IN THE SUPREME COURT OF IOWA

STATE OF IOWA,	)	
	)	
Plaintiff–Appellee,	)	
	)	
v.	)	S.CT. NO. 19–1159
	)	
DAQUON BOLDON,	)	
	)	
Defendant–Appellant.	)	

APPEAL FROM THE IOWA DISTRICT COURT
FOR BLACK HAWK COUNTY
THE HONORABLE JOEL A. DALRYMPLE, JUDGE

APPELLANT'S REPLY BRIEF AND ARGUMENT

MARTHA J. LUCEY
State Appellate Defender

MARY K. CONROY
Assistant Appellate Defender
mconroy@spd.state.ia.us
appellatedefender@spd.state.ia.us

STATE APPELLATE DEFENDER'S OFFICE
Fourth Floor Lucas Building
Des Moines, Iowa 50319
(515) 281-8841 / (515) 281-7281 FAX

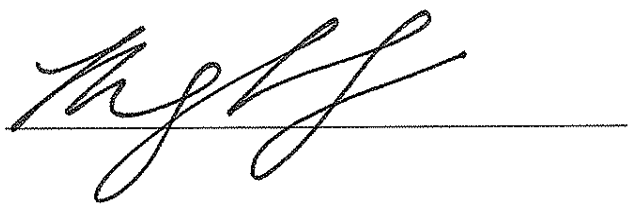
ATTORNEYS FOR DEFENDANT–APPELLANT

FINAL

CERTIFICATE OF SERVICE

On the 5th day of March, 2020, the undersigned certifies that a true copy of the foregoing instrument was served upon Defendant–Appellant by placing one copy thereof in the United States mail, proper postage attached, addressed to Daquon Dupree Boldon, No. 6579231, Mount Pleasant Correctional Facility, 1200 East Washington Street, Mt. Pleasant, IA 52641.

APPELLATE DEFENDER'S OFFICE



MARY K. CONROY
Assistant Appellate Defender
Appellate Defender Office
Lucas Bldg., 4th Floor
321 E. 12th Street
Des Moines, IA 50319
(515) 281-8841
mconroy@spd.state.ia.us
appellatedefender@spd.state.ia.us

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[1] The issues raised in Division II & III of Appellant's original Brief and Argument are adequately addressed therein, and is thus not taken up in this Reply.

TABLE OF AUTHORITIES

STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

I. SHOULD THE SENATE FILE 589 AMENDMENTS TO IOWA CODE CHAPTER 814 AFFECT THE DEFENDANT'S APPEAL?

Authorities

Supplemental Brief for Appellee at *13–18, State v. Macke, 933 N.W.2d 226 (Iowa 2019) (No. 18–0839), 2019 WL 3776462

State v. Macke, 933 N.W.2d 226, 232 (Iowa 2019)

In re Daniel H., 678 A.2d 462, 466–68 (Conn. 1996)

Rosanna Cavallaro, Better Off Dead: Abatement, Innocence, and the Evolving Right of Appeal, 73 U. Colo. L. Rev. 943, 985 (2002)

Harlon Leigh Dalton, Taking the Right to Appeal (More or Less) Seriously, 95 Yale L.J. 62, 66 (1985)

Bridge of Spies (20th Century Fox 2015)

Muhammad Ali's Greatest Fight (Sakura Films 2013)

State v. Propps, 897 N.W.2d 91, 97 (Iowa 2017)

Iowa Code § 814.6(2)(c) (2019)

Iowa Code § 814.6(2)(e) (2019)

Iowa R. App. P. 6.106 (2019)

Iowa R. App. P. 6.107 (2019)

Iowa R. App. P. 6.108 (2019)

II. SHOULD THE COURT REMAND FOR A NEW SENTENCING HEARING BECAUSE THE STATE BREACHED THE PLEA AGREEMENT?

This issue is not addressed in the reply brief.

III. DID THE DISTRICT COURT ERR BY CONSIDERING AND RELYING ON IMPROPER FACTORS WHEN RENDERING THE DEFENDANT'S SENTENCE?

This issue is not addressed in the reply brief.

STATEMENT OF THE CASE

COMES NOW the Defendant–Appellant Daquon Boldon, pursuant to Iowa Rule of Appellate Procedure 6.903(4), and hereby submits the following argument in reply to the State's brief filed on or about February 12, 2020. While the Defendant–Appellant's Brief and Argument adequately addresses the issues presented for review, a short reply is necessary to address certain contentions raised by the State.

ARGUMENT

THE SENATE FILE 589 AMENDMENTS TO IOWA CODE CHAPTER 814 SHOULD NOT AFFECT THE DEFENDANT'S APPEAL.

In its brief, the State argues that the application of Senate File 589's amendments to Iowa Code chapter 814 does not violate Iowa Code section 4.13(1). (State's Br. p. 19). This is essentially the same argument the State made in State v. Macke, 933 N.W.2d 226 (Iowa 2019). See Supplemental Brief for Appellee at *13–18, State v. Macke, 933 N.W.2d 226 (Iowa 2019) (No. 18–0839), 2019 WL 3776462. The Iowa

Supreme Court considered and disregarded this argument in Macke. See State v. Macke, 933 N.W.2d 226, 232 (Iowa 2019) ("The State's position on retroactivity conflicts with Iowa Code section 4.13(1) . . . ."). In rejecting this contention by the State, the Macke Court approvingly cited In re Daniel H., 678 A.2d 462, 466–68 (Conn. 1996), which was a case raising a similar issue out of Connecticut. Macke, 933 N.W.2d at 232. In that case, the Connecticut Supreme Court found "the removal of a right to a direct appeal is . . . a substantive change in the law." In re Daniel H., 678 A.2d 462, 466–68 (Conn. 1996). The Connecticut Supreme Court found the statutory change only applied prospectively to cases predating the statutory amendment. Id. Specifically, the Connecticut Court found that the statutory amendment did not apply to individuals whose *offense date* occurred prior to the amendment's effective date. Id. at 468–69.

In doing so, the Connecticut Supreme Court relied on the fact that the statutory change significantly affected the

defendants. Id. at 467. This reasoning is strikingly similar to the Iowa Supreme Court's conclusions in Macke. In Macke, the Court found that the Senate File 589's statutory changes "result[] in significant disadvantages to some defendants and can mean the difference between freedom and incarceration while the case proceeds." Macke, 933 N.W.2d at 233. Accordingly, the Iowa Supreme Court concluded that the statutory amendments "impaired Macke's existing right to a direct appeal of her guilty plea and ineffective-assistance-of-counsel claims." Id. at 235.

In this case, the changes in the law have impaired the rights that Boldon possessed when he acted—namely, when he chose to waive his constitutional rights associated with trial and enter guilty pleas instead. See id. (citation omitted). As such, following the logic and reasoning behind the Court's decision in State v. Macke, the Court should now find that the statutory amendments do not apply to someone, like Boldon, who entered a guilty plea prior to July 1, 2019, without

knowledge that his rights would be affected by the upcoming statutory changes. Alternatively, for the same reasons, the Court should find these defendants have established "good cause" exists to pursue their appeal.

The State's assertion that defendants do not plead guilty knowing that he can obtain appellate review and reversal ignores society's common understanding of the criminal justice system. Almost every state affords a criminal defendant a right to appeal following a conviction, presenting "powerful proof of the stature of appeal in 'our national culture.'" See Rosanna Cavallaro, Better Off Dead: Abatement, Innocence, and the Evolving Right of Appeal, 73 U. Colo. L. Rev. 943, 985 (2002); see also Harlon Leigh Dalton, Taking the Right to Appeal (More or Less) Seriously, 95 Yale L.J. 62, 66 (1985) ("The right to appeal at least once without obtaining prior court approval is nearly universal."). "The expectation of appellate review following a trial court conviction is deeply embedded in our national consciousness,

as exemplified by fictional and filmic protagonists who cry out . . ., 'I'll appeal!' or who languish--perhaps temporarily--in prison while their destiny is in the hands of an appellate court." Cavallaro, Better Off Dead, 73 U. Colo. L. Rev. at 985–96. Various criminal appeals have been memorialized in popular culture. See, e.g., Bridge of Spies (20th Century Fox 2015) (depicting the appeal taken in Abel v. United States, 362 U.S. 217 (1960)); Muhammad Ali's Greatest Fight (Sakura Films 2013) (depicting Ali's appeal of his conviction for refusing to obey draft orders in Clay v. United States, 403 U.S. 698 (1971)). It is completely logical for a defendant who does not wish to attack the validity of his guilty plea, but to ensure he was treated fairly at a sentencing hearing, to expect he had a right to appeal, particularly since that has historically been true and he had not been advised to the contrary in the plea colloquy. This is yet another reason to allow these types of appeals to go forward.

Finally, if the Court determines that Defendant–Appellant

cannot raise his challenges in a direct appeal, Boldon requests the Court still review his challenges and grant him relief. A defendant may request appellate review by filing a petition for writ of certiorari under Iowa Rule of Appellate Procedure 6.107 or by filing an application for discretionary review pursuant to Iowa Code section 814.6(2) and Iowa Rule of Appellate Procedure 6.106. State v. Propps, 897 N.W.2d 91, 97 (Iowa 2017); see also Iowa Code § 814.6(2)(c), (e) (2019) (providing that discretionary review is available from an order denying probation and an order raising a question of law important to the judiciary and the profession); Iowa R. App. P. 6.106, 6.107 (2019). Iowa Courts have "inherent power to determine whether [they] have jurisdiction over the subject matter of the proceedings before it." Id. (citations omitted) (internal quotation marks omitted). Furthermore, Iowa Rule of Appellate Procedure 6.108 provides:

> If any case is initiated by a notice of appeal . . . and the appellate court determines another form of review was the proper one, the case shall not be dismissed, but shall proceed as though the proper form of review

had been requested.

Iowa R. App. P. 6.108 (2019). Accordingly, if the Court concludes Boldon cannot appeal his sentence following the entry of the guilty pleas, he requests the Court treat his notice of appeal and the proof brief in this case as either a petition for writ of certiorari or an application for discretionary review, pursuant to Iowa R. App. P. 6.108. See id.; see also Propps, 897 N.W.2d at 97 ("Accordingly, we will treat Propp's notice of appeal and accompanying briefs as a petition for writ of certiorari . . . .").

CONCLUSION

For the reasons above and in the original Brief and Argument, Defendant–Appellant Daquon Boldon respectfully requests the Court find he may pursue his direct appeal, vacate his sentences, and remand to the district court for a new sentencing hearing in front of a different judge.

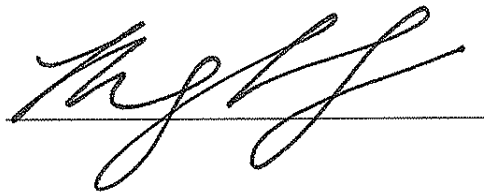
ATTORNEY'S COST CERTIFICATE

The undersigned hereby certifies that the true cost of producing the necessary copies of the foregoing Brief and Argument was $0.56, and that amount has been paid in full by the Office of the Appellate Defender.

CERTIFICATE OF COMPLIANCE WITH TYPEFACE REQUIREMENTS AND TYPE-VOLUME LIMITATION

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

> [X] this brief has been prepared in a proportionally spaced typeface Bookman Old Style, font 14 point and contains 1165 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).



MARY K. CONROY
Assistant Appellate Defender
Appellate Defender Office
Lucas Bldg., 4th Floor
321 E. 12th Street
Des Moines, IA 50319
(515) 281-8841
mconroy@spd.state.ia.us
appellatedefender@spd.state.ia.us

Dated: 03/05/2020