

IN THE SUPREME COURT OF IOWA

STATE OF IOWA,

Plaintiff-Appellee,

v.

MYCHAEL RICHARD PATTEN,

Defendant-Appellant.

SUPREME COURT
NO. 21-0101

APPEAL FROM THE IOWA DISTRICT COURT
FOR NORTH LEE COUNTY
THE HONORABLE JOHN M. WRIGHT, JUDGE

APPELLANT'S APPLICATION FOR FURTHER REVIEW
OF THE DECISION OF THE IOWA COURT OF APPEALS
FILED DECEMBER 15, 2021

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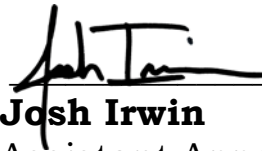
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ATTORNEYS FOR DEFENDANT-APPELLANT

CERTIFICATE OF SERVICE

On December 30, 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 Mychael Patten, No. 6837232, Newton Correctional Facility, 307 S. 60th Ave. W., Newton, IA 50208.

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QUESTION PRESENTED FOR REVIEW

Whether the Court of Appeals erred in concluding the State did not breach the plea agreement, and in considering the impact the State's lack of endorsement had on the sentencing court?

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STATEMENT IN SUPPORT OF FURTHER REVIEW

Mychael Patten requests, pursuant to Iowa R. App. P. 6.1103, that this Court grant further review of the December 15, 2021 decision of the Court of Appeals.

The Court of Appeals erred in concluding that the State did not breach the plea agreement. In exchange for Patten's guilty plea, the State agreed to recommend a suspended term of incarceration. During the sentencing hearing, the prosecutor did not state the recommendation herself, instead referring the court to the recitation of the plea agreement contained in the PSI. She then told the court, twice in quick succession, that "the sole reason" for the State's recommendation was the victim's request. Iowa precedents hold prosecutors to a high standard in upholding their end of a plea bargain; they must express their approval of the agreed-upon recommendation and they may not express reservation, whether explicitly or implicitly. The prosecutor's statements in this case failed to express approval of, and implied

reservation about, the recommended sentence. Allowing prosecutors to induce a guilty plea by promising to endorse a particular sentencing recommendation but excusing their failure to live up to that promise is contrary to our system of justice, which relies in large part upon plea agreements.

Additionally, the Court of Appeals' decision is in conflict with decisions of this Court. See Iowa R. App. P. 6.1103(1)(b). The court emphasized that the district court's sentencing decision did not appear to have been influenced by the State's failure to forcefully recommend a suspended sentence.

Opinion p. 5. This is contrary to Iowa precedents holding that the State's breach of a plea agreement mandates resentencing, regardless of the impact the breach had on the district court's sentencing decision.

Mychael Patten respectfully requests this Court grant his application for further review of the decision of the Court of Appeals and hold that the State breached the plea agreement when it failed to endorse, and implied reservation about, the

sentencing recommendation. Additionally, the Court should make clear that, when the State breaches a plea agreement, resentencing is necessary regardless of the impact that breach had upon the district court's sentencing decision.

STATEMENT OF THE CASE

Nature of the Case

The defendant-appellant, Mychael Richard Patten, seeks further review of the Court of Appeals' decision affirming his sentence.

Course of Proceedings and Factual Background

Patten generally accepts the Court of Appeals' recitation of the course of proceedings and factual background.

ARGUMENT

The Court of Appeals erred in concluding that the State did not breach the plea agreement, and in considering the impact the State's lack of endorsement had on the sentencing court.

During sentencing, the prosecutor asked the court to "adopt the plea agreement that is outlined in the Presentence Investigation Report that was agreed to by the parties."

(Sentencing Tr. p. 5 L. 1-5). But then she said that "the sole reason for this recommendation by the State is based on conversations with the victim herself," and a moment later emphasized "that is the sole driving force and the reason for

the State's recommendation in this matter." (Sentencing Tr. p. 5 L. 6–10, p. 7 L. 15–18). The Court of Appeals found that the prosecutor did not breach the plea agreement, because although the PSI recommended incarceration the prosecutor "never mentioned this recommendation nor suggested the court ignore the State's recommendation." Opinion p. 5. The court further indicated the prosecutor's statements that the victim's wishes were the sole reason for the State's recommendation were sufficient endorsement of that recommendation. Opinion p. 5. Respectfully, those conclusions were in error.

The State can implicitly undermine its recommendation without expressly asking the court to depart from it. See State v. Beres, 943 N.W.2d 575, 582 (Iowa 2020) ("A 'prosecutor's obligation to scrupulously comply with the letter and spirit of the agreements' means that even technical compliance will not suffice if the prosecutor otherwise 'undercut[s] the plea agreement.'") (quoting State v. Lopez, 872

N.W.2d 159, 173 (Iowa 2015)); see also State v. Bearse, 748 N.W.2d 211, 218 (Iowa 2008) (“Our system of justice . . . does not allow prosecutors to make sentencing recommendations with a wink and a nod. The concept of justice has a far greater meaning.”). The prosecutor’s repeated statements that the victim’s wishes were the only reason for the State’s recommendation implied to the sentencing court that the State did not actually believe a suspended sentence was warranted. They indicated that, but-for the victim’s wishes, the State would be requesting a sentence of incarceration.

The prosecutor failed to endorse the agreed-upon sentencing recommendation, and instead implied the State’s disapproval. This failure to adhere to “the most meticulous standards of both promise and performance” is detrimental to our system of justice, which relies heavily on plea agreements to function. See State v. Bearse, 748 N.W.2d 211, 215–16 (Iowa 2008). This Court should grant further review and hold

that the State breached the plea agreement by failing to endorse the agreed-upon sentencing recommendation.

Additionally, the Court of Appeals' consideration of the effect the prosecutor's statements had on the sentencing court was in error. The court noted that "[t]he [sentencing] court's thorough explanation makes clear the court considered the big picture in sentencing Patten to incarceration, regardless of how forcefully the prosecutor emphasized the State's recommendation of a suspended sentence." Opinion p. 5. But this Court has held that, when the State breaches a plea agreement, it causes irreparable prejudice to the defendant and requires resentencing regardless of the impact on the sentencing court's decision. See State v. Boldon, 954 N.W.2d 62, 70 (Iowa 2021); State v. King, 576 N.W.2d 369, 371 (Iowa 1998) (citing Santobello v. New York, 404 U.S. 257, 262–63 (1971)). This Court should grant further review and reaffirm the principle that the State's breach of the plea agreement

requires resentencing regardless of the impact on the sentencing court.

Conclusion

The prosecutor's comments during sentencing fell far short of the requirement that the State endorse the agreed-upon sentencing recommendation. The Court of Appeals erred in concluding the State did not breach the plea agreement. Additionally, the Court of Appeals erred in considering the impact the prosecutor's lack of endorsement had on the sentencing court. This Court should grant further review, vacate Patten's sentence, and remand the case for resentencing before a different judge.

ATTORNEY'S COST CERTIFICATE

The undersigned, hereby certifies that the true cost of producing the necessary copies of the foregoing Application for Further Review was \$1.71, 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 FOR
FURTHER REVIEWS**

This application complies with the typeface and type-volume requirements of Iowa R. App. P. 6.1103(4) because:

[X] this application has been prepared in a proportionally spaced typeface using Bookman Old Style, font 14 point and contains 1,087 words, excluding the parts of the application exempted by Iowa R. App. P. 6.1103(4)(a).



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Dated: 12/30/21