

**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 REPLY BRIEF (IN FINAL FORM)**

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## 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.

*State v. Treptow*, 2021 WL 2172073 (Iowa May 28, 2021).

*State v. Tucker*, 959 N.W.2d 140 (Iowa 2021).

*State v. Watson*, 2021 WL 2452049 (Iowa Ct. App. June 16, 2021).

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 Code Section 902.4.

*State v. Lathrop*, 781 N.W.2d 288, 292-93 (Iowa 2010).

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

*State v. Myers*, 653 N.W.2d 574, 576-577 (Iowa 2002).

*Strickland v. Washington*, 466 U.S. 668, 687 (1984).

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

*State v. Myers*, 653 N.W.2d 574, 576-577 (Iowa 2002).

*Strickland v. Washington*, 466 U.S. 668, 687 (1984).

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.

*State v. Craig*, 562 N.W.2d 633, 635 (Iowa 1997) .

*State v. Pherigo*, 2019 WL 6358302 (Iowa Ct. App. 2019).

## ARGUMENT

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

The State says claims of ineffective assistance of counsel cannot be considered on direct appeal. State's Brief, pg. 7. The State explicitly cites from two recent Iowa cases to support this contention and quotes from a third case as part of the State's discussion. State's Brief, pg. 7. These cases are: *State v. Treptow*, 2021 WL 2172073 (Iowa May 28, 2021), *State v. Tucker*, 959 N.W.2d 140 (Iowa 2021), and *State v. Watson*, 2021 WL 2452049 (Iowa Ct. App. June 16, 2021).

*State v. Treptow*, 2021 WL 2172073 (Iowa May 28, 2021) is distinguishable from the case at bar to the extent that Treptow entered a guilty plea in open court and explicitly waived his right to delayed sentencing proceedings, to have a presentence investigation report prepared, and to file a motion in arrest of judgment. *State v. Treptow*, 2021 WL 2172073 (Iowa May 28, 2021). In the case at bar, Jackson-Douglass entered a written plea of guilty on August 28, 2020 and was sentenced several weeks later on October 15, 2020. Court Reporter Memorandum and Certificate, October 15, 2020, pg. 1; Judgment and Sentence, pg. 1, Appendix, pg. 15. In candor to the Court, Jackson-Douglass placed his initials next to the

statement in the Written Guilty Plea and Waiver of Rights (Request for Formal P.S.I.) that Jackson-Douglass was aware of the need to file a motion in arrest of judgment to challenge this guilty plea should Jackson-Douglass wish to do so. Written Guilty Plea and Waiver of Rights (Request for Formal P.S.I.), pg. 5 (unnumbered), paragraph 22. Appendix, pg. 9. However, unlike Treptow, Jackson-Douglass waived his “right to a hearing in open court for my guilty plea”. Written Guilty Plea and Waiver of Rights (Request for Formal P.S.I.), pg. 5 (unnumbered), paragraph 19. Appendix, pg. 9. In his Written Guilty Plea and Waiver of Rights (Request for Formal P.S.I.), unlike Treptow, Jackson-Douglass explicitly requested that the Court sentence Jackson-Douglass at a later date and order that a presentence investigation report be prepared. Written Guilty Plea and Waiver of Rights (Request for Formal P.S.I.), pgs. 5 and 6, Paragraph 23. Appendix, pgs. 9, 10. Thus, unlike Treptow, Jackson-Douglass did not waive time for sentencing or for the preparation of a presentence-investigation report but rather asked to be sentenced at a later date and that a presentence investigation report be prepared. In *State v. Treptow*, 2021 WL 2172073 (Iowa May 28, 2021) the Court noted that “[u]nder the circumstances, the appellate courts cannot provide the defendant with relief”. *State v. Treptow*, 2021 WL 2172073 (Iowa May 28, 2021). The “circumstances” the Court was referring included

Treptow's waiver of his right to delay sentencing until after the guilty plea proceedings had occurred. Since Jackson-Douglass did not waive this right and asked that the sentencing proceedings occur after Jackson-Douglass entered his guilty plea and impliedly after the pre-sentence investigation report had been prepared, at least one of the "circumstances" that caused the Court to conclude *State v. Treptow*, 2021 WL 2172073 (Iowa May 28, 2021) that the appeal could not proceed did not exist in Jackson-Douglass' case. *State v. Treptow*, 2021 WL 2172073 (Iowa May 28, 2021). Therefore, *State v. Treptow*, 2021 WL 2172073 (Iowa May 28, 2021) does not preclude Jackson-Douglass from obtaining relief in this appeal.

Similarly, *State v. Tucker*, 959 N.W.2d 140 (Iowa 2021) is distinguishable from this appeal (and does not preclude Jackson-Douglass from obtaining relief in this appeal) for basically the same reasons. Like Treptow, Tucker waived his right to delayed sentencing proceedings, requested immediate sentencing, and waived the right to file a motion in arrest of judgment. *State v. Tucker*, 959 N.W.2d 140 (Iowa 2021). Jackson-Douglass did none of these things, and therefore *State v. Tucker*, 959 N.W.2d 140 (Iowa 2021) does not preclude Jackson-Douglass from obtaining relief in this appeal.

**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.**

Since the Motion to Reconsider Sentence should be viewed as a motion in arrest of judgment, Iowa Code Section 902.4's rule that one cannot appeal a District Court order denying a motion to reconsider sentence does not apply to this case or preclude this Court from reviewing the Court's order denying the defendant's motion to reconsider sentence.

Furthermore, "illegal sentences may be corrected at any time". *State v. Lathrop*, 781 N.W.2d 288, 292-93 (Iowa 2010). Therefore, this Court has the authority to review and reverse the District Court's order denying Jackson-Douglass' motion to reconsider sentence.

So the record is clear on this point, the undersigned counsel did not intentionally refer to matters outside the record in the main brief filed by the undersigned counsel in this appeal.

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

The State does not address the merits of the third claim raised in this appeal and does not discuss this claim by commenting on the merits of this ineffective assistance of claim and discussing whether the requirements of

establishing an ineffective assistance of counsel claim set forth in *Strickland v. Washington*, 466 U.S. 668, 687 (1984) and *State v. Myers*, 653 N.W.2d 574, 576-577 (Iowa 2002) are met.

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

In its brief, the State does not address the merits of the fourth claim raised in this appeal and does not discuss this claim by commenting on the merits of this ineffective assistance of claim and discussing whether the requirements of establishing an ineffective assistance of counsel claim set forth in *Strickland v. Washington*, 466 U.S. 668, 687 (1984) and *State v. Myers*, 653 N.W.2d 574, 576-577 (Iowa 2002) are met.

**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.**

In *State v. Pherigo*, 2019 WL 6358302 (Iowa Ct. App. 2019) the Court quoted from *State v. Craig*, 562 N.W.2d 633, 635 (Iowa 1997) for the proposition that the “[A]s long as the district court provides the defendant with an opportunity to speak regarding his punishment, the court is in compliance with” Iowa Rule of Criminal Procedure 2.23(3)(a) and (d).

State’s Brief, pg. 13. The plain language of *State v. Craig*, 562 N.W.2d 633,

635 (Iowa 1997) and *State v. Pherigo*, 2019 WL 6358302 (Iowa Ct. App. 2019) and Iowa Rule of Criminal Procedure 2.23(3)(d) require that a defendant personally be allowed to address the Court at sentencing in mitigation of punishment. Iowa Rule of Criminal Procedure 2.23(3)(d) specifically states that prior to pronouncing judgment “counsel for the defendant, and the defendant personally, shall be allowed to address the court where either wishes to make a statement in mitigation of punishment. Not allowing Jackson-Douglass to personally address the Court at sentencing in mitigation of punishment did not substantially comply with the requirement of Iowa R. Crim. P. 2.23(3)(d) as interpreted by *State v. Craig*, 562 N.W.2d 633, 635 (Iowa 1997) and *State v. Pherigo*, 2019 WL 6358302 (Iowa Ct. App. 2019) that a defendant personally be allowed to address the Court in mitigation of punishment prior to the Court’s imposition of judgment.

### **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 reversing the Court's 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.

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**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 1,420 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.

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