IN THE SUPREME COURT OF IOWA
Supreme Court No. 22-1144

STATE OF IOWA,
Plaintiff-Appellee,

vs.

AMY RASMUSSEN,
Defendant-Appellant.

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

APPELLEE'S BRIEF

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ROUTING STATEMENT

This case can be decided based on existing legal principles. Transfer to the Court of Appeals would be appropriate. Iowa R. App. P. 6.1101(3).

STATEMENT OF THE CASE

Nature of the Case

Amy Rasmussen appeals her sentence following her *Alford* plea[1] to two counts of assault causing bodily injury or mental illness. The issues on appeal are whether the sentencing court abused its discretion when sentencing the defendant and whether the sentencing court erred by extending a no-contact order in a companion case as part of the defendant's plea agreement.

Course of Proceedings

After the defendant assaulted three women, the State charged her with two counts of assault causing bodily injury or mental illness, a serious misdemeanor in violation of Iowa Code Section 708.2(2), and one count of simple assault, a simple misdemeanor in violation of

[1] Under *North Carolina v. Alford*, a defendant may plead guilty by admitting the evidence would be sufficient to establish guilt and consenting to the imposition of judgment and sentence, while simultaneously refusing to admit having committed the crime. *See* 400 U.S. 25, 32–39 (1970).

Iowa Code §708.2(6). Trial Information (1/12/2022); App. 4–6; Min. of Testimony (1/12/2022) at 3–11; Conf. App. 6–14. The defendant was also charged with harassment in the third degree, a simple misdemeanor in violation of Iowa Code section 708.7(4) and disorderly conduct, a simple misdemeanor in violation of Iowa Code section 723.4(1). Min. of Testimony (1/12/2022) at 3, 12–15; Conf. App. 6, 15-18. The simple misdemeanors were filed under a separate case number. *See* Sent. Order (7/6/2022) at 4; App. 15.

The parties entered into a plea agreement whereby the State would dismiss the simple misdemeanors in exchange for the defendant's plea to the two serious misdemeanor counts (Count I and Count II of the Trial Information). Petition to Enter *Alford* Plea (06/07/2022); App. 7–9. The plea also provided that the parties could ask for any disposition at sentencing. *Id.* at 3; App. 9. The district court accepted the defendant's *Alford* Plea. Order Accepting *Alford* Plea (06/17/2022); App. 10–11.

The district court held a sentencing hearing. Sent. Order (07/06/2022) at 1; App. 12. During the sentencing hearing the district court heard victim impact statements from all three victims. Sent Tr. 11:17–26:18. Each of the victims also filed written victim impact

statements. Burch Victim Impact Statement (07/06/2022); Conf. App. 42–45; Hutchcroft Victim Impact Statement (7/6/2022) at 1–2; Conf. App. 46–47; Stecker Victim Impact Statement (7/6/2022); Conf. App. 191.

The district court sentenced the defendant to a two-year term of incarceration on the two serious misdemeanor counts. Sent. Order (07/06/2022) at 2–3; App. 13–14. The court extended no-contact orders in favor of Burch and Hutchcroft for five years by separate order of the court. *Id.* at 3; App. 14. In keeping with the plea agreement between the parties, the court also dismissed the companion charges in SMCR114872[2] with costs assessed to the defendant and stated that a permanent no-contact order would be entered by separate order in the companion case. *Id.* at 4; App. 15.

The defendant filed a notice of appeal on July 7, 2022. Not. of Appeal (07/07/2022); App. 17–18.

Facts

On November 29, 2021, the defendant attacked April Burch, Laura Hutchcroft, and Holly Stecker on the steps of Boone City Hall.

[2] The sentencing order incorrectly references the companion case as "SMCR114877."

Min. of Testimony (1/12/2022) at 1–5; Conf. App. 4–8; Sent. Tr. 20:4–6. The three women were standing and talking outside city hall after a city council public forum when the defendant approached them. Min. of Testimony (1/12/2022) at 5; Conf. App. 8. The altercation began when the defendant attempted to speak with Burch. *Id.* Burch began backing away, but the defendant refused to back down, and instead pushed Hutchcroft out of the way and over a nearby retaining wall, injuring her. *Id.* When Burch tripped as she was backing away, the defendant got on top of her, began hitting and kicking her, and slammed her head on the ground. *Id.* At this point, Hutchcroft was able to run back inside City Hall and yell for help. *Id.* However, when a man came and attempted to pull the defendant off Burch, the defendant again refused to back down, elbowed Stecker in the head to get her out of the way, and then kicked Burch in the head one final time. *Id.*

After the attack, the defendant admitted to police that she "just kicked [Burch's] ass." *Id.* at 4–5; Conf. App. 7–8. The defendant explained that she was mad because Burch had, in her words, previously "attacked" her husband and her son on Facebook during a local election. *Id.* The defendant admitted that before she attacked

Burch she asked to speak with her privately, and when Burch declined, she told Burch that "the next time she attacks her son or husband that she is going to be 'hog chow.'" *Id.* at 4; Conf. App. 7.

ARGUMENT

I. The district court did not abuse its discretion when sentencing the defendant.

Jurisdiction

The State does not contest this court's jurisdiction to hear the defendant's sentencing challenge. It is true that Iowa Code section 814.6 specifically excludes the right to an appeal when the defendant has pled guilty except in a case "where the defendant establishes good cause." Iowa Code § 814.6(1)(a)(3). However, in *State v. Damme*, our Supreme Court held, "that good cause exists to appeal from a conviction following a guilty plea when the defendant challenges his or her sentence rather than the guilty plea." *State v. Damme,* 944 N.W.2d 98, 105 (Iowa 2020). This general proposition is equally applicable to *Alford* pleas. *See State v. Henderson*, No. 19-1425, 2020 WL 2781463, at *2 (Iowa May 29, 2020). Because the defendant is challenging the sentence imposed, and not the guilty plea, this constitutes "good cause" under *Damme*.

Preservation of Error

The defendant objected to the victim impact statement during the sentencing hearing and was overruled. Sent. Tr. 16:10–24. Nonetheless, sentencing errors "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). Therefore, the State does not challenge error preservation.

Standard of Review

The Court reviews a sentence imposed in a criminal case for correction of errors at law. *Damme*, 944 N.W.2d at 103. A sentence will not be upset on appellate review unless there is "an abuse of discretion or some defect in the sentencing procedure." *State v. Formaro*, 638 N.W.2d 720, 724 (Iowa 2002). When a sentencing court imposes a sentence that falls within the statutory limits, its decision "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.* The appellate court will not find an abuse of discretion unless the defendant shows that "the sentencing court exercise[d] its discretion on grounds or for reasons clearly untenable

or to an extent clearly unreasonable." *State v. Thomas*, 547 N.W.2d 223, 225 (Iowa 1996).

Discussion

The sentencing court did not abuse its discretion when sentencing the defendant to two years' imprisonment. The court properly considered a variety of factors before imposing the sentence, including the nature of the offense and attending circumstances, as well as the defendant's age, her lack of a prior record of convictions or deferred judgments, her family circumstances, the letters written in support of the defendant, and societal goals of sentencing the defendant. The court did not consider any improper factors.

A sentencing court must consider the societal goals of sentencing the criminal offender, "which focus on rehabilitation of the offender and the protection of the community from further offenses." *Formaro*, 638 N.W.2d at 724. *See also* Iowa Code § 901.5. Equally important to consider is "the nature of the offense, the attending circumstances, the age, character and the propensity of the offender and the chances of reform." *Formaro*, 638 N.W.2d at 725.

Here, the district court heard competing sentencing recommendations from each of the parties. Sent. Tr. 6:10–10:22.

Defense counsel requested a deferred sentence and judgment, or, alternatively, a sentence with no jail time, arguing that the incident was "not strictly involving political disagreements" and was instead a situation where the "defendant and one of the victims had issues for some time, family issues." Sent. Tr. 10:20–22, 9:20–22.

The State, however, recommended a one-year jail sentence for each serious misdemeanor to be served concurrently, with all but seven days of each sentence suspended. Sent. Tr. 7:24–8:2. The State also recommended that the defendant be placed on probation for two years. Sent. Tr. 8:2–3. In support of the State's sentencing recommendation, the prosecutor noted:

> I think . . . the most important part of this case . . . is where these assaults occurred and why they occurred. Political action is one of the pillars of our democracy. Likely the most important, what everything else is built upon. Political action requires that people be able to be heard and disagree with each other all in a civil way[] . . . . This all occurred on the footsteps of the city hall here in Boone, and it occurred following a political event, and that's what's troubling is that what should be an exercise of a fundamental right by the victims here was cause for them to be assaulted. So, when the Court considers Ms. Rasmussen's clean history and good conduct on one hand versus the harm that she's caused, both to the actual victims in this case, [and to] the idea of

> safe political action in the community of Boone, I think should be balanced.

Sent. Tr. 6:23–7:17.

After hearing the parties' recommendations and offering the defendant her right of allocution, the sentencing court heard victim impact statements from all three women she assaulted. First, the court heard from Laura Hutchcroft, the victim of Count II of the Trial Information. Trial Information (01/12/2022) at 1; App. 4. Hutchcroft recounted the violent attack on her and her friend, the injuries she suffered due to the attack, and the defendant's behavior during and after the attack. Sent. Tr. p. 12:7–15:17. Hutchcroft told the court, "It was not a momentary loss of self-control. I heard her threaten my friend's life. I saw her sitting on top of my friend, punching furiously. . . . What I will never forget seeing is the defendant kicking my friend in the head after she was pulled away . . . ." Sent. Tr. 15: 7–12. Hutchcroft also informed the court of a public Facebook post the defendant made calling her a gimp, "because I guess she thinks it's funny that I walked with a cane after she attacked me." Sent. Tr. 14:22–15:1.

Next, the court heard from Holly Stecker, the victim of the simple misdemeanor charge that resulted from this attack. Defense

counsel objected and the court explicitly stated, "I'll consider it only as it concerns the case regarding Ms. Stecker." Sent. Tr. 16:18–19.

Last, the court heard from April Burch, the victim of Count I of the Trial Information. Trial Information (01/12/2022) at 1; App. 4. Burch recounted what she experienced:

> I remember Amy grabbing ahold of my hair, saying that she would turn me into hog chow, pulling my head down and hitting me in the head repeatedly as hard and fast as she could. I screamed at the top of my lungs for her to stop. I thought she was going to kill me.

Sent. Tr. 21:14–18.

After hearing Burch's victim impact statement, the court imposed two, consecutive, one-year jail sentences, which merged into a single two-year sentence of imprisonment. Sent. Tr. 32:20–22. *See* Iowa Code § 901.7; § 901.8.

The court began its oral pronouncement at sentencing by noting that the Iowa legislature at section 907.5 of the Iowa Code has "thankfully set out some of the considerations the court may consider in announcing its judgment and sentence and pronouncing a sentence." Sent Tr. 29:14–17. The court then went on to list and explicitly consider these factors:

> Ms. Rasmussen is 55 years of age, married. She has . . . one child, 16-year-old son. She has no prior criminal history. She's submitted a number of exhibits from those who have known her here in the community, in particular her work in the community. The Court has considered all of the matters before it.

Sent. Tr. 29:17–30:3. The court then made another explicit reference to the defendant's lack of criminal history, finding that her "maturity has led her to a relatively law-abiding life, up until this point." Sent. Tr. 30:6–7. The court noted it must also consider the defendant's propensity to commit other law violations in the future, her willingness, and her ability to accept rehabilitation and not reoffend, and stated it would "consider[ ] each of the sentencing considerations equally." Sent. Tr. 31:8–11.

Next, the court considered the nature of the offense. The court stated that the incident "had profound consequences" for all involved, including the defendant, her family, and the victims of the offenses. Sent. Tr. 30:9–11. The court found that the defendant engaged in a violent and unprovoked attack on the victims of Count I and Count II of the Trial Information, Laura Hutchcroft and April Burch. Sent. Tr. 31:15–16. And, as the court saw it, the defendant was "quite proud of the attack at the time." Sent. Tr. 31:22–23. The court cited the fact

that the defendant admitted to police that she "kicked her ass" and the fact that the defendant continued the attack even after being pulled off one of the victims. Sent. Tr. 31:23–25.

Finally, the court focused on the societal goals of sentencing the defendant:

> I think a person who is 55 years of age, engaged in community activities, who commits this sort of act presents to the Court with internal needs for rehabilitation. I think we often forget that incarceration and jail and imprisonment can be part of that rehabilitation. There's reason to believe I think that Ms. Rasmussen is really unrepentant. I don't think she's thought about this in a way that would lead me to conclude that she no longer poses a danger to the community. I think her demeanor in Court also is reflective of that.

Sent Tr. 32:6–14.

The court's sentence of one year imprisonment on each count was within the range of permissible sentences for a serious misdemeanor conviction. Iowa Code § 903.1(1)(b) (2021) (establishing that a serious misdemeanor conviction carries a mandatory fine between $430 and $2,560 and may also result in "imprisonment not to exceed one year"). The court noted prior to sentencing the defendant that:

> The recommendations by the parties are within the range of discretion that the Court has in imposing a sentence today. There are many factors that cut in favor of each, and each of the recommendations today is reasonable, but the Court is not bound by either of the recommendations.

Sent. Tr. 30:21–25.

The defendant contends that the district court abused its discretion both because it considered Holly Stecker's victim impact statement when determining defendant's sentence on the two serious misdemeanor counts and because it focused solely on the effect of the crime on the victims without considering mitigating factors. She is incorrect on both fronts.

A. The district court did not consider Holly Stecker's victim impact statement when determining the defendant's sentence.

The record does not support the defendant's first claim. Rather, the record reveals that the district court explicitly stated it *would not* consider Stecker's victim impact statement when sentencing the defendant for the two serious misdemeanors. Sent. Tr. 16:18–19. When the court allowed Stecker to present her statement, it stated, "I'll consider it only as it concerns the case regarding Ms. Stecker. I do

understand that there's going to be some ongoing matter in terms of a No Contact Order." Sent. Tr. 16:18–20.

Then, later in the sentencing hearing, before the court announced the defendant's sentence, it again emphasized that it considered "only those matters for which Ms. Rasmussen has entered her *Alford* pleas, that being Count I and II of the Trial Information, each of which charge assault causing bodily injury or mental illness, violations of 701.1(2) and, each of the two counts charges the same offense and the same code sections." Sent. Tr. 31:2–7. This additional statement again makes clear that the court did not consider Stecker's victim impact statement or facts related to the simple misdemeanor companion case.

The district court's statements on the record here stand in stark contrast to the facts of *State v. Matheson*, 684 N.W.2d 243 (Iowa 2004), which is cited by the defendant. In *State v. Matheson*, our Supreme Court concluded that they could not determine whether the sentencing judge considered an improper victim impact statement because the Court did not make it clear the offending evidence was not a consideration, stating "[b]ut error is not cured when the sentencing court merely omits the tainted evidence in its list of

sentencing considerations. As a minimum, the Court should make clear that the offending evidence was not a consideration. Such a disclaimer is lacking here." *Id.* at 245. Here, the sentencing judge did make clear that it would not consider Stecker's victim impact statement in making its sentencing determination. Thus, *Matheson* is not on point.

Furthermore, the harmlessness of any error is apparent. In *State v. Sumpter*, 438 N.W.2d 6, 7–9 (Iowa 1989), our Supreme Court held that an aunt and uncle of a murder victim did not have standing to give a victim impact statement but that they did not affect the court's sentencing decision because there was insufficient predicate for a finding of error. Our Supreme Court held:

> The victim impact statements, in this case, were hostile and bitter, and they expressed a strong desire for the ultimate retribution for their niece's death. But they told the judge little, if anything, that was not already apparent. It could naturally be assumed that family members would be bitter toward a defendant in such a case . . . .

Id. at 9.

Here, even assuming Stecker's victim impact statement was "hostile and bitter" like those at issue and *Sumpter*, there was no problematic additional information provided. Like the victim impact

statements in *Sumpter* (and unlike in *Matheson*, where the improper victim impact statement related to completely separate, out-of-state conduct), Stecker's victim impact statement told the court very little, if anything, that was not already apparent. All of Stecker's statement–her recounting of the attack; her observation about the effects of the attack on Burch and her children; the defendant's conduct and accusations after the attack; interactions with the defendant after the attack; and concerns for her safety and the violent tendencies of the defendant–were things the court already had access to by way of the minutes of testimony and the victim impact statements offered by the other two women.

In sum, the defendant's contention that "it appears as though the court put a lot of weight on [Stecker's] statement" is not supported by the record, but even if it was, any resulting error was harmless. Appellant's Br. at 17.

B. The district court's decision to impose a two-year sentence of imprisonment was not clearly untenable or unreasonable.

The defendant's second claim–that the court improperly weighed the various sentencing factors in arriving at her sentence–is not supported by the record or the law. The district court gave a

thorough explanation for its sentencing decision on the record. The court's statement shows that it evaluated all of the relevant sentencing factors before concluding that the nature of the crime, the defendant's conduct before and after the assault, and the defendant's failure to rehabilitate outweighed any mitigating factors. Nonetheless, the defendant believes the district court should have focused more on mitigating factors to fulfill the sentencing objectives in this case. Appellant's Br. at 20.

However, the very nature of the sentencing process grants the district court discretion. As noted above, "the decision of the district court to impose a particular sentence within the statutory limits is cloaked with a strong presumption in its favor," and the district court's choice of one sentencing option over another will not be disturbed unless "the decision was exercised on grounds or for reasons that were clearly untenable or unreasonable." *Formaro*, 638 N.W.2d at 724. Here, it was not unreasonable for the district court to conclude that imposing probation or fines instead of jail time would not deter the defendant from assaulting the next person she has a political or family dispute with. Therefore, the district court had a

justifiable basis for sentencing the defendant to a two-year sentence of imprisonment and properly exercised its discretion.

Furthermore, the court did not improperly consider unproven criminal activity of the defendant. "In order to overcome the presumption of the proper exercise of [] discretion, there must be an affirmative showing that the [sentencing] judge relied on the uncharged offenses." *State v. Ashley*, 462 N.W.2d 279, 282 (Iowa 1990). Here, the record does not support "an affirmative showing" that the Court relied on allegations of harassment and domestic violence.

Although the sentencing court did not give the defendant the deferred judgment she wanted, the term of imprisonment it imposed was not an abuse of discretion. As the court noted, "incarceration and jail and imprisonment can be part of [] rehabilitation." Sent. Tr. 32:8–10. The court was aware of the defendant's lack of criminal history and work in the community but fashioned a sentence that the court believed would rehabilitate the defendant and protect the public, just as chapter 901 requires.

II. The district court did not err by extending a no-contact order in a companion case because it was as a term of the plea agreement.

Jurisdiction

The State concedes appeals challenging the sentence imposed by a district court following a guilty plea satisfy the "good cause" requirement set forth in Iowa Code section 814.6(1)(a)(3). *Damme*, 944 N.W.2d at 104–05. This jurisdictional rule is equally applicable to *Alford* pleas. *See Henderson*, No. 19-1425, 2020WL 2781463, at *2.

However, the State does not concede good cause has been established for this specific claim, because our Supreme Court's holding in *Damme* was explicitly predicated on a context where "the defendant appeals a sentence that was neither mandatory nor agreed to in the plea bargain." *Damme*, 944 N.W.2d at 100. As detailed below, the defendant agreed to a no-contact order being put in place in favor of Stecker and she received precisely what she bargained for. Our Supreme Court has not yet directly answered "the question of whether good cause exists to solely appeal an agreed sentence without an accompanying sentencing error outside the scope of the plea agreement." *State v. Wilbourn*, 974 N.W.2d 58, 66 (Iowa 2022) (explicitly saving that question "for another day" but noting the Iowa

Court of Appeals had relied on *Damme* in answering the same question in the negative). The State believes allowing an appeal as of right in this circumstance would frustrate the fundamental purpose of Iowa Code section 814.6(1)(a)(3).

Preservation of Error

An illegal sentence can be challenged at any time. *State v. Woody*, 613 N.W.2d 215, 218 (Iowa 2000). Therefore, the State does not challenge error preservation.

Standard of Review

When a defendant challenges the legality of a sentence, review is for correction of errors at law. *State v. Valin*, 724 N.W.2d 440, 443-44 (Iowa 2006) (citations omitted). The court also reviews a sentencing court's restitution order for corrections of errors of law. *State v. Hagen*, 840 N.W.2d 140, 144 (Iowa 2013).

Discussion

The sentencing court did not impose an illegal sentence by entering a no-contact order in favor of Holly Stecker in the companion simple misdemeanor case. Rather, the court's imposition of the no-contact order in the companion case was permissible because it was akin to a restitution order assessing costs on dismissed counts. With respect to restitution orders, the Iowa Supreme Court

has held even though the Iowa Code provides that a court can only order restitution in an amount attributable to an underlying conviction, "nothing . . . prevents the parties to a plea agreement from making a provision covering the payment of costs and fees [attributable to charges dismissed by the plea agreement]." *State v. Petrie*, 478 N.W. 2d 620, 622 (Iowa 1991). Such a provision can allow for the assessment of court costs against a defendant for dismissed counts if the defendant expressly agrees to that assessment. *Id.*; *see also State v. Black*, No. 14-0886, 2016 WL 3010497, at *1 (Iowa Ct. App. May 25, 2016). Furthermore, restitution orders "need not be limited to the parameters of the offense to which the defendant enters a guilty plea," so long as there is "a causal connection between the established criminal act and the damages to the victim." *Earnest v. State*, 508 N.W.2d 630, 633 (Iowa 1993).

Notably, the statutory provisions governing restitution and no-contact orders reveal significant textual similarity between the circumstances that would normally trigger imposition of both types of orders. With respect to restitution orders, the Iowa Code provides that "[i]n all criminal cases in which there is a plea of guilty, verdict of guilty, or special verdict upon which a judgment of conviction is

rendered, the sentencing court shall order [restitution]." Iowa Code § 910.2(1)(*a*) (2021). Similarly, for no-contact orders, the Code provides that "[i]f a defendant is convicted of, receives a deferred judgment for, or pleads guilty to a [relevant] public offense . . . the court shall either terminate or modify the temporary no-contact order issued by the magistrate." Iowa Code § 664A.5 (2021). Because our Supreme Court has held that restitution in the form of court costs and fees may be assessed against a defendant for dismissed counts if the defendant expressly agrees to that assessment as part of a plea agreement, this Court should find that a no-contact order entered as akin to a restitution order and as part of a plea agreement is appropriate, even where the order is in favor of a victim in a related, but dismissed, criminal charge.

Here, as part of the plea agreement, the parties expressly agreed to a no-contact order in favor of Stecker in the dismissed companion case. Defendant's brief admits as much, stating "the defendant agreed to the no-contact order." Appellant's Br. at 23. The statements made on the record at sentencing by defense counsel also support this agreement. Sent. Tr. 16: 13–17 ("The charge against [Stecker], or the charge involving her, is going to be dismissed. We're not contesting a

No Contact Order so I don't see where her victim impact statement has any relevancy to the issue before the Court here today.").

The defendant contends that she could not waive subject matter jurisdiction, meaning the court did not have the power to enter the order in a dismissed case, notwithstanding the fact that she agreed to it. Appellant's Br. at 23. The case cited by the defendant for this proposition—*State v. Wiederien*, 709 N.W.2d 538 (Iowa 2006)—is unhelpful to her for two different reasons. First, it is inapposite because that case dealt not with a plea deal dismissing charges against one victim but with an acquittal on a harassment charge. *Id.* at 540. Second, the Supreme Court explained in *Wiederien* that the issue was not even properly framed as subject matter jurisdiction; the question was actually of the district court's *authority* to issue a no-contact order after it had found the defendant not guilty of the underlying criminal charge. *Id.* For those reasons, the holding of *Wiederien* is not instructive here. Furthermore, an impediment to a court's authority can be obviated by consent, waiver, or estoppel. *State v. Mandicino*, 509 N.W.2d 481, 483 (Iowa 1993).

Finally, this court should consider the purpose of no-contact orders and why the State likely agreed to the simple assault being

dismissed in exchange for a no-contact order being entered in Stecker's favor. No-contact orders are meant to provide victims with protection from the defendant, as they ensure that the defendant cannot have contact with the victim, persons residing with the victim, or members of the victim's family. Iowa Code § 664A.1(1). Further, a no-contact order prevents a defendant from harassing the victim, persons residing with the victim, or members of the victim's family. *Id*. The circumstances support a finding that a no-contact order would protect the safety of Stecker and her family. Removing this condition deprives the State of the benefit of its bargain, at the expense of endangering a victim of the defendant's violence. When the State agreed to this plea agreement, it sought to ensure that all three victims would be equally protected from future harm and harassment by the defendant. The no-contact order in favor of Stecker was a bargained-for condition in the plea agreement, and the defendant should not be able to renege on the agreement.

In the event this Court were to agree that the no-contact order at issue was illegal, then the answer is not to "vacate the sentence, remand for resentencing and vacate the no contact order with regard to Holly Stecker," as the defendant suggests. Appellant's Br. at 24. In

this respect, the defendant's appeal "seeks to transform what was a favorable plea bargain in the district court to an even better deal on appeal." *See State v. Walker*, 610 N.W.2d 524, 526 (Iowa 2000). If the court agrees the sentence is illegal, then the parties must return to their original positions, including reinstitution of any charges that were dismissed in contemplation of the plea. *State v. Ceretti*, 871 N.W.2d 88, 97 (Iowa 2015) ("If we were simply to sever [the defendant]'s sentence for attempted murder, defendants might be motivated to enter plea agreements quietly—even if they have double punishment concerns—and then appeal them to obtain a more lenient sentence. . . . To avoid that problem, we do in this case what we have done in others involving an invalid plea agreement: We vacate all three convictions and the entire plea bargain and remand the case to the district court. 'On remand, the State may reinstate any charges dismissed in contemplation of a valid plea bargain, if it so desires, and file any additional charges supported by the available evidence.' " (internal citations omitted)).

CONCLUSION

This Court should affirm the defendant's sentence.

REQUEST FOR NONORAL SUBMISSION

This case is appropriate for submission without oral argument.

Respectfully submitted,

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Dated: March 28, 2023

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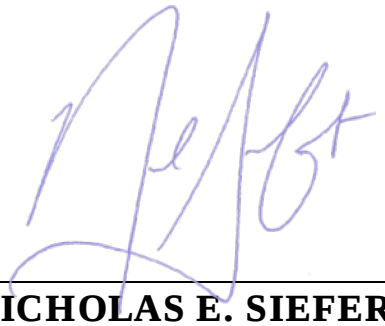

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