IN THE SUPREME COURT OF IOWA

STATE OF IOWA, Plaintiff-Appellee, v. CHRISTOPHER C. HAWK, Defendant-Appellant.	)))))))))	S.CT. NO. 19-1814

APPEAL FROM THE IOWA DISTRICT COURT
FOR WAYNE COUNTY
HONORABLE DUSTRIA A. RELPH (MOTION TO SUPPRESS), MICHAEL K. JACOBSEN (GUILTY PLEA) & PATRICK W. GREENWOOD (SENTENCING), JUDGES

APPELLANT'S BRIEF AND ARGUMENT
AND
REQUEST FOR ORAL ARGUMENT

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CERTIFICATE OF SERVICE

On the 27th day of July, 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 Christopher Hawk, 2023 NW 86th, Apt. 69, Clive, IA 50325.

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State v. Nall, 894 N.W.2d 514, 517 (Iowa 2017)

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Iowa Const. art. V, § 4

Hills Bank & Trust Co. v. Converse, 772 N.W.2d 764, 771 (Iowa 2009)

2019 Acts, ch. 140, § 28, codified as Iowa Code § 814.6(1) (Supp. 2020)

State v. Macke, 933 N.W.2d 225, 227–28 (Iowa 2019)

1. The amendment to section 814.6(1) should not apply to criminal defendants, like Hawk, whose offenses and guilty pleas occurred prior to July 1, 2019.

State v. Macke, 933 N.W.2d 225, 227–28 (Iowa 2019)

Landgraf v. USI Film Prods., 511 U.S. 244, 257 (1994)

Iowa Code § 4.13 (2019)

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

State v. Edwards, 279 N.W.2d 9, 11 (Iowa 1979)

Iowa Constitution Article XII, § 3, p. 29 (1857) http://publications.iowa.gov/9996/1/iowa_constitution_1857002.pdf.

2. If the amendment to section 814.6 applies, the text of section 814.6 only removes the right of direct appeal of the underlying guilty plea itself; a defendant, like Hawk, who entered a guilty plea, still has a right to direct appeal of his sentence.

Iowa Code § 814.6 (2019)

Iowa Code § 814.6 (2017)

State v. Nall, 894 N.W.2d 514, 518 (Iowa 2017)

State v. McCullah, 787 N.W.2d 90, 94 (Iowa 2010)

State v. Lindell, 828 N.W.2d 1, 5 (Iowa 2013)

State v. Adams, 810 N.W.2d 365, 369 (Iowa 2012)

State v. Pickett, 671 N.W.2d 866, 869–70 (Iowa 2003)

State v. Dohlman, 725 N.W.2d 428, 431 (Iowa 2006)

Daughenbaugh v. State, 805 N.W.2d 591, 597 (Iowa 2011)

State v. Hanna, 179 N.W.2d 503, 507 (Iowa 1970)

Common Legal Terms, Iowa Judicial Branch, http://www.iowacourts.gov/for-the-public/common-legal-terms (last visited Apr. 22, 2020)

Iowa Code § 814.6(1)(a)(3)

Iowa Code § 814.6(2)

Case, Cambridge Dictionary, https://dictionary.cambridge.org/us/dictionary/english/case (last visited Apr. 29, 2020)

Iowa Code § 814.6(1)(a)

Iowa Code § 814.6(2)(f) (2019)

Iowa R. App. P. 6.902(1) (2019)

State v. Allen, No. 98–1865, 2000 WL 204065, at *1 (Iowa Ct. App. Feb. 23, 2000)

State v. Boyer, 940 N.W.2d 429, 430–31 (Iowa 2020)

Senate Video 2019-03-28 at 1:49:10–1:49:20, statements of Senator Dawson, available at https://www.legis.iowa.gov/dashboard?view=video&chamber=S&clip=s20190328125735925&dt=2019-03-28&offset=3054&bill=SF%20589&status=i

Iowa Code § 814.7 (2019)

Iowa Code § 814.29 (2019)

3. If the amendment to section 814.6 applies, it should be invalidated for improperly restricting the role and jurisdiction of Iowa's appellate courts.

Klouda v. Sixth Judicial Dist. Dept. of Corr. Serv., 642 N.W.2d 255, 260 (Iowa 2002)

State v. Phillips, 610 N.W.2d 840, 842 (Iowa 2000)

Planned Parenthood of the Heartland v. Reynolds ex rel. State, 915 N.W.2d 206, 212 (Iowa 2018)

State ex rel. Allee v. Gocha, 555 N.W.2d 683, 685 (Iowa 1996)

Iowa Const. art. V, § 1

Franklin v. Bonner, 207 N.W. 778, 779 (Iowa 1926)

Iowa Const. art. V, § 4

Iowa Const. art. V, § 6

In re Guardianship of Matejski, 419 N.W.2d 576, 577 (Iowa 1988)

Laird Brothers v. Dickerson, 40 Iowa 665, 670 (1875)

Schrier v. State, 573 N.W.2d 242, 244–45 (Iowa 1997)

In re Durant Comm. Sch. Dist., 106 N.W.2d 670, 676 (Iowa 1960)

Wissenberg v. Bradley, 229 N.W. 205, 209 (Iowa 1929)

McKane v. Durston, 153 U.S. 684, 687–88 (1894)

In re Chambers, 152 N.W.2d 818, 820 (Iowa 1967)

Waldon v. Dist. Court of Lee Cnty., 130 N.W.2d 728, 731 (Iowa 1964)

Iowa Code § 602.4102(2) (2019)

Varnum v. Brien, 763 N.W.2d 862, 875–76 (Iowa 2009)
Webster County. Bd. of Supervisors v. Flattery, 268 N.W.2d 869, 873 (Iowa 1978)

4. If the amendment to section 814.6 applies, it violates equal protection.

U.S. Const. amend. XIV

Iowa Const. art. I, § 6

Varnum v. Brien, 763 N.W.2d 862, 875–76 (Iowa 2009)

State v. Doe, 927 N.W.2d 656, 661 (Iowa 2019)

City of Cleburne v. Cleburne Living Ctr., 473 U.S. 432, 439–41 (1985)

Griffin v. Illinois, 351 U.S. 12, 17 (1956)

State v. Kress, 636 N.W.2d 12, 20 (Iowa 2001)

State v. Delano, 161 N.W.2d 66, 72–73 (Iowa 1968)

Senate Video 2019-03-28 at 1:49:10–1:49:20, statements of Senator Dawson, available at https://www.legis.iowa.gov/dashboard?view=video&chamber=S&clip=s20190328125735925&dt=2019-03-28&offset=3054&bill=SF%20589&status=i

State v. Truesdell, 679 N.W.2d 611, 616 (Iowa 2004)

Schmidt v. State, 909 N.W.2d 778, 793 (Iowa 2018)

State v. Ingram, 914 N.W.2d 794, 799 (Iowa 2018)

State v. Lyle, 854 N.W.3d 378, 387 (Iowa 2014)

Racing Ass'n of Cent. Iowa v. Fitzgerald, 675 N.W.2d 1, 6–7 (Iowa 2004)

State v. Bruegger, 773 N.W.2d 862, 883 (Iowa 2009)

Behm v. City of Cedar Rapids, 922 N.W.2d 524, 546 (Iowa 2019)

Baker v. State, 744 A.2d 864, 869–873 (Vt. 1999)

Planned Parenthood of Cent. New Jersey v. Farmer, 762 A.2d 620, 632–38 (N.J. 2000)

State v. Mowrey, 9 P.3d 1217, 1220–22 (Idaho 2000)

Trujillo v. City of Albuquerque, 965 P.2d 305, 314 (N.M. 1998)

Alaska Pacific Assur. Co. v. Brown, 687 P.2d 264, 269–70 (Alaska 1984)

5. If the amendment to section 814.6 applies, it denies Hawk due process.

U.S. Const. amend XIV

Iowa Const. art. I, § 9

Schmidt v. State, 909 N.W.2d 778, 793 (Iowa 2018)

State v. Ingram, 914 N.W.2d 794, 799 (Iowa 2018)

State v. Lyle, 854 N.W.3d 378, 387 (Iowa 2014)

Behm v. City of Cedar Rapids, 922 N.W.2d 524, 546 (Iowa 2019)

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State v. Bruegger, 773 N.W.2d 862, 883 (Iowa 2009)

In re Durant Comm. Sch. Dist., 106 N.W.2d 670, 676 (Iowa 1960)

Wissenberg v. Bradley, 229 N.W. 205, 209 (Iowa 1929)

McKane v. Durston, 153 U.S. 684, 687–88 (1894)

Cassandra Burke Robinson, The Right to Appeal, 91 N.C. L. Rev. 1219, 1221 (2013)

Marc M. Arkin, Rethinking the Constitutional Right to an Appeal, 39 UCLA L. Rev. 503 (1992)

Alex S. Ellerson, The Right of Appeal and Appellate Procedural Reform, 91 Columbia L. Rev. 373, 376 (1991)

State v. Ohio ex. rel. Bryant v. Akron Metropolitan Park Dist., 281 U.S. 74, 80 (1930)

Jones v. Barnes, 463 U.S. 745, 756 n. 1 (1983)

Griswold v. Connecticut, 381 U.S. 479, 487 (1965)

Boddie v. Connecticut, 401 U.S. 371, 374 (1971)

Michael H. v. Gerald D., 491 U.S. 110, 122–223 (1989)

Suzuki v. Quisenberry, 411 F. Supp. 113, 1133 (D. Haw. 1986)

Gregory M. Dyer, Criminal Defendants' Waiver of the Right to Appeal—An Unacceptable Condition of a Negotiated Sentence or Plea Bargain, 65 Notre Dame L. Rev. 649, 651 (1990)

(Rosanna Cavallaro, Better Off Dead: Abatement, Innocence, and the Evolving Right of Appeal, 72 U. Colo. L. Rev. 943, 986 (2002)

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

ABA Comm. On Standards of Judicial Administration: *Standards Relating to Appellate Courts* § 3.10, at 12 (1977)

State v. Wilson, 234 N.W.2d 140, 140–41 (Iowa 1975)

Griffin v. Illinois, 351 U.S. 12, 17 (1956)

State v. Delano, 161 N.W.2d 66, 72–73 (Iowa 1968)

Simmons v. Pub. Defender, 791 N.W.3d 69, 74 (Iowa 2010)

U.S. Const. amend. V

U.S. Const. amend. XIV § 1

Iowa Const. art. I, § 6

Iowa Const. art. I, § 9

In re Chambers, 152 N.W.2d 818, 820 (Iowa 1967)

Evitts v. Lucey, 469 U.S. 387, 400–01 (Iowa 1985)

Billotti v. Legursky, 975 F.2d 113, 115 (4th Cir. 1992)

Douglas v. People, 372 U.S. 353, 356 (1963)

Klouda v. Sixth Judicial Dist. Dept. of Corr. Serv., 642 N.W.2d 255, 260 (Iowa 2002)

State ex rel. Allee v. Gocha, 555 N.W.2d 683, 685 (Iowa 1996)

State v. Iowa Dist. Court for Black Hawk Cnty., 616 N.W.2d 575, 578 (Iowa 2000)

Iowa Code § 822.2(1) (2019)

Rhoades v. State, 880 N.W.2d 431, 436 n.10 (Iowa 2016)

6. If the amendment to section 814.6 applies, Hawk has established "good cause" to appeal.

Iowa Code § 814.6(1)(a)(3) (2019)

Iowa Civil Liberties Union v. Critelli, 244 N.W.2d 564, 568–69 (Iowa 1976)

Simmons v. Pub. Defender, 791 N.W.3d 69, 74 (Iowa 2010)

State v. Tesch, 704 N.W.2d 440, 451–52 (Iowa 2005)

Cause, Black's Law Dictionary (11th ed. 2019)

Iowa R. Crim. P. 2.33 (2019)

Iowa R. Civ. P. 1.977 (2019)

Iowa Code § 322A.2 (2019)

Iowa Code § 322A.15 (2019)

Iowa Code § 915.84(1) (2019)

State v. Winters, 690 N.W.2d 903, 907–08 (Iowa 2005)

Wilson v. Ribbens, 678 N.W.2d 417, 420–21 (Iowa 2004)

U.S. Const. amend. V

U.S. Const. amend. XIV § 1

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In re Chambers, 152 N.W.2d 818, 820 (Iowa 1967)

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Douglas v. People, 372 U.S. 353, 356 (1963)

Klouda v. Sixth Judicial Dist. Dept. of Corr. Serv., 642 N.W.2d 255, 260 (Iowa 2002)

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Iowa Code § 822.2(1) (2019)

Rhoades v. State, 880 N.W.2d 431, 436 n.10 (Iowa 2016)

Gibb v. Hansen, 286 N.W.2d 180, 188 (Iowa 1979)

Farrell v. Iowa Dist. Court, 747 N.W.2d 789, 790–92 (Iowa Ct. App. 2008)

7. If the Court determines that Hawk cannot directly appeal for any reason, it should treat his notice of appeal and this brief as an application for discretionary review and/or petition for writ of certiorari and consider his challenges to his sentences.

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. WHETHER THE DISTRICT COURT ERRED IN FINDING THAT HAWK HAD THE REASONABLE ABILITY TO PAY RESTITUTION AS THE RECORD DISCLOSES NO MEANS FOR HIM TO DO SO?

Authorities

State v. Jenkins, 788 N.W.2d 640, 642 (Iowa 2010)

State v. Klawonn, 688 N.W.2d 271, 274 (Iowa 2004)

State v. Dudley, 766 N.W.2d 606, 612 (Iowa 2009)

State v. Albright, 925 N.W.2d 144, 161 (Iowa 2019)

State v. Barnes, 791 N.W.2d 817, 827 (Iowa 2010)

State v. Thomas, 520 N.W.2d 311, 313 (Iowa Ct. App. 1994)

State v. Cooley, 587 N.W.2d 752, 754 (Iowa 1999)

State v. Van Hoff, 415 N.W.2d 647, 648 (Iowa 1987)

State v. Dudley, 766 N.W.2d 606, 615 (Iowa 2009)

State v. Albright, 925 N.W.2d 144, 161 (Iowa 2019)

Fuller v. Oregon, 417 U.S. 40, 53–54, 94 S.Ct. 2116, 2124–25, 40 L.Ed.2d 642 (1974)

People v. Jackson, 483 Mich. 271, 769 N.W.2d 630, 636 (2009)

State v. Pate, No. 18-2120, 2019 WL 6358440, at *2 (Iowa Ct. App. November 27, 2019)

Iowa Code § 910.2(2) (2017)

State v. Storrs, 351 N.W.2d 520, 522 (Iowa 1984)

State v. Kaelin, 362 N.W.2d 526, 528 (Iowa 1985

Iowa Code § 815.9(1)(a) (2017)

Iowa Code § 910.1(4) (2019)

Iowa Code § 910.2 (2019)

Iowa Code § 815.14 (2019)

Walters v. Grossheim, 525 N.W.2d 830, 832 (Iowa 1994)

Iowa Code § 910.5(1) (2019)

ROUTING STATEMENT

Christopher C. Hawk requests the Iowa Supreme Court retain this case because it presents substantial constitutional questions regarding the application and validity of the legislature's recent amendments to Iowa Code section 814.6(1). *See* Iowa Rs. App. P. 6.903(2)(d), 6.1101(2)(a) (2019).

Additionally, this case highlights the need for guidance in recognizing those situations in which the imposition of legal obligations is the cause of undue financial obligations on the defendant.

These arguments raise substantial issues of first impression and fundamental issues of broad public importance that require ultimate determination by the Supreme Court. *See* Iowa Rs. App. P. 6.903(2)(d), 6.1101(2)(c)–(d).

STATEMENT OF THE CASE

Nature of the Case: This is an appeal, by Christopher Hawk, following conviction and sentencing for Possession With Intent to Deliver More Than Five Grams of the Controlled Substance Methamphetamine, Class "C" Felony, in violation of Iowa Code § 124.401(1)(c)(6) (2017).

Course of Proceedings and Facts: Mr. Hawk does not challenge his plea of guilty. He challenges only the restitution portion of the sentence.

On September 6, 2018, Christopher Hawk was charged with Possession With Intent to Deliver More Than Five Grams of a Controlled Substance, to-wit Methamphetamine in violation of Iowa Code §§ 124.401(1)(B) (7) (2017), a Class B Felony, and Failure to Affix a Drug Tax Stamp in violation of Iowa Code §§ 453B.1 & 453B.12 (2017). (09/06/18 Trial Information) (App. pp. 9-11).

A written arraignment was filed on September 15, 2018. (Written Arraignment) (App. pp. 12-13).

On October 15, 2018, the defense filed a motion to suppress evidence. (Motion to Suppress) (App. pp. 14-16).

A hearing on the motion to suppress evidence was held on January 22, 2019, and the court denied the motion in a ruling given from the bench. (Transcript of Proceedings pp. 68 L 21-25, 69-70 L 1-25, 71 L 1-13).

On May 28, 2019, pursuant to a plea agreement, Hawk pled guilty to the lesser-included offense of Possession of a Controlled Substance With Intent to Deliver, to-wit methamphetamine, in an amount consisting of five grams or less in violation of Iowa Code § 124.401(1)(c)(6) (2017), a Class C Felony. (Transcript of Proceedings).

On August 5, 2019, the defense filed a motion in arrest of judgment. (Motion in Arrest of Judgment) (App. pp. 21-22).

A hearing was held on August 6, 2019, during which Hawk withdrew all pending motions. (Order) (App. pp. 23-25).

Sentencing was held on October 2, 2019. Hawk was sentenced to serve a 10-year term of incarceration. (Judgment Entry and Sentence) (App. pp. 26-28).

A notice of appeal was filed on October 30, 2019. (Notice of Appeal) (App. pp. 29-30).

Additional relevant facts will be discussed below.

ARGUMENT

I. THE LEGISLATURE'S RECENT AMENDMENT TO IOWA CODE SECTION 814.6 SHOULD NOT AFFECT HAWK'S APPEAL AS THE OFFENSE AND PLEA OCCURRED PRIOR TO JULY 1, 2019 HE APPEALS ONLY HIS SENTENCE AND THERE IS GOOD CAUSE FOR ALLOWING HIS APPEAL. ALTERNATIVELY, THE COURT SHOULD TREAT HAWK'S NOTICE OF APPEAL AND BRIEF AS AN APPLICATION FOR DISCRETIONARY REVIEW OR WRIT OF CERTIORARI AND GRANT RELIEF.

A. Standard of Review: The Court reviews questions of statutory interpretation for correction of errors of law. State v. Nall, 894 N.W.2d 514, 517 (Iowa 2017) (*citations omitted*). It reviews constitutional issues de novo. Klouda v. Sixth Judicial Dist. Dept. of Corr. Serv., 642 N.W.2d 255, 260 (Iowa 2002).

B. Preservation of Error: Challenges to the

amendments to Iowa Code section 814.6 are of a nature that cannot be preserved in district court. The district court cannot determine this Court's jurisdiction. Iowa Const. art. V, § 4. The filing of a timely notice of appeal confers subject matter jurisdiction for this Court to hear the issues presented. Cf. Hills Bank & Trust Co. v. Converse, 772 N.W.2d 764, 771 (Iowa 2009) ("A failure to file a timely notice of appeal leaves us without subject matter jurisdiction to hear the appeal.").

Therefore, Hawk preserved error on this issue by timely filing a notice of appeal.

C. Discussion: During the 2019 legislative session, the Iowa legislature enacted statutes which prohibit the appellate courts from applying long-standing standards of appellate procedure. Relevant to this case, the legislature amended Iowa Code section 814.6(1) to no longer grant a right of direct appeal from a final judgment of sentence from "[a] conviction where the defendant has pled guilty". From this category, it exempted class "A" felony guilty pleas and cases "where the defendant establishes good cause." 2019 Acts, ch.

140, § 28, codified as Iowa Code § 814.6(1) (Supp. 2020). Hawk entered his guilty plea prior to July 1, 2019, which was the effective date of the amendment, and was sentenced after. *See* State v. Macke, 933 N.W.2d 225, 227–28 (Iowa 2019) (noting the new statute went into effect on July 1, 2019).

1. The amendment to section 814.6(1) should not apply to criminal defendants, like Hawk, whose offenses and guilty pleas occurred prior to July 1, 2019.

Although the statute was effective on the date of Hawk's sentence, it should not be applied to his case. *See* Macke, 922 N.W. at 230 n.1 (quoting Landgraf v. USI Film Prods., 511 U.S. 244, 257 (1994)) ("'A statement that a statute will become effective on a certain date does not even arguably suggest that it has any application to conduct that occurred at an earlier date.'"). The amendment to section 814.6(1) does not contain language that it applies retroactively to conduct that occurred prior to July 1, 2019. *See id.* at 233. Here, Hawk committed the crimes charged in the underlying case on September 6, 2018. (Trial Information) (App. pp. 9-11). Thus, in the absence of language that the statute's change applies

retroactively to conduct that occurred prior to its effective date, the Court should find the amendment to section 814.6 does not apply. *See id.*

Moreover, Iowa Code's general savings provision also renders the amendment to Iowa Code chapter 814 inapplicable to defendants such as Hawk who have pleaded guilty based on conduct that occurred before the law went into effect. It provides:

> 1. The reenactment, revision, amendment, or repeal of a statute does not affect any of the following:
>
> a. The prior operation of the statute or any prior action taken under the statute.
>
> b. Any validation, cure, right, privilege, obligation, or liability previously acquired, accrued, accorded, or incurred under the statute.
>
> c. Any violation of the statute or penalty, forfeiture, or punishment incurred in respect to the statute, prior to the amendment or repeal.
>
> d. Any investigation, proceeding, or remedy in respect of any privilege, obligation, liability, penalty, forfeiture, or punishment; and the investigation, proceeding, or remedy may be instituted, continued, or enforced, and the penalty, forfeiture, or punishment imposed, as if the statute had not been repealed or amended.

Iowa Code § 4.13 (2019). Before the legislature's amendment to the statutory language, Hawk had the right to appeal his

plea, judgment, and sentence on direct appeal. Hawk's rights had vested and cannot be retroactively removed by a statutory amendment.

In State v. Macke, in response to the State's argument that the statute applied retroactively, the Iowa Supreme Court found that the State's argument conflicted with section 4.13(3) and approvingly cited In re Daniel H., 678 A.2d 462 (Conn. 1996). Macke, 933 N.W.2d at 232. In re Daniel H. was a similar case out of Connecticut where the Connecticut legislature eliminating of a right to appeal. *Id.* 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 legislature's statutory change "result[s] 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 "impair[ed] Macke's existing right to a direct appeal of her guilty plea . . . ." *Id.* at 235.

Additionally, a guilty plea is an act constituting detrimental reliance. State v. Edwards, 279 N.W.2d 9, 11 (Iowa 1979). The right to appeal from a guilty plea still existed on the date Hawk entered his plea.

Hawk's right to appeal his sentence has historical underpinnings in the Iowa Constitution. The Iowa Constitution of 1857 includes a provision mandating that "…all offenses, misdemeanors, and crimes that may have been

committed before the taking effect of this Constitution, shall be subject to indictment, trial, and punishment, in the same manner as they would have been, had not this Constitution been made." Iowa Constitution Article XII, § 3, p. 29 (1857) http://publications.iowa.gov/9996/1/iowa_constitution_1857002.pdf.

Therefore, for the reasons stated above, the Court should find that the amendment to section 814.6 does not apply to this case because Hawk's offense and guilty plea occurred prior to the statute's effective date. *See* In re Daniel H., 678 A.2d at 468–69.

2. If the amendment to section 814.6 applies, the text of section 814.6 only removes the right of direct appeal of the underlying guilty plea itself; a defendant, like Hawk, who entered a guilty plea, still has a right to direct appeal of his sentence.

Even if the statute does apply to defendants whose conduct occurred prior to the statute's effective date, this Court should find the amended statutory language of section 814.6 does not prohibit Hawk from raising the challenges below because he only seeks direct review of his sentence; he

does not seek to challenge the underlying guilty plea. Accordingly, Hawk does not need to establish "good cause" and may file a direct appeal as a matter of right, just as he could prior to the amendments. Compare Iowa Code § 814.6 (2019), with Iowa Code § 814.6 (2017). The statute at issue, Iowa Code section 814.6, states:

> 1. Right of appeal is granted the defendant from:
>
> a. *A final judgment of sentence*, except 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.
>
> b. An order for the commitment of the defendant for insanity or drug addiction.
>
> 2. Discretionary review may be available in the following cases:
>
> a. An order suppressing or admitting evidence.
>
> b. An order granting or denying a motion for a change of venue.
>
> c. An order denying probation.
>
> d. Simple misdemeanor and ordinance violation convictions.
>
> e. An order raising a question of law important to the judiciary and the profession.
>
> f. An order denying a motion in arrest of judgment on grounds other than an ineffective assistance of counsel claim.

Iowa Code § 814.6 (2019) (*emphasis added*).

When the Court interprets a statute, it considers the plain meaning of the statutory language. State v. Nall, 894 N.W.2d 514, 518 (Iowa 2017) (*citations omitted*). If the Court determines the statute is unambiguous, it applies it as written. *Id.* However, if "reasonable minds could differ or be uncertain as to the meaning of the statute", the statute is ambiguous. State v. McCullah, 787 N.W.2d 90, 94 (Iowa 2010). "Ambiguity arises in two ways—either from the meaning of specific words or from the general scope and meaning of the statute when all its provisions are examined." *Id.* (internal quotation marks omitted). If there is ambiguity, the Court applies the principles of statutory construction in order to determine legislative intent. *See Id.*; State v. Lindell, 828 N.W.2d 1, 5 (Iowa 2013) (*citation omitted*).

When there are multiple plausible interpretations of a statute, the court examines the statute beyond its plain language to resolve the ambiguity. State v. Adams, 810

N.W.2d 365, 369 (Iowa 2012) (*citation omitted*). The Iowa Supreme Court has stated:

> When we interpret a statute, we attempt to give effect to the general assembly's intent in enacting the law. Generally, this intent is gleaned from the language of the statute. To ascertain the meaning of the statutory language, we consider the context of the provision at issue and strive to interpret it in a manner consistent with the statute as an integrated whole.

State v. Pickett, 671 N.W.2d 866, 869–70 (Iowa 2003) (*citations omitted*). In addition, the court interprets statutes "in a manner to avoid absurd results." *Id.* (*citations omitted*). The court "strictly construe[s] criminal statutes" and resolves any doubts in favor of criminal defendants. Adams, 810 N.W.2d at 369 (*citation omitted*). Moreover, "the legislative history of a statute is also instructive." State v. Dohlman, 725 N.W.2d 428, 431 (Iowa 2006) (*citation omitted*).

Here, the statute is ambiguous because there are multiple, reasonable interpretations. *See* McCullah, 787 N.W.2d at 94. One interpretation of the statutory language is it removes the right of direct appeal from all cases in which

there was an underlying plea of guilty. However, the words and "the general scope and meaning of the statute" also support a different interpretation of the language: it only removes the right of direct appeal for defendants who pled guilty in challenging the underlying plea itself, but not the sentence imposed. This Court should interpret the statute in the latter manner.

As a general rule, a right of appeal from final judgment of "sentence" allows appeals of both sentence and the underlying guilty plea conviction. However, the new statutory language of subsection (1)(a)(3) excludes a guilty plea "conviction" from direct appellate challenges as a matter of right. This Court has previously noted that the word "'conviction' has an 'equivocal meaning' that depends upon the context in which it is used." Daughenbaugh v. State, 805 N.W.2d 591, 597 (Iowa 2011) (citing State v. Hanna, 179 N.W.2d 503, 507 (Iowa 1970)). Specifically, the word "conviction" may be used in a commonly understood, popular sense or in a technical, legal sense.

The commonly understood meaning of the word "conviction" is the determination that a defendant is guilty of the crime; this occurs at the guilty plea itself. *See* Daughenbaugh, 805 N.W.2d at 597 ("[W]hen the word is used in its general and popular sense, conviction means the establishment of guilt independent of judgment and sentence."); *see also* Common Legal Terms, Iowa Judicial Branch, http://www.iowacourts.gov/for-the-public/common-legal-terms (last visited Apr. 22, 2020) ("Conviction: A legal finding or determination that a person is guilty of a crime.") (emphasis omitted). However, the Court has also noted the word "conviction" in a technical, legal sense "requires a formal adjudication by the court and the formal entry of a judgment of conviction." Daughenbaugh, 805 N.W.2d at 597.

Additionally, this Court has followed the principle that if "the statute was a punishment measure, the court would use the term 'conviction' in its narrow, technical sense, but if the statute served a protective purpose, a broad definition would be applicable." *Id.* at 598 (*citation omitted*). As the right to

appeal serves a protective purpose, this Court should interpret "conviction" in the broad sense and find it means the determination of the defendant's guilt—the guilty plea—in the context of section 814.6. *See Id.* Moreover, such a construction resolves doubts in the favor of defendants. *See* Adams, 810 N.W.2d at 369 *(citation omitted*).

The additional language of the statute also supports this interpretation. After prohibiting the right of an appeal of a conviction where the defendant has pled guilty, section 814.6(3) further provides: "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* Iowa Code § 814.6(1)(a)(3). This language supports the interpretation that the statute only prohibits the right of direct appeal of the guilty plea itself; rather than simply stating the subparagraph does not apply to class "A" felonies, it provides the subsection does not apply to a "*guilty plea"* for a class "A" felony. *See* Iowa Code § 814.6(1)(a)(3) (emphasis added). Thus, the word choice of "guilty plea" in the exceptions of subsection

814.6(1)(3) indicates the legislature's intent only to remove the right to appeal and to challenge a guilty plea itself, not the sentence.

Moreover, the subsequent word "case" in that sentence then provides an avenue for defendants to still attempt to directly appeal a guilty plea—in situations where they establish good cause. The use of the word "case" in this sentence is consistent with the legislature's use of the same word in subsection 814.6(2). The use is in the common, ordinary meaning: "a particular situation or example of something". *See* Iowa Code § 814.6(2) ("Discretionary review may be available in the following cases:"); *Case*, Cambridge Dictionary, https://dictionary.cambridge.org/us/dictionary/english/case (last visited Apr. 29, 2020). This same meaning of the word "case" must also be extended to the statute's use of that term in subsection 814.6(1)(a). *See* Iowa Code § 814.6(1)(a) (providing the right of appeal from "[a] final judgment of sentence, except in the following *cases*") (emphasis added). That is, the effect of this language is not to

exclude from the general "[r]ight of appeal . . . granted the defendant from a final judgment of sentence" of any and all criminal proceedings in which the defendant has pled guilty—but only to exclude the right to appeal the particular instance of a guilty plea "conviction" itself, distinct from the sentencing in the same criminal proceeding.

Moreover, the legislature's addition of section 814.6(2)(f) supports the interpretation that section 814.6(1)(a)(3) only applies to the guilty plea itself. In section 814.6(2)(f), the legislature amended the statute to allow a defendant the ability to seek discretionary review from an "order denying a motion in arrest of judgment on grounds other than an ineffective assistance of counsel claim". Iowa Code § 814.6(2)(f) (2019). This subsection provides an avenue of appellate review for guilty plea challenges in response to the legislature's removal of the right to directly appeal the guilty plea itself in section 814.6(1)(3). This is comparable to the provision of the statute that allows discretionary review of simple misdemeanors and ordinance violations, which also do

not have direct appeal as a matter of right. *See Id.* § 814.6(2)(d). Notably, the legislature did not add any provision for discretionary review dealing with sentencing in cases where the defendant entered a guilty plea—because the defendant still has the right to directly appeal his or her sentence following a guilty plea under section 814.6(1)(3).

Furthermore, there is additional support for the recognition of a distinction between an appeal of a guilty plea and an appeal simply from a sentence. For example, the Iowa Rules of Appellate Procedure acknowledge the availability of an appeal of a criminal sentence only. *See, e.g.,* Iowa R. App. P. 6.902(1) (2019) (providing expedited timelines for "[c]riminal proceedings in which an appeal is taken from a judgment and sentence entered upon a guilty plea *or from the sentence only"*) (emphasis added). In addition, Iowa appellate courts have recognized that a notice of appeal may be limited, including by specifying the appeal is from the sentence only, thereby disallowing any challenges to the underlying conviction. State v. Allen, No. 98–1865, 2000 WL 204065, at *1 (Iowa Ct. App.

Feb. 23, 2000) (unpublished opinion) (noting the "defense counsel filed a notice of appeal from his sentence only. [The defendant] claims his counsel was ineffective in limiting the issues in the notice of appeal" and considering whether the defendant's trial counsel was ineffective for failing to also appeal "the district court's refusal to permit [the defendant] to introduce evidence he pled guilty to the charge of interference with official acts"); *see also* State v. Boyer, 940 N.W.2d 429, 430–31 (Iowa 2020) (per curiam) ("Boyer identified a specific order in his notice of appeal, namely, the district court's judgment and sentence entered on September 24. When a party, even a pro se party, files a notice of appeal related to a specific order, we cannot rewrite it to include an order entered on a later date. . . . Although we found good cause for a delayed appeal of the September 24 order, this extension of time does not provide a basis for expanding the notice of appeal to include the October 5 restitution order or any other order.").

The interpretation that the amendment to section 814.6

only prohibits direct appeals of the guilty plea itself and not to a defendant's sentence is also corroborated by the legislative history and stated purpose of the statute. *See* Dohlman, 725 N.W.2d at 431 (*citation omitted*). The legislature designed the recent amendments to the statute in order to address the "waste" caused by "frivolous appeals" in the criminal justice system. *See* Senate Video 2019-03-28 at 1:49:10–1:49:20, statements of Senator Dawson, available at https://www.legis.iowa.gov/dashboard?view=video&chamber=S&clip=s20190328125735925&dt=2019-03-28&offset=3054&bill=SF%20589&status=i.

This reasoning does not apply to challenges to errors in the sentence itself, which are typically only subject to clear errors discernible from the existing record, such as illegal or unauthorized sentences or procedural errors, like the district court's consideration of an improper factor or failure to state reasons for the sentence on the record.

Rather, the changes the legislature made to Chapter 814 appear to be aimed defendants challenging and getting their

guilty pleas reversed over what the legislature deemed "technical" violations of Rule 2.8(2)(b) and raising ineffective-assistance-of-counsel claims or other challenges on direct appeal that need further record development. *See, e.g.*, Iowa Code § 814.7 (2019) ("An ineffective assistance of counsel claim shall be determined by filing an application for postconviction relief . . . , and the claim shall not be decided on direct appeal."); *Id.* § 814.29 (2019) ("If a defendant challenges a guilty plea based on an alleged defect in the plea proceedings, the plea shall not be vacated unless the defendant demonstrates that the defendant more likely than not would not have pled guilty if the defect had not occurred. The burden applies whether the challenge is made through a motion in arrest of judgment or on appeal.").

Consequently, it makes sense that the limitations of section 814.6(1)(a)(3) only applies to the guilty plea itself, not the subsequent sentence, which does not implicate the same concerns regarding frivolity and waste.

For the reasons above, this Court should find the

amended statute only prohibits the direct appeal of a "conviction" (the guilty plea itself).

The statute does not change a defendant's ability to file a direct appeal of the "final judgment of sentence" imposed following a guilty plea conviction.

Accordingly, this Court should find Hawk may directly appeal his sentence.

3. If the amendment to section 814.6 applies, it should be invalidated for improperly restricting the role and jurisdiction of Iowa's appellate courts.

If the Court determines the language does remove the right to direct appeal from cases in which the defendant pleads guilty, issues of retrospective and prospective application aside, Hawk contends the change to section 814.6 improperly interferes with the separation of powers, with this Court's jurisdiction, and with the Court's role in addressing constitutional violations.

"The separation-of-powers doctrine is violated 'if one branch of government purports to use powers that are clearly forbidden, or attempts to use powers granted by the

constitution to another branch.'" Klouda v. Sixth Judicial Dist. Dept. of Corr. Serv., 642 N.W.2d 255, 260 (Iowa 2002) (quoting State v. Phillips, 610 N.W.2d 840, 842 (Iowa 2000)). This doctrine means that one branch of government may not impair another branch in "the performance of its constitutional duties." *Id.* (emphasis omitted).

Recently, the Iowa Supreme Court examined the judicial branch's role within Iowa's "venerable system of government":

> The Iowa Constitution, like its federal counterpart, establishes three separate, yet equal, branches of government. Our constitution tasks the legislature with making laws, the executive with enforcing the laws, and the judiciary with construing and applying the laws to cases brought before the courts.
>
> Our framers believed "the judiciary is the guardian of the lives and property of every person in the State." Every citizen of Iowa depends upon the courts "for the maintenance of [her] dearest and most precious rights." The framers believed those who undervalue the role of the judiciary "lose sight of a still greater blessing, when [the legislature] den[ies] to the humblest individual the protection which the judiciary may throw as a shield around [her]."

Planned Parenthood of the Heartland v. Reynolds ex rel. State, 915 N.W.2d 206, 212 (Iowa 2018) (*internal citations omitted*) (*alteration in original*). "For the judiciary to play an

undiminished role in [our] constitutional scheme, nothing must impede the immediate, necessary, efficient and basic functioning of the courts." State ex rel. Allee v. Gocha, 555 N.W.2d 683, 685 (Iowa 1996) (*citation omitted) (internal quotation marks omitted*).

All judicial power in Iowa is vested in the Iowa Supreme Court and its inferior courts. Iowa Const. art. V, § 1. "Courts constitute the agency by which judicial authority is made operative. The element of sovereignty known as judicial is vested, under our system of government, in an independent department, and the power of a court and the various subjects over which each court shall have jurisdiction are prescribed by law." Franklin v. Bonner, 207 N.W. 778, 779 (Iowa 1926). Article V, sections 4 and 6 are related to the jurisdiction of the courts. Article V, section 4 provides the jurisdiction of the Iowa Supreme Court. Iowa Const. art. V, § 4. It states:

> The supreme court shall have appellate jurisdiction only in cases in chancery, and shall constitute a court for the correction of errors at law, under such restrictions as the general assembly may, by law, prescribe; and shall have power to issue all writs and

> process necessary to secure justice to parties, and shall exercise a supervisory and administrative control over all inferior judicial tribunals throughout the state.

Iowa Const. art. V, § 4. Likewise, Article V, section 6 provides for the jurisdiction of the district court. It states:

> The district court shall be a court of law and equity, which shall be distinct and separate jurisdictions, and have jurisdiction in civil and criminal matters arising in their respective districts, in such manner as shall be prescribed by law.

Iowa Const. art. V, § 6.

Notably, the Iowa Constitution provides that limitations on the manner of the Court's jurisdiction can be prescribed by the legislature. *See* Iowa Const. art. V § 4. But the ability of the legislature to "prescribe" the "manner" of jurisdiction should not be confused with an ability to remove jurisdiction from the Court. Subject matter jurisdiction is conferred upon Iowa's courts by the Iowa Constitution. In re Guardianship of Matejski, 419 N.W.2d 576, 577 (Iowa 1988). They have general jurisdiction over all matters brought before them and the legislature can only prescribe the manner of its exercise;

the legislature cannot deprive the courts of their jurisdiction. *id.* (quoting Laird Brothers v. Dickerson, 40 Iowa 665, 670 (1875)); Schrier v. State, 573 N.W.2d 242, 244–45 (Iowa 1997).

The Iowa Supreme Court has previously recognized statutory limitations placed on the right to appeal, for example. *See* In re Durant Comm. Sch. Dist., 106 N.W.2d 670, 676 (Iowa 1960) (*citations omitted)* ("We have repeatedly held the right of appeal is a creature of statute. It was unknown at common law. It is not an inherent or constitutional right and the legislature may grant or deny it at pleasure."); *see also* Wissenberg v. Bradley, 229 N.W. 205, 209 (Iowa 1929). The United States Supreme Court has made similar remarks. McKane v. Durston, 153 U.S. 684, 687–88 (1894) ("A review by an appellate court of the final judgment in a criminal case, however grave the offence of which the accused is convicted, . . . is not now a necessary element of due process of law.").

Even assuming there is no right to appeal, the Iowa Supreme Court has stated: "Once the right to appeal has been

granted, however, it must apply equally to all. It may not be extended to some and denied to others." In re Chambers, 152 N.W.2d 818, 820 (Iowa 1967) (citing Waldon v. Dist. Court of Lee Cnty., 130 N.W.2d 728, 731 (Iowa 1964)). Although Iowa Code section 602.4102 contemplates the Iowa Supreme Court handling criminal appeals, the amendment to section 814.6 would make challenges to guilty pleas unreviewable on direct appeal except for where the defendant pleaded to a class "A" felony or established "good cause". Iowa Code § 602.4102(2) (2019). This is particularly problematic for the Court's inherent jurisdiction.

The Iowa Supreme Court has both the jurisdiction and the duty to invalidate state actions that conflict with the state and federal constitutions. *See* Varnum v. Brien, 763 N.W.2d 862, 875–76 (Iowa 2009) (noting the courts have an obligation to protect the supremacy of the constitution). A statute that seeks to divest Iowa's appellate courts of their ability to decide and remedy claimed deprivations of constitutional rights and court

errors improperly intrudes upon the jurisdiction and authority of the judicial branch. *See* Webster County. Bd. of Supervisors v. Flattery, 268 N.W.2d 869, 873 (Iowa 1978) (*citations omitted*) ("For the judiciary to play an undiminished role as an independent and equal branch of government nothing must impeded the immediate, necessary, efficient and basic functioning of the courts."). The Iowa Supreme Court has eloquently stated:

> No law that is contrary to the constitution may stand. "[C]ourts must, under all circumstances, protect the supremacy of the constitution as a means of protecting our republican form of government and our freedoms." Our framers vested this court with the ultimate authority, and obligation, to ensure no law passed by the legislature impermissibly invades an interest protected by the constitution.

Planned Parenthood, 915 N.W.2d at 212–13 (*internal citations omitted*) (*alteration in original*). "The obligation to resolve this grievance and interpret the constitution lies with this court." *Id.*

By removing the court's consideration of challenges to cases arising from pleas of guilty on direct appeal, the

legislature is intruding on Iowa appellate courts' independent role in interpreting the constitution and protecting Iowans' rights. This action by the legislature has violates the separation of powers and impermissibly interferes with the inherent jurisdiction of the Court. Accordingly, this Court should invalidate the statutory change and permit even defendants who enter guilty pleas to directly appeal their convictions and sentences.

4. If the amendment to section 814.6 applies, it violates equal protection.

Hawk contends the change Senate File 589 made to Iowa Code section 814.6 denies him equal protection under the law because it deprives him of the ability to challenge his conviction on direct appeal based upon the fact that he pled guilty. Both the federal and state constitutions provide for equal protection of citizens under the law. U.S. Const. amend. XIV; Iowa Const. art. I, § 6. "Like the Federal Equal Protection Clause found in the Fourteenth Amendment to the United States Constitution, Iowa's constitutional promise of

equal protection is essentially a direction that all persons similarly situated should be treated alike." Varnum, 763 N.W.2d at 878 (c*itations omitted*) (*internal quotation marks omitted*); *see also* State v. Doe, 927 N.W.2d 656, 661 (Iowa 2019) (*citation omitted*).

There are three classes of review for an equal protection claim based upon the underlying classification or right involved. *See* City of Cleburne v. Cleburne Living Ctr., 473 U.S. 432, 439–41 (1985) (discussing different levels of scrutiny under federal equal protection analysis). The Court evaluates classifications based on race, alienage, or national origin and classifications impacting fundamental rights using strict scrutiny. Varnum, 763 N.W.2d at 879 (*citation omitted*). Such classifications are "presumptively invalid and must be narrowly tailored to serve a compelling governmental interest." *Id.* It applies intermediate or heightened scrutiny to "quasi-suspect" groups. *Id.* "To survive intermediate scrutiny, the law must not only further an important governmental interest and be substantially related to that interest, but the

justification for the classification must be genuine and must not depend on broad generalizations." *Id.* (*citation omitted*). The Court evaluates all other classifications using rational basis review, in which a complainant has the "heavy burden of showing the statute is unconstitutional and must negate every reasonable basis upon which a classification may be sustained." *Id.*

The first step in analyzing an equal protection claim is to determine if the legislation is treating similarly situated persons differently. Doe, 927 N.W.2d at 662. "[T]o truly ensure equality before the law, the equal protection guarantee requires that laws treat all those who are similarly situated with respect to the purposes of the law alike." Varnum 763 N.W.2d at 883. With respect to the changes made by Senate File 589, Hawk is within a group of criminal defendants who have been convicted following a guilty plea made in the district court. Within this group, the amendment to section 814.6 has singled out those wrongly sentenced defendants. Whereas defendants who went to trial can obtain relief on

direct appeal, a defendant who pled guilty may not get relief on direct appeal unless he has established "good cause"—whatever that may be. Even within this group, the legislature has also made the distinction between those that pleaded guilty to a class "A" felony and those that pleaded guilty to any other classification of crime. The legislature has unlawfully treated Hawk and defendants like him differently based upon his decision to forgo certain constitutional rights and plead guilty. *See* Griffin v. Illinois, 351 U.S. 12, 17 (1956) ("Both equal protection and due process emphasize the central aim of our entire judicial system—all people charged with crime must, so far as the law is concerned, 'stand on an equality before the bar of justice in every American court.'")

Hawk further contends that his claim of disparate treatment involves the deprivations of fundamental rights. By pleading guilty, a defendant waives several constitutional rights, but only by doing so knowingly and voluntarily. State v. Kress, 636 N.W.2d 12, 20 (Iowa 2001); State v. Delano, 161 N.W.2d 66, 72–73 (Iowa 1968). Furthermore, in sentencing, a

criminal defendant has a fundamental right in having his case dealt with fairly and justly. *See Id.* at 74. By depriving Hawk of his right to direct review his sentence following a guilty plea, the legislature has deprived him of fundamental rights. Accordingly, the Court should review his claim under strict scrutiny. Varnum, 763 N.W.2d 862, 879 (Iowa 2009); City of Cleburne, 473 U.S. at 440.

However, regardless of whether this Court considers Hawk's claims under strict scrutiny or rational scrutiny, it should find the statutory change is unconstitutional. Video from the legislature's discussions regarding the bill indicates the amendments were designed to reduce "waste" caused by "frivolous appeals" in the criminal justice system. Senate Video 2019-03-28 at 1:49:10–1:49:20, statements of Senator Dawson, available at https://www.legis.iowa.gov/dashboard?view=video&chamber=S&clip=s20190328125735925&dt=2019-03-28&offset=3054&bill=SF%20589&status=i.

To the extent the statutory changes prevent appellate courts from ruling upon appeals from guilty pleas, the law is

neither narrowly tailored nor rationally related to its legislative purpose. Such claims can be decided on direct appeal because they require no additional record. State v. Truesdell, 679 N.W.2d 611, 616 (Iowa 2004). The Iowa Supreme Court has stated that "[p]reserving ineffective assistance of counsel claims that can be resolved on direct appeal wastes time and resources." *Id.* The same will be true for not directly resolving appeals of guilty pleas. Without knowing the process of how good cause will be determined, it is hard to state for certain, but the appeal of a guilty plea will inevitably require some type of appellate review. Likely, the appellate court will still need to review the record and briefing to determine if "good cause" exists. This process will also be a waste of time and resources for the Court unless the Court liberally applies the concept of "good cause", accepts review, and decides the claims directly. However, the addition of the "good cause" standard still will add more work for appellate courts and waste judicial time and resources by adding another layer of review. It also fails to eliminate burdens

elsewhere in the criminal justice system and appellate process: defense attorneys will still have to review the merits of the case and present arguments accordingly and the Attorney General's Office will still respond. Therefore, the amendment of Senate File 589 to Iowa Code section 814.6 not only fails to be narrowly tailored or rationally related to the government's professed purpose, but it directly contravenes it.

Additionally, even if the Court finds that Iowa Code section 814.6 does not violate federal equal protection, it should apply a more stringent review and conclude the statute violates article I, section 6 of the Iowa Constitution. The Iowa Supreme Court has noted the "Iowa Constitution affords individuals greater rights than does the United States Constitution." *See* Schmidt v. State, 909 N.W.2d 778, 793 (Iowa 2018); *see also* State v. Ingram, 914 N.W.2d 794, 799 (Iowa 2018) ([O]ur recent case law under the search and seizure provision of the Iowa Constitution has emphasized the robust character of its protections."); State v. Lyle, 854 N.W.3d 378, 387 (Iowa 2014) ("Iowans have generally enjoyed a greater

degree of liberty and equality because we do not rely on a national consensus regarding fundamental rights . . . ."). Notably, the Iowa Supreme Court has conducted a "more stringent review" than what might be available under the federal constitution. *See, e.g.,* Racing Ass'n of Cent. Iowa v. Fitzgerald, 675 N.W.2d 1, 6–7 (Iowa 2004) (applying established federal equal protection principles in a different and more stringent fashion under the Iowa Constitution); State v. Bruegger, 773 N.W.2d 862, 883 (Iowa 2009) (*citations omitted*) ("[W]e conclude that review of criminal sentences for 'gross disproportionality' under the Iowa Constitution should not be a 'toothless' review and adopt a more stringent review than would be available under the Federal Constitution."). Moreover, other states have employed more protective standards protecting additional rights than that required under federal law with regards to equal protection claims. *See* Behm v. City of Cedar Rapids, 922 N.W.2d 524, 546 (Iowa 2019) (*citations omitted*); *see, e.g.,* Baker v. State, 744 A.2d 864, 869–873 (Vt. 1999) (discussing when the court applies

stricter review than federal standard even where fundamental interests are not implicated); Planned Parenthood of Cent. New Jersey v. Farmer, 762 A.2d 620, 632–38 (N.J. 2000) ("We have not hesitated, in an appropriate case, to read the broad language of [the New Jersey Constitution] to provide greater rights than its federal counterpart."); State v. Mowrey, 9 P.3d 1217, 1220–22 (Idaho 2000) (discussing "means-focus" scrutiny the appellate courts apply under the state constitution when "the discriminatory character of a challenged statutory classification is apparent on its face and whether there is also a patent indicate of a lack of relationship between the classification and the declared basis of the statute"); Trujillo v. City of Albuquerque, 965 P.2d 305, 314 (N.M. 1998) (describing its rational basis scrutiny under equal protection as heightened and stating it is not "largely toothless" or a "virtual rubber-stamp"); Alaska Pacific Assur. Co. v. Brown, 687 P.2d 264, 269–70 (Alaska 1984) (applying, under its equal protection provision, "an adjustable 'uniform-balancing' test which place[s] a greater or lesser burden on the

state to justify a classification depending on the importance of the individual right involved"). This Court should find the legislative amendment to Iowa Code section 814.6(1) violates the Iowa Constitution.

For these reasons, the Court should find the amendment to section 814.6 denies Hawk equal protection under the law, and it should allow him to directly appeal.

5. If the amendment to section 814.6 applies, it denies Hawk due process.

Both the Iowa Constitution and the United States Constitution ensure criminal defendants are accorded due process of law. U.S. Const. amend XIV; Iowa Const. art. I, § 9. Even if the Court finds that Iowa Code section 814.6 does not violate federal due process, it should conclude the statute violates article I, section 9 of the Iowa Constitution. The "Iowa Constitution affords individuals greater rights than does the United States Constitution." *See* Schmidt, 909 N.W.2d at 793; *see also* Ingram, 914 N.W.2d 794, 799 (Iowa 2018); Lyle, 854 N.W.3d at 387 ("Iowans have generally enjoyed a greater

degree of liberty and equality because we do not rely on a national consensus regarding fundamental rights . . . .").

Other states have employed more protective standards than that required under federal law with regards to due process. *See Behm*, 922 N.W.2d at 546 (*citations omitted*) (listing several states, including South Dakota, New Jersey, Minnesota, Alaska, and Vermont that have employed more stringent review under their respective state constitutions).

Furthermore, the Iowa Supreme Court has previously conducted a "more stringent review" than available under the federal constitution. *See, e.g.*, Racing Ass'n of Cent. Iowa, 675 N.W.2d at 6–7 (applying a more stringent review under the Iowa Constitution's equal protection clause); Bruegger, 773 N.W.2d at 883 (Iowa 2009) (citations omitted) reviewing criminal sentences under the Iowa Constitution more stringently than the federal constitution and refusing to conduct a "toothless" review).

Hawk acknowledges the Iowa Supreme Court has previously recognized statutory limitations placed on the right

to appeal. *See* In re Durant Comm. Sch. Dist., 106 N.W.2d 670, 676 (Iowa 1960) (*citations omitted*); *see also* Wissenberg v. Bradley, 229 N.W. 205, 209 (Iowa 1929). Similarly, the United States Supreme Court has also stated appellate review is not a necessary element of due process. McKane v. Durston, 153 U.S. 684, 687–88 (1894) ("A review by an appellate court of the final judgment in a criminal case, however grave the offence of which the accused is convicted, . . . is not now a necessary element of due process of law."). However, these conclusions are subject to much criticism. *See* Cassandra Burke Robinson, The Right to Appeal, 91 N.C. L. Rev. 1219, 1221 (2013) (arguing U.S. Supreme Court relied on "nineteenth century dicta" for the proposition that due process does not require a right of appeal and expressing concerns that states will attempt to eliminate appeals as of right "in order to save fiscal and administrative resources."); Marc M. Arkin, *Rethinking the Constitutional Right to an Appeal*, 39 UCLA L. Rev. 503 (1992); Alex S. Ellerson, *The Right of Appeal and Appellate Procedural Reform*, 91 Columbia

L. Rev. 373, 376 (1991) ("Although the Court has since that time repeatedly reaffirmed this dictum, it has also qualified McKane's blanket statements considerably—to the point of qualifying them out of existence.").

Notably, after the U.S. Supreme Court's decision in McKane, the Court suggested there is a right of appeal under the due process clause: "As to the due process clause of the Fourteenth Amendment, it is sufficient to say that, as frequently determined by this court, the right of appeal is not essential to due process, *provided that due process has already been according in the tribunal of first instance*." State v. Ohio ex. rel. Bryant v. Akron Metropolitan Park Dist., 281 U.S. 74, 80 (1930) (emphasis added). "Because it is impossible to be sure that due process was accorded at the trial level without actually reviewing the trial proceedings, an appeal is essential to ensure that due process is accorded to each criminal defendant." Ellerson, The Right to Appeal, at 378. Approximately ninety years after the Supreme Court's decision in McKane, in 1983, Justice Brennan believed if the

court were squarely faced with the issue it would hold that federal due process requires a right to appeal a criminal conviction. *See* Jones v. Barnes, 463 U.S. 745, 756 n. 1 (1983) (Brennan, J., dissenting). He stated:

> [T]he reversal rate of criminal convictions on mandatory appeals in the state courts, while not overwhelming, is certainly high enough to suggest that depriving defendants of their right to appeal would expose them to an unacceptable risk of erroneous conviction. Of course, a case presenting this question is unlikely to arise, for the very reason that a right of appeal is now universal for all significant criminal convictions.

Id.

Due process protects those liberties that are "'so rooted in the traditions and conscience of our people as to be ranked as fundamental.'" Griswold v. Connecticut, 381 U.S. 479, 487 (1965) (*citation omitted*). "At its core, the right to due process reflects a fundamental value in our America constitutional system." Boddie v. Connecticut, 401 U.S. 371, 374 (1971); Michael H. v. Gerald D., 491 U.S. 110, 122–223 (1989) (*citation omitted*) ("Our cases reflect . . . solid recognition of the basic values that underlie our society . . . .").

Appellate review has become an integral part of the United States criminal justice system for adjudicating the guilt or innocence of a defendant. *See* Griffin, 351 U.S. at 18 (*citations omitted*).

> Justice demands an independent and objective assessment of a district court's . . . conduct . . . . The possibilities of error, oversight, arbitrariness and even venality in any human institution are such that subjective decisions to review of some kind answers a felt need; it would simply go against the grain, today, to make a matter as sensitive as a criminal conviction subject to unchecked determination by a single institution.

Suzuki v. Quisenberry, 411 F. Supp. 113, 1133 (D. Haw. 1986) (*quotation marks and internal citations omitted*). Criminal defendants in the federal system and almost all states have a right to directly appeal their convictions and sentences. *See* Gregory M. Dyer, *Criminal Defendants' Waiver of the Right to Appeal—An Unacceptable Condition of a Negotiated Sentence or Plea Bargain*, 65 Notre Dame L. Rev. 649, 651 (1990) (*citations omitted*); Rosanna Cavallaro, *Better Off Dead: Abatement, Innocence, and the Evolving Right of Appeal*, 72 U. Colo. L. Rev. 943, 986 (2002). The right of

appeal has become . . . sacrosanct." Harlon Leigh Dalton, *Taking the Right to Appeal (More or Less) Seriously*, 95 Yale L.J. 62, 62 (1985). "'The right of appeal . . . is a fundamental element of procedural fairness as generally understood in this country.'" *Id.* at 66 (quoting ABA Comm. On Standards of Judicial Administration: *Standards Relating to Appellate Courts* § 3.10, at 12 (1977)).

The right of appeal and what it ensures—fairness and a just criminal conviction and sentence—reflect fundamental values in American society and the criminal justice system. This Court should recognize a constitutional right of direct appeal under federal and state due process protections.

Moreover, without a direct review of sentencing errors, many criminal defendants may be completely without any redress for those errors. The changes to section 814.6 essentially extinguish a defendant's ability to raise sentencing challenges, such as the insufficient statement of reasons here, or a breach of the plea agreement, the judge's consideration of improper sentencing factors, or an improper sentencing

procedure. Because of the lengthy process, it is quite possible that a defendant would never be able to challenge sentencing errors in a postconviction relief proceeding because by the time he gets a hearing, his sentence would have already discharged, rending the claims moot and giving a defendant no relief for improper conduct at the sentencing hearing. *See* State v. Wilson, 234 N.W.2d 140, 140–41 (Iowa 1975); *see also* Jones, 463 U.S. at 756 n. 1 (There are few, if any, situations in our system of justice in which a single judge is given unreviewable discretion over matters concerning a person's liberty or property."). "Prior cases establish . . . that due process requires, at a minimum, that absent a countervailing state interest of overriding significance, persons forced . . . through the judicial process must be given a meaningful opportunity to be heard." Boddie, 401 U.S. at 377. Criminal defendants have no choice but to go through the criminal proceedings, including sentencing; in order to comply with due process, defendants are entitled to a meaningful appellate review of the sentencing process and the actions of the

sentencing judge. *See id.*; Jones, 463 U.S. at 756 n.1. Denying adequate review means that many criminal defendants will lose their liberty because of unjust, improper, inadequate judicial, prosecutorial, or defense actions that the appellate court would have corrected on appeal prior to the statutory amendment. *See* Griffin, 351 U.S. at, 20–21. If the Court determines the statute prevents defendants from directly appealing even their sentences following a guilty plea, this not only violates due process, it manifests inherent unfairness and injustice, offends the public sense of fair play, and it also undermines confidence in the criminal justice system as a whole. *See* Delano, 161 N.W.2d at 74.

As a general rule, the Court interprets statutes in a way that avoids constitutional problems. Simmons v. Pub. Defender, 791 N.W.3d 69, 74 (Iowa 2010) (*citations omitted*). An interpretation effectively prohibiting the right of appeal for defendants who plead guilty would raise concerns about due process and equal protection under both the Iowa and the federal constitutions, as discussed above. *See* U.S. Const.

amends. V, XIV § 1; Iowa Const. art. I, §§ 6, 9.

Assuming the legislature can grant or deny the right to appeal at its pleasure, as discussed above, equal protection guarantees dictate that once the right to appeal is granted, it may not be extended to some and denied to others." In re Chambers, 152 N.W.2d at 820 (*citation omitted*).

In addition, the procedure by which the appeal is considered must also comport with due process. *See* Evitts v. Lucey, 469 U.S. 387, 400–01 (Iowa 1985) ("The right to appeal would be unique among state actions if it could be withdrawn without consideration of applicable due process norms. . . . In short, when a State opts to act in a field where its action has significant discretionary elements, it must nonetheless act in accord with the dictates of the Constitution—and, in particular, in accord with the Due Process Clause."): Billotti v. Legursky, 975 F.2d 113, 115 (4th Cir. 1992) (finding West Virginia's discretionary right of appeal did not violate due process because procedure for seeking appeal included right to court-appointed counsel, preparation of transcripts,

opportunity to present oral argument, and submission of written petition to the appellate court including statement of facts, procedure, assignments of error, and legal authority). Therefore, defendants should be able to have appellate counsel, the preparation of transcripts, and an opportunity for appellate counsel to review the record and present legal and factual argument to the Court to review. *See* Douglas v. People, 372 U.S. 353, 356 (1963) (highlighting the importance and benefits of written briefs, oral argument, accessibility of transcripts, and the appointment of counsel in showing an appellate issue has merit).

Sentencing is squarely within "the realm of judicial power." Klouda, 642 N.W.2d at 261–62. "Any encroachment on [sentencing] power is a violation of the separation-of-powers doctrine." *Id.* at 262. If the statute does prohibit the appellate court from reviewing a defendant's sentence on direct appeal, then the statute has impeded the necessary, efficient and basic functioning of the appellate court: ensuring district courts are justly applying and enforcing the law in

sentencing, which is in the "sole province of the judiciary". State ex. rel. Allee, 555 N.W.2d at 685 (*citations omitted*); State v. Iowa Dist. Court for Black Hawk Cnty., 616 N.W.2d 575, 578 (Iowa 2000) (*citation omitted*). However, if the Court interpreted "good cause" for a direct appeal of a conviction arising from a guilty plea as automatically allowing sentencing challenges, then it may avoid this particular separation-of-powers violation. *See* Simmons, 791 N.W.3d at 88.

Appellate review of sentencings is critical because it is not clear that claims of errors in the sentencing process would be able to be addressed in any other forum. Specifically, they may not cognizable in postconviction proceedings. *See* Iowa Code § 822.2(1) (2019). Moreover, as discussed above, because of the lengthy time delay it takes to file, present, and get a ruling on a postconviction relief proceeding, many sentences will be discharged before the defendant is afforded a correction of the process. Furthermore, in many cases, the defendant will have to await the correction while incarcerated. It is inherently unfair that the defendant will have to wait in

prison to try to remedy the situation—and potentially never be able to get relief if the sentence is short or the postconviction relief proceeding is too long. This is particularly true and important when the vast majority of the cases within the criminal justice system are being resolved with guilty pleas. *See* Rhoades v. State, 880 N.W.2d 431, 436 n.10 (Iowa 2016) (citing data indicating that ninety-six percent of cases were resolved by plea bargaining from 2008 to 2012). A criminal defendant needs an avenue to challenge, and more importantly remedy, errors that occur in the sentencing process. This process promotes fairness and justice, and it reinforces the integrity of and encourages confidence in the criminal justice system as a whole.

6. If the amendment to section 814.6 applies, Hawk has established "good cause" to appeal.

As discussed above, the amendment to section 814.6(1) also provides there is a right of appeal from a final judgment of sentence from a "conviction where the defendant has pled guilty . . . where the defendant establishes good cause." Iowa

Code § 814.6(1)(a)(3) (2019). "Good cause" is not defined in the statute, and the statute does not prescribe the procedure to be used by a defendant to establish good cause. *Id.* Thus, the determination of both is left to the discretion of the Court. *See* Iowa Civil Liberties Union v. Critelli, 244 N.W.2d 564, 568–69 (Iowa 1976) (Iowa courts maintain an "inherent common-law power . . . to adopt rules for the management of cases on their dockets in the absence of statute.").

This Court should interpret "good cause" broadly and implement an adequate procedure to avoid any due process and equal protection violations. *See* Simmons v. Pub. Defender, 791 N.W.3d 69, 88 (Iowa 2010) (noting the court construes "statutes to avoid potential constitutional infirmity" if it is reasonably able to do so). Because "good cause" is not defined or limited in the statute, the Court should give the term its common meaning. State v. Tesch, 704 N.W.2d 440, 451–52 (Iowa 2005) (*citation omitted*). "Good cause" is commonly defined as "[a] legally sufficient reason." Cause, Black's Law Dictionary (11th ed. 2019). It is a broad and

flexible term, found throughout Iowa law where its definition is situational and varies depending on the context in which it is being applied. *See, e.g.*, Iowa R. Crim. P. 2.33 (2019) (providing violations of speedy indictment and speedy trial warrant dismissal unless "good cause to the contrary is shown."); Iowa R. Civ. P. 1.977 (2019) (stating the court may set aside default upon showing of "good cause"); Iowa Code §§ 322A.2, 322A.15 (2019) (providing motor vehicle franchise may not be terminated unless "good cause" is shown and identifying factors to evaluate in that determination); Iowa Code § 915.84(1) (2019) (allowing for waiver of time limitation to file for crime victim compensation if "good cause" is shown); State v. Winters, 690 N.W.2d 903, 907–08 (Iowa 2005) (discussing that grounds for "good cause" to grant trial continuance is narrower in a criminal case where speedy trial rights are at stake than in a civil case); Wilson v. Ribbens, 678 N.W.2d 417, 420–21 (Iowa 2004) (discussing factors to be considered when determining if "good cause" has been shown to excuse failure of service pursuant to rule 1.302).

As a general rule, the Court interprets statutes in a way that avoids constitutional problems. Simmons, 791 N.W.2d at 74 (*citations omitted*). The legislature's assignment of discretion to the Court to define "good cause" and to implement the procedure utilized to establish such cause helps in ensuring both can be accomplished in a manner consistent with constitutional dictates. An interpretation effectively prohibiting the right of appeal for defendants who plead guilty would raise concerns about due process and equal protection under both the Iowa and the federal constitutions, as discussed above. *See* U.S. Const. amends. V, XIV § 1; Iowa Const. art. I, §§ 6, 9.

Assuming the legislature can grant or deny the right to appeal at its pleasure, as discussed above, equal protection guarantees dictate that once the right to appeal is granted, it may not be extended to some and denied to others." In re Chambers, 152 N.W.2d at 820 (*citation omitted*). Thus, the Court should widely interpret "good cause" as to extend the right of direct appeal to apply to criminal defendants who have

pled guilty that have some colorable claim on appeal.

In addition, the procedure by which the appeal is considered must also comport with due process. *See* Evitts v. Lucey, 469 U.S. 387, 400–01 (Iowa 1985) ("The right to appeal would be unique among state actions if it could be withdrawn without consideration of applicable due process norms. . . . In short, when a State opts to act in a field where its action has significant discretionary elements, it must nonetheless act in accord with the dictates of the Constitution—and, in particular, in accord with the Due Process Clause."): Billotti v. Legursky, 975 F.2d 113, 115 (4th Cir. 1992) (finding West Virginia's discretionary right of appeal did not violate due process because procedure for seeking appeal included right to court-appointed counsel, preparation of transcripts, opportunity to present oral argument, and submission of written petition to the appellate court including statement of facts, procedure, assignments of error, and legal authority). Thus, the application of good cause to appeals from guilty pleas must also comport with due process guarantees.

Therefore, defendants should be able to have appellate counsel, the preparation of transcripts, and an opportunity for appellate counsel to review the record and present legal and factual argument to the Court to review when determining if good cause exists to sustain the appeal. *See* Douglas v. People, 372 U.S. 353, 356 (1963) (highlighting the importance and benefits of written briefs, oral argument, accessibility of transcripts, and the appointment of counsel in showing an appellate issue has merit).

Additionally, the Court should find that good cause always exists in the context where the defendant is not trying to undo the guilty plea, but rather only raising sentencing challenges. As discussed above, in part, the legislatures amendments to Chapter 814 are aimed at defendants challenging and getting their guilty pleas undone over what the legislature deemed "technical" violations. Importantly, the challenges raised by Hawk in this appeal if successful would not result in a reversal and undoing of his guilty pleas; they would simply result in a new sentencing hearing. If Hawk

had gone to trial and had the same sentencing hearing, this Court could review his claims raised below. This Court should interpret section 814.6(1) as still allowing appeals of sentencing errors or violations of constitutional rights.

Finding a defendant has established "good cause" whenever he is only raising sentencing claims may also avoid some of the separation-of-powers problems the statute presents. Sentencing is squarely within "the realm of judicial power." Klouda, 642 N.W.2d at 261–62. "Any encroachment on [sentencing] power is a violation of the separation-of-powers doctrine." *Id.* at 262. If the statute does prohibit the appellate court from reviewing a defendant's sentence on direct appeal, then the statute has impeded the necessary, efficient and basic functioning of the appellate court: ensuring district courts are justly applying and enforcing the law in sentencing, which is in the "sole province of the judiciary". State ex. rel. Allee, 555 N.W.2d at 685 (*citations omitted*); State v. Iowa Dist. Court for Black Hawk Cnty., 616 N.W.2d 575, 578 (Iowa 2000) (*citation omitted*). However, if the Court

interpreted "good cause" for a direct appeal of a conviction arising from a guilty plea as automatically allowing sentencing challenges, then it may avoid this particular separation-of-powers violation. *See* Simmons, 791 N.W.3d at 88.

Moreover, it is important this Court interpret "good cause" as including sentencing challenges because it is not clear that claims of errors in the sentencing process would be able to be addressed in any other forum. Specifically, they may not be cognizable in postconviction proceedings. *See* Iowa Code § 822.2(1) (2019).

Additionally, as discussed above, because of the lengthy time delay it takes to file, present, and get a ruling on a postconviction relief proceeding, many sentences will be discharged before the defendant is afforded a correction of the process. Furthermore, in many cases, the defendant will have to await the correction while incarcerated. It is inherently unfair that the defendant will have to wait in prison to try to remedy the situation—and potentially never be able to get relief if the sentence is short or the postconviction relief

proceeding is too long. This is particularly true and important when the vast majority of the cases within the criminal justice system are being resolved with guilty pleas. *See* Rhoades v. State, 880 N.W.2d 431, 436 n.10 (Iowa 2016) (citing data indicating that ninety-six percent of cases were resolved by plea bargaining from 2008 to 2012). A criminal defendant needs an avenue to challenge, and more importantly remedy, errors that occur in the sentencing process. Recognizing "good cause" in such instance promotes fairness and justice, and it reinforces the integrity of and encourages confidence in the criminal justice system as a whole.

Furthermore, to satisfy a "good cause" standard, the defendant should not have to show that he would definitively win on the merits of the claim he seeks to raise in the appeal. Instead, the court's consideration of whether "good cause" has been established should include whether the defendant has a colorable or non-frivolous claim. In other discretionary review situations, a petitioner does not have a burden to show he will

ultimately prevail on the merits of the claim to get review granted. *See, e.g.,* Gibb v. Hansen, 286 N.W.2d 180, 188 (Iowa 1979) (considering claims raised in petition for writ of certiorari and ultimately ruling against petitioner and annulling writ); Farrell v. Iowa Dist. Court, 747 N.W.2d 789, 790–92 (Iowa Ct. App. 2008) (noting the Supreme Court granted the writ of certiorari but ruling against the petitioner on one issue and for him on others). The same should be true of the defendant's establishment of "good cause" in order to gain direct review of his conviction following a guilty plea.

In this case, as discussed below, the district court ordered Hawk to pay court costs and attorney fees despite the fact the he clearly has no means to do so and will not for the foreseeable future. The record supports Hawk's claims, and, therefore, he has established good cause for his appeal.

7. If the Court determines that Hawk cannot directly appeal for any reason, it should treat his notice of appeal and this brief as an application for discretionary review and/or petition for writ of certiorari and consider his challenges to his sentences.

Finally, if for any reason the Court determines that Hawk

cannot raise his challenges in a direct appeal, Hawk 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." Propps, 897 N.W.2d at 97 (*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 Hawk cannot appeal his sentence following the entry of the guilty plea, he requests the Court treat his notice of appeal and the brief in this case as either a petition for writ of certiorari and/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 . . . .").

For all of the reasons advanced above, Hawk requests that this Court allow this appeal to proceed.

II. THE DISTRICT COURT ERRED IN FINDING THAT HAWK HAD THE REASONABLE ABILITY TO PAY FOR RESTITUTION AS THE RECORD DISCLOSES NO MEANS FOR HIM TO DO SO.

Standard of Review: The Court reviews restitution orders for correction of errors at law. State v. Jenkins, 788 N.W.2d 640, 642 (Iowa 2010); State v. Klawonn, 688 N.W.2d 271, 274 (Iowa 2004). The Court reviews constitutional claims de novo. State v. Dudley, 766 N.W.2d 606, 612 (Iowa

2009).

"The inclusion of the reasonable-ability-to-pay requirement makes these restitution provisions constitutional." State v. Albright, 925 N.W.2d 144, 161 (Iowa 2019) (*citation omitted*).

However, a review for abuse of discretion may be appropriate in this case based upon the court's failure to cite reasons supporting the restitution portion of the sentencing order. State v. Barnes, 791 N.W.2d 817, 827 (Iowa 2010).

Preservation of Error: The general rule of error preservation is not applicable to void, illegal or procedurally defective sentences. State v. Thomas, 520 N.W.2d 311, 313 (Iowa Ct. App. 1994).

Review of sentencing is properly before this court upon direct appeal despite the absence of objection in the trial court. State v. Cooley, 587 N.W.2d 752, 754 (Iowa 1999).

Discussion: "A constitutional prerequisite for a restitution order is the court's determination of a defendant's reasonable ability to pay." State v. Van Hoff, 415 N.W.2d 647,

648 (Iowa 1987). "A cost judgment may not be constitutionally imposed on a defendant unless a determination is first made that the defendant is or will be reasonably able to pay the judgment." State v. Dudley, 766 N.W.2d 606, 615 (Iowa 2009).

At sentencing, the court noted that Hawk was unemployed, that his employment record was "spotty at best" and had incurred approximately $20,000 in debt at the time of sentencing, not including $3,400 in attorney fees. (Sentencing Transcript pp. 12 L 22-25, 13 L 1-3).

The court made the following finding regarding Hawk's ability to pay the legal obligations assessed:

> "THE COURT: The Clerk has advised the Court that court costs including today are $343.50. Mr. Tingle, because his services are not complete, has not submitted a claim for attorney fees and the Court does not know what those fees are. In light of the fact that Mr. Hawk is not incapable of working; in other words, he does have the capacity to work and he has some employment history, the Court finds that given time and the ability to repay some of the financial obligation or all of it according to a fine payment plan, that he does have the reasonable ability to pay the court costs in the amount of $343.50. However, his ability to repay attorney fees is limited because of his incarceration, lack of current

> employment and substantial debts. Therefore, the Court will impose attorney fees in the amount of $250 or the actual amount if the actual amount paid is less."

(Transcript of Sentencing pp. 15 L 13-25, 16 L 1-3).

Hawk filed an application for court-appointed counsel following his arrest. The application indicates that he was not employed, had approximately $12,000 in income, prior to taxes and deductions, and was paying $300 for rent and fines incurred. There were no assets (including property, possessions and cash) worth more than $100 listed. (09/04/18 Financial Affidavit and Application for Appointment of Counsel) (App. p. 8).

The presentence investigation report (PSI) reveals that Hawk's income came from unemployment benefits he received during the 12 months prior to his arrest. (09/25/19 PSI p. 4) (Conf. App. p. 9).

In State v. Albright this Court reiterated the U.S. Supreme Court's sentiment that "…a defendant has the reasonable ability to pay when he or she can do so "without hardship." State v. Albright, 925 N.W.2d 144, 161 (Iowa

2019) (*citing* Fuller v. Oregon, 417 U.S. 40, 53–54, 94 S.Ct. 2116, 2124–25, 40 L.Ed.2d 642 (1974)).

Before restitution, can be ordered the financial resources of the defendant must be considered along with the burden of paying the obligations. *Id.* (*citation omitted*). Mr. Hawk's complete financial insolvency is indisputable.

Other considerations include considering the defendant's income and other financial obligations including the resources required for food, shelter and clothing. *Id.* (*citation omitted*).

Hawk has no financial resources, but does have verified financial obligations. (09/04/18 Financial Affidavit and Application for Appointment of Counsel, PSI pp. 4-5, 12, Transcript of Sentencing pp. 12 L 22-25, 13 L 1-3, 15 L 13-25, 16 L 1-3) (App. p. 8) (Conf. App. pp. 9-10, 12).

In adopting the considerations employed by various other state courts, the Iowa Supreme Court noted that Supreme Court of Michigan's purpose behind these determinations is to "…assure repayment is not required as long as he remains indigent." *Id.* quoting People v. Jackson, 483 Mich. 271, 769

N.W.2d 630, 636 (2009).

Hawk's future income in the penal system was unknown at the time of sentencing. Regardless of any wages he may earn in prison, he is still indigent.

Mr. Hawk asserts that the financial obligations imposed by the court are an undue financial hardship.

Unlike the defendant in State v. Pate, who was earning $16.00 per hour at the time of his arrest, Hawk was unemployed. State v. Pate, No. 18-2120, 2019 WL 6358440, at *2 (Iowa Ct. App. November 27, 2019).

Hawk held various jobs between 2012 and 2018, but lost them due to attendance irregularities caused by his health problems. His longest period of employment (12 years) was with Mahaska Farms, but his probation officer at the time required him to quit on the basis of his access to anhydrous ammonia. (PSI p. 4) (Conf. App. p. 9).

Also, unlike Pate, who was in good health *Id.*, Hawk suffers from amphetamine type substance use disorder, major depressive disorder, attention deficit hyperactivity disorder

and in need of mental health and substance abuse treatment. (PSI pp. 9-13) (Conf. App. pp. 14-18).

Pate's Financial Affidavit and Application for Appointment of counsel listed no monthly obligation for debts *id.*, but Hawk's does. (09/04/18 Financial Affidavit and Application for Appointment of Counsel) (App. p. 8).

Regarding the $1,000 fine, even the State recognized the dire state of Hawk's finances and indicated that it would not resist suspension of the $1000.00 penalty. (Transcript of Sentencing p. 5 L 1-5).

Despite the fact that Hawk was in demonstrably dire financial straits, the court did not explore alternatives to court-ordered monetary remuneration. *See* Iowa Code § 910.2(2) (2017).

When a criminal defendant contests an order of restitution he "…has the burden to demonstrate a failure of the trial court to exercise discretion or abuse of discretion." State v. Storrs, 351 N.W.2d 520, 522 (Iowa 1984). However, this burden is not insurmountable. "In an extreme case this

burden may be met on appeal through a record showing a defendant's indigency and disability from earning income." State v. Kaelin, 362 N.W.2d 526, 528 (Iowa 1985).

Iowa Code § 815.9 provides for the appointment of counsel at state expense for indigent defendants. Iowa Code § 815.9(1)(a) (2017). The Code also imposes a repayment obligation on indigent defendants for the total cost of legal assistance provided by the State. *Id.* § 815.9(3). Legal assistance costs are generally payable as restitution. Iowa Code §§ 910.1(4) and 910.2. Even so, the "expense of the public defender required to be reimbursed is subject to a determination of the extent to which the person is reasonably able to pay, as provided in section 815.9 and chapter 910." *Id.* § 815.14.

"By statute, incarceration creates no obstacle to performance under the restitution plan." Walters v. Grossheim, 525 N.W.2d 830, 832 (Iowa 1994) (citing Iowa Code § 910.5(1)). "Nevertheless the restitution plan of payment is required to reflect individualized factors bearing on

the inmate's ability to pay." *Id.* (recognizing provisions in § 910.5(1) addressing "…income, physical and mental health, education, employment and family circumstances").

This case is unlike State v. Kaelin wherein the record demonstrated that the "…defendant is indigent but has several skills that should enable him to earn income." State v. Kaelin, 362 N.W.2d 526 (Iowa 1985).

Hawk's considerable debt, coupled with his meager income, indicate that his expenses exceeded his monthly income prior to being charged with the instant offense. He has no assets. (09/04/18 Financial Affidavit and Application for Appointment of Counsel) (App. p. 8).

Hawk was incarcerated for 136 days during the pendency of his case. (09/02/18 Criminal Complaints (2), 11/13/18 Order, 07/31/19 Return of Service, 10/02/19 Judgment Entry and Sentence) (App. pp. 4-7, 17-20, 26-28).

The record does not support the district court's determination of Hawk's reasonable ability to pay. This matter should be reversed and remanded for a restitution

hearing to address all of the factors relevant to Hawk's reasonable ability to pay his legal obligations.

CONCLUSION

WHEREFORE, Christopher C. Hawk respectfully requests that his appeal be allowed to proceed and that this matter be reversed and remanded for a restitution hearing to determine his reasonable ability to pay and the application of the factors announced in Albright in order to avoid imposing undue financial hardship in the form of legal obligations.

REQUEST FOR ORAL ARGUMENT

Counsel requests to be heard in oral argument.

ATTORNEY'S COST CERTIFICATE

The undersigned, hereby certifies that the true cost of producing the necessary copies of the foregoing Brief and Argument was $6.65, 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 FOR BRIEFS

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 12,365 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).

/s/ Stephan J. Japuntich Dated: 07/27/20

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