IN THE SUPREME COURT OF IOWA
Supreme Court No. 19–0551

STATE OF IOWA,
Plaintiff-Appellee,

vs.

CHRISTOPHER LEE ROBY, JR.,
Defendant-Appellant.

APPEAL FROM THE IOWA DISTRICT COURT
FOR BLACK HAWK COUNTY
THE HONORABLE ALAN HEAVENS, JUDGE

APPELLEE'S BRIEF

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Authorities

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ROUTING STATEMENT

Roby requests retention. *See* Def's Br. at 10–11. Roby does not specify which issues are new or interesting. The State can find none—other than the effects of SF 589, now found at 2019 Iowa Acts ch. 140. That enactment amends section 814.6(1)(a) to forbid an appeal from a guilty plea unless the defendant establishes good cause, and it amends section 814.7 to prohibit Iowa appellate courts from resolving claims of ineffective assistance of counsel when raised on direct appeal. Those provisions do not become effective until July 1, 2019, so they have not yet been construed. Substantively, these claims do not present novel or evolving issues, and they could all be transferred to the Iowa Court of Appeals. *See* Iowa R. App. P. 6.1101(3)(a).

STATEMENT OF THE CASE

Nature of the Case

This is Christopher Lee Roby, Jr.'s direct appeal. He pled guilty to three charges: sexual abuse in the third degree, a Class C felony, in violation of Iowa Code section 709.4(b)(2) (2018); possession of marijuana with intent to deliver, a Class D felony, in violation of Iowa Code section 124.401(1)(d) (2018); and eluding police at speeds more than 25 mph over the speed limit, an aggravated misdemeanor, in violation of Iowa Code section 321.279(2) (2017).

Roby entered a written guilty plea to the eluding charge. *See* AGCR225149 Written Guilty Plea (3/29/19); App. 50. He entered guilty pleas to both felony charges at a plea hearing, after a colloquy on the record. *See* Plea/Sent.Tr. (3/28/19). All of his guilty pleas were entered as part of a negotiated plea deal; his pleas were conditioned on the sentencing court's acceptance of the joint recommendation for concurrent sentences on all charges. *See* Written Guilty Plea (3/29/19) at 2; App. 50; Plea/Sent.Tr. 2:15–5:9. Roby waived his right to file a motion in arrest of judgment, and he requested immediate sentencing. *See* Plea/Sent.Tr. 16:22–19:18. The court imposed the sentence that matched the negotiated plea deal: concurrent terms of incarceration on all charges (producing a 10-year sentence), along with applicable fines, surcharges, and lifetime special sentence under section 903B.1. *See* Plea/Sent.Tr. 21:7–23:16; *accord* AGCR225149 Sentencing Order (3/29/19); App. 55; Sentencing Orders (3/28/19); App. 119, 181.

Roby now appeals, arguing: **(1)** the eluding charge violated constitutional prohibitions against double jeopardy, because Roby had already resolved other traffic offenses arising from the same incident; **(2)** the marijuana was found when he was arrested on execution of an unconstitutional arrest warrant, so it would have been inadmissible;

(3) there was no factual basis to support his guilty plea to possession of marijuana with intent to deliver; **(4)** none of his guilty pleas were entered knowingly or voluntarily because the written guilty plea to the eluding offense misstated the date of the offense, because he was not adequately informed of what a lifetime special sentence would entail when the court said he would "be on parole for the rest of [his] life," and because he was not informed that these convictions might elevate his score under federal sentencing guidelines for any federal charges; and **(5)** his counsel was ineffective in ways that either amounted to structural error or produced *Strickland* prejudice.

Appeals like Roby's are why the Iowa legislature amended parts of chapter 814 to prohibit baseless challenges to guilty pleas and to bar courts from resolving ineffective-assistance claims on direct appeal. This Court need not reach the merits of any of Roby's claims; he may bring them in a PCR action, where the parties can develop a record that may support them (or may disprove his allegations), but they are only minimally amenable to resolution on this limited record.

Course of Proceedings and Statement of Facts

Roby's eluding offense preceded his 18th birthday. Roby was never "held to appear"—he was cited for other offenses and released:

> [Roby] was identified as offender #1. [An officer] took the offender into custody and transported him to 715 Mulberry Street.
>
> . . . [Roby] was charged with Eluding (Agg), and Interference with Official Acts. He was issued citations for NDL, Reckless Driving and Excessive Speed. He was released to his mother.

AGCR225149 Minutes of Testimony (6/5/18) at 8; App. 33. The actual offense date was October 24, 2017. Roby turned eighteen in May 2018, and Waterloo police obtained a warrant for his arrest on the eluding offense on May 23, 2018. *Id.* at 3–4; App. 28–29; *accord* AGCR225149 Criminal Complaint (5/23/18); App. 19; *cf.* Request to Rescind Plea Deal (4/1/19); App. 185 (listing Roby's birth date).

On May 31, 2018, Waterloo police saw Roby getting into a car. They parked their vehicle to block the car from backing out, and they ordered Roby out of the car to arrest him on his outstanding warrant. *See* FECR225935 Minutes of Testimony (8/16/18) at 11; App. 95. Officers "could smell marijuana coming from inside the vehicle." *Id.*; *see also id.* at 13; App. 97. Another person was in the same vehicle. She was detained, given a *Miranda* advisory, and interviewed. During that conversation, she said there were "grams" of marijuana inside the apartment she shared with Roby. She said the marijuana was shared between them, but that "Roby gets the weed." *Id.* at 13; App. 97.

Officers applied for and obtained a search warrant for the apartment, garage, and vehicle. Three plastic baggies that contained marijuana were located in the apartment, along with plastic baggies and empty containers with THC labels. *Id.* at 13, 16, 18; App. 97–102. Roby was charged with possession of marijuana with intent to deliver. *See* FECR225935 Trial Information (8/16/18); App. 83. He was also charged with eluding, within a week of his arrest on that warrant. *See* AGCR225149 Trial Information (6/5/18); App. 24.

At the time of Roby's arrest, a thirteen-year-old girl was already six weeks pregnant. *See* FECR227264 Minutes of Testimony (10/5/18) at 10; App. 154. She told investigators that Roby was the father. *See id.* at 11; App. 155. She described sexual intercourse with Roby that occurred most recently in July 2018, after Roby's 18th birthday. *See id.* at 13; App. 157. Roby's calls and letters confirmed he was the father, which meant he had sexual intercourse with this underage girl. *See id.* at 11–14; App. 155–58. In an interview, Roby admitted that he had sex with her (but he denied the child was his). *See id.* at 16; App. 160. Roby was charged with third-degree sexual abuse. *See* FECR227264 Trial Information (10/5/18); App. 143.

The parties negotiated a plea deal. It was summarized like this:

> [T]he entire agreement as to the charges and/or sentence [is] as follows: 2 years prison, concurrent to FECR227264 & FECR225935, $625 susp, 35% SC, CC, AND
>
> (X) If the court does not accept the sentencing agreement, I withdraw my guilty plea and ask that the case be rescheduled for trial.

See AGCR225149 Written Guilty Plea (3/29/19) at 2; App. 51. At the plea hearing, the parties elaborated on that:

> In FECR225935, the parties would recommend the Defendant receive a sentence of a term of imprisonment not to exceed five years; that he be assessed a 750 dollar fine, plus 35 percent surcharge, and any court costs. We would recommend that that fine be suspended. There is also a 125 dollar law enforcement initiative surcharge, a 10 dollar DARE fee, and we would also ask that the Defendant be ordered to complete a substance abuse evaluation and follow through with any recommended treatment from that.
>
> In FECR227264, the parties would recommend the Defendant receive a sentence of a term of imprisonment not to exceed 10 years. We ask that he be assessed a 1,000 dollar fine, plus a 35 percent surcharge, and any court costs. Because this is a forcible felony, that fine must be imposed. We also ask that he be ordered to complete sex offender treatment programming; that once paroled, he register on the Sex Offender Registry; that he be assessed a 250 dollar civil penalty for being required to register, he be assessed a 100 dollar sexual assault surcharge in accordance with Code Section 911.2(b). We also ask that he be specially sentenced to the Director of the Department of Corrections for the remainder of his life under 903B.1. We ask that the no contact order in this case be extended for a period of five years and that he be ordered to pay any victim restitution, if applicable. We would recommend that both FECR225935 and FECR227264 run concurrently to one another. We're also asking that the AGCR case, the 225149 also be ran concurrently as well.

Plea/Sent.Tr. 2:23–4:16. The court made sure that Roby agreed with that explanation, it did not add anything to which he had not agreed, nor did it leave out anything to which he *had* agreed. The court stated it would "agree in advance to go along with this plea agreement and sentence [Roby] to nothing worse than what [he] bargain[ed] for." *See* Plea/Sent.Tr. 4:14–5:9. Roby confirmed that he had received, read, and discussed the trial informations and minutes of testimony with his attorney, and that she answered any questions that he had. *See* Plea/Sent.Tr. 6:13–8:3. Roby's counsel affirmed that she believed Roby understood the elements of each offense, and she could identify no applicable defenses other than a general denial. *See* Plea/Sent.Tr. 8:4–11. Both Roby and his counsel agreed that the court could rely on minutes of testimony to establish a factual basis for Roby's guilty pleas. *See* Plea/Sent.Tr. 8:12–9:5. The court explained the maximum and minimum possible penalties, including the fact that Roby's conviction for third-degree sexual abuse would mean that he "would be required to be on parole for the rest of [his] life." *See* Plea/Sent.Tr. 9:6–10:25. The court also explained that these guilty pleas did not resolve Roby's pending federal charges, and he was "not going to get any benefit on that, and I don't know, there may even be a detriment." Plea/Sent.Tr.

11:9–24. After some additional clarification, Roby indicated that he already knew this information, and he declined an opportunity to discuss it with his attorney or ask the court any further questions. *See* Plea/Sent.Tr. 11:9–12:23. Roby affirmed that he had a "full, fair, and complete opportunity" to meet with his attorney and discuss his case, he was satisfied with her services, and he understood his trial rights. *See* Plea/Sent.Tr. 13:16–15:15. Roby admitted to the court that he had committed both felony offenses, and the court found his guilty pleas were entered knowingly and voluntarily. *See* Plea/Sent.Tr. 16:22–17:8.

The court explained to Roby that if he wanted to challenge his guilty pleas, he needed to file a motion in arrest of judgment—and if he did not, he "would forever forego the right to challenge the validity of the guilty plea [he had] just entered, wouldn't be able to challenge it in District Court here, and [he] wouldn't be able to challenge it on appeal either." *See* Plea/Sent.Tr. 17:9–18:3. The parties requested immediate sentencing, and Roby confirmed that he knew this would mean waiving his opportunity to file a motion in arrest of judgment. *See* Plea/Sent.Tr. 18:4–19:18. The court proceeded to sentence Roby as described in the plea agreement. *See* Plea/Sent.Tr. 20:11–26:2.

Additional facts will be discussed when necessary.

ARGUMENT

I. This Court should not resolve any of Roby's claims.

Preservation of Error

Roby was advised that he needed to file a motion in arrest of judgment to preserve his opportunity to raise any challenge to his guilty pleas, and he affirmatively waived his opportunity to do so. *See* Plea/Sent.Tr. 17:9–19:18. Roby does not challenge this advisory, and does not make any attempt to show error was preserved for any challenge raised in his brief. This matters because "[a] defendant's failure to challenge the adequacy of a guilty plea proceeding by motion in arrest of judgment shall preclude the defendant's right to assert such challenge on appeal." *See* Iowa R. Crim. P. 2.24(3)(a).

Until recently, defendants in this situation could simply convert all of their claims on direct appeal into ineffective-assistance claims and present them within that paradigm. *See*, *e.g.*, *State v. Straw*, 709 N.W.2d 128, 133 (Iowa 2006) (explaining that "this failure does not bar a challenge to a guilty plea if the failure to file a motion in arrest of judgment resulted from ineffective assistance of counsel"). But the amendment to section 814.7 directs Iowa courts to preserve claims of ineffective assistance of counsel for PCR actions, so Roby's decision to waive his ability to challenge his pleas on appeal has consequences.

Standard of Review

There is no standard of review for an unpreserved claim because there is nothing to review. Ineffective-assistance claims would be reviewed de novo. *See State v. Finney*, 834 N.W.2d 46, 49 (Iowa 2013); *Straw*, 709 N.W.2d at 133. But this preliminary section is about the effects of recent legislative enactments. A ruling on these arguments would be reviewed for correction of errors at law. *See*, *e.g.*, *State v. Coleman*, 907 N.W.2d 124, 134 (Iowa 2018) (citing *State v. Iowa Dist. Ct.*, 889 N.W.2d 467, 470 (Iowa 2017)).

Merits

SF 589 did not specify its effective date, which means that it becomes effective on July 1, 2019. *See* Iowa Code § 3.7(1). That will include the amendment to section 814.7 that effectively preserves all ineffective-assistance claims for post-conviction proceedings, and it will also include the amendment to section 814.6(1) that creates a "good cause" requirement for direct appeals from guilty pleas.

The only question is whether these provisions will apply to appeals that are already pending when the amendments take effect on July 1, 2019. In the State's view, for both provisions, the answer is yes: both will apply to all cases pending on direct appeal as of July 1, 2019.

A. This amendment to section 814.7 is procedural, as it sets out a specific procedure for raising these ineffective-assistance claims. It is also remedial, under *Hannan*. Thus, it applies to cases pending on direct appeal when it takes effect.

Section 31 of SF 589 amends section 814.7 to specify that claims alleging ineffective assistance of counsel "shall not be decided on direct appeal from the criminal proceedings," and shall be brought in postconviction actions instead. *See* S.F. 589, 88th GA, § 31 (2019). Generally, "[i]f a procedural statute is amended, the rule is that the amendment applies to pending proceedings as well as those instituted after the amendment." *See Smith v. Korf, Diehl, Clayton and Cleverly*, 302 N.W.2d 137, 138–39 (Iowa 1981) (quoting comment to Uniform Statutory Construction Act, now codified in Iowa Code section 4.5).

A procedural statute "prescribes a method of enforcing rights or obtaining redress for their invasion." *See Dolezal v. Bockes*, 602 N.W.2d 348, 351 (Iowa 1999). Substantive legislation is presumed to apply retroactively, but "procedural legislation applies to all actions—those that have accrued or are pending and future actions." *See id.*

When section 814.7 was first enacted, the Iowa Supreme Court found it applied retrospectively because it was procedural—it changed applicable procedural rules without creating/extinguishing any claim:

> . . . [Section 814.7] is a statute describing the procedure to bring a claim of ineffective assistance of counsel. Thus, we are not required to determine what "time the judgment or order appealed from was rendered" because we do not believe this rule applies to section 814.7.
>
> . . . Section 814.7 governs the methods by which a defendant may assert a claim of ineffective assistance of counsel. *See* Iowa Code § 814.7. As such, it "prescribes a method of enforcing rights or obtaining redress for their invasion." [*Dolezal*, 602 N.W.2d at 351]. Moreover, section 814.7 does not affect the substantive rights of parties, but rather "governs the practice, method, procedure, or legal machinery by which the substantive law is enforced or made effective." *Bd. of Trs. v. City of W. Des Moines*, 587 N.W.2d 227, 231 (Iowa 1998). This indicates section 814.7 is procedural and may be applied retroactively.
>
> [. . .]
>
> Section 814.7 remedies the evil that occurs when litigants must raise ineffective assistance of counsel claims without an adequate record. Thus, the statute attempts to conserve judicial resources and place the defendant's claim in the court that is most informed to handle it. . . . As a result, we think the legislature's attempt to fix a procedural wrong evinces an intent to make the statute retroactive. *See Bd. of Trs.*, 587 N.W.2d at 231–32. Accordingly, Hannan's claim is properly before us under section 814.7.

Hannan v. State, 732 N.W.2d 45, 50–51 (Iowa 2007). That same analysis that classified section 814.7 as procedural and retrospective when first enacted applies with equal force to this amendment, which also prescribes a procedure for asserting and deciding ineffective-assistance claims. *See id.*; *accord* S.F. 589, 88th GA, § 31 (preserving the portion of section 814.7 that states: "[a]n ineffective assistance of

counsel claim in a criminal case shall be determined by filing an application for postconviction relief pursuant to chapter 822"). There is no difference between the amendment to section 814.7 and its original enactment, for the purpose of deciding whether either applies to pending cases. As a result, the legislature would have known that it was amending a procedural statute that applied to pending cases on the effective date of its enactment—and would presumably apply to all pending cases when it was *amended*, as well. *See State v. Johnson*, 784 N.W.2d 192, 197 (Iowa 2010) ("We have held section 814.7 applies retroactively to all criminal cases."); *State v. Freeman*, 705 N.W.2d 286, 291 (Iowa 2005) (quoting *Jahnke v. City of Des Moines*, 191 N.W.2d 780, 787 (Iowa 1971)) ("[W]hen the legislature enacts a law, '[w]e assume the legislature knew the existing state of the law and prior judicial interpretations of similar statutory provisions.'").

Applying the amendment to section 814.7 in this way will not result in forfeiture of any claims. Roby will still be able to bring his ineffective-assistance claims in a PCR action, where he will have a chance to develop a factual record that might support them. That, more than anything else, illustrates that this amendment is wholly procedural in nature: it does not create or extinguish any claim.

To the extent this amendment to section 814.7 is anything other than procedural, it is remedial—just like the original enactment, it "remedies the evil that occurs" when appellate courts are faced with "ineffective assistance of counsel claims without an adequate record" on direct appeal. *See Hannan*, 732 N.W.2d at 51; *accord State v. McFarland*, No. 17–0871, 2018 WL 2084835, at *2 (Iowa Ct. App. May 2, 2018) (urging the parties to develop a factual record for these claims in postconviction proceedings). Ineffective-assistance claims in appeals filed before the effective date of this provision are identical to claims raised in appeals filed *after* that date, with respect to this particular evil to be remedied. That undermines any argument that section 814.7 should only apply to ineffective-assistance claims in appeals that were filed after its effective date. All unpreserved claims are plagued by similar deficiencies and present similar problems, and so this remedy should be applied to all of them. *See City of Waterloo v. Bainbridge*, 749 N.W.2d 245, 251 (Iowa 2008) (holding statute was remedial and retroactive when "the evil to be remedied is the existence of unsafe abandoned buildings," and "[a] building abandoned before the effective date of the statute creates the same unsafe condition as a building abandoned after the effective date of the statute").

This amendment to section 814.7 is qualitatively different from amendments to section 814.6 that affect the availability of an appeal, discussed in the next section. *See* S.F. 589, 88th GA, § 28 (2019). That analysis starts with recognizing the Iowa Supreme Court's view that, when it comes to changes that affect the existence of a right of appeal, "statutes controlling appeals are those that were in effect at the time the judgment or order appealed from was rendered." *See Wal–Mart Stores, Inc. v. Caselman*, 657 N.W.2d 493, 498 (Iowa 2003) (quoting *Ontjes v. McNider*, 275 N.W. 328, 330 (Iowa 1937)). But that rule does not apply to this statute "describing the procedure to bring a claim of ineffective assistance of counsel." *See Hannan*, 732 N.W.2d at 50–51. Indeed, *Hannan* specifically rejected that argument against applying section 814.7 to appeals that were already pending. *See id.* (quoting *Wal–Mart Stores*, 657 N.W.2d at 498). Even if this Court applied that *Wal-Mart* approach to the amendments to section 814.6, *Hannan* renders that rule inapplicable to this amendment to section 814.7, which only "governs the methods by which a defendant may assert a claim of ineffective assistance of counsel." *Id.* at 51; *accord Dolezal*, 602 N.W.2d at 351; *Smith*, 302 N.W.2d at 138–39. Because *Hannan* is directly on point, this Court should apply section 814.7 as amended.

B. The amendment to section 814.6(1) reroutes the review of a conviction obtained after a guilty plea. There is "good cause" for appeals raising claims that cannot be rerouted or brought elsewhere, so those appeals may still be brought. The effect on all other appeals is purely procedural.

Section 28 of SF 589 amends Iowa Code section 814.6 to include new subsections, stating that a defendant is not granted right of appeal from a final judgment of sentence in the following cases:

> (1) A simple misdemeanor conviction
> (2) An ordinance violation.
> (3) A conviction where the defendant has pled guilty. This subparagraph does not apply to a guilty plea for a class "A" felony or in a case where the defendant establishes good cause.

See S.F. 589, 88th GA, § 28 (2019). Items (1) and (2) are not new. *See* Iowa Code § 814.6(1)(a) (2018). Roby's convictions were all imposed based on guilty pleas, so amended section 814.6(1)(a)(3) would apply. This Court should construe "good cause" to mean that a defendant may still appeal if dismissing their appeal would leave them without any alternative route to equivalent review of a claim they have raised. This will avoid any potential constitutional infirmity that may exist. *See, e.g.*, *State v. Nail*, 743 N.W.2d 535, 540 (Iowa 2007). The effect of this amendment on all remaining appeals will be to reroute them, rather than foreclose the claims—and that effect is procedural.

Some Iowa cases hold that Iowa courts should apply statutes controlling the existence of the right of appeal "that were in effect at the time the judgment or order appealed from was rendered." *See James v. State*; 479 N.W.2d 287, 290 (Iowa 1991); *see also Wal-Mart Stores*, 657 N.W.2d at 498 (quoting *Ontjes*, 275 N.W. at 330). But the foundational Iowa case in this area is *Ontjes*, which recognized that legislation defining availability of appeals "goes to our jurisdiction to consider or decide the questions presented in the appeal." *See Ontjes*, 275 N.W. at 330. Without jurisdiction and authority, no decision can be rendered—so while it may be correct to determine whether a right of appeal existed when the appeal was first initiated, this Court must *also* refrain from resolving claims if its authority to hear the case has since been stripped away by intervening legislation.

> It is clear, that when the jurisdiction of a cause depends upon a statute the repeal of the statute takes away the jurisdiction. And it is equally clear, that where a jurisdiction, conferred by statute, is prohibited by a subsequent statute, the prohibition is, so far, a repeal of the statute conferring the jurisdiction.

Bruner v. United States, 343 U.S. 112, 116 (1952) (quoting *Merchants' Ins. Co. v. Ritchie*, 72 U.S. 541, 544 (1866)); *see also Landgraf v. USI Film Products*, 511 U.S. 244, 274 (1994) (explaining that courts "have regularly applied intervening statutes conferring or ousting jurisdiction,

whether or not jurisdiction lay when the underlying conduct occurred or when the suit was filed"). This makes sense, because statutes that re-allocate jurisdiction or authority among courts are more procedural than substantive: such statutes usually do not "impair rights a party possessed when he acted, increase a party's liability for past conduct, or impose new duties with respect to transactions already completed." *See Press-Citizen Co., Inc. v. University of Iowa*, 817 N.W.2d 480, 491 (Iowa 2012) (quoting *Landgraf*, 511 U.S. at 280). More importantly, an appellate court must have jurisdiction and authority to rule—and without either, it cannot rule on the case. *See In re Estate of Falck*, 672 N.W.2d 785, 790 (Iowa 2003) (citing *Christie v. Rolscreen Co.*, 448 N.W.2d 447, 450 (Iowa 1989)) (explaining that, like a challenge to subject-matter jurisdiction, parties can "raise the court's authority to hear a particular case at any time during the proceeding").

These amendments to section 814.6 strip appellate courts of authority to hear these appeals from guilty pleas unless the defendant establishes "good cause." Jurisdiction and authority are conceptually distinct—unlike a lack of subject matter jurisdiction, "an impediment to a court's *authority* can be obviated by consent, waiver, or estoppel" and any judgments entered without authority are voidable, not void.

Id. (quoting *State v. Mandicino*, 509 N.W.2d 481, 483 (Iowa 1993)). But the point remains that the appellate court needs authority over the appeal in order to rule on it; once these amendments take effect, Iowa appellate courts will lack authority to rule on direct appeals from guilty pleas where defendants fail to establish "good cause," even if that appeal was initiated before the amendments took effect. *See Schrier v. State*, 573 N.W.2d 242, 244–45 (Iowa 1997) ("A court lacks authority to hear a particular case where a party fails to follow the statutory procedures for invoking the court's authority."). Because this Court needs *present* authority to rule on this appeal, and because the amendments to section 814.6 strip this Court of that authority as of the July 1, 2019, they necessarily apply to pending appeals.

Because applying the amendments to section 814.6 would mean that Roby no longer has a right to appeal, it is tempting to view them as substantive. But there are two reasons to view them as procedural and presumptively applicable to pending cases. First, "[a]pplication of a new jurisdictional rule usually 'takes away no substantive right but simply changes the tribunal that is to hear the case.'" *See Landgraf*, 511 U.S. at 274 (quoting *Hallowell v. Commons*, 239 U.S. 506, 508 (1916)). "No one has a vested right in any given mode of procedure."

Ex parte Collett, 337 U.S. 55, 71 (1949) (quoting *Crane v. Hahlo*, 258 U.S. 142, 147 (1922)). Just like in *Hannan*, this statute attempts to "conserve judicial resources and place the defendant's claim in the court that is most informed to handle it," rather than extinguish it. *See Hannan*, 732 N.W.2d at 51. Like almost any other reallocation of jurisdiction or authority, this is a matter of procedure—and thus, it presumptively applies to pending cases when it takes effect because "the legislature's attempt to fix a procedural wrong evinces an intent to make the statute retroactive." *See id.*

Second, the amendments to section 814.6 create an exception for "good cause" that allows Iowa appellate courts to determine that they *do* have authority over certain appeals from guilty pleas—and the State submits that appellate courts should find "good cause" when the defendant raises a claim that would not be resolvable through the same essential review in a postconviction relief action. By defining "good cause" to include all appeals where refusing to hear the appeal might have some impact on the actual outcome, this Court could avoid any unfairness that might result from applying these amendments—and it would obviate any concerns about applying these amendments to other appeals, for which this change would be purely procedural.

Here, Roby could never establish "good cause" because he only raises ineffective-assistance claims, which can be raised and resolved in PCR actions (and which cannot be raised on direct appeal anyway, because of section 814.7). For him, the amendment to section 814.6 is purely procedural because it merely redirects him to PCR litigation—indeed, it likely expedites the process. Thus, if it reaches this issue, this Court should hold these amendments to section 814.6 apply to all pending cases where the defendant pled guilty and only raises claims that would be equally amenable to resolution in a PCR action, and it should dismiss Roby's appeal accordingly. Since Roby cannot show "good cause," this Court will not have authority to do anything else.

C. This Court may choose not to reach those issues if it determines that it would preserve Roby's claims for future PCR proceedings anyway, regardless of whether those amendments applied.

Before SF 589, Iowa courts were permitted to address claims alleging ineffective assistance of counsel on direct appeal "when the record is sufficient to permit a ruling." *See State v. Wills*, 696 N.W.2d 20, 22 (Iowa 2005); *State v. Artzer*, 609 N.W.2d 526, 531 (Iowa 2000). Roby's factual-basis challenge would qualify, because factual basis can only be drawn from material in the record before the court. *See Finney*, 834 N.W.2d at 62. But the rest of Roby's challenges require

him to show that, but for counsel's breach, he would not have chosen to plead guilty and would have gone to trial instead—which is why "claims of ineffective assistance of counsel should normally be raised through an application for postconviction relief." *See Straw*, 709 N.W.2d at 137–38. This Court already had the option to preserve all of Roby's claims under the 2018 version of section 814.7, and it would be appropriate to preserve these claims even if SF 589 never existed. *See, e.g.*, *State v. Petty*, 925 N.W.2d 190, 196 (Iowa 2019). The claim alleging a lack of factual basis may still be preserved, notwithstanding the adequacy of the record to decide it, because the prior version of section 814.7(3) allows an appellate court to choose either option. *See* Iowa Code § 814.7(3) (2018). Thus, this Court may preserve the claims without deciding whether or not to apply provisions from SF 589.

II. Roby's counsel was not ineffective.

Preservation of Error

As discussed, error was not preserved on any of Roby's claims, and they should all be preserved for subsequent PCR proceedings.

Standard of Review

Claims of ineffective assistance of counsel are reviewed de novo. *See Finney*, 834 N.W.2d at 49.

Merits

To establish ineffective assistance of counsel, "a defendant must typically show that (1) counsel failed to perform an essential duty and (2) prejudice resulted." *State v. Keller*, 760 N.W.2d 451, 452 (Iowa 2009) (citing *Strickland v. Washington*, 466 U.S. 668, 687 (1984)). Both elements must be proven, and failure to prove a single element defeats the claim. *Ledezma v. State*, 626 N.W.2d 134, 142 (Iowa 2001).

A. Roby's traffic tickets did not immunize him from subsequent prosecution for eluding.

Roby argues that his traffic tickets for driving without a license, reckless driving, and speeding would have precluded prosecution on his eluding charge. *See* Def's Br. at 25–26. This is incorrect—as the Iowa Court of Appeals said in *State v. Trainer*, on which Roby relies:

> In *Ohio v. Johnson*, the United States Supreme Court examined a situation where a defendant was indicted on four offenses in a single indictment, to which he pled not guilty to the charges of murder and aggravated robbery, but pled guilty to the lesser-included charges of involuntary manslaughter and grand theft. Over the State's objection, the trial court accepted the defendant's guilty pleas to the lesser-included offenses and sentenced the defendant to a term of imprisonment. Id. Subsequently, the trial court dismissed the pending murder and aggravated robbery charges, finding that because the charges the defendant had pled guilty to were lesser-included offenses of the pending charges, continued prosecution was barred by the Double Jeopardy Clause.

> The Supreme Court reversed. It discussed that under those procedural facts, the principles of finality and prevention of prosecutorial overreaching that the Double Jeopardy Clause was intended to protect were not implicated.
>
> > The acceptance of a guilty plea to lesser-included offenses while charges on the greater offenses remain pending, . . . has none of the implications of an 'implied acquittal' which results from a verdict convicting the defendant on lesser-included offenses rendered by a jury charged to consider both greater and lesser-included offenses.
> >
> > [. . .]
> >
> > Trainer asserts that this case is distinguishable from *Ohio v. Johnson*, and points to the fact that the trespass and burglary were not charged together as the trespass was brought in a citation by the arresting officer and the burglary charge was then brought in a trial information. We do not find this fact dispositive. Subsequent to *Ohio v. Johnson*, other courts have held that when a defendant pleads guilty to a lesser-included charge with the knowledge of a greater charge pending in a separate indictment or about to be filed in a separate indictment, the defendant was not allowed to use double jeopardy as a sword to avoid prosecution of the greater offense.

See State v. Trainer, 762 N.W.2d 155, 158–59 (Iowa Ct. App. 2008) (quoting *Ohio v. Johnson*, 467 U.S. 493, 498 (1984)). It makes sense that Roby would be unable to foreclose the State from charging him with eluding simply by mailing in a check for three traffic citations, none of which actually charged him with the serious transgression of eluding the officer who was attempting to stop him. *See, e.g.*, *State v.*

Walker, 473 N.W.2d 221, 223 (Iowa Ct. App. 1991) ("Rather like speeding through a red light, Walker committed two distinguishable offenses when he drove his car onto a public road—one against the motor vehicle code and one against the financial responsibility law.").

Roby notes the indictment was filed "[o]ver six months later." *See* Def's Br. at 25. This makes sense, and it is another reason why there is no double jeopardy violation. The underlying chase occurred on October 23, 2017. Roby was a juvenile until May 2018 (which is why was released to his parents in October 2017, not held to appear). Traffic tickets for simple misdemeanor offenses are exempt from the provisions of chapter 232. *See* Iowa Code § 321.482 ("Chapter 232 has no application in the prosecution of offenses committed in violation of this chapter which are simple misdemeanors."). For eluding, the juvenile court would have jurisdiction over any charge filed while Roby was still a juvenile, unless/until it waived jurisdiction after a waiver hearing. *See* Iowa Code § 232.45. But after Roby turned 18, charges for eluding would be filed in district court (with the option of transfer to juvenile court if either party filed a motion for transfer). *See* Iowa Code § 803.5. So the traffic tickets were resolved *before* the moment when they could have been filed alongside the eluding charge.

Rule 2.33(2)(a) lists two events that can trigger the speedy indictment period to start running: either arrest of an adult, or entry of an order waiving jurisdiction over a juvenile. *See* Iowa R. Crim. P. 2.33(2)(a) (stating that indictment must be filed 45 days from point "[w]hen an adult is arrested for the commission of a public offense, or, in the case of a child, when the juvenile court enters an order waiving jurisdiction pursuant to Iowa Code section 232.45"). The Iowa Supreme Court has repeatedly held that, in situations like Roby's where neither event happens, that rule cannot be violated:

> The juvenile court never entered an order waiving its jurisdiction over Isaac. Isaac was still a juvenile at the time of his arrest. He was never arrested as an adult. Under these undisputed facts, Isaac's right to a speedy indictment was never triggered under rule 27(2)(a).

State v. Isaac, 537 N.W.2d 786, 788 (Iowa 1995); *see also State v. Harriman*, 513 N.W.2d 725, 726 (Iowa 1994) ("Harriman was never arrested as an adult and the juvenile court never entered an order waiving jurisdiction. The forty-five-day period for indictment never started running. The district court erred in holding an indictment had to be found within forty-five days of Harriman's arrest as a juvenile.").[1]

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[1] *Harriman* has a red flag on Westlaw, but that is because subsequent legislation precluded its application to juveniles who allegedly committed forcible felonies. *See State v. Williams*, No. 14–

And Roby was not "held to answer" for eluding, within the meaning of the speedy indictment rule—not until his subsequent arrest on the warrant that was issued after his 18th birthday. *See State v. Williams*, 895 N.W.2d 851, 864–65 (Iowa 2017) ("A speedy indictment is only needed when a defendant is arrested and subsequently held to answer by the magistrate following the arrest."). And any claim that Roby's traffic tickets would transform into "citations in lieu of arrest" fails, because Roby was cited for *other* offenses and was not held to answer for the offense of eluding. *See id.* at 863 (noting that Iowa cases have "excluded from the speedy indictment rule any new charges brought more than forty-five days after an arrest for a different offense, even though the new charges arose from the same incident"); *State v. Penn-Kennedy*, 862 N.W.2d 384, 389 (Iowa 2015); *State v. Dennison*, 571 N.W.2d 492, 496 (Iowa 1997); *State v. Lies*, 566 N.W.2d 507, 508–09 (Iowa 1997); *State v. Sunclades*, 305 N.W.2d 491, 494 (Iowa 1981).[2] Therefore, Roby could not have shown a speedy indictment violation.

0793, 2016 WL 146197, at *3 (Iowa Ct. App. Jan. 13, 2016), *rev'd on other grounds by State v. Williams*, 895 N.W.2d 856 (Iowa 2017). That has no applicability to Roby, who was charged with eluding.

[2] Again, these cases have red flags on Westlaw, but only because *Williams* overruled *Wing*. Not only are these holdings still valid, they provided a key part of the rationale for overruling *Wing*. *See Williams*, 895 N.W.2d 866 (citing *Penn-Kennedy*, 862 N.W.2d at 387–90).

This analysis also shows why Roby's traffic tickets cannot be used to preclude prosecution for eluding—the State did not consent to dismissal of pending charges because there *were* no pending charges (and if there was a pending adjudicative proceeding in juvenile court, Roby should have the burden of establishing that in a PCR action). Under *Trainer* and *Ohio v. Johnson*, Roby "should not be entitled to use the Double Jeopardy Clause as a sword to prevent the State from completing its prosecution on the remaining charges." *See Trainer*, 762 N.W.2d at 158 (quoting *Johnson*, 467 U.S. at 502). Any motion to dismiss this charge would have been meritless, and counsel could not have breached any duty or prejudiced Roby by failing to raise one.

B. Roby's arrest was constitutional—it was made pursuant to an arrest warrant.

Roby argues that the arrest warrant that authorized his arrest on May 31, 2018 was issued without probable cause. *See* Def's Br. at 28–29. This challenge is flawed. If prosecution was not precluded, then officers who witnessed Roby committing the eluding offense could establish probable cause by describing their observations. *See* Iowa Code § 804.1(1) (authorizing issuance of arrest warrant on the filing of a complaint, if "there is probable cause to believe an offense has been committed and a designated person has committed it"); *cf.*

State v. Munz, 382 N.W.2d 693, 703 (Iowa Ct. App. 1985) ("Sufficient facts were presented to establish probable cause to arrest Munz, and, therefore, trial counsel's failure to attack the arrest warrant on this basis does not constitute ineffective assistance."). This claim is wholly dependent on the meritless double-jeopardy claim in the last section, which means it fails for the same reasons.

Roby also mentions complaints about the amount of bond that was initially set, before he filed a pro se motion and succeeded in reducing bond to an amount he could post. *See* Def's Br. at 29. Roby has affirmatively demonstrated a lack of prejudice, because he was able to fix the problem and bond out. *See* Order (7/11/18); App. 47. To the extent Roby argues that it was unreasonable to consider him a flight risk after he led police on a high-speed chase and attempted to flee on foot, his claim was already considered and relief was granted.

C. Roby admitted to possessing marijuana with intent to distribute. That provides an adequate factual basis to support the conviction.

Roby argues that, following his arrest on May 31, 2018, officers should not have been granted a search warrant for the apartment. *See* Def's Br. at 32. But the girl who lived with Roby informed officers that there was marijuana inside. *See* FECR225935 Minutes of Testimony

(8/16/18) at 11, 13; App. 95, 97. This admission against interest from Roby's friend, combined with the strong smell of marijuana in the car, was enough to establish that "a person of reasonable prudence would believe a crime was committed on the premises to be searched or evidence of a crime could be located there." *See State v. McNeal*, 867 N.W.2d 91, 99 (Iowa 2015). The record is flatly insufficient to assess this challenge in any other way.

Roby's real argument in this section is that there was no factual basis to establish that he possessed the marijuana, that he intended to deliver it, or that it was actually marijuana to begin with. *See* Def's Br. at 32–34. The minutes of testimony established that marijuana was found in various locations in the apartment, including on the stand next to the side of the bed where Roby would sleep. *See* FECR225935 Minutes of Testimony (8/16/18) at 13; App. 97. And Roby's friend said they would both smoke, but that "Roby gets the weed." *See id.* And during the plea hearing, Roby made this factual admission:

> **THE COURT**: And in the case that ends in 935 where it alleges that you, on May 31st, 2018, in Black Hawk County, unlawfully deliver or possessed with the intent to deliver marijuana in an amount not more than 50 kilograms, did you commit this crime?
>
> **ROBY**: Yes.

Plea/Sent.Tr. 15:21–16:1. That, even standing alone, would suffice.

"The defendant's admission on the record of the fact supporting an element of an offense is sufficient to provide a factual basis for that element." *See State v. Philo*, 697 N.W.2d 481, 486 (Iowa 2005).

Roby couches his argument in language of sufficiency of the evidence, as though he were tried before a jury and as though he had not admitted to committing this offense. *See* Def's Br. at 33–34. But for factual basis, "the record does not need to show the totality of evidence necessary to support a guilty conviction, but it need only demonstrate facts that support the offense." *See State v. Ortiz*, 789 N.W.2d 761, 768 (Iowa 2010). Someone who lived in that apartment possessed 23.4 grams of marijuana (which *was* tested, despite what Roby claims) along with smaller quantities, divided into small bags. FECR225935 Minutes of Testimony (8/16/18) at 16, 18; App. 100–02. Roby said that he did it. *See* Plea/Sent.Tr. 15:21–16:1. Roby knew he had the right to contest the accusation and demand that he be proven guilty beyond a reasonable doubt (and, if not, then acquitted)—and he waived that right. *See* Plea/Sent.Tr. 14:9–15:15. Roby made his own decision to make that admission, and trial counsel had no duty to object and ask the court to require Roby to make *more* admissions before it accepted Roby's guilty plea. This challenge is frivolous.

D. The district court substantially complied with Rule 2.8(2)(b) in taking Roby's guilty pleas.

Roby argues that his guilty pleas were not entered knowingly or voluntarily. Roby identifies three problems that allegedly made his plea decisions involuntary, mostly relating to his allegation that the court and his counsel made "no modicum of attempt at compliance" with Rule 2.82(b). *See* Def's Br. at 44. None of his claims have merit.

1. The written guilty plea to eluding specified the right day and the right month, but an incorrect year. This was a mere typographical error, with no impact on anything.

Roby's written guilty plea to eluding in AGCR225149 said this:

> I admit that on or about Oct 23, 2018, I did the following things that constitute the criminal offense: Knowingly drive a motor vehicle over 25 mph over the speed limit while eluding a marked squad car with a uniformed police officer driving.

Written Guilty Plea (3/29/19); App. 50. The correct offense date was October 23, 2017. *See* AGCR225149 Minutes of Testimony (6/5/18) at 3; App. 28. By October 23, 2018, Roby had already been back in custody for months. *See, e.g.*, FECR227264 Pre-Trial Release Evaluation (10/3/18); App. 142 (noting that Roby had been in custody since August 4, 2018, and that he was "viewed as a danger to the community" and not recommended for any further pre-trial release). Roby would have recognized the inaccuracy for what it was: a typo.

Unlike the rest of Roby's claims in this section, this claim does not actually allege involuntariness—it only argues that, as a result, "there is insufficient evidence to support this plea and sentence." *See* Def's Br. at 37–38. The date is not an element of the offense, and an admission to the actual conduct is enough to meet the low threshold of "facts that support the offense." *See Ortiz*, 789 N.W.2d at 768; *cf. State v. Griffin*, 386 N.W.2d 529, 532 (Iowa Ct. App. 1986) (explaining that, where the date is not a material element of the crime, the State does not have the burden of proving when the offense occurred). In any event, the trial information and the minutes of testimony set out the correct date, and Roby affirmed that he had reviewed them—so he would have understood what conduct he was admitting. *See* Written Guilty Plea (3/29/19); App. 50; AGCR225149 Trial Information (6/5/18); App. 24; AGCR225149 Minutes of Testimony (6/5/18); App. 26. Roby cannot leverage this typo into a colorable claim.

2. Roby was informed about the lifetime special sentence under section 903B.1 during the plea colloquy.

Roby argues that he was never adequately advised about the lifetime special sentence under section 903B.1 before he pled guilty to third-degree sexual abuse. *See* Def's Br. at 39–41. But the prosecutor and the court each identified the provision and described its effect.

While describing the plea agreement, the prosecutor stated that, under the parties' joint sentencing recommendation, Roby would "be specially sentenced to the Director of the Department of Corrections for the remainder of his life under 903B.1." *See* Plea/Sent.Tr. 2:23–4:7. Roby's counsel agreed that the defense shared that understanding of the plea agreement. *See* Plea/Sent.Tr 4:8–10. Roby also agreed, and he confirmed that there was nothing in the prosecutor's explanation that he had not already agreed to. *See* Plea/Sent.Tr. 4:11–16. At that, the court would already know that Roby had no lingering questions about what it meant to be "specially sentenced" for "the remainder of his life under 903B.1." *See* Plea/Sent.Tr. 2:23–4:7. Later, in stating the maximum and minimum penalties, the court made sure that Roby understood that a conviction for third-degree sexual abuse meant that "[y]ou would be required to be on parole for the rest of your life." *See* Plea/Sent.Tr. 9:6–25. Roby said he understood that. *See id.* This was the same sentence described in the pronouncement of sentence. *See* Plea/Sent.Tr. 21:22–24. Rule 2.8(2)(b) required the court to notify Roby "that he would be subject to the punishment of lifetime parole under section 903B.1." *See State v. Cortez*, No. 08–0882, 2009 WL 928873, at *2–3 (Iowa Ct. App. Apr. 8, 2009). And that's what it did.

Roby asserts that more explanation was required. He cites no case in support of that assertion, nor can the State find one. There is no requirement that district courts explain the various procedures that will come into play in administering punishments, especially when the occurrence of those additional procedures is contingent on future events that are not guaranteed to happen. *See, e.g.*, *Saadiq v. State*, 387 N.W.2d 315, 326 (Iowa 1986) ("[C]ounsel is not ordinarily required to advise specifically of indirect or collateral consequences; . . . Counsel can hardly conceive all possible collateral consequences of a guilty plea and need not be a crystal gazer."). Roby was informed of the mandatory lifetime special sentence and was told that it meant he would effectively be on parole for the rest of his life. That cannot be a breach of duty, nor can Roby show that he would have rejected the plea deal, but for some failure to understand what that meant.

3. Roby was told that his guilty pleas would likely have a non-beneficial effect on his pending federal charges.

Before accepting Roby's pleas, the court also explained that they would not resolve Roby's pending federal charges—it said Roby was "not going to get any benefit on that, and I don't know, there may even be a detriment." Plea/Sent.Tr. 11:9–24. After some clarification, Roby said he already knew this information, and had no questions.

See Plea/Sent.Tr. 11:9–12:23. Now, Roby argues that any possible enhancement to the severity of his contingent future punishment in federal court "should have been fully revealed to [him] at the time of his plea and sentencing." *See* Def's Br. at 42–43. Roby cites no case that creates any such requirement, and the State could not find one. This is an archetypal example of a collateral consequence, and "counsel is not ordinarily required to advise specifically of indirect or collateral consequences." *Saadiq*, 387 N.W.2d at 326; *accord State v. Carney*, 584 N.W.2d 907, 910 (Iowa 1998) ("The failure to advise a defendant concerning a collateral consequence, even serious ones, cannot provide a basis for a claim of ineffective assistance of counsel."). Indeed, any explanation of how this affects Roby's exposure on federal charges is so inherently speculative that it creates a substantial risk of misadvice. *See Stevens v. State*, 513 N.W.2d 727, 728 (Iowa 1994) ("The rule is well established that defense counsel does not have a duty to inform a defendant about the collateral consequences of a guilty plea, but commits reversible error if counsel misinforms the defendant as to these consequences."). Roby cannot show his counsel was ineffective for declining to request that the court explain hypothetical calculations under federal sentencing guidelines before accepting his guilty pleas.

E. This is far from structural error.

Roby alleges structural error. *See* Def's Br. at 43–44. This claim repeats allegations of ineffectiveness presented in the prior sections. Roby also alleges generalized ineffectiveness. *See* Def's Br. at 45–47. Again, these are the same allegations already presented.

Perhaps the most startling argument in Roby's brief is his request that this Court find his trial counsel was structurally ineffective without the need to develop the factual record on what his counsel did or did not do, outside of this single reported hearing. Roby appeared to be fully satisfied with his counsel's services and fully willing to accept this plea deal (and to waive his opportunity to challenge it), throughout the plea hearing. *See* Plea/Sent.Tr. 4:11–16; Plea/Sent.Tr. 13:16–14:8. Roby's counsel was not asked to give a full description of the course of her work in representing Roby, but she confirmed that she conferred with him about the charges, verified that he had no plausible defenses other than a general denial, explained the elements of each offense, and helped Roby negotiate a plea deal. *See* Plea/Sent.Tr. 6:13–8:11. Roby's counsel even corrected him when he mistakenly answered that he *did not* have pending charges anywhere else—she knew that he had pending federal charges. *See* Plea/Sent.Tr. 11:6–15.

Roby never explains why this Court should view this as actual or constructive denial of counsel and never explains how this could have rendered the proceedings presumptively unreliable. *See* Def's Br. at 43–44 (quoting *Lado v. State*, 804 N.W.2d 248, 252 (Iowa 2011)). The State sees nothing that undermines the knowing and voluntary character of Roby's pleas, nor any grounds for claiming a failure to substantially comply with Rule 2.8(2)(b). Even if there were some breach identified, structural error is not just "one mistake too many"—it arises from errors "'affecting the framework within which the trial proceeds, rather than simply an error in the trial process itself." *See State v. Feregrino*, 756 N.W.2d 700, 706–07 (Iowa 2008) (quoting *Johnson v. United States*, 520 U.S. 461, 468 (1997)). Nothing in the record or in Roby's brief supports any allegation of error that would be comparable to actual/constructive denial of counsel or some other fatal defect that infected the entire process.

As for Roby's final claim of ineffective assistance, Roby claims "a massive amount of prejudice" from the amalgamated errors that he listed in previous sections. *See* Def's Br. at 46. This is why his claims must be preserved: without a record, Roby only has empty assertions, and cannot show prejudice. *See Straw*, 709 N.W.2d at 137–38 & n.4.

It is possible that Roby's claims will improve when developed on PCR. Three days after entering his guilty pleas, waiving his right to file a motion in arrest of judgment, and being sentenced in accordance with the negotiated plea agreement, Roby filed a request that just said: "I would like to rescind my plea deal." *See* Request to Rescind Plea Deal (4/1/19); App. 185. On this record, it is impossible to ascertain whether he discovered some new fact or whether he just experienced "buyer's remorse." *See, e.g.*, *State v. Barnhart*, No. 14-0950, 2015 WL 576358, at *2 (Iowa Ct. App. Feb. 11, 2015). Roby's present appeal is limited to challenges that can be discerned from the record, and the State is skeptical that anything in Roby's brief actually explains that sudden pivot. On direct appeal, this mystery cannot be solved—but if Roby develops the record in PCR proceedings, that might change.

Ironically, the only way that Roby will lose access to any claim is if this Court issues a ruling on its merits, which would preclude Roby from re-raising the claim on PCR. *See* Iowa Code § 822.8; *Holmes v. State*, 775 N.W .2d 733, 735 (Iowa Ct. App. 2009). This Court should not do so. Whether by applying provisions from SF 589 or preserving these claims as a matter of discretion, this Court should decline to resolve these claims until an adequate PCR record can be developed.

CONCLUSION

Roby's challenges are meritless on this record. His claims should be preserved, in accordance with the legislature's intent in passing SF 589. As such, this Court should affirm his convictions.

REQUEST FOR NONORAL SUBMISSION

This case should be set for nonoral submission. In the event argument is scheduled, the State asks to be heard.

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)(d) and 6.903(1)(g)(1) or (2) because:

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Dated: July 16, 2019

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