

IN THE SUPREME COURT OF IOWA

STATE OF IOWA,)
)
 Plaintiff-Appellee,)
)
 v.) S.CT. NO. 20-0257
)
 KORKI RICOH WILBOURN,)
)
 Defendant-Appellant.)

APPEAL FROM THE IOWA DISTRICT COURT
FOR MARSHALL COUNTY
HONORABLE JOHN J. HANEY, JUDGE (Sentencing)

APPELLANT'S REPLY BRIEF AND ARGUMENT

MARTHA J. LUCEY
State Appellate Defender

MARY K. CONROY
Assistant Appellate Defender
mconroy@spd.state.ia.us
appellatedefender@spd.state.ia.us

STATE APPELLATE DEFENDER'S OFFICE
Fourth Floor Lucas Building
Des Moines, Iowa 50319
(515) 281-8841 / (515) 281-7281 FAX

ATTORNEYS FOR DEFENDANT-APPELLANT

FINAL

CERTIFICATE OF SERVICE

On the 21st day of August, 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 Korke Ricoh Wilbourn, No. 6319040, Fort Dodge Correctional Facility, 1550 “L” Street, Fort Dodge, IA 50501.

APPELLATE DEFENDER’S OFFICE



MARY K. CONROY
Assistant Appellate Defender
Appellate Defender Office
Lucas Bldg., 4th Floor
321 E. 12th Street
Des Moines, IA 50319
(515) 281-8841
mconroy@spd.state.ia.us
appellatedefender@spd.state.ia.us

TABLE OF CONTENTS

	<u>Page</u>
Certificate of Service.....	2
Table of Authorities	4
Statement of the Issue Presented for Review.....	5
Statement of the Case	6
Argument ¹	
The defendant is entitled to a new sentencing hearing.....	6
Conclusion.....	9
Attorney’s Cost Certificate	9
Certificate of Compliance.....	10

¹ The issues raised in Divisions I and III of Appellant’s original brief and argument are adequately addressed therein, and are thus not taken up in this reply brief.

TABLE OF AUTHORITIES

<u>Cases:</u>	<u>Page:</u>
State v. Breeding, No. 17-1478, 2019 WL 1940723 (Iowa Ct. App. May 21, 2019)	6-8
State v. Cory, No. 18-0328, 2019 WL 6894254 (Iowa Ct. App. Dec. 18, 2019)	8
 <u>Statute:</u>	
Iowa Code 901.10(2) (2019)	7

STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

I. THE LEGISLATURE’S RECENT AMENDMENT TO IOWA CODE SECTION 814.6 SHOULD NOT AFFECT THE DEFENDANT’S APPEAL. ALTERNATIVELY, THE DEFENDANT HAS ESTABLISHED “GOOD CAUSE” TO APPEAL OR THE COURT SHOULD TREAT THE DEFENDANT’S NOTICE OF APPEAL AND BRIEF AS AN APPLICATION FOR DISCRETIONARY REVIEW OR WRIT OF CERTIORARI AND GRANT RELIEF.

This issue is not addressed in the reply brief.

II. THE DEFENDANT IS ENTITLED TO A NEW SENTENCING HEARING.

Authorities

State v. Breeding, No. 17–1478, 2019 WL 1940723 (Iowa Ct. App. May 21, 2019) (unpublished table opinion)

Iowa Code 901.10(2) (2019)

State v. Cory, No. 18–0328, 2019 WL 6894254, at *2 (Iowa Ct. App. Dec. 18, 2019) (unpublished table decision)

III. THE DISTRICT COURT ERRED IN ORDERING THE DEFENDANT TO PAY A \$5,000 FINE FOR FAILURE TO AFFIX A DRUG TAX STAMP IN THE JUDGMENT ENTRY WHEN IT ORDERED A FINE OF \$750 AT THE SENTENCING HEARING.

This issue is not addressed in the reply brief.

STATEMENT OF THE CASE

COMES NOW the Defendant–Appellant Korke Ricoh Wilbourn pursuant to Iowa Rule of Appellate Procedure 6.903(4), and hereby submits the following argument in reply to the State’s brief filed on or about August 12, 2020. While the Defendant–Appellant’s brief and argument adequately addresses the issues presented for review, a short reply is necessary to address certain contentions raised by the State.

ARGUMENT

THE DEFENDANT IS ENTITLED TO A NEW SENTENCING HEARING.

The State cites State v. Breeding, No. 17–1478, 2019 WL 1940723 (Iowa Ct. App. May 21, 2019) (unpublished table decision), and it argues its holding supports the conclusion that the district court did not need to consider sections 901.11(1) and 124.413(3) when it considered the appropriate sentence for Wilbourn. See (State’s Br. pp. 15–17). However, that conclusion misconstrues the decision of the Court of Appeals decision.

In State v. Breeding, a jury found the defendant guilty of possession of methamphetamine with the intent to deliver, as a second offender, pursuant to Iowa Code sections 124.401(b)(7) and 124.411. Id. at *1. Breeding argued, like Wilbourn does, that the district court abused its discretion by failing to consider a reduction of the one-third mandatory minimum sentence at her sentencing hearing. See id. at *4. The appellate court did reject this contention. Id. In doing so, the Court of Appeals relied on Iowa Code section 901.10(2). Iowa Code section 901.10(2) states that “if the sentence under section 124.413 involves an amphetamine or methamphetamine offense under section 124.401, subsection 1, paragraph ‘a’ or ‘b’, *the court shall not grant any reduction of sentence unless the defendant pleads guilty.*” Iowa Code 901.10(2) (2019) (emphasis added). The Court of Appeals found that Breeding, *who did not plead guilty and was convicted by a jury at trial*, was not entitled to the district court’s consideration of any reduction of the mandatory

minimum sentence because the plain language of section 901.10(2) controlled. Breeding, 2019 WL 1940723, at *4.

Here, Wilbourn pleaded guilty to the offense. Therefore, the statement contained in section 901.10(2) that the district court shall not grant any reduction of the defendant's sentence is inapplicable to Wilbourn. Additionally, the decision by Court of Appeals in Breeding acknowledged that the sentencing court could further reduce the mandatory minimum sentence in cases where the defendant entered a guilty plea. Id. ("Breeding is correct that the one-third mandatory minimum term prescribed by Iowa Code section 124.413(1) is subject to a fifty-percent reduction under section 124.413(3)."). This is consistent with the Court's decisions in other cases. See, e.g., State v. Cory, No. 18-0328, 2019 WL 6894254, at *2 (Iowa Ct. App. Dec. 18, 2019) (unpublished table decision) (noting that the district court reduced the one-third mandatory minimum term of incarceration by one-half, pursuant to Iowa Code section 124.413(3) but did not abuse

its discretion by declining to further reduce the mandatory minimum under section 901.10(2)). Therefore, district court erred in failing to consider whether Wilbourn's mandatory minimum sentence should have been further reduced, pursuant to section 124.413(3) and section 901.11, at the sentencing hearing.

CONCLUSION

For the reasons above and in his original brief and argument, Defendant–Appellant Korke Ricoh Wilbourn respectfully requests this Court vacate his sentences remand for a new sentencing hearing.

ATTORNEY'S COST CERTIFICATE

The undersigned hereby certifies that the true cost of producing the necessary copies of the foregoing reply brief and argument was \$1.00, 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**

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



MARY K. CONROY
Assistant Appellate Defender
Appellate Defender Office
Lucas Bldg., 4th Floor
321 E. 12th Street
Des Moines, IA 50319
(515) 281-8841
mconroy@spd.state.ia.us
appellatedefender@spd.state.ia.us

Dated: 08/19/2020