IN THE SUPREME COURT OF IOWA

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| STATE OF IOWA,<br><br>Plaintiff-Appellee,<br><br>v.<br><br>TIMOTHY BASQUIN,<br><br>Defendant-Appellant. | S.CT. NO. 20-1571 |

APPEAL FROM THE IOWA DISTRICT COURT
FOR FAYETTE COUNTY
HONORABLE RICHARD D. STOCHL, JUDGE (SENTENCING)
HONORABLE ALAN T. HEAVENS, JUDGE (HEARINGS)

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# APPELLANT'S REPLY BRIEF AND ARGUMENT

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## CERTIFICATE OF SERVICE

On the 12th day of October, 2021, 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 Timothy Basquin, 17846 T Avenue, Sumner, Iowa 50674.

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RCR/lr/10/21

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## STATEMENT OF THE CASE

COMES NOW Defendant-Appellant Timothy Basquin, pursuant to Iowa R. App. P. 6.903(4), and hereby submits the following argument in reply to the State's brief. While Appellant's brief adequately addresses the issues presented for review, a short reply is necessary to address the State's arguments.

## ARGUMENT

The State has conceded that the COVID-19 orders allowing written felony pleas violated precedent. State's Brief pp. 33-34. Thus, this reply will focus on error preservation, good cause, and separation of powers.

### I. Good cause exists because the Court can provide relief to Basquin.

The parties can agree on the definition of "good cause." "Good cause" to plead guilty under Iowa Code section 814.6 means "a legally sufficient reason." State v. Damme, 944 N.W.2d 98, 104 (Iowa 2020). "A legally sufficient reason to appeal as a matter of right is a reason that, at a minimum,

would allow a court to provide some relief on direct appeal." State v. Tucker, 959 N.W.2d 140, 153 (Iowa 2021). Iowa rules provide that, "A defendant's failure to challenge the adequacy of a guilty plea proceeding by motion in arrest of judgment shall preclude the defendant's right to assert such challenge on appeal." Iowa R. Crim. P. 2.24(3)(a) (2019). This Court found in both Tucker and Treptow that the defendants lacked good cause to appeal because of their failures to file motions in arrest of judgment after waiving their rights and requesting immediate sentencing. Tucker, 959 N.W.2d at 153; State v. Treptow, 960 N.W.2d 98, 109-10 (Iowa 2021). Therefore, no relief could be provided to them on direct appeal. Tucker, 959 N.W.2d at 154; Treptow, 960 N.W.2d at 109-10.

However, the State's reliance on Tucker and Treptow is misplaced. State's Brief pp.13-14. Both Tucker and Treptow were *personally* advised of the right to file a motion in arrest of judgment by the judge during a felony plea colloquy. Tucker, 959 N.W.2d at 144; Treptow, 960 N.W.2d at 102. "[A]

defendant may challenge his guilty plea on direct appeal despite not filing a motion in arrest of judgment where *the district court failed to adequately advise the defendant* of the necessity for filing a motion in arrest of judgment and the consequences of not filing a motion in arrest of judgment." Tucker, 959 N.W.2d at 153 (emphasis added) (citing State v. Loye, 670 N.W.2d 141, 149-50 (Iowa 2003)); accord Treptow, 960 N.W.2d at 109. Basquin was not adequately advised, and therein lies the rub.

Rule 2.8(2)(d) states that "*the court shall* inform the defendant" of the right to file a motion in arrest of judgment and its preclusive effect. Iowa R. Crim. P. 2.8(2)(d) (emphasis added). The word "shall" imposes a duty. Iowa Code § 4.1(30). And the rule makes clear that it is the *court's* duty to inform the defendant. Iowa R. Crim. P. 2.8(2)(d). Even though Basquin signed a written waiver of his rights and requested immediate sentencing, he could not waive the *court's* obligations. See State v. Meron, 675 N.W.2d 537, 543-

44 (Iowa 2004) (rejecting the State's argument that a defendant could consent to an abbreviated plea colloquy because it would eviscerate the purpose of the rule); but see State v. Vennink, No. 20-1629, 2021 WL 3378547, at *1 (Iowa Ct. App. Aug. 4, 2021) (finding the court was not required to personally advise a felony defendant under the COVID-19 orders). Basquin entered a written plea that was signed by him and his attorney and filed by the prosecutor. (Written Plea) (App. pp. 122-129). While it did include a motion in arrest advisory, Basquin was not informed by the court of the right to file a motion in arrest of judgment. It was the court's duty to inform Basquin of his right to file a motion in arrest of judgment and its preclusive effect. Iowa R. Crim. P. 2.8(2)(d); Tucker, 959 N.W.2d at 153. The court failed to do so. Thus, Tucker and Treptow do not prevent a finding of good cause in this case.

This brings us to the question of what relief can be provided to Basquin, as required by section 814.6's

requirement of good cause to appeal a guilty plea. It's clear that a frivolous appeal of a guilty plea will not be heard. See Tucker, 959 N.W.2d at 151. But Basquin's appeal is not frivolous. He has challenged the voluntariness of his plea due to the surrounding circumstances of the case. Def. Brief pp. 42-46. He has also argued that the court failed to advise him of the nature of the offense. Def. Brief pp. 46-49. The judge's failure to comply with Rule 2.8(2) merits good cause. See Treptow, 960 N.W.2d at 113-14, (Appel, J., dissenting).

An appellate court is able to review the record on appeal to determine that Basquin was not advised of the nature of the offense in substantial compliance with Rule 2.8(2). The written plea merely referred Basquin to the trial information, which is written in legalese. (Written Plea ¶5-7) (App. p. 123). See Ryan v. Iowa State Penitentiary, 218 N.W.2d 616, 619 (Iowa 1974) (finding insufficient factual basis based, in part, on reading of trial information to defendant, "which might be expected to confound and confuse one unaccustomed to legal

parlance"). Count I of the trial information states:

> The defendant, on or about the 7th day of June, 2019, in Fayette County, Iowa, did unlawfully:
>
> **Count I**
>
> Manufacture, deliver, or possess with the intent to manufacture or deliver, a controlled substance, or did act with, enter into a common scheme or design with, or conspire with one or more other person to manufacture, deliver, possess with the intent to manufacture or deliver a controlled substance, to wit, methamphetamine, its salts, isomers, or salts of isomers, or analogs of methamphetamine, or any compound, mixture, or preparation which contains any quantity or detectable amount of methamphetamine, its salts, isomers, or salts of isomers, or analogs of methamphetamine, in an amount involving less than five grams, in violation of Section 124.401(1)(c)(6) of the Iowa Criminal Code, as amended. <u>This offense is a Class "C" Felony, and notwithstanding Section 902.9(4), shall be punished by a fine of not less than $1,000, nor more than $50,0000.</u>

(Trial Information p. 1) (App. p. 8) (emphasis in original). This language did not substantially comply by advising Basquin of the charges he was facing and pleading guilty to.

The written plea demonstrates there was no explanation of the elements of the offense. Substantial compliance doesn't require a particular explanation of the charge, but the

defendant must understand the nature of the offense, particularly if there is an element of specific intent. Loye, 670 N.W.2d at 151; Worley, 297 N.W.2d at 371. Possession with Intent to Deliver is a specific intent offense. Iowa Code § 124.401(1)(c)(6); State v. Alatorre, No. 07-0950, 2008 WL 4725325, at *2 (Iowa Ct. App. Oct. 29, 2008). The confusing legal terms in the trial information do not substantially comply with the procedure required for guilty pleas. (Trial Information p. 8; Written Plea ¶5-7) (App. pp. 8, 123). There was no explanation of the elements of the offense to Basquin, including that it was a specific intent offense.

Additionally, the written plea indicated Basquin was pleading to Count I and II, when the agreement was presumably only for Count I since that is the offense for which Basquin was sentenced. (Written Plea ¶6-7; Judgment) (App. pp. 123, 136-140).

Even if the Court finds it had the authority to suspend the rules of criminal procedure and accept a written plea for a

class C felony, the written plea in the instant case was involuntary. Basquin was not adequately advised of the nature of the offense, rendering his plea unknowing and involuntary. See State v. Sutton, 853 N.W.2d 284, 290 (Iowa Ct. App. 2014) (finding that when there is no colloquy with a misdemeanor defendant, the court must be able to conclude from the written plea that there was substantial compliance). The remedy when substantial compliance with Rule 2.8 is lacking is to reverse and remand to the district court. State v. Meron, 675 N.W.2d 537, 544 (Iowa 2004). Thus, relief is available to Basquin and he has good cause to appeal.

**II. The requirement that judges personally advise felony defendants of the right to file a motion in arrest of judgment should be maintained.**

The State argues that under State v. Barnes, 652 N.W.2d 466 (Iowa 2002) (per curiam), the Court should find that district courts do not have to personally advise felony defendants of the right to file a motion in arrest of judgment and its preclusive effect. State's Brief pp. 14-16. The State's

interpretation of Barnes should be rejected.

Exploring how the Iowa Supreme Court arrived at the exception allowing defendants to challenge a guilty plea on appeal when they have failed to file a motion in arrest of judgment may be helpful. First, the advisement of the right to file a motion in arrest of judgement provides:

> The *court shall inform the defendant* that any challenges to a plea of guilty based on alleged defects in the plea proceedings must be raised in a motion in arrest of judgment and that failure to so raise such challenges shall preclude the right to assert them on appeal.

Iowa R. Crim. P. 2.8(2)(d) (emphasis added). The Worley decision summarized as follows:

> Taken together, rules [now 2.8(2)(d)] and [now 2.24(3)(a)] serve the admirable purpose of allowing the trial court to correct defects in guilty plea proceedings before an appeal and as a result reduce the number of appeals. No defendant, however, should suffer the sanction of rule [now 2.24(3)(a)] unless the court has complied with rule [now 2.8(2)(d)] during the plea proceedings by telling the defendant that he must raise challenges to the plea proceeding in a motion in arrest of judgment and that failure to do so precludes challenging the proceeding on appeal. Where the trial court informs the defendant of this procedural requirement, we

> will not hesitate to preclude challenges to plea proceedings on appeal. But where, as in Worley's case, the court fails to personally inform the defendant that he may file a motion in arrest of judgment and the consequences of failing to do so, rule [now 2.24(3)(a)] does not preclude our review.

State v. Worley, 297 N.W.2d 368, 370 (Iowa 1980) (internal citation omitted). Later, the Court found that a judge's equivocal advisory about the motion in arrest of judgement when coupled with a written plea substantially complied with Rule 2.8(2)(d). State v. Oldham, 515 N.W.2d 44, 46-47 (Iowa 1994).

Next came State v. Hook, in which the district court relied on defense counsel's assurance that the defendant had been advised of the right to file a motion in arrest of judgment. State v. Hook, 623 N.W.2d 865, 868 (Iowa 2001), abrogated in part by State v. Barnes, 652 N.W.2d 466 (Iowa 2002) (per curiam). Following Worley, Hook held that the judge's failure to *personally* advise the defendant of the right to file a motion in arrest of judgment allowed the defendant to challenge the plea on appeal. Hook, 623 N.W.2d at 868. The Hook ruling

applied to both misdemeanors and felonies. Id.

State v. Barnes revisited the issue, leaving intact the requirement that the court engage in a personal colloquy regarding the motion in arrest of judgment for felonies by stating:

> We understand why the court of appeals drew the conclusions that it did from the language this court employed in Hook. The language in Hook does suggest that the court must personally inform the defendant concerning the consequences of failing to file a motion in arrest of judgment and that this may not be accomplished by the contents of a written plea agreement. However, further reflection on our part suggests that this interpretation of rule 2.8(2)(d) would unduly restrict the written plea process that subparagraph (5) of rule 2.8(2)(b) is designed to foster in prosecutions for serious or aggravated misdemeanors. We now conclude that the reason paragraph (b) of rule 2.8(2) contains an express authorization for waiver of a personal colloquy and paragraph (d) of that rule does not is because, unlike paragraph (b), paragraph (d) contains no requirement that "the court must address the defendant personally." The absence of that requirement in paragraph (d) convinces us that defendants charged with serious or aggravated misdemeanors may enter into a valid written waiver of the right to file a motion in arrest of judgment and thus trigger the bar that rule 2.24(3)(a) imposes to challenging a guilty plea on appeal. That is what occurred in the present case.

State v. Barnes, 652 N.W.2d 466, 468 (Iowa 2002) (per curiam).

Furthermore, Hook continues to be recognized and applied by Iowa courts regarding the in-court colloquy requirement for felonies. A year after Barnes, this Court rejected the State's argument that a written plea agreement could substitute for the in-court colloquy required in felony cases. State v. Loye, 670 N.W.2d 141, 153 (Iowa 2003) (citing Hook, 623 N.W.2d at 870); see also State v. Finney, 834 N.W.2d 46, 59 n.3 (Iowa 2013). And, as acknowledged by the State, the Iowa Court of Appeals has held that a felony plea requires the court to personally advise the defendant:

> We conclude in felony guilty plea cases the court is required to personally inform the defendant of the rule 2.8(2)(d) requirement to file a motion in arrest of judgment and the consequences of failing to file the motion, and the court cannot rely on a written acknowledgement or waiver. Because the court failed to advised Kalvig pursuant to rule 2.8(2)(d), Kalvig is relieved of the requirement to file the motion in arrest of judgment in order to challenge his guilty plea on appeal.

State v. Kalvig, No. 13-1252, 2014 WL 1999186, at *3 (Iowa Ct. App. May 14, 2014).

Additionally, the same year it decided Barnes, the Court stated that *literal* compliance with rule 2.8(2)(d) is required for felonies, not just substantial compliance. State v. Moore, 638 N.W.2d 735, 738-39 (Iowa 2002). "Literal compliance, by personally addressing the defendant on the record, establishing a factual basis for the plea, its voluntariness, and the defendant's understanding of the required matters, is well scripted in rule [2.]8(2)(d)." Id. Subsequently, the court clarified that *substantial* compliance was required for informing defendants of their rights but *literal* compliance was required for an in-person colloquy for felony defendants. State v. Myers, 653 N.W.2d 574, 577-78 (Iowa 2002).

Moreover, the State's interpretation of the rules is in violation of statutory interpretation principles. The rules of statutory construction apply to court rules. State v. Dann, 591 N.W.2d 635, 638 (Iowa 1999). The State is evaluating the

rules in isolation rather than together when it concludes that the district court doesn't have to personally advise the defendant of the motion in arrest of judgment for felonies. State's Brief pp. 15-16. The Iowa Supreme Court has stated:

> Principles of statutory construction should be applied when a statute is ambiguous. Ambiguity may arise in two ways: (1) from the meaning of particular words, or (2) from the general scope and meaning of a statute when all its provisions are examined. When more than one statute is pertinent to the inquiry, the court considers the statutes together in an attempt to harmonize them.

Dann, 591 N.W.2d at 638 (internal citations omitted). Additionally, "In interpreting a supreme court rule, the court must ascertain the drafters' intent from a consideration of the entire scheme, its nature, its object, and the consequences resulting from different constructions, and the court must give effect to each word, phrase, and clause." 21 C.J.S. *Courts* § 172 (Aug. 2021 Update).

By interpreting Rule 2.8(2)(d) to require the district court to personally advise a felony defendant of how to challenge a guilty plea, the court has interpreted subsection (d) in concert

with the remainder of Rule 2.8(2). Rule 2.8(2)(b) requires the court to address a defendant personally in open court, while 2.8(2)(b)(5) permits a waiver of that requirement for misdemeanor offenses. Iowa R. Crim. P. 2.8(2)(b). Such a waiver is not allowed for felonies (until the COVID-19 orders were issued). See id. In that way, Rule 2.8(2)(d) reflects those differing requirements by mandating that the court inform the defendant of how to challenge a guilty plea. See Iowa R. Crim. P. 2.8(2)(d) (stating that "[t]he court shall inform the defendant"). The district "shall inform" a misdemeanor defendant in writing if procedures in person have been waived, while it must do so personally in open court for a felony defendant. See Worley, 297 N.W.2d at 370; but see State v. Kukowski, 704 N.W.2d 687, 693 (Iowa 2005) ("First, while the rule indicates the defendant 'shall . . . affirm or deny,' our rules of criminal procedure otherwise use specific language to indicate when a personal inquiry is required."). Thus, the court has interpreted the entire scheme of Rule 2.8(2) rather

than in isolation as the State proposes. The State's argument to reinterpret Barnes should therefore be rejected.

**III. The Supreme Court's powers don't include the power to suspend and revise the Rules of Criminal Procedure without legislative approval.**

The Iowa Constitution provides:

> The supreme court shall have appellate jurisdiction only in cases in chancery, and shall constitute a court for the correction of errors at law, under such restrictions as the general assembly may, by law, prescribe; and shall have power to issue all writs and process necessary to secure justice to parties, and shall exercise a supervisory and administrative control over all inferior judicial tribunals throughout the state.

Iowa Const. art. V, § 4 (2019). Originally, this provision stated only that the Supreme Court "shall have power to… exercise a supervisory control" over inferior courts. Iowa Const. art. V, § 4 (1857). But a 1962 amendment substituted the words "exercise a supervisory" with "shall exercise a supervisory and administrative." Iowa Const. art. V, § 4 (1962).

The Iowa Supreme Court recently analyzed its powers in

State v. Thompson, stating:

> The judicial department has several fonts of authority to regulate court practice and procedure in all Iowa courts. The judicial department has *constitutional* authority to supervise and administer "all inferior judicial tribunals throughout the state." Iowa Const. art. V, § 4. The judicial department has *statutory* authority to "prescribe all rules of pleading, practice, evidence, and procedure, and the forms of process, writs, and notices, for all proceedings in all courts of this state." Iowa Code § 602.4201(1). The judicial department possesses *inherent* authority to craft protocols and procedures in its courts. See State v. Dahl, 874 N.W.2d 348, 353 (Iowa 2016) (exercising supervisory authority to create protocol for appointment of a private investigator for an indigent defendant); see also Hammon v. Gilson, 227 Iowa 1366, 1373, 291 N.W. 448, 451– 52 (1940) ("[C]ourts have the inherent power to prescribe such rules of practice … to facilitate the administration of justice ...."). Moreover, the judicial department possesses *residual common law* authority to meet its "independent constitutional and statutory responsibilities." Iowa C.L. Union v. Critelli, 244 N.W.2d 564, 569 (Iowa 1976) (en banc).

State v. Thompson, 954 N.W.2d 402, 411 (Iowa 2021) (emphasis in original). The Court went on to conclude that historical practice supported the conclusion that the legislature had the authority to prohibit pro se briefs because

practice and procedure has historically been governed by the legislative department. Id. at 412-14.

While the State has laid out the Court's power to write rules under the rule-making process, State's Brief p. 29, the hole in its argument is that the COVID-19 rules were not submitted to the Legislative Council. Thus, the Court has violated the statutory procedure for implementing rules. See Iowa Code § 602.4202(1) ("The supreme court shall submit a rule or form prescribed by the supreme court . . . to the legislative council"). Further, the Iowa Code only provides that the court "*may* prescribe all rules of pleading, practice, evidence, and procedure," not *shall*. Iowa Code § 602.4201 (emphasis added).

> This brief survey of the relevant history shows the legislative department has always established the rules for practice and procedure in Iowa's courts. Initially, the legislature did so directly through statutes. More recently, the legislature has done so indirectly through delegation of the rulemaking power to this court subject to legislative oversight and amendment. Pursuant to this historical practice, this court has repeatedly recognized the constitutionality of legislation regulating practice

and procedure in Iowa's courts.

Thompson, 954 N.W.2d at 414. And the Court has previously acknowledged that a supervisory order cannot trump the legislature's authority. Root v. Toney, 841 N.W.2d 83, 90 (Iowa 2013).

That leaves the question of the Court's supervisory and administrative powers under the Constitution. In dicta in a 1916 case deciding whether the Supreme Court had the authority to appoint judges to a condemnation board, the Court engaged in a discussion of the meaning of "supervisory control" under Iowa's Constitution:

> While, on the one hand, supervisory control, being granted by the fundamental law, may not be restricted, save by obviating the necessity for its exercise, on the other, opportunities for its exercise may be increased by legislation. By this statute it has provided for the organization of a tribunal for the condemnation of property in the exercise of the right of eminent domain which seems to be endowed with all essential attributes of a court, even though it is to proceed no farther than the assessment of damages which, under our system, is all that is done on final hearing. If it be an inferior tribunal, such as contemplated in the section of the Constitution hereinbefore quoted, and intervener

> does not argue otherwise, it is within the supervising authority of the Supreme Court. To supervise is "to oversee for direction; to superintend; to inspect with authority;" and to control means "to exercise restraining or governing influence over; * * * to regulate; to govern; to overpower." From these definitions that of supervisory control may be deduced, and surely within it is the designation of judges best qualified to render the peculiar service exacted from a large number throughout the state.

Hutchins v. City of Des Moines, 176 Iowa 189, 157 N.W. 881, 890 (1916). The court also quoted with approval a Wisconsin jurist's discussion of the superintending power granted that court under the Wisconsin Constitution:

> (1) The second constitutional grant of power to this court, that of 'general superintending control over all inferior courts,' is not limited other than by the necessities of justice. It extends to judicial as well as jurisdictional errors. (2) The necessities of justice, in a legal sense, do not reach beyond the scope of governmental policy as to righting wrongs by judicial interference; as, for example, it stops in criminal cases at the constitutional prohibition of a second jeopardy. (3) The grant of superintending control, though without specified means or instrumentalities for its exercise, includes by necessary implication all common–law writs and means applicable thereto and all power necessary to make such writs and means fully adaptable for the purpose. (4) The extent of the power of

> superintending control, as to any particular group of circumstances, is not measurable by that of the common–law writ most adaptable in its ordinary scope to vitalize such power in regard to such circumstances. Such extent is referable to the necessities of the case and the ordinary use feature of the writ is to be expanded to meet the exigencies thereof. (5) The common–law writs, with the power indicated to adapt them, leaves no part of the court's superintending control power to be necessarily dormant for want of means to vitalize it. (6) The existence of error in the field of the controlling power does not, necessarily, upon proper request in form, require the doors of the jurisdiction to open. When that should occur rests in sound judicial discretion. (7) By the policy of this court its superintending control power is to be exercised only when the right of the matter involved is plain, there is no other efficient remedy for its invasion or denial such invasions or denial is prejudicial, and, generally, and especially as to errors not strictly jurisdictional, the case presents circumstances of exceptional or extraordinary hardship.

State v. Helms, 136 Wis. 432, 118 N.W. 158, 168-69 (1908)

(Marshall, J., concurring).[1]

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[1] At that time, the relevant portion of the Wisconsin Constitution stated, "The Supreme Court shall have a general superintending control over all inferior courts." Id. at 159 (quoting Wis. Const. art. VII, § 3). The Wisconsin Constitution was amended in April 1977 to: "The supreme court shall have superintending and administrative authority over all courts." Wis. Const. art. VII, § 3, cl. 1.

The cases interpreting the Iowa Supreme Court's supervisory control and approval of the Wisconsin Supreme Court's opinion indicate that it is the power to regulate the lower courts in their functions, such as preventing judges from overstepping their bounds or not doing their duty, appointing judges, or setting hours of operation for clerks of court. See Root v. Toney, 841 N.W.2d 83 (Iowa 2013); In re Mun. Ct. of City of Cedar Rapids, 188 N.W.2d 354 (Iowa 1971); In re Judges of Mun. Ct. of City of Cedar Rapids, 130 N.W.2d 553 (Iowa 1964); Hutchins v. City of Des Moines, 176 Iowa 189, 157 N.W. 881 (1916). "Supervisory control" is defined as "The control exercised by a higher court over a lower court, as by prohibiting the lower court from acting extrajurisdictionally and by reversing its extrajurisdictional acts." *Supervisory Control*, Black's Law Dictionary (11th ed. 2019). Thus, the Court's supervisory and administrative powers do not extend to implementing practice and procedure but apply to regulating the lower courts themselves.

Finally, the State has pointed out that North Dakota also implemented procedures during the pandemic allowing written pleas for felonies. State's Brief p. 24. Notably, North Dakota's Constitution specifically mandates its supreme court to do so, stating, "The supreme court shall have authority to promulgate rules of procedure, including appellate procedure, to be followed by all the courts of this state . . . ." N.D. const. art. VI, § 3. Thus, its powers are clearly enumerated in its constitution and not shared with the legislature, as they are in Iowa. Thompson, 954 N.W.2d at 414-15.

In conclusion, the Court lacked the authority to implement rules that permitted the district court to accept felony guilty pleas on paper. The district court did not personally inform Basquin of his right to file a motion in arrest of judgment and the preclusive effect of the failure to file one. Basquin's plea was not knowing, voluntary, and intelligent, in violation of due process. This Court can grant relief by returning the case to district court.

## CONCLUSION

For all of the reasons discussed above and, in the Brief and Argument, Defendant-Appellant Timothy Basquin respectfully requests this Court to reverse and remand this case to the Fayette County District Court.

## ATTORNEY'S COST CERTIFICATE

The undersigned, hereby certifies that the true cost of producing the necessary copies of the foregoing Brief and Argument was $3.20, and that amount has been paid in full by the Office of the Appellate Defender.

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

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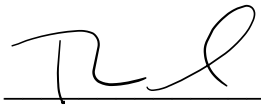

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