IN THE SUPREME COURT OF IOWA

STATE OF IOWA Plaintiff-Appellee, v. AMY RASMUSSEN, Defendant-Appellant	Supreme Court No. 22-1144

APPEAL FROM THE IOWA DISTRICT COURT
FOR BOONE COUNTY
HONORABLE STEPHEN OWEN, JUDGE

APPELLANT'S BRIEF AND ARGUMENT

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CERTIFICATE OF SERVICE

On the 23rd day of March, 2023 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 Amy L. Rasmussen, 215 Green Street, Boone, IA 50036.

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Statutes and Court Rules:

STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

JURISDICTIONAL STATEMENT (GOOD CAUSE)

Authorities:

Iowa Code § 814.6(1)(a)(3)

State v. Wilbourn, 974 N.W2d 58, 66 (Iowa 2022)

State v. Jordan, 959 N.W.2d 395, 399 (Iowa 2021)

State v. Damme, 944 N.W.2d 98, 105 (Iowa 2020)

State v. Davis, 971 N.W.2d 546, 554 (Iowa 2022)

I. Did the sentencing court err by considering improper factors when sentencing the defendant, including an improperly admitted victim impact statement and otherwise abuse its discretion by imposing the maximum sentence?

Authorities:

State v. Thomas, 520 N.W.2d 311, 313 (Iowa Ct. App. 1994)

State v. Woody, 613 N.W.2d 215, 217 (Iowa 2000)

State v. Lathrop, 781 N.W.2d 288, 293 (Iowa 2010)

State v. Cooley, 587 N.W.2d 752, 754 (Iowa 1998)

Iowa R. App. P. 6.907 (2016)

State v. Formaro, 638 N.W.2d 720, 724 (Iowa 2002)

State v. Wright, 340 N.W.2d 590, 592 (Iowa 1983)

State v. Evans, 672 N.W.2d 328, 331 (Iowa 2003)

Iowa Code § 901.5 (2011)

State v. Robbins, 257 N.W.2d 63, 70 (Iowa 1977)

State v. Boltz, 542 N.W.2d 9, 10 (Iowa Ct. App. 1995)

State v. Dvorsky, 322 N.W.2d 62, 66 (Iowa 1982)

State v. Hildebrand, 280 N.W.2d 393, 396 (Iowa 1979)

State v. Witham, 583 N.W.2d 677, 678 (Iowa 1998)

Iowa Code § 901.3(7) (2011)

State v. Johnson, 513 N.W.2d 717, 719 (Iowa 1994)

Iowa Code § 915.10(4) (2021)

Iowa Code § 915.10(3) (2021)

State v. Tesch, 704 N.W.2d 440, 452 (Iowa 2005)

State v. Matheson, 684 N.W.2d 243, 244 (Iowa 2004)

State v. Formaro, 638 N.W.2d 720, 725 (Iowa 2002)

State v. Grandberry, 619 N.W.2d 399, 401 (Iowa 2000)

State v. Witham, 583 N.W.2d 677, 678 (Iowa 1998)

Iowa Code § 901.3(7) (2011)

State v. Johnson, 513 N.W.2d 717, 719 (Iowa 1994)

II. Did the district court err by imposing a no contact order on a dismissed charge?

Authorities:

State v. Lathrop, 781 N.W.2d 288, 292-93 (Iowa 2010)

State v. Sisk, 577 N.W.2d 414, 416 (Iowa 1998)

Iowa R. Crim. P. 2.24(5)(a) (2014)

Tindell v. State, 629 N.W.2d 357, 359 (Iowa 2001)

State v. Abbasi, 14-1576, 2015 WL 4935705, *2 (Iowa Ct. App. 8/19/2015)

State v. Sanchez, 13-1989, 2105 WL 4935530, *5 (Iowa Ct. App. 8/19/2015)

State v. Formaro, 638 N.W.2d 720, 727 (Iowa 2002)

State v. Alspach, 554 N.W.2d 882, 884 (Iowa 1996)

State v. Weiderien, 709 N.W.2d 538, 540, 542 (Iowa 2006)

Iowa Code § 664A.5 (2021)

State v. Weiderien, 709 N.W.2d 538, 540, 542 (Iowa 2006)

ROUTING STATEMENT

This case should be transferred to the Court of Appeals because the issues raised involve applying existing legal principles. Iowa R. App. P. 6.903(2)(d) and 6.1101(3)(a).

STATEMENT OF THE CASE

Nature of the Case: This is an appeal following an Alford plea to two counts of assault causing bodily injury in Boone County case number SRCR114871.

Course of Proceedings and Facts[1]: On January 12, 2022, the State charged the defendant, Amy Rasmussen, with two counts of assault causing bodily injury in violation of Iowa Code sections 708.1(2) and 708.2(2) (2021), both serious misdemeanors. (Trial Information) (App. pp. 4-6). According to the Minutes of Testimony, on November 29, 2021, the defendant engaged in an altercation with three other people outside of the Boone City Hall. Two of the victims, April Burch and Laura Hutchcroft, reported they suffered some

[1] Because the issues raised in this appeal involve the sentencing, the underlying facts will not be set out in great detail.

injuries during the incident. (Minutes of Testimony) (Conf. App. pp. 4-41). This report was the basis for the charges of assault causing injury. (Trial Information) (App. pp. 4-6). A third alleged victim, Holly Stecker, reported being elbowed by the defendant. As a result of this report, the defendant was charged with simple assault. (Minutes of Testimony, Criminal Complaint re Holly Stecker) (Conf. App. pp. 13-14). The defendant also was charged with harassment in the third degree and disorderly conduct. (Minutes of Testimony, Arrest Report Boone Police Department) (Conf. App. pp. 6-8). The defendant entered an Alford plea on June 7, 2022, to both charges in exchange for the State dismissing these companion charges. (Sentencing Hrg. tr. p. 4, L. 1-11; p. 35, L. 8-11; Petition to Enter Alford Plea) (App. pp. 7-9). The agreement also provided that both parties would be free to argue for an appropriate sentence. (Petition to Enter Alford Plea) (App. pp. 7-9).

During the sentencing hearing, the court heard victim impact statements from all three alleged victims. (Sentencing

Hrg. tr. p. 11, L. 17 – p. 27, L. 16) They all also filed written victim impact statements in this case. (Victim Impact Statements, 7/6/2022) (Conf. App. pp. 42-191). The State recommended that the court suspend all but 7 days of the jail sentences, run the sentences concurrently and place her on probation for 2 years with no contact orders for the victims for 5 years. (Sentencing Hrg. tr. p. 7, L. 23 – p. 8, L. 5). The defense requested a deferred judgment since the defendant had no criminal history. In the alternative, if the court found a deferred judgment was not appropriate, she requested suspended concurrent sentences with probation. (Sentencing Hrg. tr. p. 8, L. 20-25). Further, the defense requested the no contact orders be entered for one year instead of five years. (Sentencing Hrg. tr. p. 10, L. 11-22). The court sentenced the defendant to one year on each count to run consecutively. The court did not suspend any of the sentence. (Sentencing Hrg. tr. p. 32, L. 15 – p. 33, L. 18; Judgment and Sentencing Order). At the end of the hearing, the court dismissed the companion simple misdemeanor case that involved Holly

Stecker, but continued the no contact order in that case. (Sentencing Hrg. tr. p. 35, L. 8-17). The defendant filed a notice of appeal on July 7, 2022. (Notice of Appeal) (App. pp. 17-18). Further relevant facts will be discussed below.

JURISDICTIONAL STATEMENT (GOOD CAUSE)

Iowa Code section 814.6 requires a guilty plea defendant to establish good cause to proceed with an appeal as a matter of right. Iowa Code § 814.6(1)(a)(3). Good cause confers jurisdiction over the appeal. State v. Wilbourn, 974 N.W2d 58, 66 (Iowa 2022); State v. Jordan, 959 N.W.2d 395, 399 (Iowa 2021). "[A] legally sufficient reason is a reason that would allow a court to provide some relief." Id. Good cause exists to appeal from a conviction following a guilty plea when the defendant is challenging her sentence rather than the plea itself. State v. Damme, 944 N.W.2d 98, 105 (Iowa 2020); State v. Davis, 971 N.W.2d 546, 554 (Iowa 2022). In this case, the defendant challenges various aspects to her sentencing and not her guilty plea and therefore she has good cause to appeal.

ARGUMENT

I. The sentencing court erred by considering improper factors when sentencing the defendant, including an improperly admitted victim impact statement and otherwise abused its discretion by imposing the maximum sentence.

A. Preservation of Error: Error was preserved in this case regarding the victim impact statements because the defendant objected to the victim impact statement during the sentencing hearing and was overruled. (Sentencing Hrg. tr. p. 16, L. 10-24). Additionally, 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).

B. Standard of Review: Review of a sentence imposed in a criminal case is for correction of errors at law. Iowa R. App. P. 6.907 (2016); State v. Formaro, 638 N.W.2d 720, 724 (Iowa 2002). A sentence imposed in accordance with applicable statutes will be overturned only for an abuse of discretion or a defect in the sentencing procedure. State v. Wright, 340 N.W.2d 590, 592 (Iowa 1983). An abuse of discretion is found when the court exercises its discretion on grounds clearly untenable or to an extent clearly unreasonable. State v. Evans, 672 N.W.2d 328, 331 (Iowa 2003).

C. Discussion: A court should fashion a criminal sentence that gives the defendant the maximum opportunity for rehabilitation as well as protect the community. Iowa Code § 901.5 (2011); State v. Robbins, 257 N.W.2d 63, 70 (Iowa 1977). The trial court "has discretion within the applicable statutory framework to determine the sentence

which will best meet these goals." State v. Boltz, 542 N.W.2d 9, 10 (Iowa Ct. App. 1995). The trial court is obligated to use its discretion at sentencing and must, at a minimum, take into consideration the nature of the offense, the attendant circumstances, the defendant's age, character, propensities, and chances of reform. State v. Dvorsky, 322 N.W.2d 62, 66 (Iowa 1982); State v. Hildebrand, 280 N.W.2d 393, 396 (Iowa 1979). "A sentencing court is to consider any mitigating circumstances relating to a defendant." State v. Witham, 583 N.W.2d 677, 678 (Iowa 1998) (citing Iowa Code § 901.3(7) (2011)). "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).

A victim impact statement is "a written or oral presentation to the court by the victim or the victim's representative that indicates the physical, emotional, financial, or other effects of the offense upon the victim." Iowa Code § 915.10(4) (2021). A victim for this purpose is "a person who has suffered physical, emotional, or financial harm as the

result of a pubic offense or delinquent act, other than a simple misdemeanor, committed in this state." Iowa Code § 915.10(3) (2021). In this case, Holly Stecker was allowed to give a victim impact statement both in writing and in person. Stecker was the alleged victim in the "companion" case that included a charge simple misdemeanor assault. (Minutes of Testimony) (Conf. App. pp. 4-41). Stecker does not meet the statutory definition to be allowed to submit a victim impact statement in this case, as this case involved two indictable serious misdemeanor assault charges with the named victims as April Burch and Laura Hutchcroft. There is no allegation or proof in this case that Stecker suffered any physical, emotional, or financial harm. She is listed in the trial information as witness, not a victim. (Trial Information) (App. pp. 4-6). Further, although she was alleged to be a victim in the simple assault case, that case was dismissed. Further, that was a simple misdemeanor, and, therefore, Stecker was not, according to the statutory definition, a "victim" in that

case either.[2] According to her own statement, the harm she allegedly suffered was the result of the harm inflicted on the actual victims, and this Court has previously held that a person in such a situation is not considered a victim under the statute. State v. Tesch, 704 N.W.2d 440, 452 (Iowa 2005) (concluding wife not a victim because her harm "flowed from the injuries suffered by her husband as a result of the offense and not directly from the criminal acts). The court erred by allowing and considering the statement by Stecker.

The error in this case is not harmless. There is no indication that the sentencing court did not consider this victim impact statement when deciding on a sentence. To the contrary, the court admitted the statement over the objections of defense counsel. Further it appears as though the court put a lot of weight on this statement as well as the other victim impact statements since the court imposed the sentence these

[2] The court stated during the sentencing hearing that it would consider Stecker's victim impact statement as it related to the simple misdemeanor, which is not allowed by statute and that charge was dismissed. (Sentencing Hrg. Tr. p. 16, L. 12-24).

women asked for, which was a far greater sentence than those recommended to the court by the parties. See State v. Matheson, 684 N.W.2d 243, 244 (Iowa 2004) (holding that victim impact statements entered in error was not harmless where the court never stated it did not rely on the statements and allowed the improper statement into evidence, and the statements were specifically offered to impact sentencing selection). The sentence should be vacated for this reason alone.

Further, even if Stecker were a victim, the statement itself does not demonstrate any physical, emotional, financial, or other effects of the offense upon the victim as required by statue. The statement mostly focuses on the effects of the act on another person and gossip at a café and online. (Stecker Victim Impact Statement) (Conf. App. p. 191). This statement was improper and should not have been considered.

The other victim impact statements accuse the defendant of continually harassing them before and after the assault. (Victim Impact Statements of April Burch and Laura

Hutchcroft) (Conf. App. pp. 42-190). Burch also accused the defendant as having a history of domestic violence. (Victim Impact Statement of April Burch) (Conf. App. pp. 42-45).

The judge seemed to rely, at least in part, on these allegations by basing the sentence in part on the fact that the defendant continually makes "statements in the community, . . . taking pride in that consequence." (Sentencing Hrg tr. p. 33, L. 1-4). The court again referred to the defendant's "apparent pride in the offense and her lack of remorse." (Sentencing Hrg. tr. p. 33, L. 20-21). The allegations of harassment were not pled or proven. They were conveyed by the victims and then improperly relied upon by the court when sentencing the defendant to the maximum, as requested by the victims, instead of the more reasonable jail and/or probation that was requested by the parties.

"It is a well-established rule that a sentencing court may not rely upon additional, unproven, and unprosecuted charges unless the defendant admits to the charges or there are facts presented to show the defendant committed the offenses."

State v. Formaro, 638 N.W.2d 720, 725 (Iowa 2002). If the court uses any improper consideration, resentencing of the defendant is required, even if it the improper consideration was merely a secondary consideration. State v. Grandberry, 619 N.W.2d 399, 401 (Iowa 2000). The court considered unproven crimes and relied on such in its reasoning for imposing the maximum sentence.

Further, the court focused singularly on the effect of the crimes on the victims without regard to the other factors that the court is supposed to consider. The State conceded that the maximum sentence was too harsh and settled on a recommendation of 7 days in jail and probation. The court gave lip service to the fact that the defendant was 55 years old and without a criminal history, but based the severe sentence on statements made by the victims that this was an "unprovoked attack" by a person who continued to make offensive statements in the community. It appears there was no consideration of the many letters written in support of the defendant, the fact that this was a first offense, or any other

mitigating factor. (Defendant's Sentencing Hrg Ex. A-I) (Ex. App. pp. 3-11). The court abused it discretion by failing to consider mitigating factors and focusing on a single factor of the effect on the victims for the sentence. State v. Witham, 583 N.W.2d 677, 678 (Iowa 1998) (citing Iowa Code § 901.3(7) (2011)); State v. Johnson, 513 N.W.2d 717, 719 (Iowa 1994).

II. The district court erred by imposing a no contact order on a dismissed charge.

A. Preservation of Error: Void, illegal, or procedurally defective sentences may be corrected on appeal even absent an objection before the trial court. State v. Lathrop, 781 N.W.2d 288, 292-93 (Iowa 2010).

B. Standard of Review: Challenges to the legality of a sentence are reviewed for errors at law. State v. Sisk, 577 N.W.2d 414, 416 (Iowa 1998).

C. Discussion: To be illegal under Iowa Rule of Criminal Procedure 2.24(5)(a), a sentence must be one that is not authorized by statute. Iowa R. Crim. P. 2.24(5)(a) (2014); Tindell v. State, 629 N.W.2d 357, 359 (Iowa 2001). In this case, the court ordered that the no contact concerning Holly

Stecker would be imposed in the dismissed simple misdemeanor wherein Stecker was the alleged victim. (Sentencing Hrg. tr. p. 34, L. 22 – p. 35, L. 15; Judgment and Sentence Order) (App. pp. 12-16). Because the court issued an order concerning the dismissed case, this Court has may consider the propriety of that order. See, e.g., State v. Abbasi, 14-1576, 2015 WL 4935705, *2 (Iowa Ct. App. 8/19/2015) (holding that costs in a dismissed simple misdemeanor case that were assessed in indictable case could be reviewed by the appellate court since the court ordered it in the sentencing of the indictable case). When a no contact order is included as part of the sentence, it may be challenged as an illegal sentence. See, e.g., State v. Sanchez, 13-1989, 2105 WL 4935530, *5 (Iowa Ct. App. 8/19/2015) (citing State v. Formaro, 638 N.W.2d 720, 727 (Iowa 2002); State v. Alspach, 554 N.W.2d 882, 884 (Iowa 1996)).

This Court has previously held that a court could not extend a no contact order in a case where the defendant was acquitted of the crime. State v. Weiderien, 709 N.W.2d 538,

540, 542 (Iowa 2006). The court found that, because the statute in question authorized a no contact order when the defendant "was convicted for, receives a deferred judgment for or pleads guilty to" the crime, such stature did not include an acquittal, and therefore the court did not have the jurisdiction to extend the no contact order. Id. A court may issue a no contact order when a person is "convicted of, receives a deferred judgment for, or pleads guilty to a public offense." Iowa Code § 664A.5 (2021). In this case, the court entered a no contact order in a dismissed case with regard to Holly Stecker. The defendant cannot waive subject matter jurisdiction, so, even though the defendant agreed to the no contact order, the court did not have the power to enter the order on a dismissed case where there was no adjudication and no victim. State v. Weiderien, 709 N.W.2d 538, 540, 542 (Iowa 2006). The statute makes clear that the court cannot enter a no contact order on a dismissed case, and the no contact order with regard to Holly Stecker should be dismissed.

CONCLUSION

For these reasons, the Appellant requests the Court vacate the sentence, remand for resentencing and vacate the no contact order with regard to Holly Stecker.

NONORAL SUBMISSION

Counsel requests not to be heard in oral argument.

ATTORNEY'S COST CERTIFICATE

The undersigned, hereby certifies that the true cost of producing the necessary copies of the foregoing Brief and Argument was $3.02, 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

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) because:

> [X] this brief has been prepared in a proportionally spaced typeface Bookman Old Style, font 14 point and contains 2,745 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).

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