

IN THE SUPREME COURT OF IOWA

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STATE OF IOWA

Plaintiff-Appellee,

v.

DEMETRIAS ALAN MARTIN,

Defendant-Appellant

Supreme Court No. 21-0102

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APPEAL FROM THE IOWA DISTRICT COURT  
FOR SCOTT COUNTY  
HONORABLE TAMRA ROBERTS, JUDGE

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APPLICANT'S APPLICATION FOR FURTHER REVIEW  
OF THE DECISION OF THE IOWA COURT OF APPEALS  
FILED DECEMBER 7, 2022

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## **CERTIFICATE OF SERVICE**

On the 27th day of December, 2022, 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 Demetrius Alan Martin, No. 6890575, Anamosa State Penitentiary, 406 North High Street, P.O. Box 10, Anamosa, IA 52205-1199.

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## **QUESTIONS PRESENTED FOR REVIEW**

**Whether the district court abused its discretion by considering the Iowa Risk Assessment when resentencing the defendant?**

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## **STATEMENT IN SUPPORT OF FURTHER REVIEW**

COMES NOW the Defendant-Appellant and, pursuant to Iowa Rule of Appellate Procedure 6.1103 (2019), hereby makes application for further review of the December 7, 2022, decision of the Iowa Court of Appeals in State of Iowa v. Demetrias Martin, Supreme Court number 21-0102. In support thereof, Appellant states

1. The Iowa Court of Appeals erred by finding that the record was insufficient to find that the court should not have considered the Risk Assessment. (Opinion).

2. Section 901.11(2A) authorizes the court to consider “validated” risk assessment when determining the proper mandatory minimum in this situation. There was no evidence the risk assessment considered by the district court were validated for use in sentencing decisions and, accordingly, the court should not have considered it.

## **STATEMENT OF THE CASE**

**Nature of the Case:** This is an appeal following a resentencing upon remand from direct appeal for a conviction of Robbery in the First Degree and Willful Injury Resulting in Bodily Injury.

**Course of Proceedings and Facts**<sup>1</sup>: The defendant, Demetrias Martin, was charged and convicted of Robbery in the First Degree in violation of Iowa Code sections 711.1(1) and 711.2 (2017), a class B felony, and Willful Injury Causing Bodily Injury in violation of Iowa Code section 708.4(2), a class D felony. (Trial Information, 8/29/18 Sentencing Order, 3/14/2019) (App. pp. 4-9). The court sentenced the defendant to 25 years in prison with the mandatory 70 % mandatory minimum sentence. The court merged the Willful Injury count into the Robbery count. (Sentencing Order, 3/14/2019) (App. pp. 8-9). After his sentencing, the Iowa legislature amended the robbery sentencing statute, allowing

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<sup>1</sup> Because the issue raised in this appeal concerns the sentencing order, the facts will not be set out in detail.

the court to determine the minimum sentence from between 50% to 70%. This section was made retroactive to July 1, 2018. Iowa Code § 902.12(2A) (2019). Because the defendant was sentenced after that date, his case was remanded for resentencing to determine the appropriate mandatory minimum under the new statute. State v. Martin, No. 19-0409, 2020 WL 4498039 (Iowa Ct. App. Aug. 5, 2020). On January 19, 2021, the court resentenced the defendant and again imposed the 70% minimum sentence. (Sentencing Order, 1/19/21) (App. pp. 12-14). The defendant filed a notice of appeal on the same day. (Notice of Appeal) (App. pp. 15-17). The Court of Appeals affirmed the matter on December 7, 2022. (Opinion).

Further facts and proceedings will be discussed below.

## **ARGUMENT**

**The district court abused its discretion by considering the Iowa Risk Assessment when resentencing the defendant.**

### **A. Preservation of Error and Standard of Review:**

Procedurally defective, illegal, or void sentences may be

corrected at any time and are not subject to the usual concept of waiver or requirement of error preservation. State v. Thomas, 520 N.W.2d 311, 313 (Iowa Ct. App. 1994); State v. Woody, 613 N.W.2d 215, 217 (Iowa 2000). Errors in sentencing “may be challenged on direct appeal even in the absence of an objection in the district court.” State v. Lathrop, 781 N.W.2d 288, 293 (Iowa 2010). It is “exceedingly unfair to urge that a defendant, on the threshold of being sentenced, must question the court’s exercise of discretion or forever waive the right to assign the error on appeal.” State v. Cooley, 587 N.W.2d 752, 754 (Iowa 1998). The defendant objected to the court using the conclusory risk assessment statement in the addendum to the Pre-Sentencing Report (PSI, 11/4/20; Resentencing Hrg. tr., 1/19/21, p. 9, L. 23 – p. 11, L. 5). (Conf. App. pp. 4-15)

The court reviews sentences imposed for errors at law. State v. Grandberry, 619 N.W.2d 399, 401 (Iowa 2000). “A sentence will not be upset on appellate review unless the

defendant demonstrates an abuse of trial court discretion or a defect in the sentencing procedure such as the trial court's consideration of impermissible factors." State v. Witham, 583 N.W.2d 677, 678 (Iowa 1998); State v. Sailer, 587 N.W.2d 756, 762 (Iowa 1998). To demonstrate an abuse of discretion, the defendant must show that the sentencing court's discretion "was exercised on grounds or for reasons clearly untenable or to an extent clearly unreasonable." State v. Buck, 275 N.W.2d 194, 195 (Iowa 1979).

**B. Discussion:** In 2019, the Iowa legislature amended Iowa's statutory sentencing minimums for the crime of Robbery in the First Degree:

A person serving a sentence for a conviction for robbery in the first degree in violation of section 711.2 for a conviction that occurs on or after July 1, 2018, shall be denied parole or work release until the person has served between on-half and seven-tenths of the maximum term of the person's sentence as determined under section 901.11, subsection 2A.

Iowa Code § 902.12(A) (2019). Section 901.11(2A) (2019)

states:

At the time of sentencing, the court shall determine when a person convicted of robbery in the first degree as described in section 902.12, subsection 2A, shall first become eligible for parole or work release within the parameters specified in section 902.12, subsection 2A, based upon all pertinent information including the person's criminal record, a validated risk assessment, and the negative impact the offense has had on the victim or other persons.

In this case, after the matter was remanded for resentencing to comply with the above amendments, the court ordered and updated PSI, which was to include a "Validated Risk Assessment." (Order, 10/12/20) (App. pp. 10-11). An updated PSI was filed with an addendum, which stated as follows:

On November 03, 2020, the defendant was assessed utilizing the Iowa Risk Assessment Revised. The Iowa Risk Assessment revised is a brief actuarial instrument used to estimate offenders' level of risks associated with them violently reoffending and their continuous victimization. The defendant is noted to have scored a High risk for violent recidivism, and a Moderate/High risk continuous victimization, with an Intensive level of recommended correctional supervision.

(PSI, p. 12, 11/4/2020) (Conf. App. p. 15). During the resentencing hearing, counsel for the defendant objected to

the court considering this risk assessment because of  
conclusory nature of the paragraph without any specifics or  
information as to how or why the department of corrections  
came to this conclusion:

You know, what we have here is just a conclusory  
statement, just that he's high risk. I don't have the  
ability to cross-examine anybody as to why that is, what  
criteria were used, or standard, or questions, you know,  
what answers were given, whether it was norm to  
location populations. I don't have any way to respond to  
that at all. It's a conclusory statement, and I don't feel  
that it's fair for that to be considered.

(Resentencing Hrg., 1/19/21, p. 10, L. 11-18). The defendant  
was not interviewed about this assessment, nor did he receive  
the PSI addendum prior to resentencing. The court read the  
addendum to him. (Resentencing Hrg., 1/19/21, p. 2, L. 1-  
19; p. 5, L. 2-10). The court nonetheless considered this  
assessment, although admitted that it was not the main  
consideration for the sentence imposed.

Despite having no evidence that the assessment was  
"validated," the court referred to the above addendum as a  
validated risk assessment. The court stated it would not

weigh it heavily because of the lack of specifics, but the court stated the statute required it to consider the assessment nonetheless. (Resentencing Hrg., 1/19/21, p. 14, L. 4-12).

Section 901.11(2A) authorizes the court to consider “validated” risk assessment when determining the proper mandatory minimum in this situation. There was no evidence the risk assessment considered by the district court were validated for use in sentencing decisions and, accordingly, the court should not have considered it. Although the district court was under the impression it was required to consider this conclusory statement, it was not required to, especially absent evidence that the assessment was validated or without evidence of what the assessment specifically measured.

When a sentencing court has discretion, it must exercise that discretion. State v. Ayers, 590 N.W.2d 25, 27 (Iowa 1999); State v. Finchum, 364 N.W.2d 222, 225-226 (Iowa 1985). Failure to exercise that discretion calls for a vacation of the sentence and remand for re-sentencing. State v. Lee,

561 N.W.2d 353, 354 (Iowa 1997); State v. Ayers, 590 N.W.2d 25, 27 (Iowa 1999); State v. Lee, 561 N.W.2d 353, 34 (Iowa 1997) (holding that “[w]here a court fails to exercise the discretion granted to it by law because it erroneously believes it has no discretion, a remand for resentencing is required”); *see also* State v. Washington, 356 N.W.2d 192, 197 (Iowa 1984) (finding error where trial court erroneously believed it did not have the discretion to consider a suspended sentence and probation).

In this case, the court believed that the “risk assessment” in this case was validated without any evidence that it was. Further there was no information to inform the court what the assessment was based on or the reasons for the results. The conclusory “risk assessment” should not have been considered and the court erred in doing so.

### **CONCLUSION**

For these reasons the Appellant requests the Court remand the case for resentencing.

**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 \$1.85, 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 1,535 words, excluding the parts of the application exempted by Iowa R. App. P. 6.1103(4)(a).

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