IN THE SUPREME COURT OF IOWA
Supreme Court No. 22-1920
Black Hawk County No. FECR235066

STATE OF IOWA,
Plaintiff-Appellee,

vs.

SHANNON PAIGE HIGHTOWER,
Defendant-Appellant.

APPEAL FROM THE IOWA DISTRICT COURT
FOR BLACK HAWK COUNTY
THE HONORABLE LINDA FANGMAN, JUDGE

APPELLEE'S BRIEF

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ROUTING STATEMENT

This case can be decided based on existing legal principles. Following the adoption of Iowa Code sections 814.6(1)(a)(3) and 814.29, Iowa's appellate courts have held that filing a motion in arrest of judgment is a prerequisite to permit an appellate court to review an attack on a plea. *See State v. Rutherford*, No. 22-0553, 2023 WL 7237087 (Iowa Nov. 3, 2023); *State v. Hanes*, 981 N.W.2d 454 (Iowa 2022). Hightower did not do so, and his motion in arrest of judgment advisory was satisfactory under *State v. Damme*, 944 N.W.2d 98, 104 (Iowa 2020). His challenge to his sentence is routine. Transfer to the Iowa Court of Appeals is appropriate. Iowa R. App. P. 6.1101(3).

STATEMENT OF THE CASE

Nature of the Case

Shannon Hightower appeals from her convictions and sentences for dependent adult abuse and second degree theft in violation of Iowa Code sections 235B.20(5) and 714.2(2). Both are "D" felonies. Hightower filed a written guilty plea drafted by her attorney addressing both counts. There was no in-court colloquy; the district court accepted the pleas, ordered a PSI, and set the matter for sentencing. She did not file a motion in arrest of judgment. At sentencing, the district court rejected Hightower's bid for a deferred

judgment and the State's sentencing recommendation. It ordered Hightower to serve her sentences concurrently and in the Iowa Department of Corrections' custody. Now, Hightower appeals. She attacks her plea as unknowing and involuntary, the district court's sentence, its decision not to let her withdraw her plea, and its appeal bond.

It is clear what is happening here: unhappy the court ordered her to serve her sentences in custody, Hightower seeks another shot at sentencing. Although she anticipated the district court would agree with the State's recommendation of suspended sentences, she knew when she waived her trial rights that she faced a maximum of five years' incarceration on each count. This sort of challenge is why the legislature enacted section 814.29—to require those who would attack their guilty pleas to show they would not have pleaded guilty but for the alleged defect.

Course of Proceedings and Facts

The State accepts Hightower's course of proceedings as adequate and essentially correct. Appellant's Br.22–27; Iowa R. App. P. 6.903(3). Facts will be addressed where necessary within the argument below.

JURISDICTION AND AUTHORITY

This Court lacks authority over Hightower's attacks on her plea. Iowa Code section 814.6(1)(a) grants a right of appeal to all defendants except those convicted of a simple misdemeanor, an ordinance, or a conviction where the defendant pleaded guilty. Iowa Code § 814.6(1)(a). Those who plead guilty may still be granted an appeal "where the defendant establishes good cause." Iowa Code § 814.6(1)(a)(3). The Iowa Supreme Court has construed the term "good cause" as a "legally sufficient reason to appeal." *See, e.g.*, *Damme*, 944 N.W.2d at 104. Likewise, a "legally sufficient reason to appeal as a matter of right is a reason that, at a minimum, would allow a court to provide some relief on direct appeal." *State v. Tucker*, 959 N.W.2d 140, 153 (Iowa 2021); *see also State v. Treptow*, 960 N.W.2d 98, 109 (Iowa 2021). This definition includes a defendant's attack on a non-mandatory, non-agreed-to sentence *rather than* an attack on the plea. *See State v. Wilbourne*, 974 N.W,2d 58, 66 (Iowa 2022).

Hightower alleges she is challenging her sentence and relies on *Wilbourne* for the proposition that once any "legally sufficient reason to appeal is presented" then the Court has jurisdiction over the entire

appeal. *See* Appellant's Br.27–28. *Wilbourne* does not support reviewing Hightower's attacks on her plea. Wilbourne attacked only his sentences. *Wilbourne*, 974 N.W.2d at 66. Hightower attacks both. And a sentencing challenge cannot by itself confer authority to challenge her plea where she did not file a motion in arrest of judgment. This Court has jurisdiction over the appeal but it lacks the authority to review her guilty plea claims. *See* Iowa Code §§ 814.6(1)(a)(3); 814.29. Although Hightower did not have the benefit of the opinion, this interpretation was confirmed in *State v. Rutherford*, No. 22-0553, 2023 WL 7237087, at *3 (Iowa Nov. 3, 2023).

The Court in *Rutherford* pointed out that the defendant did not contest he was required to file a motion in arrest of judgment and failed to do so. *Id.* at *3 ("As long as a defendant is adequately informed of the need to file a motion in arrest of judgment and the consequences for failing to do so, the only way around that failure is through an ineffective-assistance-of-counsel claim. And section 814.7 divests our authority to review that claim on direct appeal."). In contrast, Hightower insists her written guilty plea failed to adequately inform her about the need to file one. Appellant's Br.32–37. Not so.

In *State v. Damme*, the Iowa Supreme Court found the following advisory sufficient:

> I understand that if I wish to attack the validity of the procedures involved in the taking of my guilty plea, I must do so by a Motion in Arrest of Judgment filed with this Court. I understand that such motion must be made not later than forty-five days after my plea of guilty, but in any case not later than five days before the date set for sentencing.

Damme, 944 N.W.2d at 108. It did so because this language "plainly state[d] that Damme must file a motion in arrest of judgment to attack the validity of her guilty plea proceeding and listed the proper filing deadlines. As such, the written guilty plea 'conveyed the pertinent information and substantially complied with the requirements of rule 2.8(2)(d).'" *Id.*

Hightower's advisory provided the same information:

> I understand that if I wish to challenge this plea of guilty, I must do so by filing a Motion in Arrest of Judgment at least five (5) days prior to the Court imposing sentence, but no more than 45 days from today's date.

Written Plea 7, Dkt. No. 52. It also acknowledged she had "no right of appeal of a guilty plea." *Id.* Rather, if she "allege[d] good cause and/or a defect in this plea proceeding, or improper denial of a motion in arrest of judgment, I have 30 days to file a written Application for

Permission to Appeal . . . .” *Id.* Hightower's motion in arrest of judgment advisory was sufficient.[1] *See Damme*, 944 N.W.2d at 108, *State v. Nebinger*, No. 21-1730, 2022 WL 16630313, at *2–3 (Iowa Ct. App. Nov. 2, 2022) (bypassing error preservation and relying on *Damme* to find the advisory substantially complied with rule 2.8(2)(d)). Because her advisory was sufficient, she needed to file one—her failure to do so means both that error was not preserved and this Court lacks authority to review any of her attacks on her written plea. *See Rutherford*, 2023 WL 7237087, at *3–4; *Nebinger*, 2022 WL 16630313, at *2–3; *accord State v. Castillo*, No. 21-1215, 2023 WL 2396545, at *1–2 (Iowa Ct. App. Mar. 8, 2023) (dismissing appeal with identical motion-in-arrest-of-judgment language).

And as will be detailed in subdivision I(B), this Court also lacks authority because Hightower has not proven she would not have

[1] Some past cases did hold that the advisory must address the concept of the right to appeal, but the *Damme* court was unbothered by the omission. *Compare Damme*, 944 N.W.2d at 108 *with Fisher*, 877 N.W.2d at 680–81. Under *Damme*, Hightower's written plea properly advised her of the necessity of filing a motion in arrest of judgment. *See also State v. Thornburg*, No. 16-2019, 2017 WL 4049526, at *2–3 (Iowa Ct. App. Sept. 13, 2017) (“While the court did not use the words ‘appeal’ or ‘waive,’ the court's plain-language explanation informed Thornburg he had only a limited time to point out any mistakes the court may have made . . . and that, in order to do so, he had to file the motion.”).

pleaded guilty but for the alleged defects in her plea. Having failed to meet her burden, this Court "shall not vacate" it—there is no relief for the Court to provide. It should decline to address the issue altogether. The Iowa Supreme Court identified this authority distinction in *Wilbourne*:

> We decline to parse or bifurcate the specific sentencing errors alleged when determining good cause. An appellate court either has jurisdiction over a criminal appeal or it does not. Once a defendant crosses the good-cause threshold as to one ground for appeal, the court has jurisdiction over the appeal. *We may lack authority to consider all issues, but that is a different matter*. . . . If good cause exists to challenge any sentencing error, then we also have jurisdiction to review *other alleged sentencing errors* as well.

Wilbourne, 974 N.W.2d at 66 (citation omitted) (emphasis added). This outcome aligns with the legislature's intent in foreclosing unnecessary guilty plea litigation, or at least deferring litigation until postconviction relief where an adequate evidentiary record can be made. Declining to reach the issue from a lack of authority mirrors this Court's interpretation of Iowa Code section 814.7. *See Rutherford*, 2023 WL 7237087, at *3–4; *Damme*, 944 N.W.2d at 108–09 ("[814.7] applies and we lack authority to consider her ineffective-assistance-of-counsel claims on direct appeal." (citation

omitted)). This Court lacks authority and should not address her attacks on her guilty plea and on the district court for not permitting her to withdraw her plea after it announced sentence. *See Tucker*, 959 N.W.2d at 153; *State v. Schulte*, No. 20-1092, 2021 WL 4889069, at *1–2 (Iowa Ct. App. Oct. 20, 2021) (failure to file a motion in arrest of judgment is both an issue error preservation issue and good cause to appeal).

A few of Hightower's other claims warrant discussion. She urges she has "good cause" to attack her guilty plea because her motion in arrest of judgment advisory was inadequate. Appellant's Br.29–30. Likewise, that the district court had an "independent duty to ensure a guilty plea substantially complies with Iowa Rule of Criminal Procedure 2.8(2)" before accepting it. *Id.* Neither provide good cause.

Addressing her "inadequate advisory" claim first, Hightower's motion in arrest of judgment advisory was sufficient following *Damme*. *See Damme*, 944 N.W.2d at 108. Even if it were not, when read alongside one another, the legislature's adoption of Iowa Code sections 814.6(1)(a)(3) and 814.29 show a legislative abrogation of existing law construing rule of criminal procedure 2.8(2)(d).

Rule 2.8 requires the district court to do several things when accepting a guilty plea, and rule 2.8(2)(d) requires the court to inform the defendant:

> (1) That any challenges to a guilty plea based on alleged defects in the plea proceedings must be raised in a timely motion in arrest of judgment.
>
> (2) Of the time period for filing a motion in arrest of judgment.
>
> (3) That failure to raise such challenges in a motion in arrest of judgment shall preclude the right to assert them.

Past Iowa cases held Rule of Criminal Procedure 2.24(3)'s prohibition on appellate guilty plea challenges did not apply when the defendant was not informed about the consequences of failing to file a motion in arrest of judgment. *See, e.g.*, *State v. Fisher*, 877 N.W.2d 676, 681 (Iowa 2016); *State v. Loye*, 670 N.W.2d 141, 149–50 (Iowa 2003); *State v. Oldham*, 515 N.W.2d 44, 46 (Iowa 1994). These holdings were based on an earlier holding in *Worley* that despite a defendant's "failure to move in arrest of judgment . . . [rule 2.24(3)] must be read in conjunction with Iowa R. Crim. P. 2.8(2)(d)." *State v. Worley*, 297 N.W.368, 370 (Iowa 1980).

In more detail, the *Worley* court held

> Despite Worley's failure to move in arrest of judgment, we conclude that his challenge to the

> plea proceedings is properly before us. . . . No defendant, however, should suffer the sanction of rule 23(3)(a) unless the court has complied with rule 8(2)(d) during the plea proceedings by telling the defendant that he must raise challenges to the plea proceeding in a motion in arrest of judgment and that failure to do so precludes challenging the proceeding on appeal.

Id. at 370. As the court acknowledged in the case, 2.24(3) was adopted to "serve the admirable purpose of allowing the trial court to correct defects in guilty plea proceedings before an appeal and as a result reduce the number of appeals." *Id.*

Ever since *Worley*, Iowa courts have treated compliance with rule 2.8(2)(d) as a prerequisite to applicability of rule 2.24(3)(a). *See Worley*, 297 N.W.2d at 370. Iowa courts would indulge in gauging the sufficiency of a rule 2.8(2)(d) advisory. *See, e.g., Fisher*, 877 N.W.2d at 680–82; *Meron*, 675 N.W.2d at 540–41. But all of that was premised on an assumption that does not hold up. Rule 2.24(3)(a) does not contain the exception *Worley* invented.

Rule 2.24(3)(a) unambiguously states: "A defendant's failure to challenge the adequacy of a guilty plea proceeding by motion in arrest of judgment shall preclude the defendant's right to assert such challenge on appeal." *See* Iowa R. Crim. P. 2.24(3)(a). It does not

reference rule 2.8(2)(d). It does not condition its effect on a finding an advisory was given. There is no exception for good cause. *But see* Iowa R. Crim. P. 2.24(3)(f) (permitting the court to extend the timeline for hearing a motion in arrest of judgment "upon good cause entered in the record"). Likewise, rule 2.8(2)(d) does not specify that rule 2.24(3)(a) becomes inapplicable without an adequate advisory. See Iowa R. Crim. P. 2.8(2)(d). There is no textual basis for declining to apply rule 2.24(3)(a)'s bar. *Worley* invented such requirement out of whole cloth, out of concern for fairness.

When it enacted S.F. 589, our legislature sought to reduce the number of guilty plea appeals. *See Tucker*, 959 N.W.2d at 149 ("More bluntly, the new law prohibits those who plead guilty to non-class A offenses from pursuing frivolous appeals as a matter of right."). Section 814.6(1)(a)(3) states there is no right of appeal from "[a] conviction where the defendant has pled guilty," except in cases involving a Class A felony or "where the defendant establishes good cause" for the appeal. *See* Iowa Code § 814.6(1)(a)(3). Aside from appeal, the legislature also clarified that a timely motion in arrest of judgment is now a prerequisite for discretionary review, without any

reference to an exception for cases where a motion in arrest of judgment advisory was inadequate. *See* Iowa Code § 814.6(2)(f).

Additionally, under section 814.29 Hightower bears the burden of establishing she would not have pleaded guilty but for the alleged defects in her plea. This is her burden "whether the challenge is made through a motion in arrest of judgment or on appeal" and "Any provision in the Iowa rules of criminal procedure that are inconsistent with this section shall have no legal effect." Iowa Code § 814.29. This includes the district court's duty to inform the defendant about the motion in arrest of judgment under Iowa Rule of Criminal Procedure 2.8(2)(d).

Read together, the legislature's intent was to abrogate *Worley* and reinstate an error-preservation requirement to further "the legislative goal of curtailing frivolous direct appeals of convictions based on guilty pleas." *See State v. Damme*, 944 N.W.2d 98, 104 n.3 (Iowa 2020). These statutes restrict this Court's authority to consider a guilty plea challenge even if the district did not comply with rule 2.8(2)(d) and works in tandem with rule 2.24(3)'s prohibition on guilty plea attacks when no motion in arrest of judgment was filed. For this Court to vacate her plea, she needed to file a motion in arrest

of judgment and needed to prove she would not have pleaded guilty. She did not.

Next, Hightower submits good cause exists because the district court erroneously accepted her allegedly defective plea. Appellant's Br.30–31. The Iowa Supreme Court has already foreclosed her attempts to place fault on the trial judge where she asked the court to accept her plea and did not file a motion in arrest of judgment. *See State v. Hanes*, 981 N.W.2d 454, 455, 459–60 (Iowa 2022) (rejecting claim district court had duty to sua sponte arrest judgment when defendant claimed his plea lacked a factual basis); *Rutherford*, 2023 WL 7237087, at *4 (same, "even if the court fails its independent obligation to ensure a factual basis, our rules still require the defendant to file a motion in arrest of judgment in order to preserve the right to make that challenge on direct appeal").

She likewise submits that if this is not enough to provide good cause, then the Court should treat her bid for relief as a petition for certiorari instead. Appellant's Br.30–31. The Iowa Supreme Court has considered and rejected this vehicle, too. *See Hanes*, 981 N.W.2d at 459–60, 462 n.6 (rejecting defendant's claim court had independent duty to arrest judgment and reject plea when a factual basis was

lacking). *Hanes* and *Rutherford* control and demonstrate that premising review on the district court's "error" will not permit appellate review contrary to the legislature's intent.

In sum and as will be discussed further in this brief, Hightower's "buyer's remorse" does not permit what the legislature sought to foreclose. This Court lacks authority to review her attacks on her plea in subdivision I and III.

ARGUMENT

I. Hightower's "Buyer's Remorse" does not Mean the Plea she Tendered was Unknowing and Involuntary.

Preservation of Error

Error was not preserved. In the ten-month gap between her plea being tendered and sentencing, Hightower did not file a motion in arrest of judgment. Her motion in arrest of judgment advisory was adequate, making her failure to do so fatal to her attack on her plea.

None of Hightower's constitutional challenges to 814.29 were presented to the district court. They are not properly before this Court for review. *See State v. Mitchell*, 757 N.W.2d 431, 435 (Iowa 2008); *see generally Hanes*, 981 N.W.2d at 460 ("A supreme court is 'a court of review, not of first view.'" (quoting *Ripperger v. Iowa Pub. Info. Bd.*, 967 N.W.2d 540, 552 (Iowa 2021)).

Standard of Review

Iowa's appellate courts review challenges to a guilty plea for correction of errors at law. *Fisher*, 877 N.W.2d at 680. They review constitutional challenges to a statute de novo. *State v. Newton*, 929 N.W.2d 250, 254 (Iowa 2019).

Merits

A. Iowa Code section 814.29 applies to Hightower.

After listing several perceived defects in her written guilty plea, Hightower claims that section 814.29 should not apply to her. Appellant's Br.38–53. In summary, she labels the statute's application "fundamentally unfair" based on her views it creates a "hard-to-establish burden of proof" and forces "a defendant who did not even know it existed because the defendant was not adequately advised of the need to file a motion in arrest of judgment" to "admit additional evidence into the record to meet their burden." Appellant's Br.51–52. To escape its application, she again attacks her motion in arrest of judgment advisory. *Id.* This Court should reject each assertion.

The sufficiency of Hightower's motion in arrest of judgment advisory does not answer whether section 814.29 applies. The motion in arrest of judgment advisory is a creature of our rules of criminal

procedure. *See* Iowa R. Crim. P. 2.8(2)(d). It gives supplemental notice to the defendant of a procedure to challenge their guilty plea once tendered. But the advisory need not tell her any more than the rule requires. Contrary to Hightower's suggestion, it need not inform her what a viable attack on a guilty plea would be, or what proof is necessary to prevail. No matter the text of her advisory, the statute applies.

Hightower's subjective knowledge of 814.29's existence is irrelevant. She was on notice that for a court to vacate her plea she would need to establish she would not have pleaded guilty but for the defects she alleged. All persons are presumed to know the law. *See, e.g., State v. Sonderleiter*, 99 N.W.2d 393, 395 (Iowa 1959) (rejecting defendant's claim that driving while license suspended required proof of notice of suspension, "we find no statute requiring the Defendant to give notice under such circumstances. . . . Everyone is presumed to know the law, we cannot hold otherwise in the case of this defendant."); *see generally* Iowa Code § 701.6. Ignorance of the law—even in complex areas—is not a refuge. *See, e.g., Clark v. Iowa Dept. of Rev. and Fin.*, 644 N.W.2d 310, 319–20 (Iowa 2002) (rejecting claim of ignorance of tax fraud case, "Yet, we have charged citizens

with knowledge of the law, even when it can be complex and confusing."). Even without an advisory, litigants (and their counsel) are presumed to know about relevant error preservation requirements. It is not unfair to apply that requirement or a uniform statute to Hightower.

And as will be expanded on in subdivision I(C), Hightower's due process and fairness concerns are misplaced. Appellant's Br.52–53. It is not unfair to require defendants to raise concerns about the validity of their plea in the district court rather than wait to do so on appeal. Her claim that without a motion in arrest of judgment there "is no hearing at which the defendant can present evidence to support their claim" is undermined by the record in this case. Although she did so too late and without meritorious grounds, Hightower brought her concern to the court's attention and received a ruling on the issue before filing for appeal. *Compare* Motion for Hearing, Dkt. No. 76 *with* Post-Sentencing Order, Dkt. No. 77.

Indeed, any defendant (or their counsel) can object during the plea proceeding, or file a motion in arrest of judgment, or ask the district court to withdraw their plea, or respond with objections when the sentencing court asks if there is "any legal cause" why it cannot

pronounce sentence and enter judgment. See Iowa Rs. Crim. P. 2.8(5), 2.23(2)(a)–(b), (g), 2.24(3). What is unfair to the district court is to allow defendants to sleep on challenges to a guilty plea until after the court announces its judgment, the notice of appeal seals the scope of the record under rule 6.801, and then for the first time in briefing raise multiple claims that require the parties and this Court to sift the record for indications of what the defendant did and did not believe they agreed to. *See State v. Pickett*, 671 N.W.2d 866, 869 (Iowa 2003) ("Furthermore, it is unfair to allow a party to choose to remain silent in the trial court in the face of error, taking a chance on a favorable outcome, and subsequently assert error on appeal if the outcome in the trial court is unfavorable."). These claims are best raised before the district court—prior to the imposition of judgment through a motion in arrest of judgment or in a postconviction relief attack on counsel's efficacy. There, a proper record can be made and pleas not overturned unnecessarily. *See Hanes*, 981 N.W.2d 454, 456, 460–61 ("A contrary holding would nullify rule 2.24(3)(a) and deprive the State of notice to supplement the record or otherwise address the alleged defect in the plea in district court before any appeal.").

Aside from sentencing defects, the State is entitled to finality when a defendant enters a guilty plea. *Tucker*, 959 N.W.2d at 146 ("Once a defendant has waived his right to a trial by pleading guilty, the State is entitled to expect finality in the conviction."); *see United States v. Timmreck*, 441 U.S. 780, 784 (1979) ("Every inroad on the concept of finality undermines confidence in the integrity of our procedures; and by increasing the volume of judicial work, inevitably delays and impairs the orderly administration of justice." (quoting *United States v. Smith*, 440 F.2d 521, 528–529 (7th Cir. 1971) (Stevens, J., dissenting)). The legislature sought to secure that finality interest when it passed section 814.29. It applies to Hightower and her attacks on her plea.

B. Hightower has not established she would not have pleaded guilty but for the alleged defects in her guilty plea.

Because section 814.29 applies, Hightower must prove she "more likely than not would not have pled guilty if the defect had not occurred." She points to her surprise after the district court announced its sentence that she would be incarcerated as proof she would not have pleaded guilty. Appellant's Br.53–55. In her bid for a hearing to withdraw her plea, Hightower's counsel asserted that

at the sentencing hearing it was clear the defendant and the defense attorney had a different understanding of the plea. Defense counsel indicated that the Court should sentence the defendant according to the plea agreement and the defendant clearly indicated she thought the written plea required a suspended sentence.

The Court did not ask if the defendant wished to withdraw her plea and go to trial, but simply indicated that the Court was not bound by the terms of the plea agreement.

In close examination of the written plea (the accepted plea form provided by the Court), there is no clear choice in Paragraph 8 of the written plea. The defendant initialed the paragraph next to the part that speaks about the Court saying, “I understand the agreement is binding on the Court unless the Court specifically tells me otherwise”. The Court did indicate that she was not agreeing to be bound but did not provide the opportunity to withdraw the plea.

Furthermore, in Paragraph 10 of the written plea the defendant initialed the part of the paragraph that says, “I understand that this is a Rule 2.10 plea agreement, which means that if the Court does not accept the plea agreement, I may withdraw my plea of guilty.” The defendant indicated that is what she saw, thought, and believed what she was signing.

However, this being a written plea and a Felony matter with the possibility of prison, all care and effort should be presented to the defendant of the option of withdrawal of the guilty plea.

Motion for Hearing (paragraph numbering removed), Dkt. No. 76. The State does not agree. Unhappy with the district court's sentence, Hightower seeks a more favorable outcome.

Her claims of surprise should not be credited. Her written guilty plea stated the maximum incarceration penalty for her crimes and that the district court could sentence her to it. For example, she acknowledged "I know that the maximum sentence for each charge for which I am pleading guilty as provided by statute is confinement in the jail/prison for a period of not more than five years." Written Plea 3–4 (emphasis added), Dkt. No. 52. She also averred "I know . . . *I could lose my liberty because of my guilty plea*." *Id.* (emphasis added). And further "☒ I understand that the Court is not bound by the plea agreement and may sentence me up to the maximum sentence provided by law." *Compare id.* at 3 *with* Motion for Hearing (paragraph numbering removed), Dkt. No. 76. Consistent with the fact that there was no agreed-to disposition and that the district court retained its sentencing discretion, the State's end of the bargain was to "follow the P.S.I. or recommend suspended sentence." *Id.*

Her surprise as to incarceration is also not linked to the other complaints about her plea. Whether her plea was defective as to the

maximum fine, whether she was entering a guilty or *Alford* plea, or its inclusion of a law enforcement surcharge is immaterial. Her claim is that she did not know she could be sentenced to prison, those unrelated facts do not show she would not have pleaded guilty. *Compare* Appellant's Br.41–46 *with* 53–55 ("Hightower was completely blindsided by being sent to prison; the record shows she was a loving mother and would not have agreed to plead guilty *if she knew she could be sent to prison*." (emphasis added)).

Worse for her claim, Hightower was unlikely to proceed to or prevail at trial. *See United States v. Dominguez Benitez*, 542 U.S. 74, 83–85 (2004) (requiring defendant attacking guilty plea procedure to demonstrate "a reasonable probability that, but for the error, he would not have entered the plea" and identifying the strength of the government's case and any possible defenses as relevant considerations). With her victim's assistance the State had collected significant evidence of Hightower's fraud. *See generally* Mins. of Test. 1–3, Dkt. No. 11, 13–14. When police confronted her with it, she admitted guilt. Mins. of. Test 1 (5/13/2020) 12, 10–11, 13, Dkt. No. 11. Trial was unlikely to end well, and it was a rational decision to obtain the State's sentencing recommendation in exchange for her plea.

Which is to say her present attacks show "buyer's remorse" when she did not receive as much leniency as she had hoped. *See, e.g.*, *Hartnell v. State*, No. 03-1873, 2005 WL 291538, at *6 (Iowa Ct. App. Feb. 9, 2005) ("We find Hartnell's claim that he would have insisted on going to trial is not based on any defect in the plea colloquy or trial counsel's failure to challenge it, but rather was provoked by 'buyer's remorse' for the minimal leniency his waiver of trial produced."); *see generally State v. Bradford*, No. 22-0168, 2022 WL 3066179, at *3 (Iowa Ct. App. Aug. 3, 2022) (despite failure of the plea to accurately identify the minimum fine and surcharges, defendant failed to establish he would not have pleaded guilty). She has not met her burden under 814.29 and this Court should not vacate her pleas.

C. Hightower's constitutional challenges to section 814.29 fail.

Hightower presents a fallback position that section 814.29 is unconstitutional. Appellant's Br.56. She alleges it violates Due Process and Separation of Powers. Each fail.

1. Requiring a defendant to establish that they would not have pleaded guilty but for the alleged defect in their plea does not violate Due Process.

The crux of Hightower's due process argument is this: due process requires a guilty plea to substantially conform to rule 2.8(2) and section 814.29 would permit a guilty plea to stand that did not conform to the rule when a defendant failed to meet her burden.[2] Appellant's Br.62, 56–61. Not so.

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[2] Hightower relies on several cases holding that failure to comply with rule 2.8's advisories made a plea unknowing and involuntary, and thus violating due process. *See* Appellant's Br.56–59. None assist her here. Each considered the issue prior to the advent of S.F. 589. Discussed below, 814.29 creates a prejudice analysis that previously did not exist.

Second, the equivalence is not sound. The United States Supreme Court recognizes that a guilty plea may satisfy due process despite errors in the plea proceeding. Considering the validity of guilty pleas under the federal equivalent to Iowa rule 2.8, the United States Supreme Court stated that "the procedure embodied in Rule 11 has not been held to be constitutionally mandated." *Monroe v. United States*, 463 F.2d 1032, 1036 (5th Cir. 1972) (citing *McCarthy v. U.S.*, 394 U.S. 459, 465 (1969) (rejecting a guilty plea because a district judge had failed to comply with Fed. R. Crim. P. 11)); *United States v. Ward*, 518 F.3d 75, 82 (1st Cir. 2008). Thus, while due process requires a guilty plea be knowing and voluntary, *see, e.g.*, *Boykin v. Alabama*, 395 U.S. 238, 242 (1969), due process does not require compliance with the litany of rule 11's advisories. *See, e.g.*, *McCarthy,* 394 U.S. at 465–466. Compliance with rule 2.8 is not coextensive with what Due Process requires.

In *Hill v. Lockhart*, the United States Supreme Court held a defendant "must show that there is a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial." 474 U.S. 52, 58 (1985); *accord Sothman v. State*, 967 N.W.2d 512, 522–23 (Iowa 2021). The United States Supreme Court has also held that the *Hill* standard applies to a claim that the lower court failed to meet Federal Rule of Criminal Procedure 11—he must show a reasonable probability that, but for the error, he would not have pleaded guilty. *Dominguez Benitez*, 542 U.S. at 83–84.

Our Supreme Court adopted the *Hill* prejudice standard in the context of an ineffective assistance of counsel challenge to a guilty plea. *See Sothman*, 967 N.W.2d at 522–23 (citing *Irving v. State*, 533 N.W.2d 538, 541 (Iowa 1995)). Thus, when challenging a plea under the conduit of ineffective assistance of counsel, the defendant satisfies the prejudice prong if he or she can show "there is a reasonable probability that, but for counsel's errors, he or she would not have pleaded guilty and would have insisted on going to trial." *State v. Weitzel*, 905 N.W.2d 397, 402 (Iowa 2017). It requires a defendant to prove this prejudice by a preponderance of the evidence. *Dempsey v.*

State, 860 N.W.2d 860, 868–69 (Iowa 2015) (citing *State v. Clay*, 824 N.W.2d 488, 496 (Iowa 2012)).

In turn, the language in section 814.29 tracks the standard developed following *Hill*. The following shows the Legislature codified it:

Hill v. Lockhart	Iowa Code § 814.29
"In other words, in order to satisfy the 'prejudice' requirement, the defendant must show that there is a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial."	"If 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."

Hill satisfies due process, and section 814.29 does too.

Imposing this burden makes sense because finality is important in guilty plea proceedings. *Tucker*, 959 N.W.2d at 146; *Timmreck*, 441 U.S. at 784. It is not surprising that harmless error review applies to rule 11 challenges. *See* Fed. R. Crim. P. 11(h) ("A variance from the requirements of this rule is harmless error if it does not affect substantial rights."); *see United States v. Urbina-Robles*, 817 F.3d 838, 842–44 (1st Cir. 2016). Historically, our Supreme Court noted Iowa Rule of Criminal Procedure 2.8(2)(b) differs from the federal

rule in it does not contain a harmless error provision. *Weitzel*, 905 N.W.2d at 410 (*comparing* Fed. R. Crim. P. 11(h) *with* Iowa R. Crim. P. 2.8(2)(b)). Section 814.29 corrects that omission; it was intended to add a harmless error/prejudice provision to challenges to a guilty plea.

In turn, this Court should also find that applying section 814.29 complies with due process. The United States Supreme Court has already found such analysis applies to nonstructural errors even when the claimed errors are constitutional. *See, e.g., Neder v. United States*, 527 U.S. 1, 7 (1999) ("For all [nonstructural] constitutional errors, reviewing courts must apply . . . harmless-error analysis and must 'disregard' errors that are harmless 'beyond a reasonable doubt.'" (quoting *Chapman v. California*, 386 U.S. 18, 23 (1967))).

Finally, another reason to sustain the statute is that 814.29 functions like rule 2.24(3). Both are requirements defendants must satisfy to have their guilty plea overturned. If they fail to do so, a court cannot provide relief. *See State v. Lucas*, 323 N.W.2d 228, 230–31 (Iowa 1982). Such bars do not violate due process just because the defendant has failed to use the available procedures or

meet the required showing. *See Hanes*, 981 N.W.2d at 461; *see also Bradford*, 2022 WL 3066179, at *3. This due process challenge fails.

2. *The legislature's condition on the grant of appellate relief is consistent with the Iowa Constitution's Separation of Powers.*

Hightower also alleges that Iowa Code section 814.29 intrudes upon the Iowa Supreme Court's constitutional power and supervisory duties over lower courts—that it violates the separation of powers provision of the Iowa Constitution. Appellant's Br.62–68.

Our Constitution "establishes three separate, yet equal, branches of government." Iowa Const. art. III, § 1. It also defines the jurisdiction of the Supreme Court and grants the legislature authority to prescribe restrictions over its appellate review:

> The supreme court shall have appellate jurisdiction only in cases in chancery, *and shall constitute a court for the correction of errors at law, under such restrictions as the general assembly may, by law, prescribe*; and shall have power to issue all writs and process necessary to secure justice to parties, and shall exercise a supervisory and administrative control over all inferior judicial tribunals throughout the state.

Iowa Const. art. V, § 4 (emphasis added).

Section 814.29 falls within specific constitutional grants of authority for the legislature to provide a general system of practice in

all courts (article V, section 14), and to prescribe restrictions on the courts' exercise of appellate jurisdiction (article V, section 4). This is an express grant of authority empowering the legislature to control the procedure and jurisdiction of the appellate courts. This Court should reject the claim on this rationale alone. *See Tucker*, 959 N.W.2d at 151 ("The decision to divert claims of ineffective assistance of counsel to postconviction-relief proceedings is allowed by the textual allocation of power to the legislative department.").

Even if the Court applies the traditional separation-of-powers test to Hightower's claim, it fails. The separation-of-powers doctrine has three general aspects. *State v. Thompson*, 954 N.W.2d 402, 410 (Iowa 2021). It prohibits one department of the government from exercising powers that are clearly forbidden, prohibits one department of the government from exercising powers granted by the constitution to another department of the government, and prohibits one department of the government from impairing another in the performance of its constitutional duties. *Id*. The demarcation between a legitimate exercise of power and an unconstitutional exercise of power is context specific. "The separation-of-powers doctrine . . . has

no rigid boundaries." *Tucker*, 959 N.W.2d at 148 (internal quote and citation omitted).

When an appellate court reviews a criminal conviction, it acts as a court for correction of errors at law. *See* Iowa R. App. P. 6.907 ("Review in equity cases shall be de novo. In all other cases the appellate courts shall constitute courts for correction of errors at law . . . ."); Iowa Code § 602.4102(1) ("The supreme court has appellate jurisdiction only in cases in chancery, and constitutes a court for the correction of errors at law. The jurisdiction of the supreme court is coextensive with the state."). The constitution subjects thus the appellate courts' consideration of criminal appeals to "such restrictions as the general assembly may, by law, prescribe." Iowa Const. art. V, § 4; *accord Tucker*, 959 N.W.2d at 149–53 (examining historical context and determining that section 814.7's bar on ineffective assistance of counsel claims being resolved on direct appeal did not violate separation of powers doctrine).

Additionally, our legislature has separate authority to enact procedural rules for the courts to follow. The Iowa Constitution states, "[i]t shall be the duty of the general assembly to provide for the carrying into effect of this article, and *to provide for a general system*

of practice in all the courts of this state." Iowa Const. art. V, § 14 (emphasis added). The Court "recognize[s] "our legislature possesses the fundamental responsibility to adopt rules of practice for our courts." *Butler v. Woodbury County*, 547 N.W.2d 17, 20 (Iowa Ct. App. 1996) (citing *Iowa Civil Liberties Union v. Critelli*, 244 N.W.2d 564, 568–69 (Iowa 1976)).

The legislature has delegated some of that rule-making authority to the Supreme Court. *See* Iowa Code § 602.4201 ("The supreme court may prescribe all rules of pleading, practice, evidence, and procedure . . . ."). Yet it retains the power to supersede any rule adopted by the Supreme Court. *See id.* § 602.4202(4) ("If the general assembly enacts a bill changing a rule or form, the general assembly's enactment supersedes a conflicting provision in the rule or form as submitted by the supreme court."). And to any extent the courts possess an inherent or common-law power to enact rules of practice, that authority ends when the legislature enacts a conflicting statute. *See Critelli*, 244 N.W.2d at 568–69 (recognizing an inherent common-law power to adopt rules "in the absence of statute").

In resolving a question of whether a statute conflicts with the separation of powers provision, the Court looks first to the

constitution to determine whether there is a textual allocation of power to a particular department of the government. *Tucker*, 959 N.W.2d at 148. The Court "looks at the 'text of the document through the prism of our precedent, tradition, and custom.'" *Id.* (*quoting State v. Brown*, 930 N.W.2d 840, 861 (Iowa 2019) (McDonald, J., concurring specially)). Historical practice has particular importance in resolving separation-of-powers questions. *Id.* A history of deliberate practice among the different departments of the government can evidence a constitutional settlement among them regarding the constitutional division of powers. *Id.*

The legislature's creation of section 814.29 is consistent with its traditional historical practice. The legislature may set the burden of proof in criminal cases. *See, e.g.*, Iowa Code § 701.3 ("No person shall be convicted of any offense unless the person's guilt thereof is proved beyond a reasonable doubt."). It may set what must be proven to prevail on a challenge to a conviction. *See State v. Boland*, 309 N.W.2d 438, 440 (Iowa 1981); *State v. Wilt*, 333 N.W.2d 457, 461 (Iowa 1983) (recognizing that the legislature "has broad latitude, within constitutional limits, in recognizing affirmative defenses and allocating the burden of proof."); *compare State v. Heemstra*, 721

N.W.2d 549, 557 (Iowa 2006) (Ruling that when the act causing willful injury is the same as that causing death, the two acts should be deemed merged and finding that its ruling did not violate the separation of powers provision only because the legislature had never considered that issue.). It may condition the availability of a direct appeal from a guilty plea upon the defendant establishing good cause. *See* Iowa Code § 814.6(1)(a)(3); *Tucker*, 959 N.W.2d at 148–53. As with requiring "good cause," it may require a defendant satisfy a burden before an appellate court may grant relief on an attack on a guilty plea. Hightower's claim under this analysis fails. Section 814.29 does not violate the Iowa Constitution.

II. The District Court Properly Imposed a Harsher Sentence on Hightower Based its View her Claims of Remorse were not Credible; this was an Appropriate Sentencing Factor.

Preservation of Error

The State cannot contest error preservation. If the appellate courts "can determine whether a court abused its discretion by using an improper factor without further evidence, a defendant need not object to the use of an improper sentencing factor at the time of sentencing." *State v. Headley*, 926 N.W.2d 545, 550 (Iowa 2019).

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 will not be upset on appellate review unless the defendant demonstrates an abuse of trial court discretion or a defect in the sentencing procedure such as the trial court's consideration of impermissible factors." *State v. Witham*, 583 N.W.2d 677, 678 (Iowa 1998) (citing *State v. Wright*, 340 N.W.2d 590, 592 (Iowa 1983)). The defendant must overcome the presumption of regularity when challenging a court's sentence. *See State v. Pappas*, 337 N.W.2d 490, 494 (Iowa 1983). "Sentencing decisions of the district court are cloaked with a strong presumption in their favor." *State v. Thomas*, 547 N.W.2d 223, 225 (Iowa 1996) (citing *State v. Loyd*, 530 N.W.2d 708, 713 (Iowa 1995)).

Merits

Hightower alleges the district court considered an impermissible sentencing factor when it explained its sentence. In her view, the district court could not consider her failure to repay her victim over the two-and-a-half years since the case had begun. Appellant's Br.71–75. The State does not agree. Hightower took from

her fiancee's mother and fraudulently opened credit cards under her name; when confronted by police she stated she would take responsibility. Her failure to do so was reveals a circumstance of her crime and her lack of remorse. Both were relevant, permissible sentencing considerations.

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). Where the court complies with these requirements, Iowa's appellate courts give wide latitude to that decision. *Formaro*, 638 N.W.2d at 724–25.

One of the permissible sentencing considerations includes the circumstances of the defendant's crime. *See* Iowa Code §§ 901.3(1)(c),

901.5. It can also include the harm to the victim. *See* Iowa Code §§ 901.3(1)(e), 901.5. Likewise, a defendant's "acceptance of responsibility for the offense, and a sincere demonstration of remorse, are proper considerations in sentencing. They constitute important steps toward rehabilitation." *State v. Knight*, 701 N.W.2d 83, 87 (Iowa 2005) (cleaned up) (quoting *State v. Sims*, 608 A.2d 1149, 1158 (Vt. 1991)). Because "a defendant's lack of remorse is highly pertinent to evaluating his need for rehabilitation and his likelihood of reoffending," the court may consider that factor "as evidenced by facts other than the defendant's not-guilty plea." *Id.* at 88; *accord State v. West Vangen*, 975 N.W.2d 344, 355–56 (Iowa 2022); *see also State v. Lovan*, No. 12-0716, 2013 WL 541643, at *3 (Iowa Ct. App. Feb. 13, 2013); *State v. Wilson*, No. 05-0595, 2006 WL 2265432, at *3 (Iowa Ct. App. Aug. 9, 2006). Evidence that may be considered includes "'any admissible statement made by the defendant pre-trial, at trial, or post-trial,' or by 'other competent evidence properly admitted at the sentencing hearing.'" *Knight*, 701 N.W.2d at 87–88 (quoting *State v. Shreves*, 60 P.3d 991, 996 (Mont. 2002)).

Hightower excerpts a portion of the district court's explanation of where it touched on Hightower's failure to make her victim whole. Appellant's Br.71–75. She asserts it had no relevance and was an improper sentencing consideration. Appellant's Br.72. The State does not agree.

The lower court's statement should be read in its proper context. Hightower sought a deferred judgment, despite her criminal history and the PSI's author's opinion that she was not eligible for one. Sent. Tr. 3:5–6:20; 13:20–24. When she initially met with police during their investigation, she admitted to wrongdoing and "stated that she was willing to pay back the charges and is willing to own up to her part." Mins. of Test. 1 (5/13/2020) 12, 10–11, 13, Dkt. No. 11. And during her allocution, she claimed remorse for her crime and explained how she had been lawfully employed for an extended period. Sent. Tr. 17:1–18:15. The district court found her claims of remorse not credible and her request for a deferred judgment untenable when it considered the circumstances of Hightower's crime, her statements to the PSI investigator, as well as the time it had taken to bring her case to resolution:

> Ms. Hightower, I'm reviewing your case. One of the things that's significant to me is obviously

you were put in a position of trust over this woman when she was obviously a dependent adult. . . . [W]hile no form of exploitation or dependent adult abuse would be appropriate—it strikes me that it's not a situation where you're paying bills out of her account or you're writing checks on her account. But in fact, you opened credit cards in her name. To me, that's a second step. That's not just using money.

That is defrauding not only the victim in this case, but the credit card company. It wasn't just an, "oh, I accidentally spent this money" or "oh, I paid her bills and my bills." You went out of your way to open credit cards in the victim's name. To me, that's not a mistake or an accident. That is not just an "oh, I had some temptations that I couldn't say no to." That's a plan. And not only is it a plan, but it's trying to deceive the way it could be found out.

This came to light—or you were charged back in April of 2020. That's now two and a half years. And in two and a half years, even though you took over $16,000, you have paid zero dollars in restitution. Zero. You just told me that you've been working the same job for the last two years and that you've been promoted in that job; and yet, you haven't made her whole in two and a half years. You haven't attempted to make her whole in two and a half years. And that's significant.

Regardless of whether you are or are not eligible for a deferred, the Court does not find that a deferred is appropriate in your case. This is calculated behavior on your part. It's over $16,000. At some point it would dawn on you that, hey, this is really wrong.

You did it over eight months, and you did it to a person who is a dependent adult, somebody that you took on the role and responsibility of being a caregiver for, a protector of. A deferred is not appropriate regardless of whether you were or were not eligible for it.

. . .

I am considering your criminal history, though not the grand theft that we have spoken of. But most importantly, I am considering the nature of this offense. I am considering the actions that you took. I'm considering the fact that you're not a child. This was not a young, impulsive, stupid decision of an 18-year-old or even a 20-year-old. You're a grown woman with children, and you made this decision.

. . .

Ms. Hightower, I don't find that probation is appropriate at this time based upon the acts that you took; based upon the calculations that you made; based upon the fact that it lasted for over eight months; based upon the harm that you did to Ms. Stuber; and based on the fact that, even though you are working and had capabilities of doing so, you have done nothing to make any victim restitution.

I'm also considering that in the presentence investigation and report when questioned about what it is you did, while you did acknowledge that you took advantage of the situation, you also tried to blame Ms. Stuber, claiming that she knew and that she gave you permission to do that. And that also offends the understanding that you are taking responsibility for your actions.

Sent. Tr. 19:1–20:17, 20:25–21:7; 22:6–21.

In a bid for a new sentencing hearing, Hightower urges the district court's consideration of her failure to pay a then-non-existent restitution obligation was an impermissible sentencing factor. The Court's use of the word "restitution" was not in the legal sense of an order under Iowa Code chapter 910. This was her sentencing hearing and Hightower could not have failed to fulfill an obligation that did not yet exist. The lower court was pointing to the discrepancy between Hightower's statements and her actions. The judge did not believe Hightower's claims of remorse and was troubled by the circumstances of her crime. Hightower had exploited her fiancée's mother and abused her position as the woman's power of attorney to open multiple credit cards and incur significant debts. PSI 3, Dkt. No. 62. Her statements in preparation of the PSI blamed her victim for the decisions that Hightower made. *See* PSI at 12–13, Dkt. No. 62. If Hightower's statements of regret for these acts rang hollow, then her rehabilitation would require more than releasing her to probation.

Speaking to a defendant during "the sentencing process can be especially demanding and requires trial judges to detail, usually extemporaneously, the specific reasons for imposing the sentence."

State v. Thomas, 520 N.W.2d 311, 313–14 (Iowa Ct. App. 1994). Even a well-meaning court's statements may appear as "unfortunate phraseology, unintended remarks, misconstrued remarks, and just plain misstatements" upon appellate review. *Id.* Here, the district court's "unfortunate phraseology" in using the word "restitution" does not require reversal. The record provides the necessary context to understand what the court meant.

And the court's discussion also touched on Hightower's financial situation—she was employed yet had not begun making her victim whole. PSI at 5–7, Dkt. No. 62. Again, considering her victim was her fiancée's mother, the grandmother to her children, and the two were once "like family," there were non-legal reasons to do so. Mins. of Test 1 (5/13/2020) 10, Dkt. No. 11. This too was a relevant, permissible sentencing factor. *See West Vangen*, 975 N.W.2d at 355–56; Iowa Code §§ 901.3(1)(a), (c), (e), (g). The district court did not err.

Hightower's brief on this issue addresses items not presented to the district court, such as the living wage of a single parent of two in Waterloo, Iowa. *See* Appellant's Br.73–75. Some of it is speculation: "it was likely Hightower was advised not to start paying back Stuber

until there was a restitution order . . . payment could be interpreted as a sign of guilt on the offenses." Appellant's Br.72. Neither warrant vacating the district court's sentence.

Hightower's suggestion she could not repay her victim lest it show guilt is not persuasive. Hightower admitted her guilt the first time police met with her. Min. of Test 1 (5/13/2020) 11–12, Dkt. No. 11 ("Shannon stated that she was willing to pay back the charges and is willing to own up to her part."). After nine pre-plea continuances she admitted she would be convicted if the matter went to trial. *See* Written Plea 1, 2, Dkt. No. 52. She admitted there were no defenses available that would change her decision to tender a plea. *Id.* at 6.

Yet in the many months before sentencing, she had not attempted to make good on her assertions of remorse and responsibility. Instead, she blamed her victim and maintained the punishment she faced for what she had done "is extreamly unfair to me." *See* PSI 12, 13, Dkt. No. 62 ("The defendant greatly minimizes her criminal behaviors and partly blamed the victim for her crimes."). She told the PSI investigator she had a job and did not have financial problems. *Id.* at 5–7. Which is all to say that confronted with a record that supports the district court's conclusion she lacked remorse for

her crimes, her speculation does not establish an abuse of discretion. *See Witham*, 583 N.W.2d at 678; *Pappas*, 337 N.W.2d at 494 ("[T]o overcome this presumption of regularity requires an affirmative showing of abuse and the burden of so showing rests upon the party complaining.") (quoting *State v. Gartin*, 271 N.W.2d 902, 910 (Iowa 1978)). This Court should not disturb Hightower's sentence.

III. Hightower did not Enter a Rule 2.10 Guilty Plea. The District Court was not Bound by it and Hightower was not Entitled to Withdraw it.

Waiver and Preservation of Error

Hightower waived this claim below. She does not have a right to "challenge the district court's refusal to follow a rule 2.10 plea for the first time on appeal." *See* Appellant's Br.76 (citing *State v. Thompson*, 856 N.W.2d 915, 921–922 (Iowa 2014)). This was not a rule 2.10 plea as the district court recognized. Post-Sentencing Order, Dkt. No. 77; App. 36–38.

Nor did Hightower have a right to ask the district court to withdraw her plea after sentencing. *See* Iowa R. Crim. P. 2.8(2)(a) ("*At any time before judgment*, the court may permit a guilty plea to be withdrawn and a not guilty plea substituted." (emphasis added)); *accord State v. Whitehead*, 163 N.W.2d 899, 901–02 (Iowa 1969) ("A

defendant should not be permitted to enter a guilty plea, gamble on the sentence and then move to withdraw the plea if he is disappointed with the severity of the sentence imposed."). Only once the district court announced its sentence and imposed judgment did Hightower seek to withdraw her plea. *See* Judgment, Dkt. No. 73; App. 27–31; Motion for Hearing, Dkt. No. 76; App. 32–34. Hightower has waived error.

Standard of Review

Iowa Rule of Criminal Procedure 2.8(2)(a) gives the district court discretion to allow withdrawal of a guilty plea after determining whether the defendant entered such plea with full knowledge of the charge, trial rights, and consequences and without fear or persuasion. Iowa R. Crim. P. 2.8(2)(a). Accordingly, our appellate courts review a lower court's denial of a defendant's request to withdraw her guilty plea for abuse of that discretion. *State v. Mattly*, 513 N.W.2d 739, 741 (Iowa 1994). "No abuse of discretion will be found unless the defendant shows the discretion was exercised on grounds clearly untenable or to an extent clearly unreasonable." *Id.*

Merits

As an alternative ground to unravel her plea, Hightower alleges the district court erred by breaching rule 2.10—that it was required to permit her to withdraw her guilty plea. She asks this Court to vacate her sentence so that she may be sentenced anew. Appellant's Br.77–82, 82–83. This Court should reject her request.

No defendant has a right to have a guilty plea accepted by a court. *State v. Wenzel*, 306 N.W.2d 769, 771 (Iowa 1981). Accordingly, the district court has broad discretion in deciding whether to accept a plea. *State v. Barker*, 476 N.W.2d 624, 626 (Iowa 1991); *State v. Ramirez*, 400 N.W.2d 586, 590 (Iowa 1987).

Under Iowa Rule of Criminal Procedure 2.10(2), the parties may condition their plea agreement on the court's acceptance and agreement to be bound by it. When *that* choice is presented to the court, the court may select one of three options: (1) accept the parties' agreement, (2) reject it, or (3) defer its decision until it has reviewed the presentence investigation report. Iowa R. Crim. P. 2.10(2); *Barker*, 476 N.W.2d at 626. If the court accepts the agreement, it must inform the defendant it will accept the parties' agreed-upon

sentence or select one more favorable to the defendant. Iowa R. Crim. P. 2.10(3). And if not,

> at the time the plea of guilty is tendered, the court refuses to be bound by or rejects the plea agreement, the court shall inform the parties of this fact, afford the defendant an opportunity to then withdraw defendant's plea, and advise the defendant that if persistence in a guilty plea continues, the disposition of the case may be less favorable to the defendant than that contemplated by the plea agreement.

Iowa R. Crim. P. 2.10(4). Rule 2.10 pleas are unique in another manner. Because they "bind" the district court and remove its discretion, a sentencing court need not provide reasons for the sentence it ultimately provides—it is only giving effect to the agreement the parties and Court reached. *See State v. Snyder*, 336 N.W.2d 728, 729 (Iowa 1983). Despite her insistence it was, Hightower's plea was not made under rule 2.10. *See* Appellant's Br.79–81; *accord.* Post-Sentencing Order 1–3, Dkt. No. 77; App. 36–38.

Labeling it "not a model of clarity," Hightower highlights her written plea's inconsistencies as to whether it was intended to bind

the district court.[3] Appellant's Br.79–81. This Court should not be swayed. The text of the plea agreement, the order accepting it, and the behavior of the parties before judgment were all consistent with a non-binding plea. Discussed above in subdivision II, it was once Hightower received less leniency than expected she maintained she—and importantly, not her attorney—believed the plea had been intended to bind the district court.

This plea was not ambiguous. In multiple places it stated the parties did not intend to bind the Court by rule 2.10. Paragraph 8 of the agreement states:

> x☐ This guilty plea is entered without any agreement with the State's attorney against me or my sentence.
>
> ☐ This guilty plea is entered pursuant to Iowa Rule of Criminal Procedure 2.10 based upon an agreement with the State's attorney regarding the charges against me and/or my sentence. I understand the agreement is binding on the Court unless the Court specifically tells me otherwise. **Initials** ___[SH]_____

[3] Hightower's attorney prepared her written plea. Accepting the premise that a guilty plea is subject to the rules of contract law, the drafter was her agent—this Court construes any ambiguities in the document against her. *See State v. Beres*, 943 N.W.2d 575, 582 (Iowa 2020) *and Iowa Fuel & Minerals, Inc., v. Iowa State. Bd. of Regents*, 471 N.W.2d 859, 862–63 (Iowa 1991); *see* Written Plea 7, Dkt. No. 52.

See Written Plea at 3, Dkt. No. 52; App. 14. As the district court did below, the State notes the first box was checked and manifests Hightower's belief her plea was entered without any agreement as to a sentence to bind the court. *See* Post-Sentencing Order 1, Dkt. No. 77; App. 36.

That belief fits the following paragraph, which states the terms of the agreement were for the State to "follow P.S.I. or recommend suspended sentence, 5 years concurrent, Defendant may apply to transfer probation to different jurisdiction, and this matter includes charges known on all maters related Julie Stuber an[d] restitution to be determined." Written Plea 3, Dkt. No. 52; App. 14. It was an agreement for the State limit the range of its sentencing recommendation; not a joint-agreement to a particular disposition the parties sought the Court to enforce. *Cf.* Appellant's Br.79 ("Paragraph 8 had a check mark next to a box that said there was no agreement as to the sentence; however there was a plea agreement, as noted in paragraph 9."). Indeed, at sentencing, Hightower sought an even less-onerous penalty: a deferred judgment. *See* Sent. Tr. 3:5–6:20; 13:20–24.

What is more, there is the unmistakable provision within Paragraph 10:

> ☒ I understand that the Court is not bound by the plea agreement and may sentence me up to the maximum sentence provided by law.
>
> ☐ I understand that this is a Rule 2.10 plea agreement, which means that if the Court does not accept the plea agreement, I may withdraw my plea of guilty.
> **Initials** ___[SH]_____

Written Plea 3, Dkt. No. 52; App. 14. This does not convey the parties intended to bind the district court.

Hightower contends that Paragraph 29 suggests otherwise. Appellant's Br.80. There the plea form explained:

> I understand my rights as explained above. My Attorney has gone over this plea agreement with me and has offered to assist me with trial if I so choose. My attorney explained the consequences of entering this plea . . . I understand the consequences of my plea of guilty; I freely and voluntarily plead guilty. My entry of this plea IS contingent upon the Court accepting the plea bargain.
> **Initials** ___[SH]_____

Written Plea 7, Dkt. No. 52; App. 18. The State disagrees with her reading. This was a written plea submitted to the Court through EDMS and intended to replace an in-person colloquy. Entry was always contingent on the court "accepting" it as an acceptable

resolution. The court reviewing this filing was—as all courts presented with such a plea are—free to accept it or reject it. *Wenzel*, 306 N.W.2d at 771; *Barker*, 476 N.W.2d at 626. And when it accepted her plea, the court made no indication it agreed to be bound by the missing terms Hightower insists exist. *See* Post-Sentencing Order, Dkt. No. 77; App. 36–38.

Hightower's ambiguity argument hinges on the placement of her initialing at the end of each paragraph, which for paragraphs 8 and 10 placed her signature near text addressing rule 2.10 pleas. Yet all but a single paragraph of the plea form ends with a signature line for the defendant to initial. *See* Written Plea, Dkt. No. 52; App. 12–18. This is so even where the paragraph contains multiple exclusive options. Which is to say, the plea is better read with the initials applying to the entire paragraph, not whatever subclause they are nearest to.

As a contrast, Hightower does not claim she understood the paragraph 26 of her guilty plea to have waived her right to be present at sentencing. *See* Written Plea 6 (" . . . ☒ I demand ☐ waive the right to be present at the hearing for entry of judgment and sentencing. Further if I am offered a deferred judgment, I request it. **Initials**

___[SH]_____"), Dkt. No. 52; App. 17. "The fact [she] subjectively disagrees with the plain meaning of the agreement, without more, does not establish its ambiguity." *Ridinger v. State*, 341 N.W.2d 734, 737 (Iowa 1983) (summary disposition appropriate where postconviction relief applicant maintained the plea agreement as ambiguous). The drafter's placement of the signature line does not support accepting her self-serving view of the document.

Even were this Court to disagree, it does not benefit Hightower. Then the Court could look to extrinsic evidence to determine the parties' intent. *See generally Pillsbury Co., Inc. v. Wells Dairy, Inc.*, 752 N.W.2d 430, 435–36 (Iowa 2008) ("When the interpretation of a contract depends on the credibility of extrinsic evidence or on a choice among reasonable inferences that can be drawn from the extrinsic evidence, the question of interpretation is determined by the finder of fact."); *State v. Cerretti*, 871 N.W.2d 88, 97–98 (Iowa 2015).

As the district court explained below, neither the parties nor the court manifested that this plea was intended to bind the court until the sentencing hearing. Their conduct pointed to this being an open sentencing, not a bound one:

> The written plea also asks in numerous places for a separate sentencing hearing and a right to

allocution. The plea was accepted by an Order dated January 21, 2022, with no mention of Rule 2.10. A PSI was then Ordered. The first sentencing date was continued for failure by the Defendant to comply with the PSI. If all parties expected an uncontested sentencing, there would be no requirement for a PSI and sentencing could have proceeded. The second sentencing date was continued at the request of the Defendant because she believed the PSI contained errors regarding her criminal history. Again, if this was a Rule 2.10 case there would be no reason to continue.

The third sentencing date was continued by the Defendant alleging a PSI Addendum would be filed regarding the criminal history. The fourth date was continued because defense counsel was unavailable. The fifth sentencing date was continued by the Defendant again alleging a PSI Addendum would be completed regarding the Defendant's criminal history. At none of these five separate dates did anyone allege the plea was a Rule 2.10 plea.

At the sentencing hearing on November 17, 2022, the Defendant's position was the PSI was in error, that her earlier felony convictions had been expunged and she was therefore eligible for a deferred judgment. Without ruling on the merits, the Court allowed the Defendant to argue for a deferred judgment. The State argued for a suspended sentence. Therefore there was not a joint agreement for the Court to bind itself to. The Court did not, at any time, ever state it was binding itself to any particular sentence. The parties always contemplated arguing the sentencing to the Court. In fact, this matter was continued for eleven (11) months to allow for a contested sentencing. At

> no time did the Defendant file a Motion in Arrest of Judgment. A contested sentencing occurred and the Court entered a sentence allowed by law.

Post-Sentencing Order 1–2, Dkt. No. 77; App. 36–37.

A substantial basis in the record supported these conclusions. At the sentencing hearing, the district court *announced* it did not believe it was bound to a disposition—counsel did not raise this as a legal ground to preclude imposing sentence. *See* Sent. Tr. 4:9–23 ("THE COURT: Well, first, the Court has not bound itself to any sort of agreement whatsoever."); 11:6–19 (defense counsel stating that the only legal reason sentencing should not proceed was an alleged defect in the PSI). It also conducted the sentencing hearing as one that was open and explained its sentencing decision to Hightower consistent with the Court retaining full sentencing discretion, not simply giving effect to the parties' agreement. Sent. Tr. 6:5–7:2; 12:3–18:25 (in which the parties presented their positions on sentencing); 20:6–21:18 (explaining the court's reason for sentence); 22:6–21; *cf. Snyder*, 336 N.W.2d at 729–30.

True, after the sentence was announced Hightower stated, "I was under the assumption I was getting a—I was getting the five years with it suspended, so I did not come prepared to come to jail today."

Sent. Tr. 23:22–26:2. But the plea was explicit that the court "may sentence me up to the maximum sentence provided by law" and that incarceration was the maximum sentence. *See* Written Plea 3–4, Dkt. No. 52; App. 14–15. Hightower may have a disappointed expectation of leniency, but her plea was not ambiguous.

Hightower points to two opinions from the Iowa Court of Appeals to support her claim that the guilty plea should be treated as a rule 2.10 plea. Appellant's Br.81 (citing *State v. DeWitt*, No. 18-1344, 2019 WL 6894271 (Iowa Ct. App. Dec. 18, 2019) and *State v. Keller*, No. 17-1854, 2018 WL 6120047, at *1–2 (Iowa Ct. App. Nov. 21, 2018). Neither warrant remand for a new plea hearing.

Addressing the latter case—*Keller*—first, there the State conceded that the language "Concurrence of the court to this agreement is a condition to the acceptance of the plea," coupled with a plea hearing in which the district court informed the defendant "[I]f the sentencing judge decides to . . . not accept the plea, . . . you would have an opportunity to withdraw your guilty plea" meant the plea fell under the rule. *See Keller*, 2018 WL 6120047, at *1–2 ("The State concedes the memorandum of plea agreement and on-the-record discussion confuse the issue. In light of the confusion, the State

further concedes it will 'treat[ ] the agreement as a Rule 2.10 agreement that was binding on the district court.'"). The State is not conceding that ground in this appeal. Hightower's guilty plea language was not ambiguous, there was no in-person plea hearing, and her late claims of a different subjective understanding do not make her guilty plea into something it stated it was not.

In turn, the *DeWitt* court examined a plea memorandum that stated its terms were:

> This is an open plea. The State may make any recommendation at the time of sentencing.
>
> However, if the defendant accepts the plea agreement by 8/31/18, the State agrees not to file additional charges for all videos discovered on the recording device and on the defendant's phone. In addition, if the defendant accepts the plea agreement by the deadline, the State will also agree to cap any recommendation of incarceration to 6 years, if incarceration is recommended.
>
> ....
>
> **Concurrence of the Court to this Agreement is/~~is not~~ a condition to the acceptance of the plea.**

DeWitt, 2019 WL 6894271, at *1 (footnote omitted) (bold in original). The "is not" language was struck in pen and bolded. *Id.* at *1 n.1. The panel concluded the "plea agreement" was not a "model of clarity"

and "in light of that language and the affirmative step DeWitt and the State took to strike the 'is not' conditioned language, we conclude the plea agreement was conditioned on the court's concurrence." *Id.* at *2. It noted that the district court in accepting the plea stated it had done so "subject to confirmation of the plea agreement at the time of sentencing." *Id.* at *1. The district court rejected the "cap" and sentenced DeWitt to serve eight two-year indeterminate terms consecutively. *Id.* On those facts, the panel found that the district court was bound by rule 2.10 and that entitled DeWitt to withdraw his plea. *Id.* at *3.

DeWitt does not assist Hightower. She highlights her typed statement "My entry of this guilty plea IS contingent upon the Court accepting the plea bargain." Written Plea 7; Dkt. No. 52; App. 18. Her plea explicitly stated it was not a 2.10 plea and conveyed that the "bargain" was for the State to "follow P.S.I. or recommend suspended sentence, 5 years concurrent" and permit Hightower to apply to transfer her probation and limit any future criminal liability relating to her victim. *Id.* at 3. The "bargain" or "plea agreement" was for the State's recommendation Hightower received, not a sentencing condition binding the district court. And this language was typed into

the written plea form, not subsequently amended by pen: there was no "affirmative step taken." *Cf. DeWitt*, 2019 WL 6894271, at *2.

As noted earlier, Hightower tendered her written plea without an in-person colloquy. The "entry of this guilty plea" was always "contingent upon the Court's acceptance" of it. If the court rejected it, the plea would have been negated and the parties would have remained in their original positions. *See* Iowa R. Crim. 2.10(5) ("[I]f a plea of guilty is not accepted or is withdrawn . . . neither the plea discussion nor any resulting agreement, plea , or judgment shall be admissible in any criminal . . . proceeding."). This single provision of the plea cannot transform it.

In sum, Hightower's drafted plea form stated it was not a 2.10 plea binding the district court's discretion, the State never agreed to such a plea, and the district court never accepted to be bound by one. The parties' behavior before sentencing reflected the district court's interpretation of the plea it accepted. Hightower did not enter a rule 2.10 plea and she was not entitled to withdraw it. Although it believes the issue was not timely presented, if the Court reaches the merits, the State asks it to affirm the district court's exercise of discretion

when it denied Hightower's post-judgment request for a hearing on withdrawing her plea.

If the Court decides that the district court erred, then constitutional avoidance cautions against addressing her constitutional challenges to section 814.29 in subdivision I and moots her sentencing challenge in subdivision II. *See, e.g.*, *Cmty. Lutheran Sch. v. Iowa Dep't of Job Serv.*, 326 N.W.2d 286, 291–92 (Iowa 1982) ("We avoid constitutional issues except when necessary for disposition of a controversy.").

IV. The District Court did not Abuse its Discretion in Ordering an Appeal Bond; Hightower was able to Post it.

Preservation of Error and Mootness

The State does not contest error preservation. The normal rules of error preservation do not apply to a direct appeal of a sentence. *See State v. Cooley*, 587 N.W.2d 752, 754 (Iowa 1998). The same principle applies to matters contained within the sentencing order, such as the amount of an appeal bond. *See State v. Letscher*, 888 N.W.2d 880, 883–84 (Iowa 2016).

Even so, as it has in past cases, the State notes any action this Court takes in this appeal will moot whether the district court abused

its discretion in ordering a $17,000 appeal bond. Appellant's Br.88–92. Hightower urges the bond is excessive based on the uniform bond schedule and her own personal circumstances. *Id.* But she posted it. *See* 11/22/2022 Docket Entries 9, 12 (bond posted).

Upon this Court's issuance of its opinion and procedendo the bond will cease to exist. If the Court affirms, Hightower will be incarcerated by the district court's sentence. If the Court decides to vacate her plea, the appeal bond will end. No matter the outcome, whatever ruling this Court makes on "the contested issue [will] become academic or nonexistent and the court's opinion would be of no force or effect in the underlying controversy." *See Maghee v. State*, 773 N.W.2d 228, 233 (Iowa 2009). The issue is moot, and this Court need not address it.[4]

Standard of Review

"When reviewing the amount of an appeal bond and its conditions, our review is for abuse of discretion." *State v. Kellogg*, 534 N.W.2d 431, 433 (Iowa 1995). The appellate court will not reverse

[4] The State recognizes other cases have reached the merits. *See generally State v. Chew*, No. 17–1692, 2018 WL 5850225, at *8 (Iowa Ct. App. Nov. 7, 2018) (collecting cases). But this does not require each court presented an appeal bond challenge to do so, especially when the defendant posts the bond.

unless the district court's discretion is exercised on grounds or for reasons "clearly untenable or to an extent clearly unreasonable." *Id.* at 434 (quoting *Leonard v. State*, 461 N.W.2d 465, 469 (Iowa 1990)).

Merits

A. The district court did not abuse its discretion in ordering Hightower's appeal bond amount.

The "primary purpose of imposing conditions or restrictions on bail following the appeal of a bailable offense is to assure the future appearance of the defendant upon completion of the appeal and to provide for the safety of others during the course of the appeal." *Formaro*, 638 N.W.2d at 726 (internal citation omitted). In Iowa, this right is statutory. *See Kellogg*, 534 N.W.2d at 434; *see also* Iowa Code § 811.5. The legislature's authorization for an appeal bond is found in Iowa Code section 811.2(1)(a), which states:

> All bailable defendants shall be ordered released from custody . . . the execution of an unsecured appearance bond in an amount specified by the magistrate unless the magistrate determines in the exercise of the magistrate's discretion, that such a release will not reasonably assure the appearance of the defendant as required or that release will jeopardize the personal safety of another person or persons. When such determination is made, the magistrate shall . . .
>
> . . .

> (5) Impose any other condition deemed reasonably necessary to assure appearance as required, or the safety of another person or persons . . . .

Iowa Code § 811.2(1)(a); *see also* Iowa Code § 811.5 (providing that, while on appeal, "bailable defendants as described herein may be released in accordance with the provisions of section 811.2"). The amount of the appeal bond is left to the discretion of the district court based on

> the nature and circumstances of the offense charged, the defendant's family ties, employment, financial resources, character and mental condition, the length of the defendant's residence in the community, the defendant's record of convictions, including the defendant's failure to pay any fine, surcharge, or court costs, and the defendant's record of appearance at court proceedings or of flight to avoid prosecution or failure to avoid court proceedings.

Iowa Code § 811.2(2).

Hightower attacks the district court's order for a $17,000 appeal bond as an abuse of discretion because a uniform initial appearance bond would have been in the amount of $5,000 per count and in her view the district court ignored the criteria identified in section 811.2. Appellant's Br.88–89, 91. Both claims fail.

Her reliance on the Iowa Supreme Court's supervisory uniform bond schedule is misplaced. Appellant's Br.88–89; *see generally* Iowa Supreme Court Judicial Council, In re Unif. Bond Schedule, at 1 (June 23, 2017) (effective July 1, 2017) available at https://www.iowacourts.gov/iowa-courts/district-court/uniform-bond-schedule. "The bond amounts in the supervisory order have no applicability when the court fixes the bond." *State v. Huss*, No. 09-0574, 2010 WL 200043, at *3 (Iowa Ct. App. Jan. 22, 2010) (rejecting claim that bond twenty-five times the amount of the uniform bond schedule was unconstitutional); *accord State v. Chew*, No. 17-1692, 2018 WL 5850225, at *8–10 (Iowa Ct. App. Nov. 7, 2018). There is no dispute it was the district court that considered her request for a bond and entered one. *See* Post-Sentencing Order, Dkt. No. 77; App. 36–38.

The district court's discretionary decision to set her appeal bond at $17,000 was reasonable. The court had ordered Hightower to serve a prison sentence, making flight possible. Hightower had a significant criminal history. *See* PSI at 4–5, 13, Dkt. No. 62. When previously on probation, she violated her terms of supervision and did not timely comply with the PSI investigator. *Id. at* 3–4, 5 ("The defendant

admitted to violating her probation in Florida due to her ongoing drug addiction and failure to appear in Court. Arrest records verified the defendant incurred several arrests for probation violation, however, it appears her probation was never revoked."), 13, Dkt. No. 62. And in her guilty plea Hightower anticipated leaving Iowa. She obtained the State's agreement to permit her to "apply to transfer probation to different jurisdiction," despite her connections to the community. Written Plea 3, Dkt. No. 52. Were Hightower to violate the terms of her probation or leave the State, it could reduce the chances she would make her victim whole. The district court could consider these factors in setting the appeal bond. *See* Iowa Code § 811.2(2); *Kellogg*, 534 N.W.2d at 435 ("The fact that other factors, such as family ties and the defendant's record of appearance at court proceedings, might weigh in Kellogg's favor does not entitle him to a lower bond. The court may, in its discretion, give more weight to some factors than to others.").

And even then, $17,000 was not an unattainable bail amount. *Compare State v. Formaro*, No. 00-1082, 2001 WL 725986, at *5 (Iowa Ct. App. June 29, 2001) ("Formaro posted bond immediately after his sentencing. Therefore, the amount of bond did not affect his

ability to avoid incarceration pending the outcome of his appeal.") *with Chew*, 2018 WL 5850225, at *10 ("Because our legislature determined individuals [appealing their convictions] are bailable, the de facto denial of bail thwarts that intent."). Hightower posted it. *See* 11/22/2022 Docket Entries 9, 12 (bond posted), 14 (showing restitution still owed). Although the State maintains the matter is moot, this Court may safely conclude the district court did not abuse its discretion in setting her bond amount.

B. Although it was a laudable effort to make her victim whole, the district court could not order the forfeiture of Hightower's appeal bond.

Finally, Hightower attacks the district court's order creating her appeal bond. The order states: "All parties are advised any appeal bond posted, regardless of who posts it, SHALL be used to satisfy victim restitution. The Clerk of Court shall notify any person posting the appeal bond that it will not be returned, but rather will be used for victim restitution." Post-Sentencing Order, Dkt. No. 77; App. 36–38.

The State recognizes that portions of the Iowa Supreme Court's opinion in *Letscher* foreclose a district court from ordering the forfeiture of an appeal bond in the manner that occurred here. *See Letscher*, 888 N.W.2d at 884–87; *see also* Iowa Code §§ 811.6, 811.8.

If it reaches the merits of the claim, the Court should vacate that portion of the order and instruct that after the appeal the district court is to proceed under Iowa Code section 811.6.

CONCLUSION

This Court has jurisdiction and authority to review Hightower's attack on her sentence in subdivision II. This Court lacks authority to review her attacks on her guilty plea, to attack the constitutionality of Iowa Code section 814.29, and attack the district court's decision not to permit her to withdraw it within subdivisions I and III. Her attack on the amount of her appeal bond is moot. The State asks this Court to affirm.

REQUEST FOR NONORAL SUBMISSION

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:

- This brief has been prepared in a proportionally spaced typeface using Georgia in size 14 and contains **13,957** words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).

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