IN THE SUPREME COURT OF IOWA
Supreme Court No. 22-0553

STATE OF IOWA,
Plaintiff-Appellee,

vs.

MURPHY LEE RUTHERFORD,
Defendant-Appellant.

APPEAL FROM THE IOWA DISTRICT COURT
FOR WASHINGTON COUNTY
THE HONORABLE MARK KRUSE, JUDGE

APPELLEE'S BRIEF

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ROUTING STATEMENT

The State respectfully disagrees that retention is necessary. Appellant's Br. 15. Although Rutherford did not have the benefit of the opinion at the time his brief was written, the Iowa Supreme Court has foreclosed his attack on his guilty plea's factual basis in this direct appeal. *See State v. Hanes*, No. 21-1146, 2022 WL 16702680, at *4–*7 (Iowa Nov. 4, 2022); *see also State v. Harris*, 741 N.W.2d 1, 9 (Iowa 2007) ("Our opinions are binding on Iowa's courts as soon as they are filed."). The only issue remaining is his challenge to the district court's discretionary sentence. This is a routine appellate matter and this Court may resolve it using existing legal principles. Transfer to the Iowa Court of Appeals is appropriate. Iowa R. App. P. 6.1101(3).

STATEMENT OF THE CASE

Nature of the Case

Following his guilty plea to theft in the second degree and two counts of being a felon in possession of a firearm, Murphy Rutherford appeals. He challenges the district court's failure to consider his medical needs when sentencing him and that his guilty plea lacked a factual basis.

Course of Proceedings

The State accepts Rutherford's course of proceedings as adequate and essentially correct. Appellant's Br. 16–18; Iowa R. App. P. 6.903(3).

Facts

On Friday, July 23, 2021, Melissa Beaudette contacted law enforcement alleging Rutherford stole two guns from her home and left on foot. 7/30/2021 Sec.Attch. p.1, 2, 9; Conf.App. 7, 8, 15. Officers apprehended Rutherford and found him in possession of a backpack and two AR-15 rifles. 7/30/2021 Sec.Attch. p.9; Conf.App. 15. He volunteered "she asked me to get them out of the house." *Id.* Rutherford insisted that the "backpack and everything in it was his and did not belong to her." *Id.* Officers confirmed with Baudette that she did not authorize Rutherford to take the rifles from her home. *Id.* Once he arrived at jail, and despite his assertion to the contrary, a search of the backpack revealed additional items that belonged to Beaudette—a watch, notebook, straight talk card, and Mechanix impact gloves. *Id.*

ARGUMENT

I. The district court articulated reasonable justifications for its selected sentence. Rutherford's disagreement with that sentence is not grounds to vacate it.

Jurisdiction

The State does not contest jurisdiction. Appellant's Br. 21. Rutherford pled guilty, so he did not have an automatic right to appeal. In a case "where the defendant has pled guilty," there is no right to appeal unless it involves "a guilty plea for a class 'A' felony or in a case where the defendant establishes good cause." Iowa Code § 814.6(1)(a)(3). The Iowa Supreme Court has held that an appellate challenge to the district court's discretionary sentence the parties had not agreed upon is permitted under Iowa Code section 814.6(1)'s "good cause" exception. *See State v. Damme*, 944 N.W.2d 98, 105 (Iowa 2020).

Preservation of Error

The State does not contest error preservation. Rutherford may challenge the district court's discretionary sentence on appeal. *See Lathrop v. State*, 781 N.W.2d 288, 292–93 (Iowa 2010).

Standard of Review

Iowa's appellate courts review sentencing decisions for correction of errors at law. *See State v. Formaro*, 638 N.W.2d 720,

724 (Iowa 2002). A sentence that conforms to the statute "is cloaked with a strong presumption in its favor, and will only be overturned for an abuse of discretion or the consideration of inappropriate matters." *Id.* An abuse of discretion is only found if "the decision was exercised on grounds or for reasons that were clearly untenable or unreasonable." *Id.*

Merits

The district court stated adequate reasons for selecting a sentence. Rutherford committed a serious offense, failed to comply with the terms of his pretrial release, and had a significant criminal history. Although he sought probation to facilitate medical treatments, the court was not obligated to follow that request or state reasons for rejecting it. Because Rutherford has not shown an abuse of discretion, this Court should affirm the lower court's sentence.

A district court must consider all pertinent matters in determining sentence and the selected punishment should fit both the crime and the individual. *State v. Hildebrand*, 280 N.W.2d 393, 396 (Iowa 1979); *see* Iowa Code §§ 901.2(1), 901.5. "Each sentencing decision must be made on an individual basis, and no single factor alone is determinative." *State v. Johnson*, 513 N.W .2d 717, 719 (Iowa

1994). When issuing a sentencing decision, a district court must state on the record its reasons for the selected sentence. Iowa R. Crim. P. 2.23(3)(d). These reasons must be sufficiently detailed to allow for appellate review of the district court's decision. *State v. Thacker*, 862 N.W.2d 402, 407 (Iowa 2015). Lengthy exposition is not required, even a "terse and succinct" statement can be sufficient where it is clear from the record why the district court selected the particular sentence. *Thacker*, 862 N.W.2d at 408; *see also State v. Garrow*, 480 N.W.2d 256, 259 (Iowa 1992) ("A sentencing court's statement of its reasons satisfies the rule if it recites reasons sufficient to demonstrate the exercise of discretion and indicates those concerns which motivated the court to select the particular sentence which it imposed."). And a district court's discussion of its reasons for sentence need not address every mitigating ground a defendant urges. *State v. Boltz*, 542 N.W.2d 9, 11 (Iowa Ct. App. 1995) ("Furthermore, the failure to acknowledge a particular sentencing circumstance does not necessarily mean it was not considered."). Where the court complies with these requirements, Iowa's appellate courts give wide latitude to that decision:

> Judicial discretion imparts the power to act within legal parameters according to the

> dictates of a judge's own conscience, uncontrolled by the judgment of others. It is essential to judging because judicial decisions frequently are not colored in black and white. Instead, they deal in differing shades of gray, and discretion is needed to give the necessary latitude to the decision-making process. This inherent latitude in the process properly limits our review. Thus, our task on appeal is not to second guess the decision made by the district court, but to determine if it was unreasonable or based on untenable grounds.

Formaro, 638 N.W.2d at 724–25.

In this appeal, Rutherford asserts that the district court failed to adequately consider his medical needs when deciding his sentence. Appellant's Br. 37–40. He believes these medical needs were a mitigating circumstance and the district court failed to sufficiently acknowledge the gravity of his medical condition when it "made a blanket assumption that Rutherford could receive adequate treatment through the prison system without any record evidence supporting such an assumption." Appellant's Br. 42–44. This Court should affirm.

Below, Rutherford sought for the district court to suspend his sentences but run them consecutively. Sent.Tr. p.4 line 13–24. His reasons included his "throat cancer that he needs to get treated for, and that's been getting worse while he's been in jail" and his

treatment needs related to Hepatitis C. Sent.Tr. p.4 line 24–p.5 line 11; *see also* 12/22/2021 Financial.Aff. p.3 ("Describe any other personal or family circumstances . . . that affect your ability to repay the restitution ordered in this case: Throat cancer that needs to be treated."); Conf.App. 30. He asserted that "it does not seem like that has been able to happen while he's in jail and would not happen if he was in prison." Sent.Tr. p.5 line 7–11. Rutherford's attorney further suggested that "his chances of being rehabilitated if he was just sent to prison [was] not likely," and offered placement in a residential facility would provide "the freedom to go treatment for his medical problems, which as I said, has not really—he's not been able to do that while he's been in jail." Sent.Tr. p.5 line 7–11, line 17–p.6 line 5; p.6 line 9–14. No party presented testimony, medical reports, or other record shedding light on the medical treatment capabilities of the Iowa Department of Corrections.

In addition to the parties' arguments, the PSI touched on Rutherford's self-report "he has liver damage, kidney failure and thyroid cancer. The defendant reported that he is waiting for surgery due to the thyroid cancer and should be doing dialysis, but isn't." PSI p.10, 12 ("Defendant appears to have health problems."); Conf.App.

25, 27. But it also contained Rutherford's disclosures that he lacked stable income, stable residence, a troubling history of substance abuse, and a significant criminal history. PSI p.4–7; 9–10; Conf.App. 19–22, 24–25.

Having considered the parties' arguments and PSI, the district court necessarily considered Rutherford's age, family circumstances, lack of a productive work history, significant criminal history, and failure to abide by the terms of his pretrial release. Weighing these factors together, it determined that suspending sentence and releasing Rutherford into the community was inappropriate:

> I've taken into account your prior criminal record. I've taken into account your job history, which is poor to nonexistent.
>
> It appears you have two kids. You don't have—it appears you have limited contact with one of them. Now you're telling me here today you have several kids.
>
> You're not able to follow the rules of pretrial release or, it doesn't appear, probation either. You're not going to go to absolutely no stability.
>
> Sir, you just seem to be kind of aimless at this point in your life. If you do have medical conditions that need to be dealt with, I think the prison system at this time would provide the best opportunity for you to get those taken care of.

> Those are the reasons for the sentence here today. I believe they should also run consecutive due to the—what I consider the serious nature of the offenses, harm to the community. Given the fact that you have been in trouble several times before, I think all those factors would indicate that consecutive is appropriate in this case.

Sent. Tr. p.10 line 5–24. This sentencing rationale was not an abuse of discretion and its selected sentence was statutorily authorized. *See* Iowa Code §§ 901.2; 901.3(1), (2); 901.5; 901.8; 902.9(1)(e).

Although Rutherford does not agree, the district court's discretionary determination that Rutherford's medical needs did not outweigh these other sentencing factors was not an abuse of discretion. *See, e.g.*, *Boltz*, 542 N.W.2d at 11; *see also State v. Lynch*, 312 N.W.2d 871, 874–75 (Wis. Ct. App. 1981) ("The Constitution does not impose upon a trial court an affirmative duty to ascertain, on the record, the availability of a particular program of treatment before it sentences a defendant to a prison term. It is not an abuse of discretion to sentence a defendant to prison without making such a finding."). A mitigating circumstance will not inevitably override the district court's responsibility to issue a sentence that fits the defendant and his crime. *See Johnson*, 513 N.W .2d at 719 ("[N]o single factor alone is determinative."); *accord. State v. Ogle*, 430

N.W.2d 382, 383 (Iowa 1988) ("[W]e are not inclined to hold that the defendant's caretaking responsibility as a parent overrides a sentencing court's responsibility to impose conditions of probation that promote rehabilitation and protect the community."); *State v. Shultsev*, No. 21-1697, 2022 WL 3068389, at *1–*2 (Iowa Ct. App. Aug. 3, 2022) (rejecting claim district court abused its discretion in considering defendant's medical needs when sentencing him to prison rather than jail).

To the extent his illness mitigates against incarceration, the burden of establishing the district court abused its discretion falls to Rutherford, not the State. *See State v. Wickes,* 910 N.W.2d 554, 572 (Iowa 2018). This means it was his burden to show the Iowa Department of Corrections could not administer adequate medical care. He offered no evidence to support his suggestion, and the State notes that its Department of Corrections is obligated by law to provide medical treatment to inmates in its custody. Iowa Code § 904.102; *see also Mercy Hosp. Med. Ctr. v. Cnty. of Marion*, 590 N.W.2d 41, 42 (Iowa 1999) ("Prisoners have a due process right to receive medical care when they are in the government's custody."); *c.f. State v. Arrington*, 855 P.2d 133, 135–36 (N.M. Ct. App. 1993)

("The evidence was uncontroverted that incarceration would be life-threatening to Defendant and that adequate medical care would not be available to her in a correctional facility."). Conclusory predictions to the contrary cannot require vacating the district court's sentence. Sent.Tr. p.5 line 7–11. His dissatisfaction with that sentence cannot, either. *See, e.g.*, *State v. Sweat*, No. 16-0437, 2017 WL 702366, at *1 (Iowa Ct. App. Feb. 22, 2017) (mere disagreement with sentencing decision does not warrant resentencing, it fails to establish the district court abused its discretion).

Because the district court provided valid reasons for its sentence and Rutherford has not shown otherwise, this Court should not disturb the district court's sentence. *See State v. Stewart*, Nos. 00-521 and 00-503, 2000 WL 1298725, at *2 (Iowa Ct. App. Aug. 30, 2000) (rejecting claim court did not consider mental illness when imposing sentence, counsel discussed the illness and district court addressed defendant regarding it). It should affirm.

II. Rutherford was advised he was required to file a motion in arrest of judgment and failed to do so. His challenge to the factual basis for his plea cannot be reviewed in this direct appeal.

Jurisdiction and Authority

The State contests this Court's authority to consider Rutherford's attack on his guilty plea. Because he pleaded guilty, Iowa Code 814.6(1)(a)(3) requires Rutherford to establish good cause for direct appeal. Good cause means "a legally sufficient reason," which is defined as "a reason that would allow a court to provide some relief" through review on direct appeal. *See State v. Treptow*, 960 N.W.2d 98, 109 (Iowa 2021). The State recognizes that *Wilbourn* suggests that "Once a defendant crosses the good-cause threshold as to one ground for appeal, the court has jurisdiction over the appeal." *State v. Wilbourn*, 974 N.W.2d 58, 66 (Iowa 2022). Although the jurisdictional threshold was satisfied by Rutherford's attack on his sentence, this Court lacks authority to consider his attack on his plea.

On direct appeal, an appellate court cannot grant relief on a guilty plea challenge if the defendant was advised of the need to raise and preserve any such challenge by filing a motion in arrest of judgment before sentencing, and then failed to do so. *See Treptow*, 960 N.W.2d at 109–10. This advisory can be administered through a

written guilty plea. *See State v. Fisher*, 877 N.W.2d 676, 680–81 (Iowa 2016). Rutherford entered a written guilty plea that advised him if he wished to raise any objections to his guilty plea proceeding he needed to file a motion in arrest of judgment and his failure to do this would "preclude the right to assert defects in the guilty plea on appeal." 9/20/2021 Plea p.3; App. 13. Rutherford did not file a motion in arrest of judgment and does not attack the advisory within his guilty plea as inadequate. Thus, this Court lacks authority to consider the claim—just like in *Treptow*:

> The defendant has not advanced a legally sufficient reason to pursue an appeal as a matter of right. The defendant was adequately advised of the necessity of filing in a motion in arrest of judgment to challenge his guilty plea and the consequences of failing to do so. Upon being properly advised of his right and the consequences of waiving that right, the defendant waived the right and proceeded to immediate sentencing. . . . Under the circumstances, the appellate courts cannot provide the defendant with relief. The defendant has thus not established good cause to pursue his appeal as a matter of right under section 814.6.

Treptow, 960 N.W.2d at 109–10. Likewise, *Damme* recognizes that even though a court has jurisdiction over the claim, it does not

necessarily have authority to consider each claim presented. *Damme*, 944 N.W.2d at 104, 109.

Rutherford presents several grounds why his failure to file a motion in arrest of judgment should not preclude review. He urges that a guilty plea lacking a factual basis is a deprivation of due process and the right to the effective assistance of counsel; that the district court bears a duty under rule of criminal procedure 2.8 to ensure that plea is made voluntarily, intelligently, and with a factual basis to support it; and that in the alternative, certiorari review is appropriate to reach his claim. Appellant's Br. 22–24; 24–27, 28–31; 32–33. Although he did not have the benefit of it at the time of writing, our Supreme Court has already closed the door to much of these challenges. *See Hanes*, 2022 WL 16702680, at *4–*5 (declining to create exception to error preservation based upon court's failure to ensure a factual basis existed); *5 (citing *Ripperger v. Iowa Pub. Info. Bd.*, 967 N.W.2d 540, 552 (Iowa 2021) for principle appellate courts are court's of "review, not of first view"); *5–*6 (rejecting claim that due process required guilty plea challenges on direct appeal without a motion in arrest of judgment in the district court and distinguishing *State v. Crawford*, 972 N.W.2d 189 (Iowa 2022));

Treptow, 960 N.W.2d at 109–10. As for his claim that certiorari review is appropriate, it still suffers an identical error preservation defect. *See* Iowa R. App. P. 6.107(1)(d) (requiring party to state in petition "whether the plaintiff raised the issue in the district court"); Iowa R. Crim. P. 2.24(3)(a).

And as a final ground why review is not warranted, Rutherford does not satisfy the requirement Iowa Code section 814.29 places upon him. This provision applies here and holds that where "a defendant challenges a guilty plea based on an alleged defect in the plea proceedings, the plea shall not be vacated unless the defendant demonstrates that the defendant more likely than not would not have pled guilty if the defect had not occurred." Iowa Code § 814.29.

Rutherford asks this Court to vacate his conviction but does not suggest he wishes to proceed to trial. He makes no effort to satisfy the statute and instead suggests it simply should not apply because there is no factual basis his plea to second-degree theft. *See* Appellant's Br. 51–52, 53. Aside from being inadequate, Rutherford's request would eliminate the broad language of 814.29 from a swath of applicable appeals. This is inconsistent with the legislature's intent and chosen

language. *See* Iowa Code § 814.29; *see also* Iowa Code §§ 4.2, 4.4(2), (3).

The limited record does not support a conclusion Rutherford would have elected to stand trial. The State's case against him was strong. *See* 7/30/2021 Sec.Attch. p.9; Conf.App. 15. And although he failed while on it, his plea's terms obtained pre-sentencing release. 9/21/2021 Motion to Amend Conditions; App. 19–20; *see State v. Bradford*, No. 22-0168, 2022 WL 3066179, at *3 (Iowa Ct. App. Aug. 3, 2022) (noting that defendant failed to demonstrate that being informed of a lesser fine would have altered his determination to plead so that he could be released to help his homeless fiancée); *State v. Field*, No. 21-1186, 2022 WL 16630318, at *2 (Iowa Ct. App. Nov. 2, 2022) (dismissing appeal where defendant failed to comply with 814.29). He avoided a mandatory minimum term of incarceration. *Compare* 7/30/2021 Trial Inf. p.1–2 (charging Rutherford as a habitual offender under Iowa Code 902.8) *with* 2/25/2022 Judgment p.1–2 ("A mandatory minimum sentence of incarceration . . . is not applicable."); App. 4–5; 21–22. Regardless of his challenges, he has not furnished good cause to challenge his plea. This Court lacks authority to consider the claim and should not address it.

Preservation of Error

The State also contests error preservation. Rutherford did not file a motion in arrest of judgment despite being adequately informed about its necessity. 9/20/2021 Plea p.3; App. 13. By necessity, the district court never ruled on this unfiled motion. Error was not preserved. *See, e.g.*, *State v. Bynum*, 937 N.W.2d 319, 324 (Iowa 2020) (reiterating that preservation minimally requires an issue be (1) raised before and (2) decided by the district court prior to appellate review).

The district court's generalized duty to ensure his plea was knowing and voluntary does not answer whether error was preserved. Appellant's Br. 44–45. Assuming arguendo the district court has a duty to ensure a plea is knowing, voluntary, and possesses a factual basis, the State does not believe a district court's breach of this duty could preserve error, as this would functionally eliminate rule 2.24(3)(a)'s preservation requirement. The Iowa Supreme Court agrees and has declined to create the exception Rutherford requests. *Compare* Appellant's Br. 44–45 *with Hanes*, 2022 WL 16702680, at *1, *5 (declining to permit an exception to the error preservation requirement based on the district court's ability to arrest judgment:

"to do so would eviscerate rule 2.24(3)(a)'s express prohibition on appeals where the defendant has failed to file a motion in arrest of judgment"). Error was not preserved and further bars review of Rutherford's claim. *See, e.g.*, *State v. Carter*, No. 17-1258, 2018 WL 2246871, at *2 (Iowa Ct. App. May 16, 2018) (where defendant is adequately advised, failure to preserve error on challenge by failing to move in arrest of judgment precludes review).

Standard of Review

Iowa courts review challenges to guilty pleas for correction of errors at law. *See, e.g.*, *Fisher*, 877 N.W.2d at 680.

Merits

Because Iowa's courts have warned against the State relying upon dispositive procedural bars alone and to foreclose any waiver of the merits, the State also submits the limited record contains a sufficient factual basis to support Rutherford's plea to theft in the second degree. *See State v. Zacharias*, 958 N.W.2d 573, 587 n.3 (Iowa 2021). A challenge to the record establishing a factual basis for a guilty plea is an objective inquiry. *See State v. Finney*, 834 N.W.2d 46, 58, 61–63 (Iowa 2013). This Court may review the entire record to determine whether a factual basis supported the defendant's plea. *Id.*

A factual basis does not need to show the totality of evidence necessary to support a guilty conviction, rather it simply need only show that "the facts support the crime" and the elements alleged. *Id.* at 767–68 (quoting *State v. Keene*, 630 N.W.2d 579, 581 (Iowa 2001)). This is not the same as the "sufficiency of the evidence" standard used when examining a guilty verdict—the threshold showing under this framework is *even lower*.

For Rutherford's plea to have been valid, there needed to be a factual basis to support a finding he took possession of another person's property with the intent to deprive the person thereof and the value was in excess of $1500 but less than $10,000. *See* 7/30/2021 Trial Inf. p.2; App. 5; Iowa Code §§ 714.1(1), 714.2(2). The intent to deprive is based upon the owner's loss of possession, not the benefit obtained by the defendant. *See State v. Miller*, No. 16-2110, 2018 WL 1099580, at *4, *4 n.6 (Iowa Ct. App. Feb. 21, 2018) (quoting 3 Wayne R. LaFave, *Substantive Criminal Law* § 19.5 (3d ed. 2017)). Rutherford suggests that his theft plea was defective because there was no factual basis and did not establish he understood the nature of his charge. Appellant's Br. 50. The State disagrees on each point.

Rutherford's written plea indicated that he had reviewed the trial information, had sufficiently discussed the matter with counsel, and likewise, plea counsel asserted he "advised the defendant of all of his . . . rights and adequately researched the issues and defenses . . . To the best of my knowledge . . . this plea is made knowingly and voluntarily, is supported by a factual basis, and there is no legal barrier to the plea." 9/20/2021 Plea p.1–2, 5; App. 10–11, 14. The plea authorized the district court to review the minutes of testimony when determining if a factual basis existed. 9/20/2021 Plea p.1–2; App. 10–11. The minutes stated that victim would testify "she is the owner of the firearms and that the Defendant did not have permission or authority to deprive her of those firearms"— he took them without her permission. 7/30/2021 Mins.of Test p.1; Conf.App. 4.

The secured attachment incorporated within the minutes of testimony depicted a straightforward account of a theft: Melissa Baudette contacted police to report Rutherford "stole two AR-15 rifles and left [her] residence on foot." 7/30/2021 Sec.Attch. p.1–2, 9; Conf.App. 7–8, 15. Law enforcement located and detained Rutherford. *Id.* at 9; Conf.App. 15. He possessed the weapons and a backpack. *Id.* Without prompting he volunteered "She asked me to

get them out of the house." *Id.* Baudette later confirmed that she did not do so and wished to pursue charges. *Id.* Later, when asked if everything within the backpack was his, Rutherford stated it was. *Id.* Yet the backpack still contained other items taken from Beaudette's home; a digital watch, a blue notebook, a "straight talk card," and a pair of gloves. *Id.* His fabrications indicate he intended to continue possessing the property, not return them. *See State v. Cox*, 500 N.W.2d 23, 25 (Iowa 1993) ("A false story told by a defendant to explain or deny a material fact against him is by itself an indication of guilt . . ."); *see generally State v. Post*, 286 N.W.2d 195, 203 (Iowa 1979) (recognizing inference "that exclusive possession of recently stolen property, if unexplained *or falsely explained*, indicates that the defendant received it with guilty knowledge"); *State v. Bowerman*, No. 02-465, 2002 WL 1432271, at *2 (Iowa Ct. App. July 3, 2002) (defendant's act of taking vehicle to Texas and giving a false name and claiming to have borrowed the vehicle demonstrated his "intent to retain the car, rather than return it to its owner").

Between his unlawful taking and his lies, a factual basis existed to support a finding Rutherford intended to take Beaudette's property and deprive her of her possessory interest in the items. In

Rutherford's own words he confirmed "I took control of property, 2 guns, that were not mine and deprived the owner of them." 9/20/2021 Plea p.2; App. 11. This was a sufficient factual basis to support the plea. *See State v. Philo*, 697 N.W.2d 481, 486 (Iowa 2005) ("The defendant's admission on the record of the fact supporting an element of the offense is sufficient to provide a factual basis for that element.").

Rutherford's attack on his plea does not warrant relief. In the event this Court addresses the merits, the State respectfully requests it reject the challenge and affirm his theft conviction.

CONCLUSION

The district court adequately considered Rutherford as an individual and his crime when it ordered him to serve his sentence in the custody of the department of corrections. This Court cannot consider his factual basis challenge to his guilty plea and notwithstanding several procedural bars, the claim does not warrant relief. The State asks this Court to affirm.

REQUEST FOR NONORAL SUBMISSION

This appeal is routine and the State does not request oral 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:

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