

IN THE SUPREME COURT OF IOWA
Supreme Court No. 24-0621
Linn County No. FECR149305

STATE OF IOWA,
Plaintiff-Appellee,

vs.

EWUAN CONNOR GARDNER, JR.,
Defendant-Appellant.

APPEAL FROM THE IOWA DISTRICT COURT
FOR LINN COUNTY
THE HONORABLE IAN K. THORNHILL, JUDGE

BRIEF FOR APPELLEE

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STATEMENT OF THE ISSUE PRESENTED FOR REVIEW

- I. The district court properly concluded that Iowa Code section 907.3(1)(a)(1) rendered the defendant ineligible for a deferred judgment because he “previously has been convicted of a felony.”**

ROUTING STATEMENT

This case can be decided based on existing legal principles, so transfer to the Court of Appeals is appropriate. Iowa R. App. P. 6.1101(3).

NATURE OF THE CASE

The defendant, Ewaun Connor Gardner, Jr., appeals his sentence following his guilty plea to interference with official acts with a dangerous weapon. Specifically, he says that the district court erroneously concluded he was ineligible for a deferred judgment due to a prior felony conviction.

STATEMENT OF THE FACTS

The defendant pled guilty to interference with official acts while armed. D0031, Written Guilty Plea (12/21/2023) at 1. The agreement required the State to request a suspended sentence that was concurrent to any imposed in a Johnson County case. *Id.* at 2.

The district court sentenced the defendant in the Johnson County case, which included a felony conviction, before this case and refused his request for a deferred judgment. D0044, Order Resetting Sentencing Hr'g (2/20/2024). The district court in this case then asked the parties to brief whether the defendant "remains Deferred Judgment eligible" after the Johnson County felony conviction. *Id.* The State said no. D0046, State Sentencing Br. (3/18/2024). The defendant argued yes because he committed this offense before he committed the Johnson County offense.

D0047, Def. Sentencing Br. (3/23/2024) at 4–5; D0062, Tr. Sentencing Hr’g (3/26/2024) 8:16–22.

The district court concluded that the defendant’s Johnson County felony conviction made him ineligible for a deferred judgment. D0062 at 12:17–13:15. It imposed and then suspended the sentence. *Id.* at 23:11–24:13; D0050, J. & Sentence (3/26/2024) at 1. He timely appealed. D0056, Notice Appeal (4/12/2024).

ARGUMENT

- I. **The district court properly concluded that Iowa Code section 907.3(1)(a)(1) rendered the defendant ineligible for a deferred judgment because he “previously has been convicted of a felony.”**

Preservation of Error

The defendant preserved error by raising this issue and receiving an adverse ruling. D0047 at 4–5; D0062 at 8:16–22, 12:17–13:15; *Meier v. Senecaut*, 641 N.W.2d 532, 537 (Iowa 2002).

Standard of Review

This Court reviews statutory interpretation questions and the legality of sentences for errors at law. *State v. Watkins*, 914 N.W.2d 827, 837 (Iowa 2018); *State v. Parker*, 747 N.W.2d 196, 203 (Iowa 2008).

Merits

A “court shall not defer judgment if ... [t]he defendant previously has been convicted of a felony.” Iowa Code § 907.3(1)(a)(1). Because the defendant had been convicted of a felony before sentencing in this case, the district court concluded that subsection 907.3(1)(a)(1) made him ineligible for a deferred judgment. DO062 at 12:17–13:15.

The defendant argues that “[t]he district court erred in ruling [he] was not eligible for a deferred judgment.” Def. Br. at 8 (bold removed). Specifically, he says that “previously has been convicted of a felony” means that he must have committed the acts leading to his present conviction after his prior felony conviction. *Id.* at 11, 14–19. The district court correctly rejected his argument.

A. Subsection 907.3(1)(a)(1)’s plain meaning controls: because the defendant “previously has been convicted of a felony” he was deferred ineligible.

Subsection 907.3(1)(a)(1)’s plain language made the defendant deferred judgment ineligible. That subsection provides that a court shall not defer judgment if a defendant “previously has been convicted of a felony.” Iowa Code § 907.3(1)(a)(1). That language is clear and unambiguous. If a defendant has previously been convicted of a felony, he is ineligible for a deferred judgment. *Id.*; see *State v. McCollaugh*, 5 N.W.3d

620, 623 (Iowa 2024) (“Our inquiry ends if we find no ambiguity because we do not search for the meaning of a statute beyond the express language of a statute when that language is plain and the meaning is clear.” (internal quotation marks omitted)). Here, the defendant was convicted of a felony before sentencing, so subsection 907.3(1)(a)(1) made him deferred ineligible.

The defendant offers an alternative interpretation of subsection 907.3(1)(a)(1), but the subsection’s plain language refutes his interpretation. He says that “previously has been convicted of a felony” means that he committed the felony and was convicted of the felony before he committed the acts leading to his present conviction. Def. Br. at 11, 14–19. His interpretation adds language to the statute that the legislature omitted. The statute says “previously ... convicted,” not previously committed and was convicted of a felony before committing the present offense or prior to the commission of the offense the defendant committed and was convicted of a felony. *Compare* Iowa Code § 907.3(1)(a)(1), *with* Iowa Code § 907.3(1)(a)(2), (3). This Court should not add language to the subsection.

The two subsections following subsection 907.3(1)(a)(1) confirm that “previously has been convicted of a felony” does not mean that the

defendant must have been convicted of the prior felony before committing the current offense. Subsections 907.3(1)(a)(2) and (3) make a defendant ineligible for a deferred judgment if, “[p]rior to the commission of the offense the defendant had been granted a deferred judgment or similar relief [in a particular circumstance].” Iowa Code § 907.3(1)(a)(2), (3). Both subsections make defendants ineligible for deferred judgments if they have been granted a deferred judgment “[p]rior to the commission of the offense.” Despite its different language, that is how the defendant asks this Court to interpret subsection 907.3(1)(a)(1). Def. Br. at 11, 14–19; Iowa Code § 907.3(1)(a)(1–3). Because subsections 907.3(1)(a)(2) and (3) use the construction that the defendant presses but subsection 907.3(1)(a)(1) does not, this Court should not interpret subsection 907.3(1)(a)(1) to mean the same thing as subsections 907.3(1)(a)(2) and (3).

The defendant also complains that the district court’s interpretation of subsection 907.3(1)(a)(1) makes the word “‘previously’ redundant,” but he is mistaken. *See* Def. Br. at 14. The district court’s interpretation gives effect to the word “previously” by interpreting it differently from “prior to the commission of” as used in subsections 709.3(1)(a)(2) and (3). *Compare* Iowa Code § 907.3(1)(a)(1), *with* Iowa Code § 907.3(1)(a)(2), (3). Moreover, the district court’s interpretation requires a prior conviction for a felony to

be deferred ineligible. Without “previously,” any felony conviction—including the current one—would arguably make a defendant deferred ineligible. The district court’s interpretation gives effect to the word previously.

Subsection 907.3(1)(a)(1)’s language is clear: if a person “previously has been convicted of a felony” that person is ineligible for a deferred judgment. Because the defendant previously had been convicted of a felony, the district court correctly found him ineligible for a deferred judgement.

B. Caselaw interpreting similar language in recidivist statutes does not support the defendant’s interpretation.

The defendant turns to caselaw interpreting similar language in other statutes to support his interpretation. The Iowa Supreme Court interpreted “has twice before been convicted of any felony” in Iowa’s habitual offender statute to mean “each succeeding conviction must be subsequent in time to the previous convictions, both with respect to commission of the offense and to conviction.” *State v. Parker*, 747 N.W.2d 196, 211 (Iowa 2008) (quoting *State v. Hollins*, 310 N.W.2d 216, 217 (Iowa 1981)); Iowa Code § 902.8. The Iowa Supreme Court interpreted “has previously been convicted two or more times,” which increased punishment for subsequent drug-possession convictions, the same way as the habitual offender statute.

State v. Freeman, 705 N.W.2d 286, 291 (Iowa 2005); Iowa Code § 124.401(5). And it adopted the same meaning for “prior conviction” in a statute limiting when prisoners with forcible felony convictions could become eligible for parole. *Hajek v. Iowa State Bd. of Parole*, 414 N.W.2d 122 (Iowa 1987); Iowa Code § 906.5 (1985). The defendant says that this Court should rely on those cases to reach the same interpretation of subsection 907.3(1)(a)(1). There are several reasons to reject his argument.

First, those cases interpreted different statutes than Iowa Code section 907.3(1)(a)(1). They do not control the outcome here.

Second, those cases failed to apply the principles of statutory interpretation in deciding the meanings of the statutes they interpreted. The first case was *Hollins*. In *Hollins*, the Iowa Supreme Court failed to determine whether the habitual offender statute was ambiguous before resorting to other interpretive tools. 310 N.W.2d 216–18. But if a statute is unambiguous, a Court must apply its clear terms. *McCollaugh*, 5 N.W.3d at 623; *State v. Wade*, 467 N.W.2d 283, 285 (Iowa 1991). Section 908.2 is unambiguous: it merely requires two prior convictions for a defendant to be a habitual offender without respect to timing. Iowa Code § 902.8. The *Hollins* court should never have applied a general rule for recidivist statutes to interpret clear statutory language. *See McCollaugh*, 5 N.W.3d at 623. The

other decisions that the defendant cites rely on *Hollins* and repeat its error. *Parker*, 747 N.W.2d at 211–12; *Freeman*, 705 N.W.2d at 289–91; *Woody*, 613 N.W.2d 215, 218 (Iowa 2000); *Hajek*, 414 N.W.2d at 123–24. They add language to unambiguous statutes without determining the statutes ambiguous. This Court ought not follow *Hollins*’s flawed interpretation. See *Freeman*, 705 N.W.2d at 292–93 (Carter, J., dissenting).

Third, the general rule for recidivist statutes that produced the results the defendant relies on does not apply to subsection 907.3(1)(a)(1). Unlike those statutes, section 907.3 is not a recidivist statute. Rather, it is a general sentencing statute that extends sentencing options beyond prison to eligible defendants. That subsection 907.3(1)(a)(1) removes one sentencing option—deferred judgment—from certain offenders does not render it a recidivist statute subject to a general interpretive rule.

Last, the Iowa Supreme Court has acknowledged that the specific language in a statute trumps a general rule. Here, the general rule is that for a recidivist statute to apply, defendants must commit their current offense after conviction of the prior offense. *E.g. Hollins*, 310 N.W.2d at 217. But by using “previously” in subsection 907.3(1)(a)(1) while using “[prior] to the commission of the offense” in subsections 907.3(1)(a)(2) and (3), the legislature opted for specific language showing that it was not

following the general recidivist rule in subsection 907.3(1)(a)(1). As such, that rule does not apply. *Wade*, 467 N.W.2d at 285.

The cases that the defendant relies on are unpersuasive. Their reasoning does not apply to the non-recidivist statute at issue. And the specific language used in subsection 907.3(1)(a)(1) shows that the general rule does not apply. This Court should apply subsection 907.3(1)(a)(1)'s plain language, conclude that the defendant was ineligible for a deferred judgment, and affirm his sentence.

CONCLUSION

For the forgoing reasons, the State requests that this Court affirm the defendant's sentence.

REQUEST FOR NONORAL SUBMISSION

This case is appropriate for nonoral submission.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

This brief complies with the typeface requirements and type-volume limitation of Iowa Rs. App. P. 6.903(1)(g) and 6.903(1)(i)(1) or (2) because:

- This brief has been prepared in a proportionally spaced typeface using Georgia in size 14 and contains **1,735** words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(i)(1).

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