

IN THE SUPREME COURT OF IOWA
Supreme Court No. 21-1753

STATE OF IOWA,
Petitioner-Appellant,

vs.

IOWA DISTRICT COURT FOR WOODBURY COUNTY,
Defendant-Appellee.

APPEAL FROM THE IOWA DISTRICT COURT
FOR WOODBURY COUNTY
THE HONORABLE JEFFREY A. NEARY, JUDGE

PETITIONER'S BRIEF

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**STATEMENT OF THE ISSUE PRESENTED FOR
REVIEW**

- I. Any “person convicted of” a class “D” felony “shall be confined” “and in addition shall be sentenced to a fine,” so the fine-only sentence on Baker’s class “D” felony conviction is illegal.**

Authorities

Goodwin v. Iowa Dist. Ct., 936 N.W.2d 634 (Iowa 2019)

State v. Brydon, 454 A.2d 1385 (Me. 1983)

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State v. Robertson, No.03–1575, 2004 WL 793235
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Iowa Code § 901.5

Iowa Code § 902.9(4)

Iowa Code § 901.5(2), (3), (4)

Iowa Code § 902.9(1)(e)

Iowa Code § 907.1(4)

Iowa Code §§ 902.9, 907.3(3)

Iowa Code § 907.3(3)

ROUTING STATEMENT

None of the retention criteria in Iowa Rule of Appellate Procedure 6.1101(2) apply to the issues raised in this case, so transfer to the Court of Appeals is appropriate. Iowa R. App. P. 6.1101(1).

STATEMENT OF THE CASE

Nature of the Case

The State petitioned for certiorari to review whether the district court's fine-only sentence imposed on John Michael Baker's class "D" felony conviction is illegal.

Course of Proceedings

The district court accepted Baker's guilty plea to possessing a controlled substance as a third offense, a class "D" felony. Tr. Sent. Hr'g, 5:6–15; Written Guilty Plea at 1; App.13. Baker asked for a fine-only sentence. Tr. Sent. Hr'g, 15:10–16. The State asked for a suspended sentence with five years of probation and that Baker complete a residential-treatment-facility program. *Id.* at 13:8–18.

The district court decided to fine Baker but "not require [him] to serve on probation." *Id.* at 20:7–23. The State objected that "a fine alone would be a[n il]legal sentence." *Id.* at 21:3–12. The district court still selected a fine-only sentence: "I'm going to sentence the defendant to the minimum fine I am not going to impose a prison

sentence, nor suspend one And I am not placing the defendant on probation” *Id.* at 21:13 to 24:4. In its written judgment the Court sentenced Baker to a five year “indeterminate term of incarceration,” suspended the sentence, and ordered that Baker “is not placed on probation.” J. & Sentence at 2, 4 (bold removed); App.24, 26. It also imposed a fine. *Id.* at 2; App.24.

The State asked the district court to correct the sentence, arguing a fine-only sentence on a class “D” felony is illegal. Mot. Correct Sent.; App.37. The district court affirmed its sentence. Order Denying Mot. Correct Sent.; App.42. The State petitioned for certiorari, which the Iowa Supreme Court granted.

Facts

Baker admitted he possessed methamphetamine as a third offense. Plea Agreement at 2; App.14.

ARGUMENT

- I. Any “person convicted of” a class “D” felony “shall be confined” “and in addition shall be sentenced to a fine,” so the fine-only sentence on Baker’s class “D” felony conviction is illegal.

Preservation of Error

The State preserved error by objecting to the fine-only sentence and receiving an adverse ruling. Tr. Sent. Hr’g, 21:3 to 24:4; Mot. Correct Sent; App.37; Order Denying Correct Sent.; App.42.

Standard of Review

This Court reviews illegal-sentence claims for correction of errors at law. *Goodwin v. Iowa Dist. Ct.*, 936 N.W.2d 634, 643 (Iowa 2019).

Merits

“[S]entences imposed without statutory authorization are illegal and void.” *State v. Louisell*, 865 N.W.2d 590, 597 (Iowa 2015). This principle is true even in cases “in which the illegal sentence was more lenient than that allowed by law.” *Id.* “The legislature possesses the inherent power to prescribe punishment for crime, and the sentencing authority of the courts is subject to that power.” *State v. Iowa Dist. Ct.*, 308 N.W.2d 27, 30 (Iowa 1981).

Here, the district court acted illegally when it sentenced Baker to a fine but declined to impose a prison sentence or suspend a prison sentence and order probation. At the sentencing hearing, the district court “sentence[d] the defendant to the minimum fine” but did “not ... impose a prison sentence, nor a suspended one.” Tr. Sent. Hr’g, 23:15–19. The district court also did “not plac[e] the defendant on probation.” *Id.* at 23:20–21. But a “class ‘D’ felon ... shall be confined for no more than five years, and in addition shall be sentenced to a fine of at least one thousand twenty-five dollars.” Iowa Code § 902.9(1)(e). The inclusion of the word “shall” creates a mandatory duty, not discretion. *State v. Klawonn*, 609 N.W.2d 515, 522 (Iowa 2000). Because section 902.9(1)(e) directs that a class “D” felon “shall be confined,” the district court acted illegally by refusing to impose a prison sentence or suspended sentence and probation. Iowa Code §§ 902.9, 907.3(3).

In refusing to correct the illegal sentence, the district court erroneously concluded that Iowa Code section 901.5’s general sentencing provisions controlled the more specific sentencing provision for class “D” felons in Iowa Code section 902.9. Section 901.5 lists various sentencing options, including “pronounc[ing]

judgment and impos[ing] a fine.” Iowa Code § 901.5(2), (3), (4). But “[s]ection 901.5 is only a general or summary statute providing a procedure or framework for pronouncing judgment and sentence. It does not allow the court to override or substitute a fine for the confinement specifically required when sections 902.9[(1)(e)] and 907.3 are read together.” *State v. Peterson*, 327 N.W.2d 735, 736 (Iowa 1982). Indeed, section 901.5 explicitly says that “[t]he court shall determine which [sentencing options are] authorized by law for the offense.” Iowa Code § 901.5.

Caselaw confirms that a fine-only sentence for a class “D” felon is illegal. In *State v. Peterson*, a district court imposed a fine-only sentence on a class “D” felony conviction. 327 N.W.2d at 736. The defendant committed a forcible felony making him ineligible for a deferred judgment or sentence or a suspended sentence. *Id.* The Iowa Supreme Court held the fine-only sentence illegal because Iowa Code section 902.9(4)¹ required both confinement and a fine for class “D” felony convictions. *Id.* at 736–37. It rejected the notion that section 901.5 authorized a fine-only sentence there. *Id.* Just as in *Peterson*, the fine-only sentence on a class “D” felony conviction here is illegal.

¹ Now Iowa Code section 902.9(1)(e).

That conclusion is true even though the district court, in its written order, sentenced Baker to a five year indeterminate prison sentence, suspended the sentence, and ordered no probation. *See J. & Sentence* at 2, 4; App.24, 26. Indeed, a “rule of nearly universal application is that ‘where there is a discrepancy between the oral pronouncement of sentence and the written judgment and commitment, the oral pronouncement of sentence controls.’” *State v. Hess*, 533 N.W.2d 525, 528 (Iowa 1995) (*State v. Brydon*, 454 A.2d 1385, 1388 (Me. 1983)). Therefore, the district court’s sentence imposed at the sentencing hearing that declined to order Baker’s confinement was illegal. *See Iowa Code § 902.9(1)(e)*.

But even if the written judgment was the sentence not the oral pronouncement, the written judgment’s five-year suspended prison sentence with no term of probation is still illegal because it amounts to a fine-only sentence. Section 907.3(3) allows a district court to order and “suspend the sentence and place the defendant on probation upon such terms and conditions as it may require” In other words, while a court can suspend a prison sentence, it must “place the defendant on probation.” *Iowa Code § 907.3(3); State v. Robertson*, No.03–1575, 2004 WL 793235, at *2 (Iowa Ct. App. Apr.

14, 2004) (holding a two day suspended sentence with no term of probation is illegal); *see also* Iowa Code § 907.1(4) (defining a suspended sentence as “a sentencing option whereby the court pronounces judgment and imposes a sentence and then suspends execution of the sentence subject to the defendant’s compliance with conditions set by the court as a requirement of the suspended sentence”). And “it is a fundamental condition of any probation, whether or not it is expressed in probation instructions, that the probationer shall not violate the law.” *State v. Kirby*, 622 N.W.2d 506, 510–11 (Iowa 2001) (quoting *State v. McGinnis*, 243 N.W.2d 583, 587 (Iowa 1976)). Thus, the district court’s written order suspending the five-year sentence but ordering no probation violates sections 907.3(3) and 902.9(1)(e). It too is illegal.

CONCLUSION

For the foregoing reasons, the State requests that this Court hold a fine-only sentence imposed on a class “D” felony is illegal and remand for resentencing.

REQUEST FOR NONORAL SUBMISSION

This case is appropriate for nonoral submission.

Respectfully submitted,

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A handwritten signature in blue ink, appearing to read "Zach Miller", is written over a horizontal line.

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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 **1,287** words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).

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