

IN THE SUPREME COURT OF IOWA

STATE OF IOWA)
PLAINTIFF-APPELLEE) APPELLANT'S FINAL
) REPLY BRIEF
VS.)
) NO. 19-1433
ASHLEY DAWN THOMPSON)
DEFENDANT-APPELLANT)

APPEAL FROM THE DISTRICT COURT, POWESHIEK COUNTY, THE
HONORABLE ROSE ANNE MEFFORD, DISTRICT
ASSOCIATECOURT JUDGE

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Statement of the Issues Presented

1. Whether Iowa Code 814.6(1)(a)(3) deprives the appellate courts of jurisdiction to hear direct appeals challenging the revocation of a deferred judgment when the defendant-appellant pled guilty to her crime, but is not challenging her guilty plea or the effectiveness of her trial counsel.

Iowa Supreme Court cases

Horner v. State Bd. Of Eng'g Examiners, 110 N.W.2d 371 (Iowa 1961)

Iowa Code sections

Iowa Code 814.6(1)(a)(3)

Iowa Code 907.3(1)(b)

2. Assuming that Iowa Code 814.6(1)(a)(3) applies to the present case, whether there is “good cause” for the appellate courts to hear Thompson’s appeal on its merits.

Iowa Supreme Court cases

Crall v. Davis, 714 N.W.2d 616 (Iowa 2016)

State v. Fisher, 877 N.W.2d 676 (Iowa 2016)

Iowa Code sections

Iowa Code 229A.5(2)

Iowa Court Rules

Iowa R. Crime. P. 2.33

Other Authorities

Black’s Law Dictionary (11th edition, 2019)

3. The appellate courts do not lack jurisdiction to hear Thompson's challenge to the district court's restitution order entered on 8-16-2018 as part of its deferred judgment order

Iowa Supreme Court cases

State v. Farmer, 234 N.W.2d 89 (Iowa 1975)

State v. Stessman, 460 N.W.2d 461 (Iowa 1990)

Argument

1. Iowa Code 814.6(1)(a)(3) does not deprive the appellate courts of jurisdiction of direct appeals challenging the revocation of a deferred judgment, even when the defendant-appellant has pled guilty, if the direct appeal challenge does not contest the guilty plea proceeding.

In its proof brief, the state argues Iowa Code 814.6(1)(a)(3) deprives this court of jurisdiction to hear her appeal unless she establishes "good cause" for this court to hear her appeal. (State's proof brief at p.8). However, this court should hold that Iowa Code 814.6(1)(a)(3) does not deprive the appellate courts of jurisdiction to hear a direct appeal challenging the procedure the district court used to revoke a deferred judgment even when the appellant pled guilty and has not established "good cause" for the following reason: a conviction resulting from a revocation of a deferred judgment is a conviction where the defendant has violated the terms of the deferred judgment, not a "conviction where the defendant has pled guilty."

See Iowa Code 814.6(1)(a)(3); Iowa Code 907.3(1)(b) (“Upon a showing that the defendant is not cooperating with the program of probation or is not responding to it, the court may withdraw the defendant from the program, pronounce judgment, and impose any sentence authorized by law”).

Such an interpretation is consistent with the statute’s apparent purpose and in accordance with proper interpretation principles. As the state notes in its proof brief, the apparent purpose the legislature had in creating Iowa Code 814.6(1)(a)(3) was to “restrict direct appellate review of most guilty-plea challenges and shift all ineffective assistance claims to postconviction relief.” (State’s proof brief at p.9). The State also notes that *Horner v. State Bd. Of Eng’g Examiners*, 110 N.W.2d 371, 374 (Iowa 1961) stands for the proposition that the court “must consider the overall purpose of the legislation when interpreting its terms.” Thompson agrees with both of these assertions. Pursuant to these assertions, this court should interpret a “conviction where the defendant has pled guilty” in Iowa Code 814.6(1)(a)(3) to exclude cases where the defendant is challenging the district court’s failure to adequately provide reasons in the record for revoking a deferred judgment even when she has pled guilty. Such an interpretation is not contrary to the law’s purpose since the appeal is not challenging a defect in the guilty plea proceedings or the effectiveness of

trial counsel. Furthermore, the determination of whether to revoke a deferred judgment involves no consideration of the guilty plea procedure. Finally, a conviction resulting from the revocation of a guilty plea is not a “conviction where the defendant has pled guilty” but a conviction where the defendant has violated the terms of the deferred judgment.

Because Thompson is challenging the failure of the district court to comply with the U.S. and Iowa constitutions and the Iowa Code when it revoked her deferred judgment, Iowa Code 814.6(1)(a)(3) does not prevent the appellate courts from considering her appeal because it is not a case with a “conviction where the defendant has pled guilty” within the meaning of Iowa Code 814.6(1)(a)(3).

2. Even if the court holds that Iowa Code 814.6(1)(a)(3) applies to this case, there is “good cause” for the court to hear the appeal.

In its proof brief, the State argues that “good cause” within the meaning of Iowa Code 814.6(1)(a)(3) “is limited to extraordinary legal challenges which cannot be heard elsewhere.” (State’s proof brief at p.9). For the reasons expressed below “good cause” within the meaning of Iowa Code 816.4(1)(a)(3) has a broader definition than the State argues and there is “good cause” to hear Thompson’s appeal.

Iowa Code 816.4(1)(a)(3) does not grant a defendant the right to appeal a “conviction where the defendant has pled guilty” unless “the defendant establishes good cause.” Iowa Code 816.4(1)(a)(3) does not define “good cause” or provide a method of determining whether good cause for an appeal exists in such a case.

Black’s Law Dictionary defines “good cause” as “a legally sufficient reason.” Black’s Law Dictionary (11th ed. 2019). “Good cause” is a familiar term to Iowa’s statutes, court rules, and case law, but Thompson is unaware of a general definition that Iowa has given for the term. *See, e.g.*, Iowa R. Crim. P. 2.33 (requiring dismissal for indictments and trial informations if certainly deadlines are missed and the state cannot establish “good cause” for missing the deadline); Iowa Code 229A.5(2) (allowing for continuance of a detention hearing for a person accused as a sexually violent predator if, among other things, “good cause” is shown); *Crall v. Davis*, 714 N.W.2d 616, 619 (Iowa 2006) (discussing “good cause” in the context of Iowa R. Civ. P. 1.302(5) for failure to serve a party within 90 days of filing a petition). This court should interpret “good cause” in light of the statute’s apparent purpose of preventing challenges to guilty pleas and the effectiveness of counsel in direct appeals from criminal convictions and in

doing so consider the extent to which a defendant was informed about her appeal rights at the time she pled guilty.

In the present case, good cause exists for the court to consider Thompson's appeal on the merits for the following four reasons.

First, because Thompson pled guilty on 6-27-2018, prior to Iowa Code 814.6(1)(a)(3) taking effect, she was not informed that she would not have the right to appeal from any convictions that would result in her case. (App. at pp.8-11). Because Thompson was not so informed, there is good cause to hear her appeal because she had the right to appeal any convictions in her criminal case at the time she pled guilty and was so informed. *See State v. Fisher*, 877 N.W.2d 676, 682 (Iowa 2016) (allowing a defendant to challenge defects in his guilty plea proceeding on direct appeal, even in the absence of a district court ruling on a motion in arrest of judgment, when the district court failed to properly inform the defendant at the time he pled guilty that failure to file and obtain a ruling on a motion in arrest of judgment would prevent him from challenging his guilty plea on direct appeal).

Second, Thompson's guilty plea expressly informed her that she *did* "have the right to appeal the judgment and sentence in this case[.]" (App. at

p.10). Good cause exists for this court hear Thompson's appeal because she was informed at the time she pled guilty that she had the right to appeal.

Third, good cause exists for this court to hear Thompson's appeal because doing so would not be contrary to the purpose of the statute since she is not challenging her guilty plea or the effectiveness of her trial counsel.

Fourth, good cause exists to hear this appeal because it only addresses the constitutionality of the district court's revocation of her deferred judgment and the state concedes that the district court did not comply with the U.S. and Iowa constitutions when stating the reasons for revoking Thompson's deferred judgment. (State's proof brief at p.14 ("the State concedes that the factual findings were insufficient and the revocation should be reversed")). The arguments Thompson is raising in this appeal are analyzed the same whether she pled guilty or was found guilty after a trial. There are no practical reasons to allow a person to challenge the revocation of her deferred judgment on direct appeal if she originally had a trial, but not if she pled guilty. Therefore good cause exists to hear this case.

3. Thompson may challenge the restitution order for 8-16-2018 in the present appeal

In its proof brief, the State argues that this court "lacks jurisdiction over Thompson's *Albright* challenge" because she did not seek discretionary review of the 8-16-2018 restitution order that included the district court's

deferral of judgment. (State’s proof brief at p. 9). In support of its argument the State cites *State v. Stessman*, 460 N.W.2d 461, 464 (Iowa 1990).

Stessman addressed the limited issue of “how a defendant *may* properly seek review of a restitution order accompanying or following a deferred judgment.” *Stessman*, 460 N.W.2d, at 464 (emphasis added). Therefore,

Stessman only holds that a defendant may challenge a restitution order accompanying a deferred judgment by seeking discretionary review.

Stessman does not hold that applying for discretionary review is the only method for challenging such an order. Because the district court entered the restitution order Thompson is challenging “before entry of final judgment” it occurred during “a prosecutorial stage of the case.” *State v. Farmer*, 234 N.W.2d 89, 91 (Iowa 1975). Therefore, the restitution order “inheres in the subsequent judgment [and Thompson] may attack” the restitution order “in this case in [her] appeal from final judgment.” *Id.*

Since the district court ultimately revoked Thompson’s deferred judgment, the restitution order was subsumed by the order imposing a judgment of conviction. Because Thompson can challenge the order imposing a judgment of conviction, she can also challenge the restitution requirements that inhered in that order. Therefore, her challenge to the

restitution order is not moot as the State alleges. (*See* State’s proof brief at p.10).

Conclusion and Request for Relief

Thompson requests that the court vacate her conviction, sentence, and restitution orders and remand the case to the district court for a new hearing on the state’s application to revoke her deferred judgment.

Request for Submission With Oral Argument

Thompson requests to be heard at oral argument.

Statement of Costs

Thompson’s attorney incurred no costs in printing or duplicating necessary copies of this brief

Certificate of Service

I certify that on 3-17-2020, I will email a copy of this reply brief to Ashley Thompson. /s/ *Peter Stiefel*

Certificate of Compliance with Type-Volume Limitations, Typeface Requirements, and Type-Style Requirements

1. This brief complies with the type-volume limitations of Iowa R. App. P. 6.903(1)(g)(1) because this brief contains 2,052 words.
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. P. 6.903(1)(f)

because this brief has been prepared in a proportionally spaced type face using Microsoft Word in 14 point Times New Roman text.