IN THE SUPREME COURT OF IOWA
NO. 20-1530
BLACK HAWK COUNTY NO. FECR231289

STATE OF IOWA,
Plaintiff-Appellee,

vs.

VEIL JACOBY JACKSON-DOUGLASS,
Defendant-Appellant.

APPEAL FROM THE IOWA DISTRICT COURT IN AND FOR BLACK HAWK COUNTY, IOWA
THE HON. BRADLEY J. HARRIS

APPELLANT'S AMENDED BRIEF IN FINAL FORM

Submitted by: Richard Hollis
Attorney at Law
AT0003608
P.O. Box 12153
Des Moines, IA 50312
(515) 255-3426 phone no.
e-mail: attorneyhollis@hotmail.com
ATTORNEY FOR
VEIL J. JACKSON-DOUGLASS
DEFENDANT-APPELLANT

CERTIFICATE OF SERVICE

I certify that on or before September 17, 2021, I, the undersigned counsel served a copy of the "Appellant's Amended Brief in Final Form" upon the State by electronically transmitting a copy of the same to the Criminal Appeals Division of the Iowa Attorney General's Office through the use of the EDMS system. I, Richard Hollis, further certify that on or before September 18, 2021 I served a copy of the Appellant's Amended Brief in Final Form upon Appellant Veil J. Jackson-Douglass (whose inmate number is 6494547) by depositing a copy of the same into a mail receptacle at a post office, with first-class or priority mail, postage prepaid affixed, addressed to Veil Jackson-Douglass, using the following address: Newton Correctional Facility, P.O. Box 218, Newton, IA 50208.

By: /s/_____

Richard Hollis
Attorney at Law
AT0003608
P.O. Box 12153
Des Moines, IA 50312
(515) 255-3426 phone no.
e-mail: attorneyhollis@hotmail.com
ATTORNEY FOR
VEIL J. JACKSON-DOUGLASS
APPELLANT

TABLE OF CONTENTS

TABLE OF AUTHORITIES

STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

1. Iowa Code Section 814.6 and 814.7 do not prevent Jackson-Douglass from bringing this appeal.

Evits v. Lucey, 469 U.S. 387, 395 (1985).
Gideon v. Wainright, 372 U.S. 335, 344 (1963).
Griffin v. Illinois, 351 U.S.12, 18, 76 S.Ct. 585, 590, 100 L.Ed. 891 (1956).
In re Chambers, 152 N.W.2d 818, 820 (Iowa 1967).
In Re Guardianship of Matejski, 419 N.W.2d 576, 577 (Iowa 1988).
Iowa Civil Liberties Union v. Critelli, 244 N.W.2d 564, 568-69 (Iowa 1976).
James v. State, 541 N.W.2d 864, 868 (Iowa 1995).
Laird Brothers v. Dickerson, 40 Iowa 665, 670 (1875).
Shortridge v. State, 478 N,W.2d 613, 615 (Iowa 1991)
Simmons v. State Pub. Def, 791 N.W.2d 69, 74 (Iowa 2010).
State v. Baldon, 829 N.W.2d 785 (Iowa 2013).
State v. Damme, 944 N.W.2d 98 (Iowa App. 2020).
State v. Delano, 161 N.W.2d 66, 74 (Iowa 1968).
State v. Hinners, 471 N.W.2d 841, 843 (Iowa 1991).
State v. Lathrop, 781 N.W.2d 288, 292-93 (Iowa 2010).
State v. Roby, 897 N.W.2d 127, 137 (Iowa 2017).
State v. Truesdell, 679 N.W.2d 611, 616 (Iowa 2004).
Varnum v. Brien, 763 N.W.2d 862, 875-76 (Iowa 2009).
Iowa Code Section 602.4102.
Iowa Code Section 814.6.
Iowa Code Section 814.7.
Iowa Constitution, Article I, Sections 1 and 9 and Article V, Section 4.
United States Constitution, Fifth and Fourteenth Amendments.

2. Jackson-Douglass' November 9, 2020 *Pro Se* filing should be deemed a motion in arrest of judgment, and the District Court erred by not treating this filing as such and by denying the relief requested therein.

Iowa R. Crim. P. 2.8(2)(b),
Iowa R. Crim. P. 2.24(3)(a).
Munz v. State, 382 N.W.2d 693, 697 (Iowa App. 1985).
North Carolina v. Alford, 400 U.S. 25, 91 S.Ct. 160, 27 L.Ed.2d 162 (1969).
State v. Ferry, 919 N.W.2d 766 (Table) (Iowa App. 2018).

3. Defense Counsel was ineffective for not filing a Motion in Arrest of Judgment labeled as such.

Arizona v. Fulminante, 499 U.S. 279, 310, 111 S.Ct. 1246, 1265, 113 L.Ed. 2d 302, 331 (1991).
Ledezma v. State, 626 N.W.2d 134, 142 (Iowa 2001).
State v. Lado, 804 N.W.2d 248 (Iowa 2011).
State v. Mapp, 585 N.W.2d 746, 747 (Iowa 1998).
State v. Myers, 653 N.W.2d 574, 576-577 (Iowa 2002)
State v. Wissing, 528 N.W.2d 561, 563, 564 (Iowa 1995).
United States v. Cronic, 466 U.S. 648 (1984).
Iowa Rule of Professional Conduct 32.1.1.
Iowa Rule of Professional Conduct 32.1.3.

4. Defense Counsel was ineffective for not ensuring Jackson-Douglass entered an *Alford* Plea.

Arizona v. Fulminante, 499 U.S. 279, 310, 111 S.Ct. 1246, 1265, 113 L.Ed. 2d 302, 331 (1991).
Class v. United States, 138 S.Ct. 798, 200 L.Ed.2d 37 (2018)
Ledezma v. State, 626 N.W.2d 134, 142 (Iowa 2001).

State v. Carroll, 767 N.W.2d 638 (Iowa 2009).
State v. Crary, No. 19-0952 (Iowa App. 2020).

State v. Hallock, 765 N.W.2d 598 (Iowa App. 2009).
State v. Jordan, No. 19-1442 (Iowa App. 2020).
State v. Lado, 804 N.W.2d 248 (Iowa 2011).
State v. Mapp, 585 N.W.2d 746, 747 (Iowa 1998).
State v. Myers, 653 N.W.2d 574, 576-577 (Iowa 2002).
State v. Speed, 573 N.W.2d 594 (Iowa 1998).
State v. Thompson, No. 19-1433 (Iowa 2020).
State v. Wissing, 528 N.W.2d 561, 563, 564 (Iowa 1995).
United States v. Cronic, 466 U.S. 648 (1984).
Iowa Code Section 814.29.
Iowa Rule of Professional Conduct 32.1.1.
Iowa Rule of Professional Conduct 32.1.3.

5. The District Court erred/abused its discretion by not asking Jackson-Douglass personally at sentencing whether good cause for why judgment should not be pronounced existed.

Iowa R. Crim. P. 2.23.
Iowa R. Crim. P. 2.24.
State v. Cooper, No. 8-971/07-1988 (Iowa App. 2009)
State v. Craig, 562 N.W.2d 633, 635-37 (Iowa 1997).
State v. Gilbert, No. 0-346/09-0894 (Iowa App. 2010).
State v. Lathrop, 781 N.W.2d 288, 292-93 (Iowa 2010).
State v. Nosa, 738 N.W.2d 658, 660 (Iowa 2007).

ROUTING STATEMENT

This case involves "substantial constitutional questions as to the validity of a statute, ordinance, or court administrative rule" within the meaning of Iowa R. App. P. 6.1101(2)(a), namely the versions of Iowa Code Sections 814.6 and 814.7 that took effect on July 1, 2019. Because this appeal challenges the constitutionality of these statutes, this case raises "substantial issues of first impression" within the meaning of Iowa R. App. 6.1101(2)(c) and "substantial questions of enunciating or changing legal principles" within the meaning of Iowa R. App. P. 6.1102(2)(f). In addition, this case this case raises "substantial issues of first impression" within the meaning of Iowa R. App. 6.1101(2)(c) and "substantial questions of enunciating or changing legal principles" within the meaning of Iowa R. App. P. 6.1102(2)(f) to the extent that this case raises the question of how to properly initiate a direct appeal of a conviction where the defendant has pled guilty or otherwise challenge any defect in any guilty plea proceedings. Accordingly, this case should be retained by the Supreme Court of Iowa.

STATEMENT OF THE CASE

On August 28, 2020, Appellant Veil J. Jackson-Douglass (hereinafter "Jackson-Douglass") signed a "Written Guilty Plea and Waiver of Rights (Request for Formal P.S.I.)" (hereinafter "Guilty Plea Document").

Guilty Plea Document, unnumbered pg. 7. Appendix (hereinafter "A", pg. 11. His attorney, Matthew Hoffey (hereinafter "Defense Counsel") filed this document on the same date. Combined General Docket Entries, pg. 9. In this document, Jackson-Douglass pled guilty to Sexual Abuse in the Third Degree, in alleged violation of Iowa Code Section 709.4(1)(b)(3)(d), a Class C Felony. Guilty Plea Document, unnumbered pg. 2, Paragraph 6. A, pg. 6. The Order Following Guilty Plea indicates that the Court conducted a guilty plea proceeding in which "[t]he Defendant appeared together with Attorney Matt Hoffey". Order Following Guilty Plea, pg. 1. A, pg. 13. The District Court sentenced Jackson-Douglass to an "indeterminate term of confinement" not to exceed ten years. Judgment and Sentence, pg. 1. A, pg. 15. The Court suspended the fine of $1,000 the associated 15% surcharge. Judgment and Sentence, pg. 1. A, pg. 15. The Court ordered the prison sentence in this case to run concurrently "with the sentence imposed in Case No. FECR044643 in BV County". Judgment and Sentence, pg. 2. A, pg. 16. The Court gave Jackson-Douglass credit for time served, and ordered Jackson-Douglass to pay restitution according to the provisions set forth in Paragraph 7(c) of the Judgment and Sentence. Judgment and Sentence, pgs. 2 and 3. A, pgs. 16, 17.

On November 9, 2020 the Clerk's Office electronically filed a *pro se* document submitted by Jackson-Douglass requesting he be allowed to withdraw his plea (hereinafter "the November 9, 2020 filing"). November 9, 2020 filing, pg. 1. A, pg. 20. The Clerk's Office filed this as a "Req to Reconsider". Combined General Docket Report, pg. 10. The District Court denied the November 9, 2020 filing in its order dated November 18, 2020 (hereinafter "the November 18, 2020 Order"), pg. 1. A, pg. 24.

STATEMENT OF THE FACTS

On August 28, 2020, Appellant Veil J. Jackson-Douglass (hereinafter "Jackson-Douglass") signed a "Written Guilty Plea and Waiver of Rights (Request for Formal P.S.I.)" (hereinafter "Guilty Plea Document"). Guilty Plea Document, unnumbered pg. 7. A, pg. 11. His attorney, Matthew Hoffey (hereinafter "Defense Counsel") filed this document on the same date. Combined General Docket Entries, pg. 9. In this document, Jackson-Douglass pled guilty to Sexual Abuse in the Third Degree, in alleged violation of Iowa Code Section 709.4(1)(b)(3)(d), a Class C Felony. Guilty Plea Document, unnumbered pg. 2, Paragraph 6. A, pg. 6. The Order Following Guilty Plea indicates that the Court conducted a guilty plea proceeding in which "[t]he Defendant appeared together with Attorney Matt Hoffey". Order Following Guilty Plea, pg. 1. A, pg. 13. The District Court

sentenced Jackson-Douglass to an "indeterminate term of confinement" not to exceed ten years. Judgment and Sentence, pg. 1. A, pg. 15. The Court suspended the fine of $1,000 the associated 15% surcharge. Judgment and Sentence, pg. 1. A, pg. 15. The Court ordered the prison sentence in this case to run concurrently "with the sentence imposed in Case No. FECR044643 in BV County". Judgment and Sentence, pg. 2. A, pg. 16. The Court gave Jackson-Douglass credit for time served, and ordered Jackson-Douglass to pay restitution according to the provisions set forth in Paragraph 7(c) of the Judgment and Sentence. Judgment and Sentence, pgs. 2 and 3. A, pgs. 16, 17.

On November 9, 2020 the Clerk's Office electronically filed a *pro se* document submitted by Jackson-Douglass requesting he be allowed to withdraw his plea (hereinafter "the November 9, 2020 filing"). November 9, 2020 filing, pg. 1. A, pg. 20. The Clerk's Office filed this as a "Req to Reconsider". Combined General Docket Report, pg. 10. The District Court denied the November 9, 2020 filing in its order dated November 18, 2020 (hereinafter "the November 18, 2020 Order"), pg. 1. A, pg. 24.

ARGUMENT

I. IOWA CODE SECTIONS 814.6 AND 814.7 DO NOT PREVENT JACKSON-DOUGLASS FROM WINNING THIS APPEAL.

Pursuant to *State v. Roby*, 897 N.W.2d 127, 137 (Iowa 2017), the standard of review for this issue is "*de novo*" because this is a constitutional issue. This issue implicates Jackson-Douglass's rights to due process of law pursuant to the Fifth Amendment to the United States Constitution (as applied to state criminal prosecutions by the Fourteenth Amendment to the United States Constitution) and pursuant to Article I, Section 9 of the Iowa Constitution. This issue implicates Jackson-Douglass's rights to equal protection of the law pursuant to the Fourteenth Amendment to the United States Constitution and pursuant to Article I, Section 1 of the Iowa Constitution. As noted on pages 30-37 of the brief filed in *State v. Boldon*, Iowa Supreme Court Case Number 19-1159 by Assistant Appellate Defender Mary Conroy, this case also violates the separation of powers doctrine and thereby implicates the provisions of the Iowa Constitution, Article V, Sections 4 and 6. This issue implicates Jackson-Douglass's right to effective assistance of counsel pursuant to the Sixth Amendment to the United States Constitution as made applicable to State Criminal prosecutions

by the Fourteenth Amendment to the United States Constitution and pursuant to Article I, Section 10 of the Iowa Constitution.

The Appellant requests the Court please analyze this claim pursuant to the relevant provisions of both the Iowa and United States Constitutions because the "[i]ndependent state constitutional law is now a well-established part of our state's legal fabric" as noted by Justice Appel in his concurring opinion in *State v. Baldon,* 829 N.W.2d 785 (Iowa 2013). This issue was not preserved for appellate review.

The undersigned counsel has incorporated large segments of this discussion by quoting from (without the use of quotation marks or by making specific attribution to) briefs filed by Attorney Mary Conroy in *State v. Boldon,* Iowa Supreme Court Case Number 19-1159 and by Attorney Melinda Nye in *State v. Draine,* Iowa Supreme Court Case Number 18-1292. While the undersigned counsel is hopeful that he will not make any errors in this discussion, the undersigned counsel is a contractor with the State Public Defender, and any errors in this discussion cannot be attributed to the Appellate Defender's Office, to Attorney Conroy, or Attorney Nye.

Separation of Powers

As noted starting on page 30 of the Boldon brief, "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 District Department of Correctional Services,* 642 N.W.2d 255, 260 (Iowa 2002) (quoting *State v. Phillips,* 610 N.W.2d 840, 842 (Iowa 2002). This doctrine means that one branch of government may not impair another branch in "the performance of its official duties". *Klouda v. Sixth Judicial District Department of Correctional Services,* 642 N.W.2d 255, 260 (Iowa 2002).

As the Court is well aware, Article V, Section 1 of the Iowa Constitution gives Iowa Courts all judicial power. *Franklin v. Bonner,* 207 N.W. 778, 779 (Iowa 1926). Similarly, Article V, Section 4 of the Iowa Constitution gives the Supreme Court jurisdiction over appeals. The Iowa Constitution gives subject matter jurisdiction to the Iowa Courts. *In Re Guardianship of Matejski,* 419 N.W.2d 576, 577 (Iowa 1988). Iowa Courts have general jurisdiction over all matters brought before them, and the legislature can only limit the *manner* of the Courts' exercise of their constitutionally-conferred jurisdiction. The legislature cannot take from the Iowa Courts the jurisdiction the Iowa Constitution explicitly gives the Iowa Courts. *In Re Guardianship of Matejski,* 419 N.W.2d 576, 577 (Iowa 1988) citing to *Laird Brothers v. Dickerson,* 40 Iowa 665, 670 (1875).

Whatever arguments may be made concerning the constitutional right to appeal, as a matter of law this Court stated over a half-century ago that "[o]nce 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 to *Waldon v. District Court of Lee County*, 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 Iowa Code Section 814.6 would make challenges to guilty pleas unreviewable on direct appeal except where the defendant pled guilty to a Class A felony or established "good cause" for an appeal, and the amendment to Iowa Code Section 814.7 would make claims of ineffective assistance of counsel unreviewable on direct appeal. Iowa Code Section 602.4102(2) (2019). Thus, Iowa Code Section 814.6 now takes jurisdiction of some appeals from the Iowa Supreme Court. Therefore, the Legislature, by passing the newer form of Iowa Code Section 814.6, has thereby deprived the Iowa Supreme Court of some of its subject matter jurisdiction by depriving the Court of its authority to hear certain types of appeals. The Supreme Court of Iowa has both the jurisdiction and the duty to invalidate state actions that violate the state and federal constitutions. *Varnum v. Brien*, 763 N.W.2d 862, 875-76 (Iowa 2009).

The Legislature's amendments to Iowa Code Section 814.6 violates the separation of powers doctrine mandated by Article V, Section 4 of the Iowa Constitution.

Similarly, the Legislature's amendment to Iowa Code Section 814.7 completely eliminates the possibility of a criminal defendant bringing an ineffective assistance of counsel claim on direct appeal, even if the record is adequate to determine this issue. Criminal defendants obviously have a right to effective assistance of counsel. *State v. Ambrose,* 861 N.W.2d 550, 556 (Iowa 2015), citations omitted. The newly enacted version of Iowa Code Section 814.7 violates the separation of powers principle set forth in Article V. Section 4 of the Iowa Constitution because this statute improperly divests the Iowa Appellate Courts of their ability to decide and remedy claimed deprivations of constitutional rights and therefore improperly intrudes upon the jurisdiction and authority of the judicial branch. *Planned Parenthood of the Heartland v. Reynolds ex. rel. State,* 915 N.W.2d 206, 212 (Iowa 2018).

Equal Protection

The changes to Iowa Code Sections 814.6 and 814.7 violate Jackson-Douglass's rights to equal protection of law pursuant to the Fourteenth Amendment to the United States Constitution and pursuant to Article I, Section 1 of the Iowa Constitution because these statutes deprive Jackson-

Douglass of the ability to challenge his convictions on direct appeal based upon the facts that he pled guilty and based upon ineffective assistance of counsel.

Iowa Code Sections 814.6 and 814.7 treat Jackson-Douglass differently than other criminal defendants. He is within a group of criminal defendants who have been convicted following a guilty plea made in District Court. Within this group, the amendment to Iowa Code Section 814.6 has singled out those wrongly sentenced defendants. Whereas defendants who chose to go to trial can get relief on direct appeal, a defendant who pled guilty cannot get relief on direct appeal unless he or she has established good cause for pursuing an appeal. Within this group, by passing the Senate File 589, which enacted the current versions of Iowa Code Sections 814.6 and 814.7, the Legislature made unconstitutional distinctions between those who pled guilty to a Class a felony and those who pled guilty to any other classification of crime. The Legislature has unconstitutionally treated Jackson-Douglass and defendants like him differently based upon his decision to forgo certain constitutional rights and plead guilty, thus violating Jackson-Douglass's rights to equal protection of law pursuant to the Fourteenth Amendment to the United States Constitution and pursuant to Article I, Section 1 of the Iowa Constitution

Secondly, the amendment to Iowa Code Section 814.7 treats Jackson-Douglass and similarly situated defendants differently. The current version of Iowa Code Section 814.7 has singled out those defendants who were provided ineffective assistance of counsel for disparate treatment. Whereas a defendant who received effective assistance of counsel can obtain relief on direct appeal, a defendant who did not receive effective assistance of counsel cannot obtain relief *on this basis* on direct appeal but must instead pursue postconviction relief while frequently being required to serve his or her sentence. Although in most cases, it is possible to post an appeal bond and stay a criminal sentence, there is no such option in postconviction relief actions. *State v. Macke*, 933 N.W.2d 226, 233 (Iowa 2019). Accordingly, the Legislature has treated Jackson-Douglass and similarly situated defendants based upon the exercise of the fundamental right of effective assistance of counsel. The right to assistance of counsel was a right explicitly noted in *Gideon v. Wainright*, 372 U.S. 335, 344 (1963).

The right to assistance of counsel guaranteed by the Sixth Amendment to the United States Constitution as made applicable to state criminal prosecutions by the Fourteenth Amendment to the United States Constitution means the right to effective assistance of counsel, pursuant to

United States v. Cronic, 466 U.S. 648, 654 (1984) and *Evits v. Lucey*, 469 U.S. 387, 395 (1985).

Assuming (without conceding) that the legislature has the constitutional authority to grant or deny the right to appeal, equal protection guarantees require that "[o]nce the right to appeal has been granted … it must apply equally to all. It may not be extended to some and denied to others." *Waldon v. District Court of Lee County*, 256 Iowa 1311, 1316, 130 N.W.2d 728, 731 (1964).

Similarly, the United States Supreme Court has said basically the same thing. The United States Supreme Court stated that "at all stages of the proceedings the Due Process and Equal Protection Clauses [of the Fifth and Fourteenth Amendments to the United States Constitution] protect persons … from invidious discriminations. *Griffin v. Illinois*, 351 U.S.12, 18, 76 S.Ct. 585, 590, 100 L.Ed. 891 (1956) (internal citations omitted). Similarly, the United States Supreme Court stated that once a right to appeal is legislatively established, "these avenues [to challenge a conviction] must be kept free of unreasoned distinctions that can only impede open and equal access to the courts".

As this Court will recall, this Court has held similarly. This Court found a statute limiting the right of appeal from the denial of a

postconviction relief unconstitutional on equal protection grounds because the State was not similarly limited. *Shortridge v. State,* 478 N,W.2d 613, 615 (Iowa 1991), superseded by statute, 1990 Iowa Acts Chapter 1043, Section 1, as recognized in *James v. State,* 541 N.W.2d 864, 868 (Iowa 1995). Furthermore, a criminal defendant has a fundamental right in having his or her case dealt with fairly and justly. *State v. Delano,* 161 N.W.2d 66, 74 (Iowa 1968). By depriving Jackson-Douglass of his right to direct review of his sentence following a guilty plea and a right to review on a direct appeal a claim of ineffective assistance of counsel, the Legislature has deprived Jackson-Douglass of fundamental rights. Accordingly, the Court should review the issue of the applicability or lack thereof of Iowa Code Section 814.6 and 814.7 using strict scrutiny analysis pursuant to *Varnum v. Brien,* 763 N.W.2d 862, 875-76 (Iowa 2009).

The legislative purpose of this legislation as to reduce the "waste" of resources caused by allegedly frivolous appeals in the criminal justice system. Senate Video 2019-03-28 at 1:49:10-1:49:20, statements of Senator Dawson, https://www.legis.iowa.gov/dashboard?view=video&chamber=S&clipe=s20190328125735925&dt=2019-03=28&offset=3054&bill=SF%20589&status=i.

To the extent statutory changes prevent appellate courts from ruling upon appeals from guilty pleas and claims of ineffective assistance of counsel for which the record is adequate, the legislation creating the current versions of Iowa Code Sections 814.6 and 814.7 is neither narrowly tailored nor rationally related to its purpose because it means that claims that can be resolved on direct appeal cannot be if this legislation is permitted to stand. In *State v. Truesdell*, 679 N.W.2d 611, 616 (Iowa 2004) the Supreme Court of Iowa noted that basically it was a waste of resources for the Court not to address ineffective assistance of counsel claims on direct appeal if the record was adequate to do so. Appeals of guilty pleas will likely involve the Appellate Courts reviewing the record and the briefs to determine if good cause exists for bringing the appeals. Therefore, the amendments to Iowa Code Section 814.6 and 814.7 subvert and completely undermine the Legislature's purpose in passing this legislation are therefore not narrowly tailored or rationally related to the government's professed purpose.

For the reasons set forth above, Iowa Code Sections 814.6 and 814.7 violate Jackson-Douglass's right to equal protection of law pursuant to the Fourteenth Amendment to the United States Constitution and pursuant to Article I, Section 1 of the Iowa Constitution.

Effective Assistance of Counsel

The amendments to Iowa Code Sections 814.6 and 814.7 deprive Jackson-Douglass of his right to effective assistance of counsel pursuant to the Sixth Amendment to the United States Constitution as made applicable to state criminal prosecutions by the Fourteenth Amendment to the United States Constitution and pursuant to Article I, Section 10 of the Iowa Constitution. The amendment to Iowa Code Section 814.7 purports to prohibit an appellate court from deciding a defendant's underlying claim of ineffective assistance of counsel on direct appeal even where the record is adequate to do so. Where a state provides an appeal as of right but denies a defendant the opportunity to have his/her appeal decided on the merits, the "right" to appeal does not comport with due process. *Evits v. Lucey*, 469 U.S. 387, 395 (1985).

Moreover, the changes to Iowa Code Sections 814.6 and 814.7 could essentially eliminate Jackson-Douglass's ability to bring an ineffective assistance of counsel claim because of the possibility that such a claim would become moot because Jackson-Douglass may be out of custody and therefore the claims will be moot by the time of any postconviction relief action hearing that might be had if and when Jackson-Douglass brings a postconviction relief action, therefore resulting in Jackson-Douglass not

having any meaningful opportunity to have ineffective assistance of counsel claims addressed.

Due Process

Since the changes to Iowa Code Sections 814.6 and 814.7 violate Jackson-Douglass's fundamental right to effective assistance of counsel, these changes also violate Jackson-Douglass's right to due process of law pursuant to Article I, Section 9 of the Iowa Constitution and pursuant to the Fifth Amendment to the United States Constitution as made applicable to state criminal prosecutions by the Fourteenth Amendment to the United States Constitution.

In *State v. Hinners,* 471 N.W.2d 841, 843 (Iowa 1991), this Court held that a defendant may waive his or her right to appeal but must do so voluntarily, knowingly, and intelligently to meet due process requirements. Thus, this case clearly implies that appeal rights implicate the due process constitutional protections.

Furthermore, the appeal process must also conform with due process requirements of the Fifth Amendment to the United States Constitution as made applicable to state criminal prosecutions by the Fourteenth Amendment to the United States Constitution, pursuant to the mandate of

Evitts v. Lucey, 469 U.S. 387, 400-01, 105 S.Ct. 830, 838-39, 83 L.Ed. 2d 821 (1985).

If the statute does not say how the Courts should manage their docket, the Courts have "an inherent common-law power … to adopt rules for the management of cases on their dockets". *Iowa Civil Liberties Union v. Critelli*, 244 N.W.2d 564, 568-69 (Iowa 1976). Iowa Code Section 814.6(1)(a)(3) does not define what "good cause" means for bringing an appeal where a defendant has pled guilty to an offense that is not a Class A felony nor does the statute say what a criminal defendant in Jackson-Douglass's situation must do to bring an appeal in such a situation. Therefore, this Court has the power to find that Jackson-Douglass has shown good cause for bringing this appeal.

As Assistant Appellate Defender Melinda Nye stated on page 20 of the brief she filed in *State v. Drain*, Iowa Supreme Court case number 18-1292, "[t]he Court will usually interpret statutes in a way that avoids a constitutional problem. *Simmons v. State Pub. Def.*, 791 N.W.2d 69, 74 (Iowa 2010).

Jackson-Douglass requests that the Court please strike down the amendments to Iowa Code Chapter 814 that became effect on July 1, 2019 as unconstitutional because, as discussed above, these provisions violate

Jackson-Douglass's constitutional rights to equal protection of law, effective assistance of counsel, and due process of law as well as the separation of powers provisions found in Article V, Section IV of the Iowa Constitution. However, in the alternative, if the Court wishes to avoid these constitutional questions, Jackson-Douglass requests this Court please interpret Iowa Code Sections 814.6 in a way that avoids these constitutional problems by finding that Jackson-Douglass has good cause to bring this appeal,.

"Good cause"[s] exist within the meaning of Iowa Code Section 814.6(1)(3) for Jackson-Douglass to bring this appeal, namely: with all due respect, the District Court incorrectly treated Jackson-Douglass's November 9, 2020 filing as a motion for reconsideration of sentence, rather than as a motion in arrest of judgment, and by improperly denying this motion. As will be argued in the next section in greater detail, the District Court should have treated the November 9, 2020 filing as a motion in arrest of judgment because the motion suggests that Jackson-Douglass' guilty plea was involuntary because Jackson-Douglass instructed Defense Counsel to enter a plea pursuant to *North Carolina v. Alford,* 400 U.S. 25, 91 S.Ct. 160, 27 L.Ed.2d 162 (1969), but Defense Counsel failed to do so, thus rendering the plea involuntary.

For this reason, Jackson-Douglass should be able to challenge his conviction and sentence and defects in the guilty plea and sentencing proceeding on direct appeal because he has shown good cause for doing so, thus making his case fit within the exception set forth in Iowa Code Section 814.6(1)(a)(3). Furthermore, the District Court's incorrectly treating Jackson-Douglass's November 9, 2020 filing as a motion for reconsideration of sentence, rather than as a motion in arrest of judgment, and by improperly denying this motion is "'[a] legally sufficient reason'" as defined in *Black's Law Dictionary* (11th ed. 2019) for Jackson-Douglass to challenge his conviction and sentence in this direct appeal. As this Court is well aware, this Court has adopted this definition of "good cause" within the meaning of Iowa Code Section 814.6 in *State v. Damme,* 944 N.W.2d 98 (Iowa App. 2020). Therefore, Jackson-Douglass has shown good cause within the meaning of Iowa Code Section 814.6 as interpreted by *State v. Damme*, 944 N.W.2d 98 (Iowa App. 2020) for challenging his conviction and sentence on direct appeal. While the Court in *State v. Damme,* 944 N.W.2d 98 (Iowa App. 2020) applied this definition only to appeals of sentences resulting from convictions based upon guilty pleas, in *State v. Thompson*, No. 19-1433 (Iowa 2020). this Court extended the holding of *State v. Damme,* 944 N.W.2d 98 (Iowa App. 2020) to appeals of revocations of deferred

judgments. In candor to the Court, a contrary result was reached in an unpublished Court of Appeals case, *State v. Jordan*, No. 19-1442 (Iowa App. 2020). The Court dismissed that appeal because pursuant to Iowa Code Section 814.7 because it involved only ineffective assistance of counsel claims, unlike this appeal, which involves, in part, the denial of what the Court should have viewed as a *pro se* motion in arrest of judgment.

II. JACKSON-DOUGLASS' NOVEMBER 9, 2020 FILING SHOULD BE DEEMED A MOTION IN ARREST OF JUDGMENT, AND THE DISTRICT COURT ERRED BY NOT TREATING THE NOVEMBER 9, 2020 FILING AS SUCH, AND DENYING THE RELIEF REQUESTED THEREIN.

The standard of review for denial of motions in arrest of judgment is "abuse of discretion". *State v. Smith*, 753 N.W.2d 562, 564 (Iowa 2008). Jackson-Douglass preserved this error for review by his November 9, 2020 filing.

On November 9, 2020 the Clerk's Office electronically filed a *pro se* document submitted by Jackson-Douglass requesting he be allowed to withdraw his plea. November 9, 2020 filing, pg. 1. The Clerk's Office filed this as a "Req to Reconsider". Combined General Docket Report, pg. 10. The District Court denied the November 9, 2020 filing in its November 18, 2020 Order. November 18, 2020 Order, pg. 1. A, pg. 24.

In this document Jackson-Douglass stated the following:

> I would like to file a motion to reconsider my sentence on behalf of my plea. I told my lawyer to file an Alfreds plea on my behalf and he didn't. He only entered a guilty plea. I want to plead under the Alfreds plea. A, pg. 20.

Read in its entirety, this statement indicates that Defense Counsel failed to ensure that Jackson-Douglass plea was pursuant to *North Carolina v. Alford,* 400 U.S. 25, 91 S.Ct. 160, 27 L.Ed.2d 162 (1969) (hereinafter "an *Alford* plea"), allowing for a plea to a charge without actually admitting that one personally committed a crime but rather by conceding that the evidence against a defendant, if believed, would be sufficient to sustain a verdict of guilty. By alleging that Defense Counsel failed to ensure that Jackson-Douglass entered his plea as an *Alford* plea, not a guilty plea, Jackson-Douglass impliedly made a claim that his guilty plea was involuntary. Pursuant to Iowa R. Crim. P. 2.8(2)b), before accepting a guilty plea, the court must ensure that "the plea is made voluntarily and intelligently".

Pro se pleadings are given a liberal construction. *State v. Ferry*, 919 N.W.2d 766 (Table) (Iowa App. 2018) citing to *Munz v. State,* 382 N.W.2d 693, 697 (Iowa App. 1985). Regardless of what the November 9, 2020 filing is labeled or characterized on the docket by the Clerk's Office, this document is a *pro se* Motion in Arrest of Judgment because the language suggests that the guilty plea is involuntary, and allegations that a plea is involuntary are the proper subject of a motion in arrest of judgment. *State v.*

Browder, No. 3-632/11-2079 (Iowa App. 2013) is an example of a case in which a defendant challenged his guilty plea by filing a *pro se* motion in arrest of judgment Since the Court did not comment on the propriety of the motion in arrest of judgment challenging the voluntary nature of the plea, the Court seems to have assumed that the voluntary nature of the guilty plea was appropriately challenged by the filing of the motion in arrest of judgment. In addition, Iowa R. Crim. P. 2.24(3)(a) specifically states that a motion in arrest of judgment is the appropriate remedy for requesting "that no judgment be rendered on … a … plea of guilty".

With all due respect, the District Court erred by treating the November 9, 2020 filing as a Motion to Reconsider Sentence. Because the District Court treated the November 9, 2020 filing as a Motion for Reconsideration of Sentence, rather than as Motion in Arrest of Judgment, the Court abused its discretion by mistakenly denying this *pro se* motion in arrest of judgment. November 18, 2020 Ruling, pg. 1. A, pg. 24. The District Court denied this Motion because "[r]eason stated for Reconsideration of Sentence was not ground to reconsider". However, as noted above, while not conceding that the November 9, 2020 filing did not state a basis for the reconsideration of sentence, Jackson-Douglass noted that the "reason stated" was a reason to grant this *pro se* Motion in Arrest of

Judgment, namely that Jackson-Douglass' guilty plea was involuntary because Defense Counsel failed to ensure it was entered as an *Alford* plea.

III. DEFENSE COUNSEL WAS INEFFECTIVE FOR NOT FILING A MOTION IN ARREST OF JUDGMENT LABELED AS SUCH.

The standard of review for this claim is *de novo* because ineffective assistance of counsel claims are reviewed *de novo. Herman v. State,* 832 N.W.2d 385 (Iowa App. 2013). Although error was not preserved on this claim, "[a] claim of ineffective assistance of counsel provides an exception to this traditional error preservation rule." *Herman v. State,* 832 N.W.2d 385 (Iowa App. 2013).

Jackson-Douglass requests this Court please analyze this claim pursuant to the provisions of both the Iowa and United States Constitutions because the "[i]ndependent state constitutional law is now a well-established part of our state's legal fabric" as noted by Justice Appel in his concurring opinion in *State v. Baldon,* 829 N.W.2d 785 (Iowa 2013).

To establish an ineffective assistance of counsel claim, the Applicant must prove a breach of duty which the attorney owed the applicant or that the attorney's handling of the case conduct was unreasonable "under … professional norms." *Strickland v. Washington,* 466 U.S. 668, 687 (1984), *State v. Myers,* 653 N.W.2d 574, 576-577 (Iowa 2002), and *State v. Carroll,*

767 N.W.2d 638, 642 (Iowa 2009). Furthermore, to prevail on an ineffective assistance of counsel claim, a defendant "ordinarily" must show legal prejudice resulted from his/her attorney's negligence. *State v. Myers*, 653 N.W.2d 574, 576-577 (Iowa 2002).

Strickland phrases the test for the first element of ineffective assistance of counsel not as "breach of duty" but rather "reasonableness under prevailing professional norms." *Id.* While an attorney's breach of a legal duty to his or client can be indication that his or her performance was not characterized by "reasonableness under prevailing professional norms", a breach of a legal duty or a lack of a breach of a duty is not categorically determinative of whether or not his or her performance was characterized by "reasonableness under prevailing professional norms". Iowa case law seems to differ in its description of the attorney negligence element of an ineffective assistance of counsel claim. In *Ledezma v. State*, 626 N.W.2d 134, 142 (Iowa 2001) the Supreme Court of Iowa adopted the *Strickland* description of the first element of an ineffective assistance of counsel claim. In contrast, other Iowa cases say the test for the first element of an ineffective assistance of counsel claim *is* a breach of a legal duty owed to the client by the attorney. *Please see, for example, State v. Mapp*, 585 N.W.2d

746, 747 (Iowa 1998) and *State v. Wissing*, 528 N.W.2d 561, 563, 564 (Iowa 1995).

The breaches of duty with respect to this ineffective assistance of counsel claim are the breach of the duty of competence noted in Iowa Rule of Professional Conduct 32.1.1 and also the breach of the duty of diligence as noted in Iowa Rule of Professional Conduct 32.1.3.

In certain instances, a person seeking to prove an ineffective assistance of counsel claim does not have to show actual prejudice because prejudice can be presumed. In the aforementioned *Strickland v. Washington*, 466 U.S. 668 (1984) case, the United States Supreme Court noted that "[a]ctual or constructive denial of the assistance of counsel altogether is legally presumed to result in prejudice". Similarly, in *United States v. Cronic*, 466 U.S. 648 (1984) the United States Supreme Court stated the following:

> Similarly, if counsel entirely fails to subject the prosecution's case to meaningful adversarial testing, then there has been a denial of Sixth Amendment rights that makes the adversary process itself presumptively unreliable. No specific showing of prejudice was required in Davis v. Alaska, 415 U.S. 308, 94 S.Ct 1105, 39 L.Ed 2d 347 (1974), because the petitioner has been "denied the right of effective cross-examination" which "'would be constitutional error of the first magnitude and no amount of showing of want of prejudice would cure it.'" Id., at 318, 94 S.Ct. at 1111 (citing Smith v. Illinois, 390 U.S. 129, 131, 88 S.Ct. 748, 749, 19 L.Ed.2d 956 (1968); and Brookhart

> v. Janis, 384 U.S. 1, 3, 86 S.Ct. 1245, 1246, 16 L.Ed.2d 314 (1966).

Similarly, in *State v. Lado,* 804 N.W.2d 248 (Iowa 2011) the Supreme Court of Iowa stated the following:

> Defense counsel, however, may also commit "structural errors." Structural errors are not merely errors in a legal proceeding, but errors "affecting the framework within which the trial proceeds." *Arizona v. Fulminante*, 499 U.S. 279, 310, 111 S.Ct. 1246, 1265, 113 L.Ed. 2d 302, 331 (1991). We have recognized structural error occurs when: (1) counsel is completely denied, actually or constructively, at a crucial stage of the proceeding; (2) where counsel does not place the prosecution's case against meaningful adversarial testing; or (3) where surrounding circumstances justify a presumption of ineffectiveness, such as where counsel has an actual conflict of interest … *State v. Feregrino*, 756 N.W.2d 700, 707 (Iowa 2008) (citing *Cronic*, 466 U.S. at 659, 104 S.Ct. at 2047, 80 L.Ed. 2d at 668).

Defense Counsel should have filed a motion in arrest of judgment challenging Jackson-Douglass guilty plea because it was not made "voluntarily and intelligently" as required by Iowa R. Crim. P. 2.8(2)(b) because Jackson-Douglass told Defense Counsel to ensure the written guilty plea was filed as an *Alford* plea and Defense Counsel failed to do so, thus rendering the guilty plea involuntary. November 9, 2020 filing, pg. 1. A, pg. 20.

Thus, Defense Counsel breached his duties of competence and diligence to Jackson-Douglass by this failure. Accordingly, the failure of Defense Counsel to file a motion in arrest of judgment caused Jackson-

Douglass legal prejudice because Jackson-Douglass was not permitted to withdraw his guilty plea and enter an *Alford* plea. Therefore, Defense Counsel was ineffective in this regard.

Iowa Code Section 814.29 does not apply to this issue because this failure to a file a motion in arrest of judgment is not part of the "plea proceedings" described by Iowa Code Section 814.29 but rather is an instance of ineffective assistance of counsel committed *after* the "plea proceedings" had occurred.

Furthermore, a failure to file a motion in arrest of judgment is a structural error because Defense Counsel's failure to challenge the guilty plea because it was involuntary and not intelligently made fits the third category of structural error described by the Court in *State v. Lado,* 804 N.W.2d 248 (Iowa 2011), namely that an error of the sort that surrounding circumstances justify a presumption of ineffectiveness. Defense Counsel's failure to file a motion in arrest of judgment is also a structural error as described by the United States Supreme Court in *Arizona v. Fulminante*, 499 U.S. 279, 310, 111 S.Ct. 1246, 1265, 113 L.Ed. 2d 302, 331 (1991). This error impacted "the framework" of the legal proceedings in this case within the meaning of *Arizona v. Fulminante*, 499 U.S. 279, 310, 111 S.Ct. 1246,

1265, 113 L.Ed. 2d 302, 331 (1991) because of how prejudicial this ineffective assistance of counsel was to Jackson-Douglass.

This ineffective assistance of counsel violated Jackson-Douglass' right to effective assistance of counsel pursuant to the Sixth Amendment to the United States Constitution (as applied to state criminal prosecutions by the Fourteenth Amendment to the United States Constitution) and pursuant to Article I, Section 10 of the Iowa Constitution. Of course, this ineffective assistance of counsel is a violation of Jackson-Douglass's rights to equal protection of the law pursuant to the Fourteenth Amendment to the United States Constitution and pursuant to Article I, Section 1 of the Iowa Constitution. This ineffective assistance of counsel is also a violation of Jackson-Douglass's rights to due process of law pursuant to the Fifth Amendment to the United States Constitution (as applied to state criminal prosecutions by the Fourteenth Amendment to the United States Constitution) and pursuant to Article I, Section 9 of the Iowa Constitution.

IV. DEFENSE COUNSEL WAS INEFFECTIVE FOR FAILING TO ENSURE THAT JACKSON-DOUGLASS ENTERED AN *ALFORD* PLEA.

The standard of review for this claim is *de novo* because ineffective assistance of counsel claims are reviewed *de novo. Herman v. State,* 832 N.W.2d 385 (Iowa App. 2013). Although error was not preserved on this

claim, "[a] claim of ineffective assistance of counsel provides an exception to this traditional error preservation rule." *Herman v. State*, 832 N.W.2d 385 (Iowa App. 2013).

Jackson-Douglass requests this Court please analyze this claim pursuant to the provisions of both the Iowa and United States Constitutions because the "[i]ndependent state constitutional law is now a well-established part of our state's legal fabric" as noted by Justice Appel in his concurring opinion in *State v. Baldon*, 829 N.W.2d 785 (Iowa 2013).

To establish an ineffective assistance of counsel claim, the Applicant must prove a breach of duty which the attorney owed the applicant or that the attorney's handling of the case conduct was unreasonable "under … professional norms." *Strickland v. Washington*, 466 U.S. 668, 687 (1984), *State v. Myers*, 653 N.W.2d 574, 576-577 (Iowa 2002), and *State v. Carroll*, 767 N.W.2d 638, 642 (Iowa 2009). Furthermore, to prevail on an ineffective assistance of counsel claim, a defendant "ordinarily" must show legal prejudice resulted from his/her attorney's negligence. *State v. Myers*, 653 N.W.2d 574, 576-577 (Iowa 2002).

Strickland phrases the test for the first element of ineffective assistance of counsel not as "breach of duty" but rather "reasonableness under prevailing professional norms." *Id.* While an attorney's breach of a

legal duty to his or client can be indication that his or her performance was not characterized by "reasonableness under prevailing professional norms", a breach of a legal duty or a lack of a breach of a duty is not categorically determinative of whether or not his or her performance was characterized by "reasonableness under prevailing professional norms". Iowa case law seems to differ in its description of the attorney negligence element of an ineffective assistance of counsel claim. In *Ledezma v. State,* 626 N.W.2d 134, 142 (Iowa 2001) the Supreme Court of Iowa adopted the *Strickland* description of the first element of an ineffective assistance of counsel claim.

In contrast, other Iowa cases say the test for the first element of an ineffective assistance of counsel claim *is* a breach of a legal duty owed to the client by the attorney. *Please see, for example, State v. Mapp,* 585 N.W.2d 746, 747 (Iowa 1998) and *State v. Wissing,* 528 N.W.2d 561, 563, 564 (Iowa 1995).

The breaches of duty with respect to this ineffective assistance of counsel claim are the breach of the duty of competence noted in Iowa Rule of Professional Conduct 32.1.1 and also the breach of the duty of diligence as noted in Iowa Rule of Professional Conduct 32.1.3.

In certain instances, a person seeking to prove an ineffective assistance of counsel claim does not have to show actual prejudice because

prejudice can be presumed. In the aforementioned *Strickland v. Washington*, 466 U.S. 668 (1984) case, the United States Supreme Court noted that "[a]ctual or constructive denial of the assistance of counsel altogether is legally presumed to result in prejudice". Similarly, in *United States v. Cronic*, 466 U.S. 648 (1984) the United States Supreme Court stated the following:

> Similarly, if counsel entirely fails to subject the prosecution's case to meaningful adversarial testing, then there has been a denial of Sixth Amendment rights that makes the adversary process itself presumptively unreliable. No specific showing of prejudice was required in Davis v. Alaska, 415 U.S. 308, 94 S.Ct 1105, 39 L.Ed 2d 347 (1974), because the petitioner has been "denied the right of effective cross-examination" which "'would be constitutional error of the first magnitude and no amount of showing of want of prejudice would cure it.'" Id., at 318, 94 S.Ct. at 1111 (citing Smith v. Illinois, 390 U.S. 129, 131, 88 S.Ct. 748, 749, 19 L.Ed.2d 956 (1968); and Brookhart v. Janis, 384 U.S. 1, 3, 86 S.Ct. 1245, 1246, 16 L.Ed.2d 314 (1966).

Similarly, in *State v. Lado*, 804 N.W.2d 248 (Iowa 2011) the Supreme Court of Iowa stated the following:

> Defense counsel, however, may also commit "structural errors." Structural errors are not merely errors in a legal proceeding, but errors "affecting the framework within which the trial proceeds." *Arizona v. Fulminante*, 499 U.S. 279, 310, 111 S.Ct. 1246, 1265, 113 L.Ed. 2d 302, 331 (1991). We have recognized structural error occurs when: (1) counsel is completely denied, actually or constructively, at a crucial stage of the proceeding; (2) where counsel does not place the prosecution's case against meaningful adversarial testing; or (3) where surrounding circumstances justify a presumption of ineffectiveness, such as

> where counsel has an actual conflict of interest … *State v. Feregrino*, 756 N.W.2d 700, 707 (Iowa 2008) (citing *Cronic*, 466 U.S. at 659, 104 S.Ct. at 2047, 80 L.Ed. 2d at 668).

As noted in Jackson-Douglass' November 9, 2020 filing, Jackson-Douglass told Defense Counsel to ensure the written guilty plea was filed as an *Alford* plea and Defense Counsel failed to do so, thus rendering the guilty plea involuntary. November 9, 2020 filing, pg. 1. A, pg. 20 Defense Counsel breached his duties of competence and diligence by preparing the Guilty Plea document such that Jackson-Douglass entered an *Alford* plea, not a guilty plea. Guilty Plea Document, unnumbered pgs. 1-7. A, pgs. 5-11.

Guilty pleas must be made "voluntarily and intelligently". Iowa R. Crim. P. 2.8(2)(b). *State v. Speed*, 573 N.W.2d 594 (Iowa 1998); *State v. Hallock*, 765 N.W.2d 598 (Iowa App. 2009); *Class v. United States*, 138 S.Ct. 798, 200 L.Ed.2d 37 (2018). Because Defense Counsel ignored Jackson-Douglass' directive to enter an *Alford* plea, not a guilty plea, Jackson-Douglass' guilty plea was not made "voluntarily and intelligently" within the meaning of Iowa R. Crim. P. 2.8(2)(b). In *State v. Crary*, No. 19-0952 (Iowa App. 2020) the Court considered an attorney's failure to ensure defendant Crary entered an *Alford* plea "to the extent it alleges his counsel's failure to raise *Alford* resulted in a plea that was not made knowingly, intelligently, and voluntarily".

Thus, Defense Counsel breached his duties of competence and diligence to Jackson-Douglass by this failure. Accordingly, the failure of Defense Counsel to file ensure that Jackson-Douglass entered an *Alford* plea caused Jackson-Douglass legal prejudice because Jackson-Douglass' guilty plea was not "voluntarily and intelligently made" and Jackson-Douglass was not permitted to withdraw his guilty plea and enter an *Alford* plea. Had Defense Counsel's failure to ensure Jackson-Douglass entered an *Alford* plea not a guilty plea rendered the guilty plea not "voluntarily and intelligently made", Jackson-Douglass, as he stated in his November 9, 2020 filing, would have entered an *Alford* plea. This meets the requirement in *State v. Carroll,* 767 N.W.2d 638 (Iowa 2009) that a defendant can challenge his/her guilty plea by showing that "a reasonable probability, that, but for counsel's alleged errors", the defendant would have resolved the criminal case in some other way than by pleading guilty. The language in *State v. Carroll*, 767 N.W.2d 638 (Iowa 2009) that a person challenging a guilty plea because of ineffective assistance of counsel must show that he or she would have chosen to go to trial if his/her attorney had not been ineffective should be broadly construed as meaning, not necessarily go to trial, but simply to have resolved the criminal case against the person in some way other than by

pleading guilty, in this case, by entering an *Alford* plea. Therefore, Defense Counsel was ineffective in this regard.

Furthermore, Defense Counsel's failure to ensure that Jackson-Douglass' plea was entered as an *Alford* plea is a structural error because this error fits the third category of structural error described by the Court in *State v. Lado,* 804 N.W.2d 248 (Iowa 2011), namely that an error of the sort that surrounding circumstances justify a presumption of ineffectiveness. Defense Counsel's failure to ensure Jackson-Douglass' plea was entered as an *Alford* plea is also a structural error as described by the United States Supreme Court in *Arizona v. Fulminante,* 499 U.S. 279, 310, 111 S.Ct. 1246, 1265, 113 L.Ed. 2d 302, 331 (1991). This error impacted "the framework" of the legal proceedings in this case within the meaning of *Arizona v. Fulminante,* 499 U.S. 279, 310, 111 S.Ct. 1246, 1265, 113 L.Ed. 2d 302, 331 (1991) because of how prejudicial this ineffective assistance of counsel was to Jackson-Douglass.

This ineffective assistance of counsel violated Jackson-Douglass' right to effective assistance of counsel pursuant to the Sixth Amendment to the United States Constitution (as applied to state criminal prosecutions by the Fourteenth Amendment to the United States Constitution) and pursuant to Article I, Section 10 of the Iowa Constitution. Of course, this ineffective

assistance of counsel is a violation of Jackson-Douglass's rights to equal protection of the law pursuant to the Fourteenth Amendment to the United States Constitution and pursuant to Article I, Section 1 of the Iowa Constitution. This ineffective assistance of counsel is also a violation of Jackson-Douglass's rights to due process of law pursuant to the Fifth Amendment to the United States Constitution (as applied to state criminal prosecutions by the Fourteenth Amendment to the United States Constitution) and pursuant to Article I, Section 9 of the Iowa Constitution.

It may be that Iowa Code Section 814.29 supersedes *State v. Lado*, 804 N.W.2d 248 (Iowa 2011) to the extent that Iowa Code Section 814.29 requires a showing that "the defendant more likely than not would not have pled guilty had the defect not occurred". Jackson-Douglass is not conceding this point. That being said, Jackson-Douglass can show that he "more likely than not would not have pled guilty had the defect not occurred" within the meaning of Iowa Code Section 814.29.

In the November 9, 2020 filing Jackson-Douglass noted that he instructed his attorney "to file a Alfreds [sic. *Alford*'s] plea on my behalf, and he didn't." November 9, 2020 filing, pg. 1. Jackson-Douglass noted that his attorney "only entered a guilty plea". November 9, 2020 filing, pg. 1. A, pg. 20. Jackson-Douglass also noted that he wanted to enter an *Alford* plea.

Similarly, in his *pro se* notice of appeal, Jackson-Douglass noted that his attorney entered a guilty plea on Jackson-Douglass' behalf, and incorrectly stated that Jackson-Douglass had entered an *Alford* plea. Notice of Appeal, pg. 1. A, pg. 21. Jackson-Douglass also noted that he wanted "to renter" his plea as an *Alford* plea. Notice of Appeal, pg. 1. A, pg. 21. Thus, in both of these documents, Jackson-Douglass clearly stated that he wanted to enter an *Alford* plea and because of his attorney's failure to ensure the plea was entered as an *Alford* plea, Jackson-Douglass pled guilty. Clearly, Jackson-Douglass "would not have pled guilty if" this "defect had not occurred" because Jackson-Douglass specifically instructed his attorney to enter a guilty plea, and the attorney failed to do so. Thus, Jackson-Douglass can make the showing required by Iowa Code Section 814.29 should the Court deem Iowa Code Section 814.29 to supersede the holding of *State v. Lado,* 804 N.W.2d 248 (Iowa 2011) regarding structural error.

V. THE DISTRICT COURT ERRED/ABUSED ITS DISCRETION BY NOT ASKING JACKSON-DOUGLASS AT SENTENCING WHETHER "LEGAL CAUSE" FOR "WHY JUDGMENT SHOULD NOT BE PRONOUNCED" EXISTED PRIOR TO IMPOSING SENTENCE.

Pursuant to *State v. Roby*, 897 N.W.2d 127, 137 (Iowa 2017), arguably the standard of review for this issue is "*de novo*" because this is a constitutional issue. In contrast, there is also authority for the proposition

that "sentencing procedures" are reviewed using an "abuse of discretion standard". *State v. Nosa*, 738 N.W.2d 658, 660 (Iowa 2007).

Error was not preserved with respect to this issue. However, the failure of Jackson-Douglass's attorney to preserve error with respect to this issue in the lower court does not matter because "errors in sentencing need not be challenged first in the district court" and "illegal sentences may be corrected at any time". *State v. Lathrop*, 781 N.W.2d 288, 292-93 (Iowa 2010).

The Appellant requests the Court please analyze this claim pursuant to the relevant provisions of both the Iowa and United States Constitutions because the "[i]ndependent state constitutional law is now a well-established part of our state's legal fabric" as noted by Justice Appel in his concurring opinion in *State v. Baldon*, 829 N.W.2d 785 (Iowa 2013).

Iowa R. Crim. P. 2.23(3)(a) says in part that "[w]hen the defendant appears for judgment, the defendant must be … asked whether the defendant has any legal cause to show why judgment should not be pronounced against the defendant".

Jackson-Douglass is not conceding that the District Court asked Defense Counsel whether such legal cause existed. However, so as not to mislead this Court, the District Court asked Defense Counsel "any reason

why we can't proceed to sentencing?" Sentencing Transcript, pg. 2, Lines 12-13. Even if this Court disagrees with Jackson-Douglass and views this statement as an inquiry of Defense Counsel as to whether "legal cause" existed "why judgment should not be pronounced against the defendant", with all due respect inquiry does not meet the requirement that the defendant personally be asked this question.

The plain language of Iowa R. Crim. P. 2.23(3)(a) indicates that defendant as used in this rule means literally and personally "the defendant" himself/herself, not the defendant's attorney. The other requirements of Iowa R. Crim. P. 2.23(3)(a) require that the defendant be informed of things which the defendant's attorney would be expected to know at the time of sentencing (such as "the nature of the indictment, the defendant's plea, and the verdict"). Iowa R. Crim. P. 2.23(3)(a). So, clearly, the purpose of Iowa R. Crim. P. 2.23(3)(a) is to ensure that the defendant be informed personally of various matters. Consistent application of this definition of "defendant" to exclude "defense counsel" and to mean "the defendant personally" means that the same definition for "defendant" used in the part of Iowa R. Crim. P. 2.23(3)(a) dealing with what the defendant must be informed of must also apply to the requirement of Iowa R. Crim. P. 2.23(3)(a) that the Defendant

be asked whether "legal cause to show why judgment should not be pronounced". Iowa R. Crim. P. 2.23(3)(a).

Although *State v. Myers,* 653 N.W.2d 574, 577-578 (Iowa 2002) permits a conviction obtained by a guilty plea to be upheld if the District Court "substantially complies" with Iowa R. Crim. P. 2.23(3)(a), even if this Court disagrees with Jackson-Douglass and believes that the District Court inquired of Defense Counsel whether "legal cause … why judgment should not be pronounced against the defendant", doing so is not compliance with Iowa R. Crim. P. 2.23(3)(a)'s requirement that the District Court ask the personally whether he/she knows of "legal cause … why judgment should not be pronounced against the defendant", much less substantial compliance within the meaning of *State v. Myers,* 653 N.W.2d 574, 577-578 (Iowa 2002).

While the Court permitted Jackson-Douglass to speak on his own behalf as provided for by Iowa R. Crim. P. 2.23(3)(d) this does not satisfy the separate requirement of Iowa R. Crim. P. 2.23(3)(a) that the Court ask the defendant personally "whether the defendant has any legal cause to show why judgment should not be pronounced against the defendant". In *State v. Cooper,* No. 8-971/07-1988 (Iowa App. 2009) the Court implied that the requirements of Iowa R. Crim. P. 2.23(3)(a) and Iowa R. Crim. P. 2.23(3)(d)

are separate requirements and cited to *State v. Nosa*, 738 N.W.2d 658, 660 (Iowa 2007) for this proposition. Similarly, in *State v. Gilbert*, No. 0-346/09-0894 (Iowa App. 2010) the Court treated the requirements of Iowa R. Crim. 2.23(3)(a) and 2.23(3)(d) as separate requirements. In *State v. Nosa*, 738 N.W.2d 658, 660 (Iowa 2007) the Court said that the two separate requirements of Iowa R. Crim. P. 2.23(3)(a) and 2.23(3)(d) "are referred to as a defendant's right to allocution" *State v. Nosa*, 738 N.W.2d 658, 660 (Iowa 2007), citing to *State v. Craig*, 562 N.W.2d 633, 635-37 (Iowa 1997). Furthermore, the Court noted that "our supreme court has held the right to allocution is personal to the defendant and will not be deemed exercised through counsel alone" *State v. Nosa*, 738 N.W.2d 658, 660 (Iowa 2007) citing to *State v. Craig*, 562 N.W.2d 633, 636-37 (Iowa 1997). Since the requirement of Iowa R. Crim. P. 2.23(a) that the Court inquire of the defendant whether "legal cause to show why judgment should not be pronounced" exists is part of the Defendant's right of allocution per *State v. Nosa*, 738 N.W.2d 658, 660 (Iowa 2007) and *State v. Craig*, 562 N.W.2d 633, 636-37 (Iowa 1997), then the defendant's right to be asked whether "legal cause to show why judgment should not be pronounced" exists is also personal to the defendant. Therefore, even if this Court disagrees with Jackson-Douglass and views the statement to Defense Counsel noted above

as an inquiry of Defense Counsel as to whether "legal cause" existed "why judgment should not be pronounced against the defendant", this statement did not comply with this requirement because the Court was required to ask Jackson-Douglass personally this question.

Jackson-Douglass suffered legal harm from this sentencing error because he had "cause against the entry of judgment" within the meaning of Iowa R. Crim. P. 2.23(3)(b). Iowa R. Crim. P. 2.23(3)(b) defines "cause against the entry of judgment" as "any sufficient ground for a new trial or in arrest of judgment". Iowa R. Crim. P. 2.23(3)(b). Iowa R. Crim. P. 2.24(3)(a) says that a motion in arrest of judgment is proper "when upon the whole record no legal judgment can be pronounced". "No legal judgment" could "be pronounced" within the meaning of Iowa R. Crim. P. 2.24(3)(a) because Jackson-Douglass' guilty plea was involuntary because of the involuntary nature of Jackson-Douglass' guilty plea, as discussed in greater detail in Section IV of this brief. As noted above, had Defense Counsel's failure to ensure Jackson-Douglass entered an *Alford* plea, not a guilty plea rendered the guilty plea not "voluntarily and intelligently made", Jackson-Douglass, as he stated in his November 9, 2020 filing, would have entered an *Alford* plea. This meets the requirement in *State v. Carroll*, 767 N.W.2d 638 (Iowa 2009) that a defendant can challenge his/her guilty plea by

showing that "a reasonable probability, that, but for counsel's alleged errors", the defendant would have resolved the criminal case in some other way than by pleading guilty.

With all due respect, the District Court's failure to inquire of Mr. Jackson-Douglass personally whether he knew of any "legal cause why judgment should not be pronounced" within the meaning of Iowa R. Crim. P. 2.23(3)(a) was a sentencing error constituting an abuse of discretion that violated Jackson-Douglass's rights to due process of law pursuant to the Fifth Amendment to the United States Constitution as made applicable to state criminal prosecutions by the Fourteenth Amendment to the United States Constitution and pursuant to Article I, Section 9 of the Iowa Constitution, were violated by this sentencing error. In all due respect, Jackson-Douglass's rights to equal protection of law pursuant to the Fourteenth Amendment to the United States Constitution and pursuant to Article I, Section 1 of the Iowa Constitution were also violated by this sentencing error.

CONCLUSION AND PRAYER FOR RELIEF

Jackson-Douglass has shown good cause for challenging his conviction and sentence within the meaning of Iowa Code Section 814.6(1)(a)(3) and therefore should be permitted to do so on direct appeal.

WHEREFORE, Jackson-Douglass requests that this Court please strike the conviction at issue in this appeal and order the District Court to enter an order striking Jackson-Douglass's conviction with prejudice to the State.

WHEREFORE, only in the alternative, Jackson-Douglass requests that the Court please strike the conviction at issue in this appeal and grant him a new trial with respect to the case appealed from.

WHEREFORE, Jackson-Douglass requests that only in the alternative to the foregoing requests, Jackson-Douglass requests that the Court please strike Jackson-Douglass' sentence and remand the case for new sentencing proceedings.

WHEREFORE, Jackson-Douglass requests that if the Court remands this case to the District Court, that this Court please order that any further District Court proceedings be conducted by a different judge.

WHEREFORE, Jackson-Douglass requests that the Court order any other relief for Jackson-Douglass that the Court deems to be in the interest of justice.

REQUEST FOR ORAL ARGUMENT

Jackson-Douglass requests oral argument in this case to address the constitutional issues pertaining to Iowa Code Section 814.6 and Iowa Code Section 814.7.

By: /s/_____
Richard Hollis
Attorney at Law
AT0003608
P.O. Box 12153
Des Moines, IA 50312
(515) 255-3426 phone no.
e-mail: attorneyhollis@hotmail.com
ATTORNEY FOR
VEIL J. JACKSON-DOUGLASS
APPELLANT

CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMITATION, TYPEFACE REQUIREMENTS, AND TYPE-STYLE REQUIREMENTS

1. This brief complies with the type-volume limitation of Iowa R. App. P. 6.903(1)(g)(1) or (2) because this brief contains 9,412 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).

2. This brief complies with the typeface requirements of Iowa R. App. P. 6.903(1)(3) and the type-style requirements of Iowa R. App. P. 6.903(1)(f) because this brief has been prepared in a proportionally spaced

typeface using a version of Microsoft Word that was produced on or before 2003 in Times New Roman, 14 point type.

By: /s/_____

Richard Hollis
Attorney at Law
AT0003608
P.O. Box 12153
Des Moines, IA 50312
(515) 255-3426 phone no.
e-mail: attorneyhollis@hotmail.com
ATTORNEY FOR
VEIL JACOBY JACKSON-DOUGLASS
APPELLANT

Dated: September 17, 2021