

IN THE SUPREME COURT OF IOWA  
Supreme Court No. 21-1146

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STATE OF IOWA,  
Plaintiff-Appellee,

vs.

JOHN EDDIE HANES, III,  
Defendant-Appellant.

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APPEAL FROM THE IOWA DISTRICT COURT  
FOR SCOTT COUNTY  
THE HONORABLE JOEL W. BARROWS, JUDGE

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**APPELLEE'S BRIEF**

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## STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

### I. Defendant's Appeal Should Be Dismissed.

#### Authorities

*State v. Treptow*, 960 N.W.2d 98 (Iowa 2021)  
*Tindell v. State*, 629 N.W.2d 357 (Iowa 2001)

### II. Defendant Has Failed to Establish Good Cause to Appeal and Failed to Show Any Prejudice Resulting from His Guilty Plea.

#### Authorities

*Yee v. City of Escondido*, 503 U.S. 519 (1992)  
*Meier v. Senecaut*, 641 N.W.2d 532 (Iowa 2002)  
*State v. Biddle*, 652 N.W.2d 191 (Iowa 2002)  
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(Iowa 2013)  
Iowa Code § 814.6(1)(a)(3)  
Iowa Code § 814.29

## **ROUTING STATEMENT**

Defendant John Eddie Hanes III (Defendant) requests retention, but his claim is foreclosed by *State v. Treptow*, 960 N.W.2d 98 (Iowa 2021). 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 is appropriate. Iowa R. App. P. 6.1101(2).

## **STATEMENT OF THE CASE**

### **Nature of the Case**

Defendant appeals his conviction following a guilty plea to one count of Criminal Gang Participation, in violation of Iowa Code sections 703.1, 706.1, 706.3, and 723A.2, a class D felony. On appeal, Defendant claims his guilty plea lacked a factual basis.

### **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). Because of the limited nature of Defendant's appeal, any facts necessary to the resolution of his claim will be discussed below.

## ARGUMENT

### I. Defendant's Appeal Should Be Dismissed.

Defendant pleaded guilty to criminal gang participation in violation of Iowa Code sections 703.1, 706.1, 706.3, and 723A.2. 07-12-2021 Order Accepting Plea; App. 22–25. He was sentenced on August 20, 2021. 08-20-2021 Order of Disposition; App. 26–29.

On appeal, Defendant challenges the factual basis for his plea. He does not contest that he was informed of the necessity to file a motion in arrest of judgment to allege a defect in the plea, nor does he contest the adequacy of the advisory. *See* 07-12-2021 Order Accepting Plea; App. 22–25; *see also* App. Br. He did not file a motion in arrest of judgment. Instead, Defendant requests that this Court consider his claim as an “exception” to filing a motion in arrest of judgment. *See* App. Br. at 9, 13. The Iowa Supreme Court expressly declined to do this in *State v. Treptow*, 960 N.W.2d 98, 109 (Iowa 2021) (finding that a defendant’s “failure to file a motion in arrest of judgment precludes appellate relief” when a defendant claims his guilty plea lacks a factual basis).

In *Treptow*, the Supreme Court dismissed an appeal raising an unpreserved factual basis challenge under Iowa Code section 814.6. It

held that because the defendant waived his right to file a motion in arrest of judgment and because ineffective assistance of counsel claims can no longer be considered on direct appeal, the appellate courts could provide no relief for his challenge to the factual basis for his guilty plea. *Id.* at 109–110. The Supreme Court has been clear that the rule and its precedents “allow challenges to illegal *sentences* at any time, but they do not allow challenges to sentences that, because of procedural errors, are illegally *imposed.*” *Tindell v. State*, 629 N.W.2d 357, 359 (Iowa 2001) (emphasis in original). A defect in the plea proceeding does not create an illegal sentence, and Defendant is not entitled to a direct appeal.

A three-justice panel of the Supreme Court recently granted a motion to dismiss on nearly identical facts. *See State v. Taylor*, Sup. Ct. Dkt. No. 21-0599, 09-27-2021 Order. In its order, the Court stated that “[t]o preserve error, defendant was required to assert his claim in district court through a timely motion in arrest of judgment.” *Id.* Because Defendant was adequately advised of the requirement to file a motion in arrest of judgment, and he failed to do so, his claim should be dismissed.

## **II. Defendant Has Failed to Establish Good Cause to Appeal and Failed to Show Any Prejudice Resulting from His Guilty Plea.**

### **Good Cause**

Defendant has failed to establish good cause to appeal from his guilty plea. *See* Iowa Code § 814.6(1)(a)(3). In *Treptow*, the defendant raised a nearly identical claim to the one raised by Defendant. There, the Supreme Court found the defendant did “not advanced a legally sufficient reason to pursue an appeal as a matter of right,” and thus, did not have good cause to assert on appeal that his guilty plea lacked a factual basis. 960 N.W.2d at 109–110. The result should be the same here. *See also State v. Mayfield*, Sup. Ct. Dkt. No. 21-0872, 10-29-2021 Order (finding “the appellant has not established good cause to pursue his appeal” of his lack-of-factual-basis claim.).

### **Preservation of Error**

Defendant has also failed to preserve error. As stated above, Defendant was properly informed of his right to file a motion in arrest of judgment, and he did not do so. At the sentencing hearing, Defendant’s trial counsel engaged him in a colloquy in which he agreed that his factual basis was truthful, and Defendant stated that he did not want to withdraw his guilty plea and wanted to proceed to sentencing. Sent. Tr. at 2:21–3:22.

It is fundamental that an issue must be both raised to and decided by a district court for it to be preserved for appeal. *Meier v. Senecaut*, 641 N.W.2d 532, 537 (Iowa 2002) (internal citations omitted); see also *Taft v. Iowa Dist. Court ex rel Linn Cty.*, 828 N.W.2d 309, 322 (Iowa 2013) (citing *State v. Biddle*, 652 N.W.2d 191, 203 (Iowa 2002) (“Even issues implicating constitutional rights must be presented to and ruled upon by the district court in order to preserve error for appeal.”)). This is because “it is not a sensible exercise of appellate review to analyze facts of an issue ‘without the benefit of a full record or lower court determination[.]’” *Meier*, 641 N.W.2d at 537 (quoting *Yee v. City of Escondido*, 503 U.S. 519, 538 (1992)).

While Defendant argues that our courts should recognize a stand-alone challenge to the factual basis for a guilty plea, he makes no argument as to how such a stand-alone claim should be preserved for appeal. He does ask that the claim be an exception to error preservation, but he makes no argument in support of that request. And Defendant’s reliance on *State v. Williams*, 224 N.W.2d 17 (1974), is misplaced. *Williams* did not discuss a motion in arrest of judgment, and it certainly doesn’t stand for the proposition that a motion in

arrest of judgment “is not required to challenge the district court’s failure to ensure there is a factual basis for a plea of guilty.”<sup>1</sup> App. Br. at 9. Here, Defendant did not file a motion in arrest of judgment, never argued to the district court that his plea lacked a factual basis, and the district court never ruled on such a claim. As such, it is not preserved and should not be considered on direct appeal.

### **Standard of Review**

Defendant asserts a stand-alone challenge to the lack of a factual basis should be de novo. While the State asserts *Treptow* forecloses such a claim, if such a challenge were recognized, the review would be for compliance with Iowa Rule of Criminal Procedure 2.8(2) and would be for correction of errors at law. *See State v. Meron*, 675 N.W.2d 537, 540 (Iowa 2004) (“[] [R]eview of a claim of error in a guilty plea proceeding is at law.”).

### **Merits**

Pursuant to a plea agreement, Defendant pleaded guilty to one count of criminal gang participation, in violation of Iowa Code

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<sup>1</sup> While it’s unclear in *Williams* how the defendant preserved his claim, error preservation is never discussed in the case. Defendant’s claim that a motion in arrest of judgment is not required to preserve error for a lack-of-factual-basis claim directly conflicts with current Iowa law, including *Treptow*.

sections 703.1, 706.1, 706.3, and 723A.2. 07-09-2021 Plea Agreement, 07-09-2021 Written Plea of Guilty; App. 9–21. The elements of this crime are:

1. On or about [date], the defendant actively participated in or was a member of a criminal street gang as defined in Instruction No. \_\_\_\_.

2. On that date, the defendant willfully aided and abetted a criminal act, that is, (name of crime alleged).

3. The criminal act was committed [at the direction of] [for the benefit of] [in association with] the criminal street gang.

Model Criminal Jury Instr. No. 2800.1.

In his written plea agreement, Defendant acknowledged these elements. 07-09-2021 Written Plea of Guilty; App. 17. For a factual basis, he wrote: “I was an active participant in a criminal street gang and I possessed a firearm unlawfully as a felon and did so for the benefit and in association with that same criminal street gang on April 28, 2021, in Scott County, Iowa.” *Id.* at ¶ 8; App. 17. Defendant admitted to being an active participant in a street gang, admitted to being a felon in possession of a firearm, and admitted to using that firearm for the benefit of and in association with the street gang. *Id.*; App. 17.

Recently, in *State v. El-Amin*, the Supreme Court reiterated “that ‘Iowa does not distinguish between principals who perpetrate a crime and those who aid and abet them.’” 952 N.W.2d 134, 139 (Iowa 2020) (quoting *State v. Finnigan*, 478 N.W.2d 630, 632 (Iowa 1991)). Like section 709.4(1)(a), nothing in section 723A.2 “prevents an aider and abettor from being charged, tried and punished as a principal under 703.1.” *Id.* (quoting *Finnigan*, 478 N.W.2d at 632).

Presumably, the reverse is true as well. And here as in *El-Amin*, the trial information specifically mentioned a conspiracy theory. *See id.* at 138 (“Moreover, both the trial information and plea colloquy mentioned theories of accomplice liability.”); 06-10-2021 Trial Inform. at 1 (charging Defendant under section 706.1 and alleging he “did personally, aid and abet another to, or conspire with another to” possess a firearm in association with a criminal street gang); App. 5. Because Defendant admitted to being a principal, and Iowa law does not distinguish between principals and those who aid and abet, there is a sufficient factual basis for Defendant’s guilty plea.

Finally, Defendant has failed to prove prejudice. Historically, when a lack-of-factual-basis-to-a-guilty-plea claim was raised through the lens of ineffective assistance of counsel, prejudice was

presumed. *See State v. Straw*, 709 N.W.2d 128, 137 n.4 (Iowa 2006) (citing *State v. Hack*, 545 N.W.2d 262, 263 (Iowa 1996)). But, as a stand-alone claim, Defendant must prove prejudice. Iowa Code section 814.29 plainly states that a guilty plea “shall not be vacated unless the defendant demonstrates that the defendant more likely than not would not have plead guilty if the defect had not occurred.” Iowa Code § 814.29. Defendant does not mention this requirement in his brief and does not argue he more likely than not would have proceeded to trial.

And here, Defendant could not do so. Because Iowa law does not distinguish between principals and those who aid and abet, the result would be the same.

### **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 **1,795** words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).

Dated: March 7, 2022



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