IN THE SUPREME COURT OF IOWA

STATE OF IOWA, Plaintiff-Appellee, v. EWAUN CONNOR GARDNER, JR., Defendant-Appellant.	Supreme Court No. 24-0621 Linn Co. No. FECR149305

APPEAL FROM THE IOWA DISTRICT COURT
FOR LINN COUNTY
HONORABLE IAN K. THORNHILL, JUDGE

APPELLANT'S BRIEF AND ARGUMENT AND REQUEST FOR ORAL ARGUMENT

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STATEMENT OF THE ISSUE PRESENTED FOR REVIEW

I. Did the district court err in ruling Gardner was not eligible for a deferred judgment?

ROUTING STATEMENT

This case should be retained by the Iowa Supreme Court because the issue raised involves a substantial issue of first impression in Iowa. Iowa R. App. P. 6.903(2)(a)(4) and 6.1101(2)(c). The Linn County District Court ruled it could not grant Gardner a deferred judgment because he was convicted of a felony in Johnson County, even though that offense was committed after this one. The Iowa Code provides judgment cannot be deferred if "[t]he defendant previously has been convicted of a felony." Iowa Code § 907.3(1)(a)(1) (2023). Iowa courts have not interpreted this phrase. However, the Supreme Court has interpreted similar language—"has previously been convicted"—in Iowa Code section 124.401(5) (2003). *State v. Freeman*, 705 N.W.2d 286 (Iowa 2005). The *Freeman* Court ruled section 124.401(5) should be construed like the habitual offender enhancement statute, requiring an offense to be "complete as to a conviction and sentencing before commission of the next." *Id.* at 291. Gardner respectfully requests this Court retain

his case and apply this rationale to find he is eligible for a deferred judgment upon resentencing.

NATURE OF THE CASE

This is an appeal by Defendant-Appellant Ewaun Gardner following a guilty plea of guilty to interference with official acts with a dangerous weapon, a class D felony in violation of Iowa Code sections 719.1(1)(a) and 719.1(1)(f), in Linn County District Court. D0050, Disposition Order at 1 (3/26/24). The district court imposed a conviction and sentenced Gardner to three years of probation and suspended the $1,025.00 fine and 15% surcharge. D0050 at 1-2. On appeal, Gardner challenges the district court's ruling he was not eligible for a deferred judgment under Iowa Code section 907.3. D0062, Sentencing Tr. at 12:17-13:15 (3/26/24).

STATEMENT OF THE FACTS

In a written plea, Gardner admitted: "On the 31st day of March, 2023, I did run from Cedar Rapids Police Officer(s), known to be peace officer(s), in the performance of their lawful duties, while having a firearm in my possession, which I tossed on the

ground while running away; this occurred in Cedar Rapids, Linn County, Iowa". D0031, Guilty Plea at 3 (12/21/23).

JURISDICTIONAL STATEMENT

Gardner has good cause to appeal. Iowa Code section 814.6(1)(a)(3) prohibits a direct appeal as a matter of right from a "conviction where the defendant has pled guilty." Iowa Code § 814.6(1)(a)(3) (2022). The prohibition does "not apply to a guilty plea for a class 'A' felony or in a case where the defendant establishes good cause." *Id.* "Good cause exists to appeal from a conviction following a guilty plea when the defendant challenges his or her sentence rather than the guilty plea." *State v. Damme*, 944 N.W.2d 98, 101 (Iowa 2020). Because Gardner is challenging a discretionary sentence and not the underlying guilty plea, there is good cause to appeal.

ARGUMENT

I. The district court erred in ruling Gardner was not eligible for a deferred judgment.

Preservation of Error: The defense maintained Gardner was eligible for a deferred judgment. D0047, Def. Sentencing Memo

(3/23/24); D0062 at 3:21-9:25. The State argued the language of Iowa Code section 907.3 prohibited it. D0046, State's Sentencing Brief (3/18/24); D0062 at 10:1-11:20. The district court heard the matter and found Gardner was not eligible for a deferred judgment. D0062 at 11:21-13:15. Accordingly, error was preserved. *State v. Kamber*, 737 N.W.2d 297, 298 (Iowa 2007).

Standard of Review: Questions of statutory interpretation are reviewed for correction of errors at law. *Rhoades v. State*, 880 N.W.2d 431, 434 (Iowa 2016).

Merits: The parties reached a global plea agreement to resolve charges in Johnson and Linn Counties with the understanding the State would ask for suspended sentences while Gardner could request deferred judgments. D0047 at 2; D0046 at 1. The instant offense occurred in Linn County prior to the commission of the Johnson County offenses, but the Johnson County offenses were resolved earlier. D0046 at 1. Gardner was scheduled to be

sentenced in Johnson County on February 19, 2024,[1] and in Linn County the following day. D0032 Order Accepting Plea at 2 (12/22/23); D0044, Order Resetting Sentencing (2/20/24). When the judge in Johnson County adjudicated Gardner guilty of a felony and suspended the sentence, the Linn County judge rescheduled sentencing to allow the parties to brief whether the court still had authority to grant a deferred judgment in this case. D0044 at 1.

The relevant portion of the Iowa Code provides:

> 1. a. With the consent of the defendant, the court may defer judgment and may place the defendant on probation upon conditions as it may require. A civil penalty shall be assessed as provided in section 907.14 upon the entry of a deferred judgment. However, the court shall not defer judgment if any of the following is true:
>
> (1) The defendant previously has been convicted of a felony. "*Felony*" means a conviction in a court of this or any other state of the United States, of an offense classified as a felony by the law under which the defendant was convicted at the time of the defendant's conviction.
>
> (2) Prior to the commission of the offense the defendant has been granted a deferred judgment or

[1] The Johnson County case is on appeal in *State v. Gardner*, No. 24-0487.

> similar relief, two or more times anywhere in the United States.
>
> (3) Prior to the commission of the offense the defendant had been granted a deferred judgment or similar relief in a felony prosecution anywhere in the United States within the preceding five years, measured from the date of granting of deferment of judgment to the date of commission of the offense.

Iowa Code § 907.3 (2023).

The parties disagreed about whether Gardner "previously has been convicted" of a felony under subsection one. The State argued the plain language of the statute when read in conjunction with subsections two and three indicated Gardner wasn't eligible. D0046 at 2. The defense argued Gardner was deferred eligible because at the time he committed this offense he had no previous felony convictions.[2] D0047 at 2-5; D0062 at 8:16-22; 9:16-23.

The district court ruled:

> And the last issue regards to the language of 907.3, specifically whether or when someone is deferred eligible and loses their deferred eligibility. And I agree with the State; they point out that the legislature used separate language when talking about different scenarios that either do or do not extinguish defendant's availability to seek a deferred judgment. In the case of a prior

[2] Gardner does not renew his other two arguments on appeal.

> conviction, they simply say "prior conviction." And other sections they don't use the same language; they use different language that distinguish the "prior conviction" from "prior commission of an offense," so those are two different phrases.
>
> What makes it even an issue here, I think -- and I'm sure [Defense Counsel] agrees with this – the offense here in the Linn County matter took place prior to the Johnson County matter, but the Johnson County matter was sentenced before. So this clearly is a prior offense, but because the Johnson County conviction has been entered, it is a prior conviction, and I find that the defendant is not deferred eligible based upon his prior conviction for a felony in Johnson County.

D0062 at 12:17-13:15.

Section 907.3(1)(a)(1) is ambiguous. An ambiguous statute requires the court to engage in statutory construction. *State v. McCullah*, 787 N.W.2d 90, 94 (Iowa 2010) (finding the lack of a modifier created ambiguity). "A statute is not ambiguous unless 'reasonable minds could differ or be uncertain as to the meaning of the statute.'" *Id.* at 94 (quoting *Carolan v. Hill*, 553 N.W.2d 882, 887 (Iowa 1996)). The ambiguity can arise from the meaning of specific words or the scope and meaning of the statute. *Id.*

The meaning of "previously has been convicted of a felony" is ambiguous on its own and when read with subsections two and

three of section 907.3. The State argued the different wording in subsections two and three supports its argument Gardner was no longer deferred eligible after he was convicted of a felony in Johnson County. D0046 at 2. The defense maintained the phrasing in subsection one is ambiguous and subsections two and three help explain its meaning. D0047 at 5.

Because there is ambiguity in the meaning of "previously has been convicted" in subsection one, and its interplay with subsections two and three, the statute is ambiguous. *See State v. Zacarias*, 958 N.W.2d 573, 581 (Iowa 2021) (concluding the meaning of "object" under section 708.2(5) was ambiguous when the parties presented "at least two differing yet reasonable interpretations"). Therefore, the Court must engage in statutory construction.

The Court considers the whole statute for statutory construction. Statutes are viewed as an integrated whole requiring consideration of the entire statute. *State v. Kamber*, 737 N.W2d 297, 299 (Iowa 2007) (interpreting the meaning of "similar relief" in

section 907.3). The Court doesn't just consider isolated words or phrases. *McCullah*, 787 N.W.2d at 94.

Subsection one of 907.3 uses the phrase "previously has been convicted of a felony" while two and three are phrased as "[p]rior to the commission of the offense." As the defense argued below, the wording in subsections two and three support Gardner's interpretation of subsection one.

The meaning of 907.3(1)(a)(1) hinges on the use of the word "previously." Statutes are interpreted so no part is redundant. *McCullah*, 787 N.W.2d at 94. The State's interpretation renders "previously" redundant. If the legislature intended any felony conviction to prevent deferred eligibility, it would have used only the word "convicted," not "previously convicted." *See Hajek v. Iowa State Bd. of Parole*, 414 N.W.2d 122, 124 (Iowa 1987) (holding parole board's interpretation of section 906.5 rendered the word "prior" redundant and meaningless). By using the word "previously" in section 907.3(1)(a)(1), the legislature indicated the felony must have occurred previously to the present offense.

Furthermore, this is similar to the Court's analysis of the habitual offender enhancement, which provides that a person convicted of a class C or D felony "who has twice before been convicted of any felony" is subject to an enhanced sentence. Iowa Code § 902.8 (2023). The enhancement "only applies when conviction for the first predicate offense occurs before commission of the second predicate offense and conviction of the second predicate offense occurs before commission of the primary offense." *State v. Parker*, 747 N.W.2d 196, 211 (Iowa 2008); *State v. Woody*, 613 N.W.2d 215, 218 (Iowa 2000); *State v. Hollins*, 310 N.W.2d 216, 217-18 (Iowa 1981).

The same interpretation applied to a statute limiting parole possibilities. *Hajek*, 414 N.W.2d at 123 (considering Iowa Code section 902.8 when interpreting "prior conviction" in section 906.5). "Although it is certainly no iron-bound rule, we are reluctant to ascribe different meanings to the same term, even when it appears in different statutes. Laws can be more readily understood and uniformly applied when terms do not shift in meaning from one

statute to another." *Id.* at 124. Section 907.3 should be applied uniformly with sections 902.8 and 906.5.

Moreover, analysis of a similar phrase supports Gardner's argument. An additional statutory interpretation tool is to examine how a phrase is used elsewhere in the Iowa Code. *State v. Richardson*, 890 N.W.2d 609, 618 (Iowa 2017); *State v. Gordon*, 998 N.W.2d 859, 863-64 (Iowa 2023). The phrase "previously has been convicted" is also used in Iowa Code sections 155A.24 and 600C.1 but has not been interpreted by the Court.

However, the phrase "has previously been convicted" is used frequently. *See, e.g.*, Iowa Code §§ 321J.2(2)(b), 692A.106(5), 708.7(2)(a)(3) (2023). It was interpreted in the context of Iowa Code section 124.401(5) wherein, "A person who commits a violation of this subsection and has previously been convicted two or more times of violating this chapter or chapter 124A, 124B, or 453B is guilty of a class 'D' felony." *State v. Freeman*, 705 N.W.2d 286, 288 (Iowa 2005) (analyzing Iowa Code § 124.401(5) (2003)).

Freeman argued he could only be convicted as a second offender guilty of an aggravated misdemeanor rather than a third offender guilty of a class D felony because of the timing of his offenses. *Id.* at 287. The Court reviewed the history of its analysis of the habitual offender enhancement and stated, "By 1998, our cases consistently held that this state followed the general rule that each offense must be complete as to a conviction and sentencing before commission of the next in order to qualify for the enhancement of penalty under a habitual offender statute, unless the legislature expressly provided otherwise." *Id.* at 291. When the legislature enacted 124.401(5), it did not include language to exclude that general rule. *Id.* "Unless there is clear evidence to the contrary, when the legislature enacts a law, "[w]e assume the legislature knew the existing state of the law and prior judicial interpretations of similar statutory provisions." *Id.* (citation omitted). Accordingly, the Court found Freeman could not be considered a third offender because he was not convicted of his first offense before committing the second. *Id.*

The relevant language of section 907.3 was first enacted in Iowa Code section 789A.1 (1975); *State v. Woolsey*, 240 N.W.2d 651, 653 (Iowa 1976). Section 907.3 became effective in 1978. 1976 Iowa Acts ch. 1245, § 702.

The language of what are now subsections one, two, and three have undergone minor changes since its enactment as section 789A.1 to present day. The phrase "has been previously convicted of a felony" was changed to "previously has been convicted of a felony." *Compare* Iowa Code § 789A.1 (1)(f) (1975) *with Id.* § 907.3(1)(b) (1979). The legislature also changed then removed gender pronouns. *Compare* Iowa Code § 789A.1 (1)(f) (1975) *with id.* § 907.3(1)(b) (1979) *and id.* § 907.3(1)(a)(1) (2023).

Despite numerous amendments to 907.3 since its enactment, the legislature hasn't substantively changed the language of subsections one, two, and three even in the face of the Court's interpretations of sections 902.8 and 124.401(5). Thus, this Court can assume the legislature intended section 907.3 to follow the general rule because it hasn't included language excepting it. *See*

Freeman, 705 N.W.2d at 291. Gardner's Johnson County offenses had to predate the commission of the Linn County offense for the Johnson county felony conviction to be considered as "previously convicted" under section 907.3(1)(a)(1). Therefore, Gardner's sentence should be reversed.

Finally, the rule of lenity should be applied if there are doubts as to the legislature's intent. The rule of lenity is only used as a last resort. *State v. Zacarias*, 958 N.W.2d 573, 581 (Iowa 2021). It requires penal statutes to be strictly construed in favor of the defendant. *Bifulco v. United States*, 447 U.S. 381, 387 (1980); *State v. Hearn*, 797 N.W.2d 577, 585 (Iowa 2011). Thus, if the Court finds ambiguity after engaging in statutory construction, section 907.3 should be construed in favor of Gardner.

Conclusion: The case should be remanded for resentencing because the district court erred in refusing to consider a deferred judgment when it sentenced Gardner. *State v. Kamber*, 737 N.W.2d 297, 300 (2007) (remanding for resentencing where district court

erroneously found defendant was not eligible for a deferred judgment).

CONCLUSION

For the reasons discussed above, Defendant-Appellant Gardner respectfully requests this Court vacate the conviction and remand the case to the Linn County District Court for resentencing.

REQUEST FOR ORAL ARGUMENT

Counsel requests to be heard in oral argument.

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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