

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

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STATE OF IOWA,  
Petitioner-Appellant,

vs.

IOWA DISTRICT COURT FOR WOODBURY COUNTY,  
Defendant-Appellee.

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

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**PETITIONER'S REPLY BRIEF**

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**STATEMENT OF THE ISSUE PRESENTED FOR  
REVIEW**

- I. Section 902.9(1)(e) is a specific sentencing statute for sentencing class “D” felons and requires imposing confinement and a fine.**

**Authorities**

*MidWestOne Bank v. Heartland Co-op*, 941 N.W.2d 876

(Iowa 2020)

*State v. Peterson*, 327 N.W.2d 735 (Iowa 1982)

Iowa Code § 902.9(1)(e)

Iowa Code § 903.7

Iowa Code § 901.5

## ARGUMENT

### I. **Section 902.9(1)(e) is a specific sentencing statute for sentencing class “D” felons and requires imposing confinement and a fine.**

#### **Merits**

Iowa Code section 902.9(1)(e) provides the sentence for class “D” felons: “A class ‘D’ felon, not an habitual offender, shall be confined for no more than five years, and in addition shall be sentenced to a fine.” Section 902.9(1)(e) is the specific statute that governs sentencing a class “D” felon and therefore controls over section 901.5’s general list of all sentencing options. Iowa Code §§ 901.5, 902.9(1)(e); *MidWestOne Bank v. Heartland Co-op*, 941 N.W.2d 876, 883 (Iowa 2020) (“To the extent there is a conflict or ambiguity between specific and general statutes, the provisions of the specific statutes control.”); *see State v. Peterson*, 327 N.W.2d 735, 739 (Iowa 1982). Baker offers no argument why that “familiar canon of construction” does not apply here to make section 902.9(1)(e)’s requirement of confinement and a fine the applicable sentencing provision.

It is true that because Baker did not commit a forcible felony, he is eligible for a deferred judgment, deferred sentence, or suspended sentence under section 907.3 and in that sense he may not actually be

confined. But that option for leniency does not put a fine-only sentence back on the table. Instead, section 907.3 adds another sentencing option for sentencing a class “D” felon. Without section 907.3, all class “D” felons would be confined and fined. Iowa Code § 902.9(1)(e). But section 907.3 allows a court to sentence a class “D” felon to confinement and a fine, and then defer the judgment, defer the sentence, or suspend the sentence if the felony was not forcible. In either case, a fine alone is not allowed. Iowa Code §§ 902.9(1)(e), 907.3(1)–(3).

For similar reasons, Baker’s attempt to distinguish *State v. Peterson*, 327 N.W.2d 735 (Iowa 1982), is unavailing. In *Peterson*, the Iowa Supreme Court held that a fine-only sentence imposed on a forcible class “D” felony is illegal. 327 N.W.2d at 739. While Baker is correct that he did not commit a forcible felony, that only means his judgment or sentence can be deferred or suspended. Iowa Code § 903.7. It does not undermine the Court’s reasoning in *Peterson* that the more specific statute governing class “D” felonies controlled sentencing over the general provisions in section 901.5. *Peterson*, 327 N.W.2d at 736–37. Because *Peterson*’s reasoning applies to non-

forcible “D” felonies, it supports concluding a fine-only sentence for a class “D” felon is illegal.

Section 902.9(1)(e) is the specific statute for sentencing class “D” felons. It mandates confinement and a fine. Because the district court imposed only a fine on a class “D” felon here, it violated section 902.9(1)(e).

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

Dated: April 4, 2022



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