

No. 21-1146

IN THE

SUPREME COURT OF IOWA

STATE OF IOWA,

Plaintiff-Appellee,

v.

JOHN EDDIE HANES, III,

Defendant-Appellant.

APPEAL FROM THE DISTRICT COURT OF SCOTT COUNTY
THE HONORABLE JEFFREY D. BERT, JUDGE

APPELLANT'S REPLY BRIEF

JACK BJORNSTAD
JACK BJORNSTAD LAW OFFICE
1700 HILL AVENUE
SPIRIT LAKE, IA 51360
PHONE: 712-332-5225
jack@bjornstad.legaloffice.pro
ATTORNEY FOR APPELLANT

CERTIFICATE OF SERVICE

The undersigned certifies that on the 7th day of March, 2022, he did serve the Appellant's Reply Brief through electronic filing, on the following respective parties:

Attorney General
Criminal Appeals Division
1305 E. Walnut
Hoover State Office Building
Des Moines, IA 50319

The undersigned further certifies that on the 7th day of March, 2022, he did mail the Appellant's Reply Brief to John Hanes, III, appellant.

/s/ Jack Bjornstad
Jack Bjornstad, ICIS #AT0000922
Jack Bjornstad Law Office
1700 Hill Avenue
Spirit Lake, IA 51360
ATTORNEY FOR APPELLANT

CERTIFICATE OF FILING

I further certify that on the 7th day of March, 2022, I did electronically file the Appellant's Reply Brief.

/s/ Jack Bjornstad
Jack Bjornstad, ICIS #AT0000922
Jack Bjornstad Law Office
1700 Hill Avenue
Spirit Lake, IA 51360
ATTORNEY FOR APPELLANT

TABLE OF CONTENTS

	Page
CERTIFICATE OF SERVICE	2
CERTIFICATE OF FILING	2
TABLE OF AUTHORITIES.....	4
STATEMENT OF THE ISSUE.....	5
ARGUMENT	6
CONCLUSION	10
REQUEST FOR ORAL ARGUMENT.....	11
CERTIFICATE OF COMPLIANCE	12
ATTORNEY’S COST CERTIFICATE	12

TABLE OF AUTHORITIES

CASES

<i>Earnest v. State</i> , 508 N.W.2d 630 (Iowa 1993)	8
<i>State v. Hack</i> , 545 N.W.2d 262, 263 (Iowa 1996).....	10
<i>State v. Kellogg</i> , 263 N.W.2d 539 (Iowa 1978).....	8
<i>State v. Mitchell</i> , 650 N.W.2d 619 (Iowa 2002)	11
<i>State v. Taylor</i> , Sup. Ct. Dkt. No. 21-0599	6, 7
<i>State v. Treptow</i> , ___ N.W.2d ___ (Iowa 2021)	6, 7
<i>State v. Williams</i> , 224 N.W.2d 17 (1974)	7

CODES AND STATUTES

Iowa R. Cr. P. 2.8(2)(b)	6
Iowa R. Cr. P. 2.24(3)(c)	9

STATEMENT OF THE ISSUE

- I. Should this Court recognize an error preservation and motion in arrest of judgment exception on direct appeal when the District Court fails in its duty to ensure there is a factual basis for a plea of guilty, or fails to arrest judgment pursuant to Rule 2.24(3)(c)?**

AUTHORITIES

CASES

State v. Taylor, Sup. Ct. Dkt. No. 21-0599

State v. Treptow, ___ N.W.2d ___ (Iowa 2021)

State v. Williams, 224 N.W.2d 17 (1974)

State v. Kellogg, 263 N.W.2d 539 (Iowa 1978)

Earnest v. State, 508 N.W.2d 630 (Iowa 1993)

State v. Hack, 545 N.W.2d 262, 263 (Iowa 1996)

State v. Mitchell, 650 N.W.2d 619 (Iowa 2002)

CODES AND STATUTES

Iowa R. Cr. P. 2.8(2)(b)

Iowa R. Cr. P. 2.24(3)(c)

ARGUMENT

- II. When the District Court fails in its duty to ensure there is a factual basis for a plea of guilty, or fails to arrest judgment pursuant to Rule 2.24(3)(c), this Court should recognize an error preservation exception and motion in arrest of judgment exception on direct appeal.**

“You have not because you ask not.” James 4:2. There’s a big difference between this case and *State v. Taylor*, cited by the State. *See State v. Taylor*, Sup. Ct. Dkt. No. 21-0599. The big difference is that in *Taylor* the Appellant *didn’t ask* for a new error preservation exception. *See State v. Taylor*, Sup. Ct. Dkt. No. 21-0599, 07/29/21 Appellant’s Brief. Hanes, on the other hand, asks this Court to recognize an exception.

In *Taylor*, the Appellant cited an “illegal sentence” and asked the Court to adopt the “doctrine of plain error.” *Id.* at 13-22. Hanes does not challenge his sentence as illegal. Hanes does not invite the Court to adopt the plain error doctrine. The Appellant in *Taylor* did discuss the District Court’s obligation to ensure the factual basis for a guilty plea under Rule 2.8(2)(b).

However, the reference was limited to the illegal sentence argument. *Id.* at 24-27.

There is the same big difference between this appeal and *State v. Treptow*. *State v. Treptow*, 960 N.W.2d 98 (Iowa 2021). Again, the big difference is that in *Treptow*, the Appellant didn't ask for a new exception. See *State v. Treptow*, Sup. Ct. Dkt. No. 19-1276, 06/05/20 Appellants Brief. In *Treptow*, the District Court's duty to ensure a factual basis was cited only in support of a "plain error" argument. *Id.* at 82.

This appeal presents issues not raised in *Taylor* and *Treptow*. For instance, is a motion of arrest of judgment *even required* when challenging the District Court's failure to ensure a factual basis exists for a guilty plea? *State v. Williams* spelled out the District Court's duty to ensure a factual basis for a guilty plea. *State v. Williams*, 224 N.W.2d 17, 18-19 (1974). But, upon close inspection, *Williams* shows us more. The *Williams* Court did not require a motion in arrest of judgment to preserve error before the Court could correct a plea proceeding with no guarantee of a factual basis.

In *Williams*, the Iowa Supreme Court entertained an appeal after a guilty plea without a motion in arrest of judgment, and addressed the District Court's non-delegable duty to ensure a factual basis for the plea.

How can we know whether a motion in arrest of judgment was filed? It is telling that the *Williams* Court put equal blame on defense counsel, the prosecutor, and the trial court. The *Williams* Court stated, concerning defense counsel, “[a]s an officer of the court and representative of the defendant, the defense lawyer has a responsibility to ensure that the record shows the pleas of his client is intelligent, voluntary, and accurate.” *Williams* at 19.

If *Williams*’ defense counsel *had* filed a motion in arrest of judgment to point out that *Williams* plead guilty without an adequate factual basis, the *Williams* Court would not have criticized trial counsel for failure to ensure the factual basis guarantees of *Sisco* were honored.

The *Williams* Court entertained the appeal, after the guilty plea, without a motion in arrest of judgment. Because allowing a person to be incarcerated on a plea of guilty without a factual basis is not tolerated in Iowa, this Court should do the same.

And, even if *Williams* does not excuse the lack of a motion in arrest of judgment, this Court should allow his appeal to proceed. In this appeal, Hanes is asking the Court to recognize an exception to the duty of a defendant to preserve error and move to arrest judgment when the District

Court fails in its duty to ensure a factual basis for a guilty plea, and/or fails to arrest judgment. The exception would be very much like the exception that allowed a defendant to pursue an appeal where the failure to file a motion in arrest of judgment was due to ineffective assistance of counsel. See *State v. Kellogg*, 263 N.W.2d 539, 543 (Iowa 1978); *Earnest v. State*, 508 N.W.2d 630, 632 (Iowa 1993).

The *Kellogg* Court was more concerned about a “miscarriage of justice” than rigid adherence to error preservation rules. *Kellogg* at 543. This case presents a miscarriage of justice as well. The District Court accepted a plea of guilty, and it is readily apparent there was no factual basis for the guilty plea. Hanes did not “aid and abet” himself in possessing a firearm as a felon. However, Hanes is sitting in prison right now because the District Court failed in its duty to ensure a factual basis and failed to arrest judgment pursuant to Rule 2.24(3)(c). As in *Kellogg*, the miscarriage of justice should be the primary concern here. Not rigid adherence to error preservation rules or rules of criminal procedure.

Neither the Court nor the State have *any* legitimate interest in seeing Hanes serve prison time for “aiding and abetting” himself in possessing a firearm as a felon. Allowing a guilty plea to stand without a factual basis not

only offends due process, it "erode[s] the integrity of all pleas and the public's confidence in our criminal justice system." *State v. Hack*, 545 N.W.2d 262, 263 (Iowa 1996).

There is no factual basis for the plea because Hanes could not "aid and abet" himself in possessing a firearm as a felon. In the interest of preserving the guilty plea, the State makes the novel argument that because "Iowa law does not distinguish between principals and those who aid and abet, there is a sufficient factual basis for Defendant's guilty plea." Appellee's Br. at 12. Under the State's view, distinctions between principals and accomplices are dissolved. Under the State's view, nothing prevents a principal from being charged, tried, and punished as an aider and abettor of his own conduct. *Id.* In this case, that means Hanes can be convicted for aiding and abetting his own possession of a firearm. And apparently, the State is arguing that Hanes may have conspired to possess a firearm himself.

Guilty pleas are not to be entered into lightly, and the State has an interest in their finality. But if to preserve this plea the State has to argue Hanes aided and abetted his own possession of a gun, the State has gone too far. Principles of statutory construction and longstanding doctrines of criminal responsibility aside, the State's argument on this point just stretches

both the law and statutory language too far. Hanes did not “aid and abet” *himself* in possessing a firearm as a felon. There is no factual basis for Hanes’ guilty plea. Hanes’ plea and conviction should be vacated.

CONCLUSION

Hanes did not “aid and abet” himself in possessing a firearm as a felon. Hanes’ plea of guilty does not have a factual basis. The District Court failed in its duty to ensure there was a factual basis for the plea of guilty. This Court should adopt an exception to the motion in arrest of judgment requirement concerning lack of factual basis for a plea, and find good cause for appeal. Defendant requests his plea and conviction be vacated. *See Mitchell* at 621.

REQUEST FOR ORAL ARGUMENT

Appellant respectfully requests oral argument.

Respectfully submitted,

/s/ Jack Bjornstad
Jack Bjornstad
Jack Bjornstad Law Office
1700 Hill Avenue
Spirit Lake, IA 51360
Phone: 712-332-5225; Fax: 712-332-8138
E-mail: jack@bjornstad.legaloffice.pro
Attorney for Applicant-Appellant

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

1. This reply brief complies with the type-volume limitation of Iowa R. App. P. 6.903(1)(g)(1) or (2) because:

This reply brief contains 1,130 words, excluding the parts of the proof brief exempted by Iowa R. App. P. 6.903(1)(g)(1).

2. This reply brief complies with the typeface requirements of Iowa R. App. P. 6.903(1)(e) and the type-style requirements of Iowa R. App. P. 6.903(1)(f) because:

This reply brief has been prepared in a proportionally spaced typeface using Word with 14 point font size/Book Antiqua.

/s/ Jack Bjornstad
Jack Bjornstad, ICIS #AT0000922
Jack Bjornstad Law Office
1700 Hill Avenue
Spirit Lake, IA 51360
ATTORNEY FOR APPELLANT

ATTORNEY'S COST CERTIFICATE

I hereby certify that the actual cost of printing the necessary copies of the foregoing Appellant's Reply Brief is \$0.00, due to the cost savings of using the Iowa Appellate Court's Electronic Filing system.

/s/ Jack Bjornstad
Jack Bjornstad, ICIS #AT0000922
Jack Bjornstad Law Office
1700 Hill Avenue
Spirit Lake, IA 51360
ATTORNEY FOR APPELLANT