

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 REPLY BRIEF AND ARGUMENT

MARTHA J. LUCEY
State Appellate Defender

RACHEL C. REGENOLD
Assistant Appellate Defender
rregenold@spd.state.ia.us
appellatedefender@spd.state.ia.us

STATE APPELLATE DEFENDER'S OFFICE
6200 Park Avenue
Des Moines, IA 50321-1270
(515) 281-8841 / (515) 281-7281 FAX

ATTORNEYS FOR DEFENDANT-APPELLANT

TABLE OF CONTENTS

	<u>Page</u>
Table of Authorities	3
Statement of the Issue Presented for Review.....	4
Nature of the Case.....	5
Argument	
I. The Iowa Legislature has acquiesced in the Iowa Supreme Court’s interpretation of the habitual offender statute	5
Conclusion.....	7
Certificate of Compliance.....	8

TABLE OF AUTHORITIES

<u>Cases:</u>	<u>Page:</u>
State v. Fountain, 786 N.W.2d 260 (Iowa 2010).....	6
State v. Freeman, 705 N.W.2d 286 (Iowa 2005)	6
State v. Hollins, 310 N.W.2d 216 (Iowa 1981)	5-6
State v. Lee, 6 N.W.3d 703(Iowa 2024).....	5-6
State v. Nicoletto, 845 N.W.2d 421 (Iowa 2014)	7
State v. Parker, 747 N.W.2d 196 (Iowa 2008).....	6
State v. Woody, 613 N.W.2d 215 (Iowa 2000).....	6
 <u>Statutes:</u>	
2014 Iowa Acts ch. 1114, § 1.....	7
Iowa Code § 709.15(1)(g) (2024).....	7

STATEMENT OF THE ISSUE PRESENTED FOR REVIEW

I. Has the Iowa Legislature acquiesced to the Iowa Supreme Court's interpretations of the habitual offender statute?

NATURE OF THE CASE

COMES NOW Defendant-Appellant Gardner, pursuant to Iowa Rule of Appellate Procedure 6.903(4), and hereby submits the following argument in reply to the State's brief. While Appellant's brief adequately addresses the issues presented for review, a short reply is necessary to address the State's arguments.

ARGUMENT

I. The Iowa Legislature has acquiesced in the Iowa Supreme Court's interpretation of the habitual offender statute.

The State argues this Court erred in previous interpretations of Iowa Code section 902.8. State's Brief at 11. In the State's view, the Iowa Supreme Court "failed to determine whether the habitual offender statute was ambiguous before resorting to other interpretive tools," and the failure began with its analysis in *State v. Hollins*, 310 N.W.2d 216 (Iowa 1981). State's Brief at 11. The Court's analysis was not erroneous.

Moreover, the Iowa Legislature has acquiesced in this Court's interpretation of Iowa Code section 902.8. *State v. Lee*, 6 N.W.3d 703, 707 (Iowa 2024). "[W]e presume the legislature is aware of our

cases that interpret its statutes. When many years pass following such a case without a legislative response, we assume the legislature has acquiesced in our interpretation.” *Id.* (citations omitted). In *Lee*, the legislature hadn’t changed the law in response to the Court’s decisions in 1994 and 2014. *Id.* at 708. The legislature hasn’t responded to the Court’s decision in *Hollins* in 1981 or subsequent cases in 2000 and 2008. *Hollins*, 310 N.W.2d at 217-18; *State v. Parker*, 747 N.W.2d 196, 211 (Iowa 2008); *State v. Woody*, 613 N.W.2d 215, 218 (Iowa 2000). In contrast, the legislature amended the OWI enhancement statute following decisions of this Court. *State v. Freeman*, 705 N.W.2d 286, 289-90 (Iowa 2005) (discussing the history of decisions and amendments of the OWI enhancement statute).

Other examples demonstrate the legislature can act, hastily even, in response to decisions of this Court. There was some back and forth between the court and legislature regarding the intent required for assault. *State v. Fountain*, 786 N.W.2d 260, 264-65 (Iowa 2010) (discussing the history of cases and legislation). The

legislature also promptly amended a statute following dismissal of the charge in *State v. Nicoletto*, 845 N.W.2d 421 (Iowa 2014), *superseded by statute*, 2014 Iowa Acts ch. 1114, § 1 (codified at Iowa Code § 709.15(1)(g) (2024)). *Nicoletto* was decided on April 11, 2014, and the statute “being deemed of immediate importance” took effect upon enactment on May 23, 2014. *Nicoletto*, 845 N.W.2d at 421; 2014 Iowa Acts. ch. 1114, § 1. Thus, the legislature can act quickly if it chooses, and after over 40 years, it has not amended section 902.8 despite multiple rulings by this Court.

Thus, this Court may find the legislature acquiesced in the past interpretations of section 902.8, and this Court may consider its interpretations of that statute in this case to find Gardner is entitled to resentencing.

CONCLUSION

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

**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:

[X] this brief has been prepared in a proportionally spaced typeface Bookman Old Style, font 14 point and contains 511 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(i)(1).



Dated: 10/09/24

RACHEL C. REGENOLD
Assistant Appellate Defender
6200 Park Avenue
Des Moines, IA 50321-1270
(515) 281-8841
rregenold@spd.state.ia.us
appellatedefender@spd.state.ia.us

RCR/lr/10/24

Filed: 10/10/24