 911.1(1) (2019) and § 911.2B(1) (2019). Rather, the imposition of the 15% surcharge, along with the reduced sexual abuse surcharge, establish the judge did not consider the timing of the offense and its corresponding penalties. Instead, the judge only considered and ordered the penalties that applied at the time of sentencing.

There is more evidence in the record that the judge did not consider that the offense had different penalties than the crime carried at the time it sentenced Smith. This is evidenced in the sentencing order itself. While the order lists the offense date, it never lists or notes the year of the Iowa Code under which the judge was sentencing Smith. D0084, at 1–11. Moreover, despite containing the disclaimer that the "descriptive parentheticals are only to aid in preparing the document and are not substantive parts of [the] order," the section related to the applicable fines shows the greater range of penalties that applied at the time of sentencing.

2. **Incarceration and Fine.** Pursuant to Iowa Code §§ shown in paragraph 1 above and the Iowa Code §§(s) shown below at *, the defendant is sentenced to an indeterminate term of incarceration not to exceed that shown below plus fine and surcharge as follows:

Count	Incarceration	Fine	Surcharge
1	Ten (10) years	1,370	15%

*Check all applicable Code §§ (The descriptive parentheticals are only to aid in preparing the document and are not substantive parts of this order.)

☐702.11 Forcible Felony(ff) ☒911.1 (surcharge)	☐902.9(1)(e) (5 yrs. + $1,025-$10,245)	☐124.411 (2nd off. up to 3x)
☐902.1(1); 124.401D(1)(c) (life)	☐124.401(1)(a) (50 yrs+$0-1mil.)	
☐ 902.9(1)(a);124.401D(1)(b) (99 yrs.)	☐124.401(1)(b) (25 yrs+$5k-100k)	☐124.401A (1000 ft. + 5 yrs.)
☐ 707.3;726.6A;716.10(2)(a) (50 yrs.)	☐124.401(1)(c) (10yrs.+$1k-50k)	☐124.401B (1000 ft. + 100 hrs.) ☐124.401C (minors present + 5 yrs.)
☐902.9(1) (b) (25 yrs.)	☐124.401(e) (if firearm 2x penalty)	
☐902.9(1)(c) (15 yrs.)Habitual	☐124.401(f) (off.weap 3x penalty)	☐124.401D (to a minor, 2nd, life)
☒902.9(1)(d) (10 yrs. + $1,370-$13,660	☐	

D0084, at 2. In contrast, there is no indication in the sentencing order that a lower range of penalties actually applied to Smith's offense or that the district court was aware of that fact.

As a general rule, the trial court does not need to give reasons for rejecting particular sentencing options. *Thomas*, 547 N.W.2d at 225 (citation omitted). However, the record must reveal the sentencing court, in fact, exercised discretion with respect to the options it had. *Id.* In this case, the record here shows the district court's failure to exercise discretion with respect to the fine it imposed. A remand for resentencing is required where a court fails to exercise discretion because it was unaware it had discretion. *See State v. Washington*, 356 N.W.2d 192, 197 (Iowa 1984) (citation omitted) ("The court's failure to exercise the discretion granted it by the law requires that the case be remanded for resentencing."); *State v. Johnson*, 445 N.W.2d 337, 343 (Iowa 1989), *overruled on other grounds by State v. Hill*, 878 N.W.2d 269, 274–75 (Iowa 2016) (citation omitted) (noting that resentencing is necessary when the district court's statements left the impression that it mistakenly believed the sentence was mandatory). Thus, this Court should

vacate Smith's sentence and remand for a hearing for the court to exercise its discretion in accordance with version of Iowa Code sections 902.9 that existed when Smith committed the offense in June of 2020. *See State v. Boley*, 23–0854, 2024 WL 707460, at *2–3 (Iowa Ct. App. Feb 21, 2024) (pending publication decision) (remanding for resentencing when it did not appear the sentencing court was aware a lower minimum fine applied at the time the offenses were committed, giving the court discretion to order that amount rather than the amended and higher minimum fine for the offense at the time of sentencing); *State v. Wong*, 01–1708, 2003 WL 183332, at *1 (Iowa Ct. App. Jan. 29, 2003) (same).

II. The district court's order prohibiting the use and possession of firearms, offensive weapons, and ammunition violates Smith's rights under the Second Amendment to the United States Constitution.

***Error Preservation*:** In this case, the district court's order prohibiting Smith from using and possessing "a firearm, offensive weapons, or ammunition," (the "arms prohibition") is part of Smith's sentence. (D0084, at 9). As a term of the sentence, Smith may challenge the prohibition on appeal without objecting to its

imposition in district court. *See State v. Letscher*, 888 N.W.2d 880, 883–84 (Iowa 2016) ("A defendant is not required to object to a term of the sentence to preserve error on appeal."); *State v. Pearson*, 876 N.W.2d 200, 205 (Iowa 2016) (quoting *State v. Lathrop*, 781 N.W.2d 288, 293 (Iowa 2010)) ("[A] defendant may challenge an 'error[ ] in sentencing . . . on direct appeal even in the absence of an objection in the district court.'"). Moreover, a defendant may challenge their sentence as illegal at any time. *See State v. Bruegger*, 773 N.W.2d 862, 871–72 (Iowa 2009) ("[A] challenge to an illegal sentence includes claims that the court lacked the power to impose the sentence or that the sentence itself is somehow inherently legally flawed, including claims that the sentence is outside the statutory bounds or that the sentence itself is illegal.").

***Scope of Review*:** The Court reviews constitutional claims de novo. *State v. Nail*, 743 N.W.2d 535, 538 (Iowa 2007) (citing *State v. Shanahan*, 712 N.W.2d 121, 131 (Iowa 2006)).

***Discussion*:** The district court violated Smith's rights to "keep and bear Arms" under the Second Amendment to the United States Constitution when it imposed the arms prohibition. *See* U.S. Const.

amend. II. The State cannot “affirmatively prove that its firearm regulation is part of the historical tradition that delimits the outer bounds of the right to keep and bear arms.” *See New York Rifle & Pistol Assoc., Inc. v. Bruen*, 597 U.S. 1, 19 (2022). Accordingly, this Court must vacate the arms prohibition. *See id.*

In 2008, the United States Supreme Court examined the scope of the Second Amendment to the U.S. Constitution in *District of Columbia v. Heller*, 554 U.S. 570 (2008). In *Heller*, the Court held that “the Second Amendment conferred an individual right to keep and bear arms.” *Id.* at 595. However, the Court noted, just like the First Amendment’s right of free speech, “the right was not unlimited.” *Id.* (citation omitted). The Court continued:

> Although we do not undertake an exhaustive historical analysis today of the full scope of the Second Amendment, nothing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill, or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings, or laws imposing conditions and qualifications on the commercial sale of arms.

Id. at 626–27. The Supreme Court also noted that precedent, and historical tradition, also supported "prohibiting the carrying of dangerous and unusual weapons." *Id.* at 627.

Two years later, the U.S. Supreme Court considered whether the Second Amendment right to bear arms, as announced in *Heller,* applied to the States. *McDonald v. City of Chicago*, 561 U.S. 742 (2010). A majority of the Court found the Fourteenth Amendment incorporates the Second Amendment right to keep and bear arms for the purpose of self-defense; four of the justices found the Due Process Clause incorporated the right, while Justice Thomas believed it was incorporated through the Privileges and Immunities Clause. *Id.* at 791 (Alito, J., writing for the plurality); *id.* at 806 (Thomas, J., concurring in part). Although the *McDonald* Court referred to the right to bear arms for self-defense in particular as "fundamental," the Court was been less clear on what level of scrutiny to give to laws impacting the right to bear arms. *Id.* at 767–778, 791 (describing the right as "fundamental from an American perspective").

The Supreme Court recently resolved this question in *New York Rifle & Pistol Assoc., Inc. v. Bruen*, 597 U.S. 1 (2022). In *Bruen*, the Court rejected the notion that "means-end scrutiny" was appropriate when courts considered restrictions on the Second Amendment. *See id.* at 18–19. Rather, the Court found

> the standard for applying the Second Amendment is as follows: When the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct. The government must then justify its regulation by demonstrating that it is consistent with the Nation's historical tradition of firearm regulation. Only then may a court conclude that the individual's conduct falls outside the Second Amendment's "unqualified command."

Id. at 24 (quoting *Konigsberg v. State Bar of Calif.*, 366 U.S. 36, 50 n.10 (1961)).

> To carry its burden, the Government must point to "historical precedent from before, during, and even after the founding [that] evinces a comparable tradition of regulation." . . . "[W]e are not obliged to sift the historical materials for evidence to sustain [the statute]. That is [the Government's] burden."

United States v. Rahimi, 61 F.4th 443, 454 (5th Cir. 2023), *cert. granted*, 143 S.Ct. 2688 (U.S. June 30, 2023) (No. 22–915) (quoting *Bruen*, at 597 U.S. at 27, 60) (alteration in original) (finding a federal statute that prohibited a person subject to a domestic abuse

restraining order from possessing a firearm violated the Second Amendment).

The plain text of the Second Amendment covers both Smith and the actions that the district court's arms prohibition reaches. First, Smith's rights under the Second Amendment are presumptively protected. *See Heller*, 554 U.S. at 581 ("We start therefore with a strong presumption that the Second Amendment right is exercised individually and belongs to all Americans."); *id.* at 580 (noting the term "the people" "unambiguously refers to all members of the political community, not an unspecified subset"). The mere fact that Smith was convicted of a felony does not strip him of his rights under the Second Amendment. *See Kanter v. Barr*, 919 F.3d 436, 451 (7th Cir. 2019) (Barrett, J., dissenting), *abrogated by Bruen*, 597 U.S. 1 ("Founding-era legislatures did not strip felons of the right to bear arms simply because of their status as felons."). Second, the arms prohibition in the sentencing court's order clearly infringes on the Second Amendment, which protects "the right . . . to keep and bear Arms." U.S. Const. amend II; *Heller*, 554 U.S. at 576. Because the Second Amendment's plain text

covers the arms prohibition, the State "must affirmatively prove that its firearm regulation is part of the historical tradition that delimits the outer bounds of the right to keep and bear arms." *See Bruen*, 597 U.S. at 19.

The State has the burden of justifying the district court's arms prohibition. Yet, it has not identified "a well-established and representative historical analogue" for the arms prohibition contained in Smith's sentencing order. *See id.* at 30. Accordingly, the State has not rebutted the presumption of the prohibition's unconstitutionality. *See Bruen*, 142 S.Ct. at 26–29; *see also Kanter*, 919 F.3d at 458 (Barrett, J., dissenting) ("[N]either the convention proposals nor historical practice supports a legislative power to categorically disarm felons because of their status as felons."); *Range v. Att'y Gen.*, 69 F.4th 96, 98, 106 (3d Cir. 2023) (*en banc*), *petition for cert. filed,* ___ U.S.L.W. ____ (U.S. Oct. 5, 2023) (No. 23–374) (finding the federal statute that prohibited an individual convicted of a nonviolent felony from lawfully purchasing a rifle and shotgun violated the Second Amendment); *United States v. Duarte*, 101 F.4th 657, 669 (9th Cir. 2024) (citation omitted) ("It would be

‘fundamentally inconsistent’ with *Bruen*’s analytical framework to treat felon firearm bands any differently, as nothing in the majority opinion implies that we can jettison *Bruen*’s test for one “presumptively lawful” category of firearm regulations but not others (e.g., sensitive place regulations).”). Therefore, the portion of the district court’s order containing the arms prohibition, as well as the court’s subsequent “Notice of Firearm Prohibition” order, should be vacated. *See* D0084, at 9; D0090, Notice of Firearm Prohibition, at 1 (01/09/2024).

III. The district court’s order prohibiting the use and possession of firearms, offensive weapons, and ammunition violates Smith’s rights under the Article I, section 1A of the Iowa Constitution.

Error Preservation**:** The arms prohibition is a term of Smith’s sentence. (D0084, at 9). Accordingly, it is not subject to the usual requirements of error preservation. *See Letscher*, 888 N.W.2d at 883–84; *Pearson*, 876 N.W.2d at 205 (quoting *Lathrop*, 781 N.W.2d at 293) (“[A] defendant may challenge an ‘error[ ] in sentencing . . . on direct appeal even in the absence of an objection in the district court.’”). Moreover, Smith did not need to object

below to preserve error because the prohibition is unconstitutional; therefore, it amounts to an illegal sentence, which the Court may correct at any time. *See Bruegger*, 773 N.W.2d at 871–72.

***Scope of Review*:** The Court reviews constitutional challenges de novo. *Nail*, 743 N.W.2d at 538 (citing *Shanahan*, 712 N.W.2d at 131).

***Discussion*:** Article I, section 1A of the Iowa Constitution provides: "The right of the people to keep and bear arms shall not be infringed. The sovereign state of Iowa affirms and recognizes this right to be a fundamental individual right. Any and all restrictions of this right shall be subject to strict scrutiny." Iowa Const. art. I, § 1A. This amendment to the Iowa Constitution was adopted and ratified on November 8, 2022. The district court's entry of the arms prohibition contained in Smith's sentencing order violates his rights to keep and bear arms under the Iowa Constitution.

Prior to the amendment of the Iowa Constitution, the Iowa Supreme Court found that the right to bear arms was "not the type of fundamental right to which the 'compelling state interest' standard applies." *Rupp*, 282 N.W.2d at 130 (citation omitted).

However, the language of Article I, section 1A clearly abrogated that conclusion. The plain language of Article I, section 1A provides the right to bear arms is fundamental and any restrictions on an individual's right are subject to strict scrutiny. Iowa Const. art. I, § 1A.

Thus, the question is whether "the government action infringing the fundamental right is narrowly tailored to serve a compelling government interest." *Hensler v. City of Davenport*, 790 N.W.2d 569, 580 (Iowa 2010) (citation omitted). Accordingly, the Iowa Constitution demands the prohibition be narrowly tailored to serve the government's interest. Because it does not, this Court should find the broad arms prohibition contained in Smith's sentencing order violates the Iowa Constitution.

The government has an interest in preventing dangerous people from possessing arms, including firearms. *See State v. Rupp*, 282 N.W.2d 125, 130 (Iowa 1979) ("There is a legitimate interest in minimizing the felonious use of firearms . . . ."). As the Court in *State v. Buchanan* noted: "No one questions the legislature's purpose in prohibiting felons from possessing firearms. It is

because the legislature considers them dangerous. This is a legitimate public purpose because such persons have an elevated tendency to commit crimes of violence." *See, e.g.*, *State v. Buchanan*, 604 N.W.2d 667, 669 (Iowa 2000) (citations omitted).

However, even assuming the government has a legitimate or even compelling interest, prohibiting all felons from possessing and bearing arms does not survive a strict scrutiny analysis. The statutes supporting the court's order are not narrowly tailored to serve a compelling government interest. Rather, they are overbroad and effectively prohibit even non-dangerous and non-violent felons from possessing firearms for self-defense, even in their own home. *See Kanter*, 919 F.3d at 456 (Barrett, J., dissenting) (noting that the concern that animated English and early American restrictions was "not about felons in particular or even criminals in general; it is about threatened violence and the risk of public injury" and stating "if virtue exclusions don't apply to individual rights, they don't apply to the Second Amendment").

Smith was convicted under Iowa Code section 709.4(1)(*b*)(2)(*d*). Thus, the crime he committed was not violent; it does not require a

showing of violence or use of force. *See* Iowa Code § 709.4(1)(b)(2)(d). The State cannot show that a general prohibition on felons possessing arms is narrowly tailored. *See Kanter*, 919 F.3d at 468 (Barrett, J., dissenting) ("The sheer diversity of crimes encompassed by these statutes makes it virtually impossible for the government to show that banning all nonviolent felons from possessing guns is closely tailored to the goal of protecting the public safety."). Accordingly, the district court violated Smith's rights under Article I, section 1A when it entered a provision in his sentencing order banning him from possessing and using arms. Thus, this Court should vacate the notice of arms prohibition and the related portion of Smith's sentencing order.

CONCLUSION

For these reasons, Defendant–Appellant Taylor Christopher Smith respectfully requests this Court remand for resentencing. Alternatively, Smith requests the Court vacate the notice of arms prohibition and the related portion of his sentencing order.

REQUEST FOR NONORAL SUBMISSION

Counsel requests this case be submitted without oral argument.

CERTIFICATE OF COMPLIANCE WITH TYPEFACE REQUIREMENTS AND TYPE-VOLUME LIMITATION FOR BRIEFS

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