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IN THE SUPREME COURT OF IOWA
Supreme Court No. 21-0590

J.D. RAY ANDERSON,
Plaintiff,

vs.

IOWA DISTRICT COURT FOR WOODBURY COUNTY,
Defendant.

ON WRIT OF CERTIORARI FROM THE IOWA DISTRICT COURT
FOR WOODBURY COUNTY
THE HONORABLE ZACHARY S. HINDMAN, JUDGE

STATE OF IOWA'S BRIEF

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STATEMENT OF THE ISSUE PRESENTED FOR REVIEW

I. Whether Anderson's claim is properly raised before this Court, and if so, whether Iowa Code section 902.13 applies to Anderson's conviction for domestic abuse assault, third offense

Authorities

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Christensen v. Iowa Dist. Ct. for Polk Cty., 578 N.W.2d 675 (Iowa 1998)
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Legislative Services Agency 3/15/2017 Fiscal Note
Legislative Services Agency 4/6/2017 Fiscal Note

ROUTING STATEMENT

Because this case involves the application of existing legal principles of statutory interpretation, transfer to the Court of Appeals would be appropriate. Iowa R. App. P. 6.1101(3)(a).

STATEMENT OF THE CASE

Nature of the Case

This original certiorari proceeding arises from a district court order denying J.D. Ray Anderson's motion to correct an illegal sentence. For the first time, Anderson now argues the sentence imposed following his conviction for domestic abuse assault, third offense, is illegal because the sentencing enhancement set forth in Iowa Code section 902.13 is inapplicable to him. This is so, he claims, because that enhanced sentencing provision only applies to so-called "third-third" offenses.

Course of Proceedings

The State accepts Anderson's course of proceedings as adequate and essentially correct. Iowa R. App. P. 6.903(3).

Facts

The State accepts Anderson's facts as adequate and essentially correct. Iowa R. App. P. 6.903(3). Additional relevant facts will be discussed as part of the State's argument.

ARGUMENT

I. Anderson's sole claim is not properly before the Court in this original certiorari action. To the extent Anderson's claim is properly raised, his sentence is not illegal because Iowa Code section 902.13 applies.

Preservation of Error

As a preliminary matter, and as the State previously argued in resistance to Anderson's petition for writ of certiorari, the sole issue now presented to this Court was not raised before, considered by, or ruled upon by the district court. Therefore, this Court cannot properly review the issue in this original certiorari action.

The State readily concedes the Iowa Supreme Court has held that "[w]here . . . the claim is that the sentence itself is inherently illegal, whether based on constitution or statute, we believe the claim may be brought at any time." *State v. Bruegger*, 773 N.W.2d 862, 872 (Iowa 2009). *See also* Iowa R. Crim. P. 2.24(5)(*a*) ("The court may correct an illegal sentence at any time."). But, crucially, *Bruegger* concerned a direct appeal following a district court's imposition of a sentence the appellant claimed amounted to cruel and unusual punishment. 773 N.W.2d at 868. *See also State v. Lathrop*, 781 N.W.2d 288, 293 (Iowa 2010) ("[E]rrors in sentencing may be

challenged on direct appeal even in the absence of an objection in the district court.").

This case presents a fundamentally different question regarding error preservation. Appeals from a motion to correct an illegal sentence "are most appropriately fashioned" as petitions for writ of certiorari. *State v. Propps*, 897 N.W.2d 91, 97 (Iowa 2017). Under the Iowa Rules of Appellate Procedure, an original certiorari action may be commenced in the Iowa Supreme Court when a party claims a district court judge "exceeded the judge's jurisdiction or otherwise acted illegally." Iowa R. App. P. 6.107(1)(*a*). "Illegality exists when the court's findings lack substantial evidentiary support, or when the court has not properly applied the law." *Christensen v. Iowa Dist. Ct. for Polk Cty.,* 578 N.W.2d 675, 678 (Iowa 1998).

Because certiorari actions are premised on the idea that the Iowa Supreme Court may correct unlawful decisions of a district court, the party filing a petition for writ of certiorari "shall state whether [that party] raised the issue in the district court." Iowa R. App. P. 6.107(1)(*d*). This makes sense, as a district court cannot logically be said to have exceeded its jurisdiction or otherwise acted illegally by not considering or ruling on an issue never raised before

it. *See Christensen,* 578 N.W.2d at 678 ("In a certiorari action, we may examine only the jurisdiction of the district court and the legality of its actions."). The Iowa Supreme Court explained as much in *Sorci v. Iowa District Court*, 671 N.W.2d 482, 489–90 (Iowa 2003):

> "Certiorari arises from the supervisory function which the supreme court exercises over all lower courts within the state." *Hadjis v. Iowa Dist. Ct., in and for Linn County*, 275 N.W.2d 763, 765 (Iowa 1979) (citations omitted). "The rule is well established that in certiorari actions we will not review questions not presented to the so-called inferior tribunal . . . ." *Lenertz v. Mun. Court of the City of Davenport*, 219 N.W.2d 513, 515 (Iowa 1974) (refusing, in original certiorari action, to consider constitutional claims which plaintiffs did not raise in lower court) (citations omitted); *see, e.g., Henley v. Iowa Dist. Ct. for Emmet County*, 533 N.W.2d 199, 201 n. 2 (Iowa 1995) (refusing to consider a claim presented in an original certiorari action because error was not preserved); *see also* 14 Am.Jur.2d Certiorari § 102, at 703 (2000) ("Failure to raise an argument in the court below will preclude its determination in a certiorari review.").

Here, Anderson is asking this Court to declare his sentence illegal by way of a certiorari action challenging the district court's April 13, 2021 order denying his motion to correct an illegal sentence. But the motion considered by the district court was focused on

Anderson's accumulation of earned time, as the court summarized in its order:

> In [Anderson's] motion, as [he] clarified at the instant hearing, [Anderson] argues that his sentence is "illegal" in two ways. First, [Anderson] argues that his three-year mandatory minimum should have been reduced by earned time. Second, [Anderson] argues that the reduction of his total term of incarceration for earned time should not be capped at 15 percent, such that he has to serve 85 percent of that total term of incarceration before his sentence is discharged—rather, [Anderson] contends that he should be entitled to accrue earned time credit at the usual rate.

Order (4/13/2021) at 5; App. 32. The district court was not asked to address the theory that Anderson's sentence is illegal based on the existence of a "third-third" sentencing framework under Iowa Code section 902.13.

Notably, Anderson does not now argue that the district court lacked jurisdiction to issue the challenged order, made findings not supported by substantial evidence, or misapplied the law. Instead, he openly admits he is using this original certiorari action as a vehicle to present a novel statutory interpretation claim. Put another way, Anderson concedes he does not actually want this Court to review the district court order he is supposed to be challenging.

This Court should not accept Anderson's invitation to abandon the fundamental purpose of certiorari proceedings. If Anderson wishes to seek appellate review on the issue he now raises, in an original certiorari action, he should be required to first raise the issue before the district court by way of a motion to correct an illegal sentence. As previously stated, he is free to file such a motion at any time.

Standard of Review

The standard of review for illegal-sentence challenges not alleging constitutional violations, questions of statutory interpretation, and original certiorari actions is for correction of errors at law. *Noll v. Iowa Dist. Ct. for Muscatine Cty.*, 919 N.W.2d 232, 234 (Iowa 2018).

Merits

J.D. Ray Anderson presents a single argument on appeal: his May 31, 2018 conviction for domestic abuse assault, third offense, in violation of Iowa Code section 708.2A, subsection 4, did not trigger the enhanced sentencing framework set forth in section 902.13 because that enhanced sentencing provision only applies to so-called "third-third" offenses (i.e., fifth offenses). This Court should annul

the writ of certiorari in this case because the language of Iowa Code section 902.13 is not ambiguous, and statutory interpretation does not support his "third-third" theory.

A. Iowa Code section 902.13 is not ambiguous.

To begin with, the meaning of Iowa Code section 902.13 is not ambiguous. "A statute is not ambiguous unless 'reasonable minds could differ or be uncertain as to the meaning of the statute.'" *State v. McCullah*, 787 N.W.2d 90, 94 (Iowa 2010) (quoting *Carolan v. Hill*, 553 N.W.2d 882, 887 (Iowa 1996)). Section 902.13 states:

> 1. A person who has been convicted of a third or subsequent offense of domestic abuse assault under section 708.2A, subsection 4, shall be denied parole or work release until the person has served between one-fifth of the maximum term and the maximum term of the person's sentence as provided in subsection 2.
>
> 2. The sentencing court shall determine, after receiving and examining all pertinent information referred to in section 901.5, the minimum term of confinement, within the parameters set forth in subsection 1, required to be served before a person may be paroled or placed on work release.

See Iowa Code § 902.13 (2021).

In reality, the "ambiguity" described by Anderson is simply a result of the fact that the crime described in section 902.13—"a third

or subsequent offense of domestic abuse assault under section 708.2A, subsection 4" –includes an ordinal number. In his view, the inclusion of the ordinal number causes ambiguity because he characterizes "third or subsequent" to be a modifying phrase rather than an integral part of the description of the crime itself. No reasonable person could read section 902.13 in such a manner; it applies, just as it says, to all convictions for third or subsequent offenses of domestic abuse assault.

Because section 902.13 plainly and clearly establishes a mandatory minimum sentence for third and subsequent domestic abuse assault convictions, this Court need not further entertain Anderson's statutory interpretation argument. *See McCullah*, 787 N.W.2d at 94 ("If, as the State contends, the statute is unambiguous, we will not engage in statutory construction."); *State v. Chang*, 587 N.W.2d 459, 461 (Iowa 1998) ("When a statute is plain and its meaning clear, courts are not permitted to search for meaning beyond its express terms.").

B. Iowa Code section 902.13 cannot be reasonably interpreted as creating a "third-third" statutory framework.

Even if this Court determines the meaning of Iowa Code section 902.13 is ambiguous, then the resulting exercise in statutory interpretation should still arrive at the same result: Iowa Code section 902.13 cannot be reasonably interpreted as creating a "third-third" statutory framework. The rules governing statutory interpretation are well established:

> [W]here the language of a statute is ambiguous, so that reasonable minds would differ on the meaning, we turn to our rules of interpretation. *See Lockhart v. Cedar Rapids Comm. Sch. Dist.*, 577 N.W.2d 845, 847 (Iowa 1998). The polestar of statutory interpretation is to give effect to the legislative intent of a statute. *Harris v. Olson*, 558 N.W.2d 408, 410 (Iowa 1997). We "consider the objects sought to be accomplished and the evils and mischiefs sought to be remedied, seeking a result that will advance, rather than defeat, the statute's purpose." *Danker v. Wilimek*, 577 N.W.2d 634, 636 (Iowa 1998) (quoting *Harris*, 558 N.W.2d at 410).
>
> Our goal is to look at what the legislature said, not what it might or should have said. *See* Iowa R. App. P. [6.904(3)(*m*)]. In looking at the language used, we will not construe a statute in a way which creates an impractical or absurd result, nor will we speculate as to the probable legislative intent beyond what the language clearly states. *State v. Sailer*, 587 N.W.2d 756,

> 760 (Iowa 1998). Finally, we are mindful that criminal statutes are to be strictly construed with doubts resolved in favor of the accused. *State v. Williamson*, 570 N.W.2d 770, 772 (Iowa 1997).

State v. Schultz, 604 N.W.2d 60, 62 (Iowa 1999).

Iowa Code section 708.2A, subsection 4, provides that "[o]n a third or subsequent offense of domestic abuse assault, a person commits a class 'D' felony." Prior to July 1, 2017, the enhanced sentencing scheme applicable to third or subsequent offenses of domestic abuse assault was set forth within section 708.2A, which provided that "[a] person convicted of violating subsection 4 shall be sentenced as provided under [the subsection applicable to class "D" felons who are not habitual offenders], and shall be denied parole or work release until the person has served a minimum of one year of the person's sentence." *See* Iowa Code § 708.2A(7)(*b*) (2017).

Then, effective July 1, 2017, the enactment of 2017 Acts, ch. 83 (hereinafter "HF 263") deleted the existing sentencing language and replaced it with the following: "A person convicted of a violation referred to in subsection 4 shall be sentenced as provided under section 902.13." *See* Iowa Code § 708.2A(7)(*b*) (2019). HF 263 also created section 902.13, which reads, in relevant part: "A person who

has been convicted of a third or subsequent offense of domestic abuse assault under section 708.2A, subsection 4, shall be denied parole or work release until the person has served between one-fifth of the maximum term and the maximum term of the person's sentence. . . ." *See* Iowa Code § 902.13(1) (2021). Anderson argues the use of the phrase "third or subsequent offense of domestic abuse assault" in section 902.13 creates ambiguity because it could be read to mean that section 902.13 only applies to third or subsequent offenses under section 708.2A, subsection 4, which itself is only applicable to third or subsequent offenses. Stated more simply, he believes the legislature's choice of duplicative phrasing is indicative of its intent to make section 902.13 applicable only to fifth or subsequent convictions for domestic abuse assault. Anderson is wrong.

It is not difficult to imagine why the legislature used the particular phrasing it did. When the legislature created section 902.13, it lifted language formerly housed within section 708.2A, subsection 7, paragraph "*b*," and placed it alongside other enhanced sentencing provisions in chapter 902. In so doing, the legislature obviously thought it appropriate to add in descriptive language so that someone reading through chapter 902 could quickly and easily

understand what crime the mandatory minimum sentence set forth in 902.13 applied to, without the need to grab another code book for cross-reference.

The obviousness of the legislature's intent is revealed by the fact the legislature used language in 902.13 that is consistent with the language used in other, similar enhanced sentencing provisions within the same chapter. *See, e.g.,* Iowa Code § 902.11(2) (establishing a minimum sentence applicable to a person serving a sentence for conviction of "operating a motor vehicle while under the influence of alcohol or a drug under chapter 321J"); § 902.12(1)(*a*) (establishing a minimum sentence applicable to a person serving a sentence for conviction of "[m]urder in the second degree in violation of section 707.3"); § 902.12(1)(*b*) (establishing a minimum sentence applicable to a person serving a sentence for conviction of "[a]ttempted murder in violation of section 707.11, except as provided in section 707.11, subsection 5"); § 902.12(1)(*c*) (establishing a minimum sentence applicable to a person serving a sentence for conviction of "[s]exual abuse in the second degree in violation of section 709.3"); § 902.12(1)(*d*) (establishing a minimum sentence applicable to a person serving a sentence for conviction of

“[k]idnapping in the second degree in violation of section 710.3”); § 902.12(1)(*e*) (establishing a minimum sentence applicable to a person serving a sentence for conviction of “[r]obbery in the second degree in violation of section 711.3, except as determined in subsection 4”); § 902.12(1)(*f*) (establishing a minimum sentence applicable to a person serving a sentence for conviction of “”[v]ehicular homicide in violation of section 707.6A, subsection 1 or 2 . . .”); § 902.12(2) (establishing a minimum sentence applicable to a person serving a sentence for conviction of “[c]hild endangerment as defined in section 726.6, subsection 1, paragraph “*b*” . . .”); § 902.12(3) (establishing a minimum sentence applicable to a person serving a sentence for conviction of “[r]obbery in the first degree in violation of section 711.2 . . .”); § 902.12(4) (establishing a minimum sentence applicable to a person serving a sentence for conviction of “[r]obbery in the second degree in violation of section 711.3 . . .”); § 902.12(5) (establishing a minimum sentence applicable to a person serving a sentence for conviction of “[a]rson in the first degree in violation of section 712.2 . . .”). Again, without textual descriptions accompanying each code section referenced, a reader attempting to quickly scan chapter 902 would be forced to look up each cross-

referenced statutory section to identify the relevant crime. In creating section 902.13, the legislature obviously intended to provide a helpful textual reference for the minimum sentence applicable for persons convicted of third or subsequent offenses of domestic abuse assault, just as it has done for minimum sentences applicable to other crimes.

Additionally, under Anderson's "third-third" framework, the language referring a reader from section 708.2A to section 902.13 would be rendered meaningless. As previously discussed, Iowa Code section 708.2A, subsection 7, paragraph "*b*" now states "A person convicted of a violation referred to in subsection 4 shall be sentenced as provided under section 902.13." More plainly, someone looking for the sentence applicable to third or subsequent convictions for domestic abuse assault is referred to section 902.13, which is said to provide the sentence applicable to all such convictions. Anderson would have this Court interpret section 902.13 in a way that would effectively rewrite section 708.2A, subsection 7, paragraph "*b*" to state "A person convicted of a *third or subsequent* violation referred to in subsection 4 shall be sentenced as provided under section 902.13." Such a result is inappropriate.

Construing the language of section 902.13 in such a way that it applies only to convictions for "third-third" offenses (i.e., fifth offenses) would lead to other absurd results as well. As Anderson concedes, prior to July 1, 2017, the law applicable to third or subsequent convictions for domestic abuse assault categorically imposed a one-year mandatory minimum sentence and foreclosed the possibility of suspended or deferred sentences or deferred judgments. *See* Iowa Code § 708.2A(7)(*b*) (2017). Under Anderson's preferred interpretation of the current state of the law, a person convicted of first or second offenses of domestic abuse assault would be subject to two-day mandatory minimums, *see* Iowa Code § 708.2A(7)(*a*) (2021), a person convicted of "third-third" offenses would be subject to mandatory minimums of at least one year, *see* Iowa Code §§ 902.13, 902.9(*e*) (2021), and a person convicted of third or fourth offenses would be subject to no mandatory minimum whatsoever. *See* Iowa Code § 708.2A(4)(2021) ("On a third or subsequent offense of domestic abuse assault, a person commits a class "D" felony."); § 902.9(*e*) (2021) ("A class "D" felon, not an habitual offender, shall be confined for no more than five years . . .").

It is inconceivable that the legislature intended HF 263 to reduce the penalty applicable to third and fourth convictions for domestic abuse assault. Indeed, legislative history confirms the legislature's intent in enacting HF 263 was to *enhance* penalties applicable to all third and subsequent convictions for domestic abuse assault, not just to fifth and subsequent convictions. The House floor manager of HF 263 explained during floor debate that "[t]he issue before us today is to elevate both the punishment and the rehabilitation for both the offender, but most importantly, for the survivor." House Floor Debate, HF263, March 27, 2017, 4:52:33–4:52:41 p.m., available at https://www.legis.iowa.gov/dashboard?view=video&chamber=H&clip=H20170327163935379&dt=2017-03-27&offset=658&bill=HF%20263&status=i (last accessed September 6, 2022). The House floor manager went on to explicitly state who would be subject to the enhanced sentencing provisions of HF 263, stating "[t]hese are individuals who have been convicted now three times of some truly horrendous events," while holding up the middle, ring, and pinky fingers of his right hand for emphasis. *Id.* at 4:58:58–4:59:04 p.m.

Furthermore, in two separate Fiscal Notes issued by the Fiscal Services Division of the Legislative Services Agency, HF 263 was described as applying to third and subsequent domestic abuse assault convictions, again with no mention of any "third-third" statutory framework. First, the "Background" section of a Fiscal Note dated March 15, 2017, provided:

> Mandatory minimums are established in this Bill for the following situations, and the offenders would be prohibited from receiving a deferred judgment or sentence:
>
> - If an offender is convicted of a third or subsequent domestic abuse assault, the offender is required to serve at least one-fifth of the maximum term, establishing a 20.0% mandatory minimum sentence. Currently, a person who commits a third or subsequent domestic abuse assault commits a Class D felony.

Legislative Services Agency 3/15/2017 Fiscal Note, available at https://www.legis.iowa.gov/docs/publications/FN/853709.pdf, (last accessed September 6, 2022).

Second, the "Description" and "Background" sections of a Fiscal Note dated April 6, 2017, provided:

> House File 263 relates to domestic abuse and sentencing for third or subsequent offense domestic abuse assault, stalking, and the unauthorized placement of a global positioning device.

. . .

> Under this Bill, if an offender is convicted of a third or subsequent domestic abuse assault, the offender is required to serve at least one-fifth of the maximum term, establishing a 20.0% mandatory minimum sentence. A person who commits a third or subsequent domestic abuse assault commits a Class D felony that is punishable by a fine of at least $750 but no more than $7,500 and imprisonment not to exceed five years. Currently, the actual average Length of Stay (LOS) for a domestic abuse assault third Class D felony is 17.1 months. The mandatory minimum sentence contained within this Bill would increase that LOS to 36 months because the LOS is calculated at a midpoint between the earliest parole eligibility date and sentence expiration.

Legislative Services Agency 4/6/2017 Fiscal Note, available at https://www.legis.iowa.gov/docs/publications/FN/856466.pdf (last accessed September 6, 2022). In sum, it seems likely no one ever contemplated that the enactment of HF 263 would create a "third-third" sentencing structure for domestic abuse assault offenses.

Finally, Anderson's argument that his "third-third" theory is the only way to reconcile all relevant statutory sections following the enactment of HF 263 misleads. On this point, Anderson specifically refers to the newly-created section 905.16, which provides that "[a]

person placed on probation, parole, work release, or any other type of conditional release for domestic abuse assault in violation of section 708.2A, subsection 4, may be supervised by an electronic tracking and monitoring system in addition to any other conditions of supervision." Iowa Code § 905.16(1) (2019). The reference to "a person placed on probation," he argues, is evidence of the legislature's intention to deviate from a statutory framework that had previously forbidden such an outcome for third and subsequent offenses of domestic abuse assault. *See* Iowa Code § 708.2A(7)(*b*) (2017).

Thus, according to Anderson, the "third-third" framework can be divined when one realizes that other statutory subsections created by HF 263 contradict section 905.16 and its seeming authorization of probation eligibility. *See* §§ 907.3(1)(*a*)(13) (2021) (stating a court may not defer judgment and place a criminal defendant on probation if "[t]he offense is a violation referred to in section 708.2A, subsection 4"); 907.3(2)(*a*)(8) (stating a court may not defer a sentence and place a criminal defendant on probation if "[t]he offense is a violation referred to in section 708.2A, subsection 4"); 907.3(3)(*g*) (stating a court may not suspend a sentence and place a criminal defendant on probation if "[t]he sentence [is] imposed under section 902.13 for a

violation referred to in section 708.2A, subsection 4"). In Anderson's view, this contradiction can be resolved by virtue of the fact only the suspended sentence limitation references section 902.13. Under his "third-third" interpretation, the different language used for the suspended sentence subsection is a subtle hint that suspended sentences—unlike deferred judgments and deferred sentences—are not categorically prohibited, so long as section 902.13 is not triggered by a "third-third" conviction.

Contrary to Anderson's suggestion, Iowa Code section 905.16 does not make suspended sentences available for those convicted of third and fourth offenses of domestic abuse assault. Rather, it provides an expansive list of those subject to electronic monitoring. All such outcomes are possible. *See, e.g.*, Iowa Code § 901.5(13) (explaining that criminal defendants who were under eighteen years of age when the offense was committed may generally be granted suspended sentences, deferred sentences, and deferred judgments, "[n]otwithstanding any provision in section 907.3 or any other provision of law prescribing a mandatory minimum sentence for the offense."). Anderson's assertion that section 905.16 cannot be read

alongside the other statutory provisions without being rendered superfluous is incorrect.

CONCLUSION

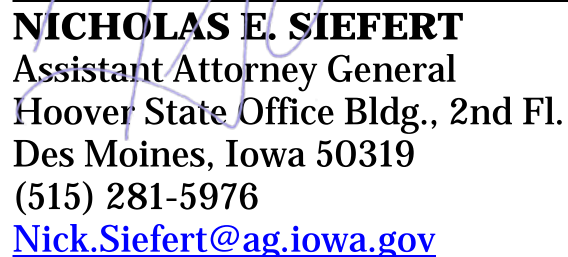
For the reasons stated above, this Court should reject Anderson's statutory construction argument and annul the writ for certiorari.

REQUEST FOR NONORAL SUBMISSION

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

Respectfully submitted,

THOMAS J. MILLER
Attorney General of Iowa



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