

IN THE SUPREME COURT OF IOWA  
Supreme Court No. 19-1433

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STATE OF IOWA,  
Plaintiff-Appellee,

vs.

ASHLEY DAWN THOMPSON,  
Defendant-Appellant.

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

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**APPELLEE'S BRIEF**

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FINAL

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**STATEMENT OF THE ISSUE PRESENTED FOR  
REVIEW**

**I. This Appeal is Barred by Iowa Code Section  
814.6(1)(a)(3).**

**Authorities**

*Calvert v. State*, 310 N.W.2d 185 (Iowa 1981)  
*Horner v. State Bd. of Eng'g Examiners*, 110 N.W.2d 371  
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*State v. Van Wie*, No. 13-0133, 2014 WL 69517  
(Iowa Ct. App. Jan. 9, 2014)  
Iowa Code § 814.6(1)(a)(3)  
Iowa R. App. P. 6.106(1)(b)  
SF589, §§ 28–29, 31 (88th Gen. Assem.)

## **ROUTING STATEMENT**

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

## **STATEMENT OF THE CASE**

### **Nature of the Case**

This is a direct appeal from an order revoking Ashley Dawn Thompson's deferred judgment. Thompson pleaded guilty to one charge of child endangerment. She argues that the district court violated her right to due process when it revoked her deferred judgment and that it improperly ordered restitution. The appeal is barred by Iowa Code sections 814.6(1)(a)(3) (effective July 1, 2019).

### **Course of Proceedings**

Thompson entered a written plea of guilty to a charge of child endangerment on June 27, 2018. Written Plea; App. 8-11. The parties agreed to jointly recommend a deferred judgment accompanied by a civil penalty and a term of probation not to exceed one year. Written Plea; App. 9. The district court accepted the plea and deferred judgment on August 16, 2018; Deferred Judgment; App. 14-16. It ordered Thompson to pay a \$625 civil penalty, \$212 in court costs, and attorney fees not to exceed \$1,800. Deferred Judgment; App. 14-

16. Thompson was supposed to pay those amounts in full by September 15, 2018. Deferred Judgment; App. 14-16.

The Iowa Judicial Branch electronic document management system indicates that Thompson's financial obligations were "SENT TO CO ATTY COLLECTIONS" on September 17, 2018. Thompson entered into a payment plan requiring her to pay \$50 per month that was filed with the district court on November 13, 2018. Co Atty Payment Plan; App. 17. The State filed an application to revoke Thompson's deferred judgment on July 8, 2019, alleging that Thompson had paid only \$200 toward her obligations and that \$2,167.40 remained outstanding. Application to Revoke; App. 18-19. The district court set the matter for a hearing on July 18, 2019. Order Setting Status Hearing 07/09/19; App. 20-21.

Thompson's counsel appeared at the July 18 hearing, but Thompson did not appear personally. The hearing was not reported. The district court found that Thompson had violated the terms of her probation and revoked her deferred judgment. Judgment Entry 07/18/19; App. 25-29. It found her guilty of child endangerment and imposed a two-year suspended sentence. Judgment Entry 07/18/19;

App. 25-29. It is from this judgment and sentence that Thompson now appeals.

### **Facts**

Thompson's written plea admits that on May 10, 2017, she acted in a manner that created a substantial risk of injury to her minor child. Written Plea; App. 9.

## **ARGUMENT**

### **I. This Appeal is Barred by Iowa Code Section 814.6(1)(a)(3).**

#### **Statement on Jurisdiction**

The Iowa legislature recently barred direct appeals from guilty pleas to non-Class A felonies. Iowa Code § 814.6(1)(a)(3) (effective July 1, 2019). The prohibition applies unless the judgment was entered prior to the July 1, 2019, effective date. *See State v. Macke*, 933 N.W.2d 226, 228 (Iowa 2019); *State v. Trane*, 934 N.W.2d 447, 464 (Iowa 2019). Because the district court entered judgment in this case on July 18, 2019, Thompson has no right to appeal. This Court lacks jurisdiction unless Thompson can establish "good cause." *See* Iowa Code § 814.6(a)(1)(3).

This Court has yet to determine what constitutes "good cause" following the change. Although the term is not defined in the statute,



the purpose of the change was to restrict direct appellate review of most guilty-plea challenges and shift all ineffective assistance claims to postconviction relief. *See* SF589, §§ 28–29, 31 (88th Gen. Assem.). This Court must consider the overall purpose of the legislation when interpreting its terms. *See Horner v. State Bd. of Eng’g Examiners*, 110 N.W.2d 371, 374 (Iowa 1961) (“[I]n determining the meaning of a statute all provisions of the act of which it is a part, and other pertinent statutes, must be considered.”). Given this background, the State’s position is that “good cause” is limited to extraordinary legal challenges which cannot be heard elsewhere.

Thompson’s due process challenge to the revocation proceeding can be raised in a postconviction relief application—and only there, as the State will explain as part of its argument. Notably, Thompson does not argue that she has established good cause under the statute.

This Court also lacks jurisdiction over Thompson’s *Albright* challenge for an independent reason. A deferred judgment is not a final judgment for purposes of determining a defendant’s statutory right to appeal, but if a defendant wants to challenge a restitution order issued as part of a deferred judgment, she must seek discretionary review. *See State v. Stessman*, 460 N.W.2d 461, 464

(Iowa 1990). Thompson’s *Albright* challenge alleges error in the restitution order contained in the deferred judgment entered on August 16, 2018. But an application for discretionary review must be filed within thirty days “after entry of the challenged ruling, order, or judgment of the district court.” Ia. R. App. P. 6.106(1)(b). Thompson did not seek discretionary review of the 2018 restitution order and this Court lacks jurisdiction to hear the claim now. In any event, because the deferred judgment was revoked and judgment was entered on July 18, 2019, Thompson’s challenge to the 2018 restitution order is moot.

This appeal should be dismissed.

### **Preservation of Error**

Thompson did not preserve error on her due process challenge to the revocation proceeding. She cites three unpublished court of appeals decisions for the proposition that she was not required to raise her objections in the district court to preserve them for appeal. Appellant’s Br. P.8-9. Those decisions are *State v. Moreno*, No. 14-0985, 2015 WL 576380 (Iowa Ct. App. Feb. 11, 2015), *State v. Van Wie*, No. 13-0133, 2014 WL 69517 (Iowa Ct. App. Jan. 9, 2014), and

*State v. Brown*, No. 17-0921, 2018 WL 2727728 (Iowa Ct. App. June 6, 2018).

*Van Wie* and *Moreno* involved claims that the district court failed to adequately describe on the record its findings supporting revocation. *Van Wie* did not address error preservation. Rather, the court of appeals held that where the record on appeal discloses inadequate findings supporting revocation, is it not the defendant's burden to recreate an unreported hearing. *See Van Wie*, 2014 WL 69517, at \*2. *Moreno* held that a defendant does not waive any objection to the inadequacy of the proceedings by failing to ensure that the hearing is reported. *Moreno*, 2015 WL 576380, at \*2. Neither case holds that a defendant need not raise the due process claim first in the district court before it can be advanced on appeal. *Brown* does address error preservation, but the court of appeals simply agreed to consider the merits of the argument because the unreported hearing left the court with "no indication of whether Brown or his counsel raised these claims before the district court." *Brown*, 2018 WL 2727728, at \*2.

Thompson's failure to appear personally at the revocation hearing and to request that the hearing be reported did not relieve her

of the obligation to preserve error in the district court. Because she did not first raise her due process claims there, she cannot do so for the first time on appeal. *See State v. Farmer*, 234 N.W.2d 89, 91 (Iowa 1975) (refusing to consider due process challenge to probation revocation because it “was not urged in the trial court and cannot be raised for the first time here.”); *see also State v. Odell*, No. 12-1113, 2013 WL 751294, at \*1 (Iowa Ct. App. Feb. 27, 2013) (unpreserved due process challenge to revocation of deferred judgment must be raised as ineffective assistance of counsel on appeal).

### **Standard of Review**

Review is for correction of errors at law. *Van Wie*, 2014 WL 69517, at \*2 (citing Iowa R. App. P. 6.907); *see also State v. Keutla*, 798 N.W.2d 731, 732 (Iowa 2011).

### **Merits**

Thompson argues that the revocation proceeding violated her due process rights because she was not provided with notice and an opportunity to present evidence and because the district court did not adequately state the factual basis for the revocation. This Court has held that “[b]ecause revocation is not a stage of criminal prosecution, the rules of criminal procedure do not apply and ‘the proceedings can

be informal, even summary.’ *State v. Lillibridge*, 519 N.W.2d 82, 83 (Iowa 1994) (quoting *Calvert v. State*, 310 N.W.2d 185, 187 (Iowa 1981)). That said, “revocation involves a serious loss of liberty and due process must be afforded.” *Id.* As relevant to this case, while the district court does not have to “file an opinion or make conclusions of law ... due process requires written findings by the court showing the factual basis for the revocation.” *Id.*

In *Kirby*, this Court clarified that even where the factual basis for the revocation does not appear in the written order, a district court can satisfy the requirement by oral statements on the record. *State v. Kirby*, 622 N.W.2d 506, 509-10 (Iowa 2001). Because the revocation hearing was not reported, it is not possible to determine whether the district court satisfied the factual findings requirement except by looking at the written order. *See Van Wie*, 2014 WL 69517, at \*2. The order says:

The Court FINDS by a preponderance of the evidence that the Defendant has violated the terms of his/her probation under the terms of the Deferred Judgment. The Defendant is hereby withdrawn from the Deferred Judgment Program, and the Deferred Judgment granted to the Defendant on August 16, 2018, is hereby **REVOKED**.

Judgment Entry; App. 25. The State agrees that the written order, like the order in *Lillibridge*, “does not indicate what evidence the court relied on in revoking” the deferred judgment. *Lillibridge*, 519 N.W.2d at 83. If this Court determines that it has jurisdiction to consider this appeal despite the change to Iowa Code section 814.6 and if it decides to consider the issues raised by Thompson despite her failure to preserve error in the district court, the State concedes that the factual findings were insufficient and the revocation should be reversed. It is not necessary to address the notice or opportunity to present evidence claims.

### **CONCLUSION**

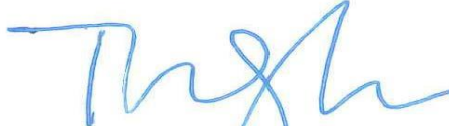
For the foregoing reasons, this Court lacks jurisdiction and the appeal should be dismissed.

**REQUEST FOR NONORAL SUBMISSION**

Nonoral submission is appropriate for this case.

Respectfully submitted,

THOMAS J. MILLER  
Attorney General of Iowa



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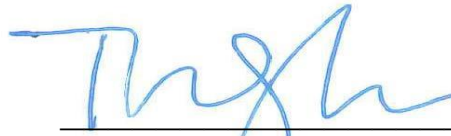
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## CERTIFICATE OF COMPLIANCE

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

- This brief has been prepared in a proportionally spaced typeface using Georgia in size 14 and contains **1,686** words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).

Dated: March 20, 2020



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