

IN THE SUPREME COURT OF IOWA

Supreme Court No. 19-1139

STATE OF IOWA
PLAINTIFF-APPELLEE

vs.

MERCEDES JOJEAN DAMME
DEFENDANT-APPELLANT

APPEAL FROM THE IOWA DISTRICT COURT
IN AND FOR GRUNDY COUNTY

Nos. AGCR15098 and AGCR15099

The Honorable Jeffrey L Harris

APPELLANT'S FINAL REPLY BRIEF

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ARGUMENT

I. THE COURT DOES HAVE JURISDICTION TO HEAR THIS APPEAL BECAUSE DEFENDANT DOES HAVE GOOD CAUSE

The State argues that this Court’s jurisdiction has been stripped to hear this case under Senate File 589, because Damme pled guilty, and they contend that there was no showing of “good cause”. Effective July 1, 2019, Iowa Code 814.6(1)(a)(3) grants the defendant a right of appeal where the defendant establishes good cause.

“Good cause” is not defined in Iowa Code 814. “Good cause” has been defined as “a sound, effective, and truthful reason. It is more than an excuse, plea, apology, extenuation, or some justification, for the resulting effect.” Sheeder v Boyette, 764 N.W.2d 778, 780 (Iowa Ct. App. 2009). The legislature did not include in its amendment of Iowa Code 814.6(1)(a)(3) any further requirement from a defendant to request a hearing or decision of the District Court or any other mechanism for which to establish “Good Cause”. The legislature did not specify whether the District Court or Appellate Court was charged with finding such good cause.

The State argues that the Defendant cannot show good cause and should be denied her right to appeal and that the claims should be preserved under an ineffective-assistance of counsel challenge in post-conviction relief. State's Proof Br. The Defendant shouldn't be required to try to fit her claims into an ineffective assistance of counsel challenge when the District Court's improper factors in rejecting the sentencing plea agreement and imposing sentence are the basis of her appeal. If the Court finds it is the appellate court that has the responsibility to find good cause, it should find good cause is shown and the appeal should proceed.

II. THERE WAS ABUSE OF DISCRETION THAT SHOULD RESULT IN RESENTENCING

The State also argues that because Damme did not object to the PSI, she cannot object to the Court's improper statements. State's Proof Br. The court may consider the Defendant's social history and family circumstances in sentencing. Iowa Code 901.3(1)(b). Damme had no reason to object to the recitation of the social history prior to sentencing because there was nothing inaccurate. Damme and her attorney could not have known that the Court would use Damme's history as a victim of sexual abuse and make statements

that her “family is not good stock” in rejecting the plea agreement and imposing sentence. If the court was going to weigh such factors as her family members’ criminal history, it should have balanced that with considering the frequency of contact or communication Damme has with them.

If, however, the court finds that Damme should have objected to the Presentence Investigation Report, then the failure to do so is due to the ineffectiveness of counsel. Damme’s claims then should be preserved for post-conviction proceedings.

CONCLUSION

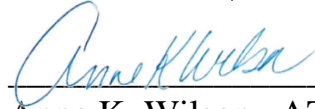
The Sentence imposed on Damme should be reversed. This case should be remanded to the District Court for further proceedings.

Respectfully Submitted,

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ATTORNEY'S CERTIFICATE OF COSTS

I, Anne K. Wilson, Attorney for the Appellant, hereby certify that the cost of preparing the foregoing Appellant's Proof Brief was \$0.00.



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CERTIFICATE OF SERVICE

The undersigned certifies a copy of this Proof Reply Brief, was served on the January 17, 2020, upon the following persons and upon the Clerk of the Supreme Court:

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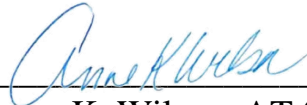


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**CERTIFICATE OF COMPLIANCE WITH TYPEFACE
REQUIREMENTS**

1. This brief complies with the type-volume limitation of Iowa R. App. P. 6.903(1)(g)(1) because this brief contains 481 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).

2. This brief complies with the typeface requirements of Iowa R. App. P. 6.903(1)(e) and the type-style requirements of Iowa R. App. 6.903(1)(f) because this brief has been prepared in a proportionally spaced typeface using Times New Roman in Microsoft Word 2016 in 14 point font.



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