

IN THE SUPREME COURT OF IOWA
Supreme Court No. 20-1530

STATE OF IOWA,
Plaintiff-Appellee,

vs.

VEIL JACOBY JACKSON-DOUGLASS,
Defendant-Appellant.

APPEAL FROM THE IOWA DISTRICT COURT
FOR BLACK HAWK COUNTY
THE HONORABLE BRADLEY J. HARRIS, JUDGE

APPELLEE'S BRIEF

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FINAL

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STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

I. Defendant's Constitutional Claims Against Iowa Code sections 814.6 and 814.7 Are Foreclosed, and His Claims of Ineffective Assistance of Counsel Must Be Dismissed.

Authorities

State v. Treptow, ___ N.W.2d ___, 2021 WL 2172073

(Iowa May 28, 2021)

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

State v. Watson, No. 20-1333, 2021 WL 2452049

(Iowa Ct. App. June 16, 2021)

II. Defendant's Claim That the District Court Erred By Failing to Treat His Motion to Reconsider His Sentence as a Motion in Arrest of Judgment Should Be Dismissed Because It Is Not Part of the Record for This Appeal.

Authorities

In re Marriage of Keith, 513 N.W.2d 769 (Iowa 2002)

State v. Boyer, No. 18-1892, 2020 WL 2108129 (Iowa 2020)

State v. Holton, No. 14-1519, 2015 WL 5285767

(Iowa Ct. App. Sept. 10, 2015)

State v. Smith, 753 N.W.2d 562 (Iowa 2008)

Iowa R. Crim. P. 2.24(3)(b)

III. The District Court Complied with Iowa Rule of Criminal Procedure 2.23(3)(a).

Authorities

State v. Barry, No. 03-1758, 2004 WL 1252706
(Iowa Ct. App. June 9, 2004)
State v. Craig, 562 N.W.2d 633 (Iowa 1997)
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Iowa R. Crim. P. 2.23(3)(a)
Iowa R. Crim. P. 2.23(3)(d)

ROUTING STATEMENT

Because this case does not meet the criteria of Iowa Rule of Appellate Procedure 6.1101(2) for retention by the Supreme Court, transfer to the Court of Appeals would be appropriate. Iowa R. App. P. 6.1101(2).

STATEMENT OF THE CASE

Nature of the Case

Defendant Veil Jacoby Jackson-Douglass (“Defendant”) appeals his conviction and sentence after a guilty plea to one count of Sexual Abuse in the Third Degree, in violation of Iowa Code section 709.4(1)(b)(3)(d), a class C felony. On appeal, Defendant argues that Iowa Code sections 814.6 and 814.7 are unconstitutional, that his trial counsel provided ineffective assistance, that the district court misinterpreted a pro se motion, and the district court violated Iowa Rule of Criminal Procedure 2.23(3)(a) at sentencing.

Course of Proceedings and Facts

The State accepts Defendant’s course of proceedings as adequate and essentially correct. Iowa R. App. P. 6.903(3). Due to the limited nature of Defendant’s appeal, any facts necessary for the resolution of his claims will be discussed below.

ARGUMENT

I. Defendant’s Constitutional Claims Against Iowa Code sections 814.6 and 814.7 Are Foreclosed, and His Claims of Ineffective Assistance of Counsel Must Be Dismissed.

Motion to Dismiss

In section I of his brief, Defendant attacks the constitutionality of Iowa Code sections 814.6 and 814.7. App. Br. at 15–30. These arguments have been foreclosed by *State v. Treptow*, ___ N.W.2d ___, 2021 WL 2172073 (Iowa May 28, 2021), and *State v. Tucker*, 959 N.W.2d 140 (Iowa 2021). In sections III and IV of his brief, Defendant raises claims of ineffective assistance of counsel and asserts his trial counsel should have filed a motion in arrest of judgment and should have entered an *Alford* plea. App. Br. at 33–46. Appellate courts in Iowa are without jurisdiction to consider these claims on direct appeal, and they must be dismissed. *See Treptow*, 2021 WL 2172073, at *2–7; *Tucker*, 959 N.W.2d at 145–153; *see also State v. Watson*, No. 20-1333, 2021 WL 2452049, at *3 (Iowa Ct. App. June 16, 2021) (“Effective July 1, 2019, appellate courts were constitutionally stripped of their jurisdiction to consider claims of ineffective assistance of counsel raised in this appeal.”).

II. Defendant’s Claim That the District Court Erred By Failing to Treat His Motion to Reconsider His Sentence as a Motion in Arrest of Judgment Should Be Dismissed Because It Is Not Part of the Record for This Appeal.

Preservation of Error and Motion to Dismiss

Next, Defendant challenges a district court order that was entered on November 18, 2020. *See* App. Br. at 30–33. But Defendant filed his notice of appeal on November 16, 2020. *See* 11-16-2020 Notice of Appeal; App. 21.

When Defendant filed his notice of appeal on November 16, 2020, jurisdiction was transferred from the district court to the Iowa Supreme Court, and the record in his underlying case was closed. Thus, anything filed after that date is not in the record for this appeal, and any reliance on those materials is inappropriate. *See, e.g., State v. Holton*, No. 14-1519, 2015 WL 5285767, at *1 (Iowa Ct. App. Sept. 10, 2015) (“Holton filed his notice of appeal on September 12, 2014. The parties’ briefs and appendix include references to a contempt order filed September 15 and the victim’s written application to modify the no contact order filed September 17. Events which occurred after September 12, 2014, are beyond the scope of the proper record on appeal.”) (citing *In re Marriage of Keith*, 513

N.W.2d 769, 771 (Iowa 2002)). In order to challenge the district court's November 18, 2020, Defendant was required to file a second notice of appeal that named this order. He did not.¹ Thus, Defendant's claim should be dismissed.

Standard of Review

Review is for abuse of discretion. *State v. Smith*, 753 N.W.2d 562, 564 (Iowa 2008) (internal citations omitted).

Merits

Even if this Court could consider Defendant's claim, it would fail. On August 28, 2020, Defendant entered a written plea of guilty. 08-28-2020 Written Guilty Plea; App. 5–11. A pre-sentence investigation report was ordered. 09-03-2020 Order for PSI; App. 13–14. At Defendant's plea hearing, he “was informed of the right to challenge the entry of the plea of guilty by filing a Motion in Arrest of

¹ On December 8, 2020, Defendant filed an amended notice of appeal, but this notice stated that Defendant “appeals to the Supreme Court of Iowa from the final order entered in this case on October 15, 2020, [] and from all adverse rulings and orders inhering therein.” 12-08-2020 Amended Notice of Appeal; App. 26–29. Thus, this notice does not encompass the district court's November 18, 2020 order. *See State v. Boyer*, No. 18-1892, 2020 WL 2108129, at *2 (Iowa 2020) (finding that “[w]hen 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.”).

Judgment. Such a motion must be filed within forty-five (45) days of pleading guilty and no later than five (5) days before the imposition of sentence. If these deadlines are not met, the Defendant loses the right to challenge the guilty plea on appeal.” 09-03-2020 Order for PSI; App. 13. The district court sentenced Defendant on October 15, 2020. 10-15-2020 Order of Disposition; App. 15–19.

On November 9, 2020, Defendant filed an inmate request form that stated: “I would like to file a motion to reconsider my sentence on behalf of my plea. I told my lawyer to file an [Alford] plea on my behalf, and he didn’t. He only entered a guilty plea. I want to plead under the [Alford] plea.” 11-09-2020 Other Event, Request to Reconsider; App. 20. The district court entered an order that said it “was presented with a Motion to Reconsider Sentence filed by defendant. IT IS HEREBY ORDERED: Said Motion is denied.” 11-18-2020 Order; App. 24.

On appeal, Defendant claims the district court erred by treating this motion as one to reconsider his sentence instead of as a motion in arrest of judgment. App. Br. at 30–32. Motions in arrest of judgment “must be made not later than 45 days after plea of guilty...but in any case not later than five days before the date set for pronouncing

judgment.” Iowa R. Crim. P. 2.24(3)(b). Defendant’s November 9 filing came 67 days after he entered his written guilty plea and 25 days after the district court pronounced judgment.² A district court abuses its discretion if it considers a motion in arrest of judgment that is filed beyond the limitations set forth in Rule 2.24(3)(b). *See Smith*, 753 N.W.2d at 564 (finding the defendant filed a late motion in arrest of judgment, so “it was clearly erroneous for the court to consider [the defendant’s] motion in arrest of judgment, and the court abused its discretion by considering the motion.”). Thus, it cannot be said the district court erred by not considering Defendant’s November 9, 2020 motion as being a late motion in arrest of judgment.

III. The District Court Complied with Iowa Rule of Criminal Procedure 2.23(3)(a).

Preservation of Error

Defendant is not required “to raise an alleged sentencing defect in the trial court in order to preserve claimed error on that ground.”

State v. Barry, No. 03-1758, 2004 WL 1252706, at *1 (Iowa Ct. App.

² On September 3, 2020, the district court entered an order that indicates a guilty plea hearing was conducted with all parties. 09-03-2020 Order for PSI; App. 13. However, this order does not specify the date of the hearing, and no transcript appears in the record.

June 9, 2004); *see also State v. Wilson*, 294 N.W.2d 824, 825–26 (Iowa 1980).³

Standard of Review

Review is for abuse of discretion. *State v. Craig*, 562 N.W.2d 633, 634 (Iowa 1997).

Merits

Finally, Defendant claims the district court violated Iowa Rule of Criminal Procedure 2.23(3)(a) because it did not ask him personally whether he had “any legal cause to show why judgment should not be pronounced against the defendant.” Iowa R. Crim. P. 2.23(3)(a). Defendant likens this phrase to the language in Rule 2.23(3)(d), which requires the district court to allow both the defendant himself and the defendant’s trial counsel to address the court “in mitigation of punishment.” Iowa R. Crim. P. 2.23(3)(d); *see*

³ Defendant asserts good cause should allow his appeal to proceed. In *State v. Damme*, the Iowa Supreme Court determined that “good cause exists to appeal from a conviction following a guilty plea when the defendant challenges his or her sentence rather than the guilty plea[,]” and when the defendant “received a discretionary sentence that was neither mandatory nor agreed to as part of [his or] her plea bargain[.]” 944 N.W.2d 98, 105 (Iowa 2020). Because Defendant challenges only his discretionary sentence, *Damme*’s holding applies, and, even though Defendant failed to seek approval in a pre-appeal motion, good cause exists for Defendant’s appeal to proceed.

App. Br. at 46–52. But the language in Rules 2.23(3)(a) and 2.23(3)(d) are not the same. Rule 2.23(3)(a) uses the generic “the defendant.” *See* Iowa R. Crim. P. 2.23(3)(a). In contrast, Rule 2.23(3)(d) says in relevant part, “[p]rior to such rendition, 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.” Iowa R. Crim. P. 2.23(3)(d) (emphasis added). Thus, Rule 2.23(3)(d) makes a specific allowance for “the defendant personally” that is otherwise not required in the statute.

And Defendant’s argument is foreclosed by prior precedent. In *State v. Craig*, the Iowa Supreme Court found that a district court is not required to specifically ask a defendant “whether he has any legal cause to show why judgment should not be pronounced against him.” *Craig*, 562 N.W.2d at 634–35. The supreme court “has previously emphasized that the words used by a sentencing court to offer the defendant a right to allocution need not duplicate the language of [Rule 2.23(3)(a)].” *Id.* at 635. “[A]s long as the district court provides the defendant with an opportunity to speak regarding his punishment, the court is in compliance with” Rules 2.23(3)(a) and (d). *State v. Pherigo*, No. 18-0951, 2019 WL 6358302, at *3 (Iowa Ct.

App. Nov. 27, 2019) (quoting *Craig*, 562 N.W.2d at 635); *see also State v. Nosa*, 738 N.W.2d 658, 660 (Iowa Ct. App. 2007) (stating that Rules 2.23(a) and (d) are “together...referred to as a defendant’s right to allocution”); *State v. Mooney*, No. 11-1569, 2013 WL 261267, at *3 (Iowa Ct. App. Jan. 24, 2013) (finding the district court substantially complied with Rules 2.23(3)(a) and (d) when it allowed defense witnesses to testify at the sentencing and engaged in a dialog with the defendant).

Here, the district court afforded Defendant the opportunity for allocution. *See* Sent. Tr. at 6:11–7:15. “The district court complied with the dictates of Rule 2.23(3)(a) by providing [Defendant] an opportunity to speak in mitigation of his punishment.” *Pherigo*, 2019 WL 6358302, at *3. And at the beginning of the sentencing hearing the district court asked Defendant’s trial counsel “any reason why we can’t proceed to sentencing?” Sent. Tr. at 2:6–14. Trial counsel said no. *Id.* The record shows the district court complied with Rule 2.23(3)(a), and Defendant’s claim fails.

CONCLUSION

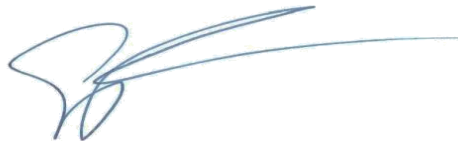
For all the reasons stated above, the State respectfully requests that this Court affirm Defendant's conviction and sentence and deny all claims on the merits.

REQUEST FOR NONORAL SUBMISSION

The State requests that this case be submitted without oral argument.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

This brief complies with the typeface requirements and type-volume limitation of Iowa Rs. App. P. 6.903(1)(d) and 6.903(1)(g)(1) or (2) because:

- This brief has been prepared in a proportionally spaced typeface using Georgia in size 14 and contains **1,918** words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).

Dated: July 21, 2021



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