

IN THE SUPREME COURT OF IOWA

SUPREME COURT NO. 22-0903
Boone County No. AGCR114235
Boone County No. OWCR114992

KADIN JEFFREY MILLER,
Appellant,

v.

STATE OF IOWA,
Appellee.

APPEAL FROM
THE DISTRICT ASSOCIATE COURT
FOR BOONE COUNTY
THE HONORABLE STEPHEN A. OWEN, JUDGE

APPLICATION FOR FURTHER REVIEW
Iowa Court of Appeals Decision: July 13, 2023

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QUESTIONS PRESENTED FOR FURTHER REVIEW

Whether or not the Iowa Court of Appeals erred when it found that the publishing of a pornographic video without consent is an offense that is continuing in nature and thus there was sexual gratification by the mere posting and whether there was sufficient evidence overall to sustain a finding of sexual motivation?

Based on the improper inferences, did the Court of Appeals err in upholding the sentenced imposed by the District Court?

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STATEMENT SUPPORTING FURTHER REVIEW

This case warrants further review for the following reasons:

This case presents a substantial issue of first impression, is constitutional in nature, and involves fundamental rights that have not previously been determined/ruled upon by this tribunal. Miller was charged with Harassment in the First Degree in violation of Iowa Code 708.7(2)(a)(2) & 708.7(1)(a)(5), colloquially referred to as the “revenge porn” statute. The harassment statute was modified with an effective date of July 1, 2017 to add a form of harassment that involves publishing a film that shows another person engaged in a sex act without their permission. The statute further requires that the fact finder shall make a determination as to whether or not a person should register as a sex offender if found to have violated this subsection.

The Court of Appeals found that this issue constituted good cause pursuant to Iowa Code 814.6.

The Court of Appeals made an error of law when it found that sexual gratification was essentially a continuing offense that carried over to the publishing of the pornographic video following the demise of the relationship.

This is an issue of first impression. What is the appropriate standard to employ by the district court when determining whether the offense requires sex offender registration? Does the act of publication alone equate to sexual gratification?

NATURE OF THE CASE, THE PROCEEDINGS AND DISPOSITION OF THE CASE

This is an Application for Further Review from the July 13, 2023 Iowa Court of Appeals opinion affirming the District Court's finding that Kadin Miller was required to register as a sex offender, and drawing illegitimate inferences following the posting of a pornographic video on a pornographic website, PornHub.

Miller is appealing his conviction, judgment and sentence following his plea to Harassment in the First Degree in violation of Iowa Code Section 708.7(1)(a)(5) in Boone County case number AGCR114235 and Operating While Intoxicated in violation of Iowa Code Section 321J.2 in Boone County case number OWCR114992.

On February 4, 2021, a criminal complaint was filed charging Miller with Harassment in the First Degree. (Criminal Complaint AGCR114235; App. 42). A trial information was filed on April 15, 2021 charging Miller with the same. (Trial Information; App. 43). During the pendency of this case, Miller was charged with Operating While Intoxicated and Possession of Controlled Substance, Marijuana, Second Offense in violation of Iowa Code §124.401(5) on February 8, 2022 in Boone County. (Criminal Complaint OWCR114992; App. 53).

On February 25, 2022, after plea negotiations had been exhausted, Miller pled as charged in the former case. (Plea AGCR114235; App. 70). Before a sentencing hearing was held, a plea agreement was reached in the O.W.I. case. (Plea OWCR114992; App. 74). Both cases were heard for sentencing on May 25, 2022.

For Case number AGCR114235, Miller was sentenced to the maximum sentence of incarceration for a period not to exceed two (2) years. For case number OWCR114992, Miller also received the maximum sentence of incarceration for a period not to exceed one (1) year. These sentences were set to run consecutively for a total sentence not to exceed three (3) years with credit for time served. (Order of Disposition; App. 85)

Appellant appealed and on July 13, 2023, the Court of Appeals denied his request for relief. Miller timely filed this request for further review with the tribunal pursuant to Iowa Rule of Appellate Procedure 6.1103(1).

STATEMENT OF THE FACTS

On February 4, 2021, a criminal complaint was filed charging Miller with Harassment in the First Degree in violation of Iowa Code Section 708.7(2)(a)(2). The allegation was that between May and July 2019 Miller had recorded a female that was nude engaging in a sex act and disseminated

the video on the website Pornhub without consent of the female. (Criminal Complaint AGCR114235; App. 42). A Trial Information was filed on April 15, 2022 affirming this charge. (T.I., App. 43).

On January 4, 2022 a Motion to Bifurcate Proceedings was filed on Miller's behalf. The issue at hand was regarding the determination of sexual motivation underlining the proceedings. (Motion to Bifurcate; App. 45). The State filed a resistance on January 7, 2022. (Resistance to Motion to Bifurcate; App.49). On February 21, 2022 the Court entered an order granting the motion however declining the defense's request to have the jury decide the question of guilty and the District Court decide the issue of "sexual motivation". (Order 02/21/2022; App. 57).

On February 8, 2022, Miller was charged with Operating While Intoxicated as well as Possession of Controlled Substance – Marijuana, Second Offense. (Criminal Complaints OWCR114992; App. 53).

After exhaustive plea negotiations, Miller opted not to go to trial in the former case and instead pled guilty as charged on February 25, 2022. (Plea AGCR114235; App. 70). No plea agreement was made and thus the parties were free to argue for any legal sentence (Plea AGCR114235; App. 70). Miller objected to the minutes of testimony. (Plea AGCR114235; App.

70). The Plea included that Miller did not admit nor stipulate that the crime was “sexually motivated” pursuant to the previous bifurcation proceedings. (Plea AGCR114235; App. 70).

The Matter proceeded to sentencing On May 25th, 2022. (Sent. Trans. Pg 1; L1 20-21; App. 7). The defense filed a Sentencing Memorandum, which was received by the court. (Sentencing Memorandum AGCR114235; App. 77). The defense filed nine exhibits admitted into evidence, including several letters of support from family and friends, an article titled "Out of Prison & Out of Work," and Dr. Tracy Thomas's curriculum vitae. (Sent. Trans. Pg 6; L1 3-18; App. 9). The defense called one witness, Dr. Thomas. (Sent. Trans. Pg 8; L1 8-9; App. 10).

Dr. Thomas concluded that there were no indications that Miller had antisocial traits or psychopathy. (Sent. Trans. Pg 19, and 209; L1 8-11; App. 17). Based upon her investigation, Dr. Thomas concluded that Miller was not sexually motivated when he committed the offense. (Sent. Trans. Pg 23; L1 1-4; App. 20). Dr. Thomas's opinion was based on the definition of "sexual motivation" in the code and case law. (Sent. Trans. Pg 14; L1 13-18 ; App. 15). Dr. Thomas found no evidence that Miller was sexually aroused or masturbating in response to his actions. (Sent. Trans. Pg 23; L1 13-25; App.

20). Dr. Thomas discovered that Miller was angry about his breakup with Goebel; Miller believed he was the victim of the breakup, that he was cheated, and acted in this manner to embarrass her and regain his self-esteem. (Sent. Trans. Pg 24; L1 1-11; App. 21).

Dr. Thomas' conclusions were founded in signifiers including the naming of the video which she believed supported the conclusion that the video was uploaded for the purposes of revenge, as opposed to sexual motivation. (Sent. Trans. Pg 25, and 39; L1 4-20; App. 22). Dr. Thomas went on to indicate that if he bragged to other witnesses that would suggest revenge motivation as opposed to sexual motivation. (Sent. Trans. Pg 55; L1 1-6; App. 28).

Following the conclusion of evidence, Miller exercised his right of allocution. (Sent. Trans. Pg 95; L1 16; App. 35). For both cases, Miller was advised by counsel that he could not appeal a defect in the plea proceeding unless he filed a Motion in Arrest of Judgment alleging a defect not later than 45 days after a plea is entered, or not later than five days before the date set for pronouncing sentence, whichever comes first. (Pleas; App. 70 & 74).

A sentencing memorandum was filed confirming that Miller had no prior deferred judgments. (Defendant's Sentencing Memo.; App. 77). With

both oral and written arguments submitted, the District Court made its ruling. Miller was given the maximum sentences in both cases for a total sentence of up to three (3) years. Further the court made the determination that found a sexual motivation to the underlying offense in AGCR114235. (Order of Disposition; App. 85).

Any additional relevant facts will be discussed below.

ARGUMENT

I. THE COURT OF APPEALS ERRED WHEN IT FOUND THE STATE PRESENTED SUFFICIENT EVIDENCE TO PROVE THAT MILLER COMMITTED THIS CRIME WITH SEXUAL MOTIVATION WHEN IT FOUND THAT SEXUAL GRATIFICATION CONTINUED WHEN THE VIDEO WAS POSTED, AND THE COURT RELIED ON CONJECTURE AND SPECULATION IN MAKING ITS FINDINGS AND DECISIONS

Law:

Iowa law defines “sexually motivated” as the commission of a crime having a purpose of sexual gratification for the perpetrator. Iowa Code Section 692A.126(1)(f). This has been elaborated as “a broad, forward-looking term encompassing the concept of intent.” *In re Det. of Blaise*, 830 N.W.2d 310, 323 (Iowa 2013). This intent does not need to be established by actual instances of gratification but it “can be inferred from an accused’s conduct, remarks, and all surrounding circumstances.” *State v. Jorgensen*,

758 N.W.2d 830, 837 (Iowa 2008). In this case, it was the district court judge who was the fact finder making the determination on this concept of intent.

“It is not for us to interfere with the finding made [by the fact finder] when supported by substantial evidence, even though the evidence may have supported a finding favorable to the defendant. *State v. Ernst*, 954 N.W.2d 50, 58 (Iowa 2021)(Citation omitted). This is crucial in this case as there is a conspicuous lack of evidence, let alone substantial evidence, that supports the district court’s finding.

The issue at hand revolves around what can be considered a legitimate inference and what is impermissible speculation. *Ernst* also defined this concept by establishing that a legitimate inference is one that may “fairly and reasonably be deduced from the record evidence.” *Id.* at 59. Speculation becomes a concern when the gap between the actual evidence and the inferred conclusion “is bridged by a succession of inferences, each based upon the preceding one.” *United States v. Shahane*, 517 F.2d 1173, 1178 (8th Cir. 1975). The courts do not overtly prohibit a “stacking” of inferences, but recognize the danger of error when that gap between truth and conjecture becomes too broad.

Analysis:

The Court of Appeals and District Court rulings both suffer from an issue of scale and proportion. Their conclusions are conceivable in that they could hypothetically be true, but they fail to stand against reasonable logic, let alone the evidence that contradicts them. Now it is impossible to disprove that a finding of sexual motivation is a possibility in any case. Because it is impossible to disprove a negative, we have to look to whether the inferences made by the district court are legitimate and was the court of appeals correct in adopting those inferences. The test is whether the court's conclusions can be "fairly and reasonably deduced from the record of evidence." *Ernst*, 954 N.W.2d 50, 54 (Iowa 2021). The Court of Appeals has simply echoed the same logic that the District Court claimed, which suffers from a serious gap between fact and speculation. They have employed a succession of flawed inferences, which represents a serious violation of due process.

The most important of these inferences is the District Court's finding that Miller's sexual gratification "continued when he published the video." The Court presumed that Miller received gratification from making the video, which in and of itself is reasonable. The opinion states that "[T]he

sexual gratification that Miller received during sexual intercourse continued when he published the video.”

Essentially, the Court has determined that the posting itself is basically a continuing offense, so to speak, of sexual gratification that constantly remained from the day that he took the video and the day that it was discovered on the website. This rationale is fundamentally flawed. This also means that the court would always find that sex offender registration is required when a sexual video is published. This is not the intent of the legislature or it would have indicated that registration is mandatory for that particular brand of this crime.

The court relies, in part, on the fact that Miller did not tell people close to the victim of the posting. This is nonsensical. A person can certainly take satisfaction in their revenge, despite no one ever having known they got said revenge.

The ruling cites two additional issues. The first is Miller’s decision to keep the video for two months and the second is Miller’s decision to post the video on a pornographic website. However, using both to support the same conclusion is conflating two very different sources of gratification. Miller could conceivably receive gratification by watching the video himself, or by

knowing that other people are viewing the video. The former is supported by the fact that he kept the video, but not by posting it. Likewise, the latter is supported by him posting the video, and not by first keeping it. If disseminating the video gave Miller sexual gratification, then waiting two months would not make sense as he could have posted it sooner if that was the motivation behind the posting. If the video itself was the source of his gratification, then there would be no reason to post it. Each represents a different, contradictory narrative. To conclude that both support the same conclusion is illogical.

Miller's decision to keep the video may have been for self-gratification, but it does nothing to support anything regarding its dissemination. Even the facts around posting the video contradict the court's conclusion. The ruling notes how Miller had never posted a video before and had to make a new account to do so. This can only support a motivation of revenge as it shows that there was no prior history of similar behavior (e.g. posting other videos, exposing himself online, etc.). Miller's preplanned intent can be indicative of either motivation, but the lack of a prior history of this behavior can only support a motivation of revenge. The court has simply stretched a valid inference beyond its scope and mischaracterized the facts of

another to land at their own conclusion. This demonstrates the flawed line of logic employed.

The court also attempted to negate the narrative that Miller was motivated by revenge, but this too does not reasonably follow the facts.

The Court stated that Miller would have notified the alleged victim if he had been truly motivated by revenge. This is again an illogical leap of inference because Miller knew his actions were wrong, therefore it would make no sense for him to alert the victim of his crime, nor is there a requirement that seeking revenge involve her family, friends or notification to the victim. If he did, they would have called the police on him and had direct evidence on him as well. Even if Miller tried to notify them anonymously, he is in the video himself, so this would have endangered him still. There is no requirement that revenge cannot be secret. In fact there may be many a time where a couple breaks up and the other party does something sinister before vacating the home. One might dip a toothbrush in the toilet or some other unbecoming act. They may never tell their ex, or anyone else, but they take satisfaction in knowing that they did it and that the ex is brushing his or her teeth with that brush every day. This is not

indicative that there is sexual gratification, just merely satisfaction based on doing a terrible act to them.

Miller's choice of posting the video on a pornographic site was the only realistic way for Miller to expose the video to a significant number of others (the goal of a revenge motivation by publication), while maintaining his protected anonymity. Any other mediums than a porn site would have this video removed as violating community standards of decency. The only place this is not violated and able to be disseminated is a pornographic site. Therefore, the mere posting on Pornhub cannot reasonably support the Court's own conclusion.

Miller did show the video to his friend, Leeck; however, many criminals have a confidant, and Leeck would have been one of the few people he knew personally to whom he could show the video without fear of consequence. The District Court believed that this indicated sexual gratification, but neither they nor the Court of Appeals explain *how* they believe this interaction gave Miller sexual gratification. There was certainly nothing in the record itself to support this conclusion. Leeck did not testify to that effect, and getting sexual gratification from this interaction would be contradictory to both men's apparent sexuality. This is more likely a

condition to support revenge. The court's inference is theoretically possible, but the criterion here is whether that leap from fact to conclusion can reasonably be deduced. The ruling and the record provides no such resolution to this discrepancy. It is understood that, between two inferences the court of appeals must defer to the fact finder's decision. However, these are not two legitimate inferences. One can be explained by a logical presumption and the other defies common sense, lacks supporting argument or evidence, and contradicts expert testimony.

Yet still the court goes on to build off of this presumption in their further claims. They state that, because Miller used the pornographic website to show Leeck the video, Miller was then one of the 1300 views on that website. This is apparently evidence of gratification based on the broad principle that "watching a video of sexual intercourse on a pornography website suggest sexual gratification." This statement, in a vacuum, could be true, but makes no sense when considered in context. There is nothing to support that he was aroused or gratified by showing his friend the video, and it does nothing to indicate that Miller had viewed the video at any other time, let alone viewed it for his gratification. Again, an inference is just

repackaging standard language and does not logically follow the actual facts of the situation.

Furthermore, this illustrates how the Court has stacked inferences upon inferences in order to support their narrative. The inference that Miller watched the video on the pornographic website for sexual gratification can only be true if the inference that he showed Leeck the video for sexual gratification is also true. The inference that he showed Leeck the video for sexual gratification is only true if the underlying presumption that he posted the video itself for gratification is also true. Including that final inference, that would make four degrees of separation between an actual fact and the court's conclusion. Even if that precarious succession of inferences was to be believed, it still would not be considered reasonable in light of the other facts. The District Court sided with these suppositions over the explicit advice of a trained and qualified expert on the topic. It is important to note that this expert addressed this very topic and specifically opined that she believed revenge, not sexual gratification, to have motivated Miller. Yet, the court disregarded this compelling evidence in favor of the tenuous claims discussed above.

Ernst provides that the Court must defer to the prosecution when regarding two conflicting and legitimate inferences. However, the Court of Appeals has simply echoed and repackaged the District Court's flawed logic and given nothing to establish that their inferences are actually legitimate. The Court of Appeals was essentially given two inferential narratives to explain Miller's intent. One suffered from stacking inferences and contradictory logic; the other was based on expert testimony and a narrative which follows that testimony, logically. In light of all this, it defies the definition of "reasonable" to conclude that the district court's inferences were legitimate enough to side with. The principle established in *Ernst* cannot be held to such an extent that such conjecture be upheld on principle alone.

II. THE COURT OF APPEALS ERRED WHEN IT FOUND THAT THE DISTRICT COURT DID NOT ERR WHEN IT RELIED UPON UNPROVEN CONDUCT IN DETERMINING MILLER'S SENTENCE

Law:

When sentencing a defendant, a court may not consider facts, allegations, or offenses that are not established by the evidence or admitted by the defendant. *Witham*, 583 N.W.2d at 678; *State v. Black*, 324 N.W.2d

313, 316 (Iowa 1982). Offenses and allegations that are not proven by the State or admitted to by the defendant, but considered by the court, amount to improper sentencing considerations. See *Black*, 324 N.W.2d at 315-17; *State v. Gonzalez*, 582 N.W.2d 515,517 (Iowa 1998). A district court cannot speculate facts into existence and then rely upon them. *State v. Fetner*, 959 N.W.2d 129, 136 (Iowa 2021) In *Fetner*, the court determined that the sentencing judge drew certain unsupported conclusions based on speculation. *Fetner*, 959 N.W.2d 129, 136 (Iowa 2021)

To constitute reversible error, there must be some showing that the sentencing judge was not "merely aware" of the improper factor but also "impermissibly considered" or "relied on" it in rendering the sentence. *State v. Ashley*, 462 N.W.2d 279, 282 (Iowa 1990). Where such a showing is made, however, the reviewing court will vacate the defendant's sentence and remand for resentencing even if it was "merely a secondary consideration." *State v. Grandberry*, 619 N.W.2d 399, 401 (Iowa 2000); See also *State v. Lovell*, 857 N.W.2d 241, 243 (Iowa 2014).

Analysis:

The problems argued above are reflected in this issue as well. The Court specifically cited those same inferences to show Miller's sexual

motivation in the same testimony in which they ruled on his sentence. This included the speculations that Miller planned to disseminate the video, that he received continued gratification in disseminating the video, that Miller was one of the 1,300 views on the video, and that he received sexual gratification from that viewing. (Sent. Trans. Pg 105-106; L1 6-25; L1 1-10; App. 39-40). The court even described this all through a narrative that Miller knew the relationship was ending and this was supposedly a cause for his actions.

The Court of Appeals considered these statements to only be in support of the District Court's sexual motivation determination, however these statements were all made in the same monologue as the actual sentence. Furthermore, the court heard all argumentation, including Miller's allocution and victim impact testimony, before ruling on *both* the sexual motivation determination and his sentence. This would raise concerns that the impact of the victim's statements may have unduly affected the judge's ruling on the sexual motivation issue. However, it more importantly raises the issue that the inferences made for the sexual motivation determination were a significant factor in the ruling on Miller's sentence a few seconds later.

As in *State v. Fetner*, courts are liable to “connect the dots” and draw unsavory conclusions without basis. Fetner’s sentencing judge casted aspersions that he ran a daycare while under the influence of controlled substances by combining two facts: a statement from defense counsel that the defendant ran a daycare and the fact that the defendant used marijuana. *Id.* As noted by the Supreme Court, nothing in the record “connected the dots between his marijuana use and employment...” *Id.* Like *Fetner*, the judge’s lengthy diatribe on Miller’s supposed and unproven acts paints a compelling picture of what the judge was considering before he sentenced Miller.

The appellate court will set “aside a sentence and remand [the] case to the district court for resentencing if the sentencing court relied upon charges of an unprosecuted offense that was neither admitted to by the defendant nor otherwise proved.” *State v. Sailer*, 587 N.W.2d 756, 762 (Iowa 1998) (quoting Black, 324 N.W.2d at 315) (internal quotation marks omitted). Because the record affirmatively establishes the sentencing court considered an unproven conduct Guise's sentence should be vacated and his case remanded for resentencing in front of a different judge. See *Lovell*, 857 N.W.2d at 242-43.

III. WHETHER THE COURT ABUSED ITS DISCRETION WHEN SENTENCING MILLER

Law:

“A discretionary sentencing ruling, similarly, may be [an abuse of discretion] if a sentencing court fails to consider a relevant factor that should have received significant weight, gives significant weight to an improper or irrelevant factor, or considers only appropriate factors but nevertheless commits a clear error of judgment by arriving at a sentence that lies outside the limited range of choice dictated by the facts of the case. *Id.* at 138 (alteration in original) (quoting *People v. Hyatt*, 316 Mich.App. 368, 891 N.W.2d 549, 578 (2016), *judgment affirmed in part and reversed in part by People v. Skinner*, 502 Mich. 89, 917 N.W.2d 292, 295 (2018)). “Sentencing decisions of the district court are cloaked with a strong presumption in their favor.” *State v. Crooks*, 911 N.W.2d 153, 171 (Iowa 2018); *see also State v. Formaro*, 638 N.W.2d 720, 724 (Iowa 2002).” *State v. Majors*, 940 N.W.2d 372, 385–86 (Iowa 2020).

“We reiterate that our role on review is for abuse of discretion. An abuse of discretion may exist if the sentencing court fails to consider a factor, gives significant weight to an improper factor, or arrives at a

conclusion that is against the facts. *Id.* at 138. But if the court follows our outlined sentencing procedure by conducting an individualized hearing, applies the *Miller/Lyle/Roby* factors, and imposes a sentence authorized by statute and supported by the evidence, then we affirm the sentence. *Goodwin v. Iowa Dist. Ct.*, 936 N.W.2d 634, 637 (Iowa 2019); *see also Seats*, 865 N.W.2d at 552–53 (explaining our review for abuse of discretion and emphasizing the discretionary nature of judges). As we stated in *Formaro*, 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.” *Id.*

““In applying the abuse of discretion standard to sentencing decisions, it is important to consider the societal goals of sentencing criminal offenders, which focus on rehabilitation of the offender and the protection of

the community from further offenses.” *State v. Formaro*, 638 N.W.2d 720, 724 (Iowa 2002). Sentencing courts in Iowa generally have broad discretion to rely on information presented to them at sentencing. *See State v. Pappas*, 337 N.W.2d 490, 494 (Iowa 1983) (“[W]hatever Iowa statutes leave to the courts in matters of sentencing should be the responsibility of the sentencing judge.”); *State v. Gartin*, 271 N.W.2d 902, 910 (Iowa 1978) (“[T]he decisions of the trial court are cloaked with ‘a strong presumption in [their] favor,’ and ‘[u]ntil the contrary appears, the presumption is that the discretion of the [trial] court was rightfully exercised.’ ” (Alterations in original.) (quoting Kermit L. Dunahoo, *The Scope of Judicial Discretion in the Iowa Criminal Trial Process*, 58 Iowa L. Rev. 1023, 1024 (1973))); *State v. Delano*, 161 N.W.2d 66, 71 (Iowa 1968) (holding the sentencing court may rely on any information to which the defendant did not object). A court “should weigh and consider all pertinent matters in determining proper sentence, including the nature of the offense, the attending circumstances, defendant’s age, character and propensities[,] and chances of his reform.” *State v. Cupples*, 260 Iowa 1192, 1197, 152 N.W.2d 277, 280 (1967).” *State v. Headley*, 926 N.W.2d 545, 550 (Iowa 2019).

Analysis:

There is nothing beyond brief comments that indicate that the court gave adequate consideration to Miller's personal situation and what would be the most beneficial to his rehabilitation. The court, instead, focused on the "irreparable harm" Goebel experienced. (Sent. Trans. Pg 108; L1 12-13; App. 41). The District Court went on to focus on how Leeck had been affected too, despite Leeck not being a victim in this case.

The Court did make some boilerplate acknowledgments in finding that Miller was remorseful in his allocution. (Sent. Trans. Pg 108; L1 1-2; App. 41). But, when moving past the generalized nods to common considerations, the Court's understanding of the facts begins to fail. For instance, the defense had previously submitted in writing Miller's stable employment at the time, and yet the court clearly was unaware of this as the judge stated that he thinks he would be "employable if he is not currently." (Sent. Trans. Pg. 108; ln. 23; App. 41).

Furthermore, the judge cites how the charge of Operating While Intoxicated is the most common offense in Iowa. This offense also commonly accompanies mental health issues, which Miller had also illustrated to the court. However, this recognition was quickly disregarded by the judge as he capitulates back to the Harassment charge. Nothing

further is said on the matter until the actual sentence is pronounced. It is incongruous that the judge would recognize the common nature of the offense, but then proceed to order an extremely uncommon sentence for that very same charge.

For both offenses, there were other, less invasive options for the court. The defense established the ways that his troubled family history, recent mental health struggles, and suicidal behavior contributed to these offenses. There were halfway houses, work release programs, and intensive probation, that would have provided Defendant a way to address these concerns while maintaining oversight and accountability. Further, it would have provided resources for a young person to utilize to ensure long-term success as opposed to long-term incarceration.

CONCLUSION

For the above-mentioned reasons, Appellant Kadin Miller respectfully requests that the Iowa Supreme Court grant Further Review in this matter.

Respectfully Submitted,



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PROOF OF SERVICE AND CERTIFICATE OF FILING

I certify that on the 2nd day of August, 2023, I served a copy of this document by mailing a copy to all parties at their respective addresses below by mail or via EDMS:

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I further certify that on the 2nd of August, 2023, I filed this brief by electronically filing to the Clerk of the Supreme Court of Iowa, 1111 E. Court Avenue, Room 125, Des Moines, Iowa 50319.

CERTIFICATE OF COST

I certify that the cost of printing this brief was \$0.00

/s/ Lucas M. Taylor

CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of Iowa R. App. P. 6.903(1)(g)(1) because the brief contains 5,032 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).

This brief complies with the typeface requirements of Iowa R. App. P. 6.903(1)(e) and the type-style requirements of Iowa R. App. P. 6.903(1)(f) because this brief has been prepared in a proportionately spaced typeface using Microsoft Word in Times New Roman 14 pt. font.

/s/ Lucas M. Taylor
Lucas M. Taylor

08/02/22
Date