IN THE SUPREME COURT OF IOWA

STATE OF IOWA, Plaintiff–Appellee, v. TAYLOR CHRISTOPHER SMITH, Defendant–Appellant.	Woodbury County Case No. FECR111571 S. CT. NO. 24–0053

APPEAL FROM THE IOWA DISTRICT COURT
FOR WOODBURY COUNTY
THE HONORABLE STEVEN ANDREASEN, JUDGE

APPELLANT'S REPLY BRIEF AND ARGUMENT

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STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

I. Smith's challenge to the arms prohibition is properly before this Court.

II. The district court's order prohibiting the use and possession of firearms, offensive weapons, and ammunition violates Smith's rights under the Second Amendment to the United States Constitution and Article I, section 1A of the Iowa Constitution.

NATURE OF THE CASE

COMES NOW the Defendant–Appellant Taylor Christopher Smith, pursuant to Iowa Rule of Appellate Procedure 6.903(4), and hereby submits the following argument in reply to the State's brief filed on or about July 12 2024. While the Defendant–Appellant's brief adequately addresses the issues presented for review, a short reply is necessary to address certain contentions raised by the State.

ARGUMENT

I. Smith's challenge to the arms prohibition is properly before this Court.

Error was preserved for Smith's challenge on the constitutionality of the district court's order prohibiting his use and possession of firearms, offensive weapons, and ammunition. As a term of the sentence, Smith may challenge the prohibition on appeal without objecting to its imposition in district court. *See State v. Letscher*, 888 N.W.2d 880, 883–84 (Iowa 2016) ("A defendant is not required to object to a term of the sentence to preserve error on appeal."); *State v. Pearson*,

876 N.W.2d 200, 205 (Iowa 2016) (quoting *State v. Lathrop*, 781 N.W.2d 288, 293 (Iowa 2010)) ("[A] defendant may challenge an 'error[ ] in sentencing . . . on direct appeal even in the absence of an objection in the district court.'"). The State argues that the arms prohibition was not a term of the sentence, but only a "miscellaneous notice" towards people in general that have been convicted of felonies. *See* State's Br. p. 15.

While it is true that the arms prohibition came under a section titled "**Miscellaneous Notices.**", it was in fact part of the judgment entry and Smith's sentence itself. At least one other provision under the "Miscellaneous Notices" portion makes it clear this section should be considered part of the sentencing order. D0084, Sentencing Order, at 10 (01/05/2024) (emphasis in original). Specifically, there is another section under the "miscellaneous notices" on booking and fingerprinting; this term specifically requires a defendant to report to the Sheriff's office to complete those processes. D0084, at 10. The order provides if the defendant fails to

complete the booking and fingerprinting, a warrant will issue for their arrest. D0084, at 10. Moreover, the order states that the failure to complete this processes is punishable by contempt. D0084, at 10. To justify a finding of contempt, there must be a willful disregard of court's order. *See State v. Lipcamon*, 483 N.W.2d 605, 607 (Iowa 1992) (quoting *Lutz v. Darbyshire*, 297 N.W.2d 349, 353 (Iowa 1980)); *see also Contempt*, Black's Law Dictionary (12th ed. 2024) (noting that contempt occurs when a party disobeys a court's order). Thus, this provision, though under the order's "Miscellaneous Notice" is clearly a part of the court's order and the sentence. The same is true of the arms prohibition, despite the order classifying it under "miscellaneous notices."

Notably, the district court believed the sentencing order caused Smith to lose his right to bear arms. A notice filed a few days after sentencing states:

> Pursuant to I.C. 724.31A, the court hereby notifies the party names above that, in the case number indicated above, the court issued an order or judgment by which the party named above lost firearm rights because the party named above met

> one or more of the following criteria [*Judge: check applicable criteria*]:
>
> * Felony conviction [I.C. 724.26(1) and 18 USC 922(g)(1)]

D0090, Notice of Firearm Prohibition, at 1 (01/09/2024) (emphasis in original). As this order indicates, the district court considered the arms prohibition to be part of the judgment and sentencing ordered in the case. *See* D0090, at 1 ("[T]he court issued judgment by which the party named above lost firearm rights . . .").

The State asserts because the arms prohibition is a collateral consequence of Smith's felony conviction, it is not part of his sentence. It is mistaken. First, the line between whether a consequence is direct or collateral has been blurred in recent years. *See, e.g.*, *Padilla v. Kentucky*, 559 U.S. 356 (2010); Jenny Roberts, *Ignorance Is Effectively Bliss: Collateral Consequences, Silence, and Misinformation in the Guilty-Plea Process*, 95 Iowa L. Rev. 119, 124 (Nov. 2009) (noting the "artificial, ill-conceived divide between collateral and direct consequences"); *see also Doss v. State*, 961 N.W.2d 701, 723

(Iowa 2021) (Appel, J., concurring specially) ("[T]he best approach to the duty of counsel to disclose the consequences of a plea is best reflected in the ABA standards which require disclosures of "collateral" consequences enmeshed with the criminal process that are severe and important enough to impact the decision to plead guilty."). Moreover, the arms prohibition at issue is intimately related to the criminal process and a direct and is arguably a direct consequence of a conviction. *See id.*; *Doss*, 961 N.W.2d at 710 (quoting *State v. Carney*, 584 N.W.2d 907, 908 (Iowa 1998) (per curiam)) ("The distinction between direct and collateral consequences is 'whether the result [of the consequence] represents a definite, immediate and largely automatic effect on the range of defendant's punishment.'"); *State v. Fisher*, 877 N.W.2d 676, 683–84 (Iowa 2016) (finding the revocation of a driver's license for a drug possession offense was a direct consequence). However, Smith acknowledges the Iowa Supreme Court has ruled otherwise, though notably the decision was prior to *Padilla* and recent criticism of the direct versus collateral

distinction. *See Saadiq v. State*, 387 N.W.2d 315, 325 (Iowa 1986).

Nevertheless, whether the arms prohibition is a collateral or direct consequence of the conviction is immaterial to whether the prohibition is a part of the sentence in this case. For example, conditions of probation have been said to be collateral consequences of a conviction. *See State v. Sanders*, 490 N.W.2d 211, 215 (Neb. 1992). Yet, sentencing courts can and sometimes do set special conditions of probation. *See State v. Jorgensen*, 588 N.W.2d 686, 687 (Iowa 1998) (citing Iowa Code § 906.7). When the courts enter the conditions of probation in the sentencing order, they become part of the sentence; therefore, the appellate court can review the conditions for reasonableness as part of the sentence. *See State v. Lathrop*, 781 N.W.2d 288, 292–93 (Iowa 2010). And, despite being collateral consequences, appellate courts routinely review such conditions as part of the defendant's sentence, finding some to be illegal or run afoul of the defendant's constitutional rights. *See, e.g.*, *id.* at 299–301

(finding the no-contact with minors term of probation to be unnecessarily excessive); *State v. Fatland*, 882 N.W.2d 123, 126 (Iowa Ct. App. 2016) (finding a probationary condition prohibiting the defendant from becoming pregnant violated her fundamental, constitutional right to procreation); *State v. Cutshall*, No. 16–1646, 2017 WL 2875693, at *1, n.1 (Iowa Ct. App. July 6, 2017) (unpublished table decision) (finding a condition of probation prohibiting access to the internet unreasonable and noting a recent U.S. Supreme Court decision striking down a similar provision as unconstitutional under the First Amendment).

Similar to a probationary condition, even if it is a collateral consequence, the arms prohibition is a part of the sentence because the district court included it as a term in Smith's sentencing order. *See State v. Grover*, No. 14–0072, 2014 WL 7343514, at *5 (Iowa Ct. App. Dec. 24, 2014) (unpublished table decision) (vacating the "additional directive" of a firearms prohibition as an illegal sentence). As discussed in the opening brief and in Division II below, the

arms prohibition violates Smith's constitutional rights to bear arms under both the state and federal constitutions. D0084, at 10; D0090, at 1. Because the prohibition is unconstitutional, and therefore illegal, this Court may address Smith's argument. *See State v. Bruegger*, 773 N.W.2d 862, 871–72 (Iowa 2009) ("[A] challenge to an illegal sentence includes claims that the court lacked the power to impose the sentence or that the sentence itself is somehow inherently legally flawed, including claims that the sentence is outside the statutory bounds or that the sentence itself is illegal.").

II. The district court's order prohibiting the use and possession of firearms, offensive weapons, and ammunition violates Smith's rights under the Second Amendment to the United States Constitution and Article I, section 1A of the Iowa Constitution.

The U.S. Supreme Court's recent decision in *United States v. Rahimi*, 144 S.Ct. 1889 (2024), is instructive to the analysis of this issue, though not in the way the State suggests. In *Rahimi*, the Supreme Court affirmed the lower court's rejection of Rahimi's facial challenge to Section 922(g)(8). *Id.* at 1901–02. However, the holding of *Rahimi* was

relatively narrow: it determined that where a court found an individual "[p]osed a credible threat to the physical safety of another [they] may be temporarily disarmed consistent with the Second Amendment." *Id.* at 1903; *see also* Mark W. Smith, *Much Ado About Nothing:* Rahimi *Reinforces* Bruen *and* Heller, 2024 Harv. J.L. & Pub. Pol'y Per Curiam 26, at *10 (Summer 2024) (describing *Rahimi* as applying "Bruen faithfully" and stating "its holdings were narrow in scope and limited in applicability"). In doing so, the Supreme Court noted the government had presented "ample evidence" and Rahimi had "notice and an opportunity to be heard" before the court entered the order disarming him. *Id.* at 1895–86, 1898.

This is in stark contrast to the arms prohibition the district court entered in this case. Here, the district court did not give Smith any notice it would be entering the arms prohibition in the sentencing order. Nor did it give him an opportunity to be heard or present evidence to show he did not present a clear threat of physical violence to anyone. Notably, the State below did also not present this evidence.

Additionally, the Court in *Rahimi* emphatically rejected the government's assertion that an individual could be disarmed simply because they were not "responsible." *Id.* at 1903. This statement suggests that the mere fact that an individual is a felon, without more, is not enough to disarm the individual and limit their rights under the Second Amendment. *See id.*; *see also United States v. Connelly*, No. 23–50312, ____ F.4th _____, 2024 WL 3963874 (5th Cir. Aug. 28, 2024) finding section 922(g)(3) was unconstitutional as applied under the Second Amendment and affirming the dismissal of her firearm possession charge where there was no evidence that the defendant, a "non-violent marijuana user" falls into the category of dangerous"). *But see United States v. Jackson*, 110 F.4th 1120, 1129 (8th Cir. 2024) (concluding that the Supreme Court's "recent decisions on the Second Amendment cast no doubt on the constitutionality of laws prohibiting the possession of firearms by felons" and affirming after the U.S. Supreme Court remanded for further consideration in light of *Rahimi*). As one court noted after the

Rahimi decision, "A legislature's ability to deem a category of people dangerous based only on belief would subjugate the right to bear arms "in public for self-defense" to "a second-class right, subject to an entirely different body of rules than the other Bill of Rights guarantees." *Worth v. Jacobson*, 108 F.4th 677, 694, 698 (8th Cir. 2024) (citing *New York Rifle & Pistol Assoc., Inc. v. Bruen*, 597 U.S. 1, 70 (2022)) (finding the government failed to show that 18 to 20-year olds posed credible threats to the physical safety of others such to justify the prohibition of their right to bear arms).

Rather, *Rahimi* suggests there must be an individualized determination that an individual "presents a clear threat of physical violence to another" in order to justify their disbarment. *See Rahimi*, 144 S.Ct. at 1901. In this case, the district court did not make an individualized determination that Smith did present a clear threat of physical violence to anyone to justify the arms prohibition; the court merely ordered the arms prohibition because Smith was convicted of a felony offense. The State attempts to cover that shortcoming

in its brief, arguing the circumstances of the crime and Smith's prior drug use could support the conclusion Smith presents a clear threat of physical violence. However, this attempt highlights the failure of the court to formally adjudicate that issue below. *See Much Ado About Nothing*, at *9 ("The [Rahimi] Court held only that individuals who have been formally adjudicated by a court 'to pose a credible threat to the physical safety of another may temporarily disarmed consistent with the Second Amendment.'"). Without this individualized determination, made only after the court has given Smith notice and an opportunity to be heard on the issue, the arms prohibition violates both the state and federal constitutions.

CONCLUSION

For the reasons stated above and in the original brief and argument, Defendant–Appellant Taylor Christopher Smith requests the Court vacate the notice of arms prohibition and the related portion of his sentencing order.

CERTIFICATE OF COMPLIANCE WITH TYPEFACE REQUIREMENTS AND TYPE-VOLUME LIMITATION FOR BRIEFS

This brief complies with the typeface requirements and type-volume limitation of Iowa Rs. App. P. 6.903(1)(g)(1) and 6.903(1)(i)(1) because:

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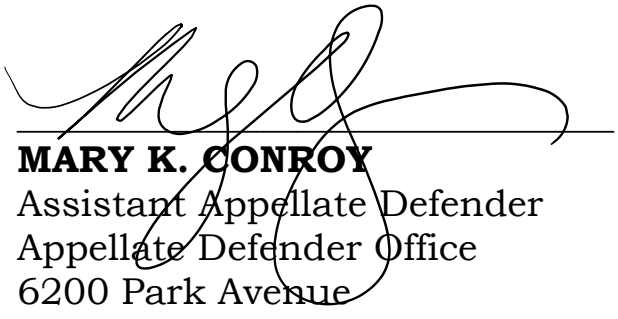

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