

IN THE SUPREME COURT OF IOWA

24-0351
Polk County Case Nos. AGCR369554, AGCR375425
24-0353
Polk County Case Nos. AGCR374090, SMAC409228

STATE OF IOWA,
Plaintiff-Appellee

V.

RONALD RICHARD PAGLIAI
Defendant-Appellant.

APPEAL FROM THE IOWA DISTRICT COURT
IN AND FOR POLK COUNTY
HONORABLE JUDGE TABITHA TURNER

DEFENDANT-APPELLANT'S BRIEF

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CERTIFICATE OF FILING

I, the undersigned, hereby certify that on October 5, 2024, I will file this document by submitting the document via electronic filing with the Clerk of the Supreme Court. Participants in the case who are registered with the EDMS will be served by EDMS.

/s/ Erin M. Carr

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STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

- I. WHETHER A DISTRICT COURT HAS THE AUTHORITY TO ORDER A DEFENDANT TO PAY CATEGORY B RESTITUTION UPON THE DISMISSAL OF A CASE.**
- II. WHETHER ORDERING A DEFENDANT IN A DISMISSED CASE TO PAY CATEGORY B IS A VIOLATION OF BOTH DUE PROCESS AND THE RIGHT TO COUNSEL IN CRIMINAL PROSECUTIONS.**
- III. WHETHER THE DISTRICT COURT ENTERED AN ILLEGAL SENTENCE BECAUSE LACKED AUTHORITY TO ORDER CATEGORY B RESTITUTION IN A DISMISSED CASE.**

ROUTING STATEMENT

This case involves “fundamental and urgent issues of broad public importance requiring prompt or ultimate determination by the Supreme Court”, and presents “substantial issues of first impression”, accordingly, retention by the Iowa Supreme Court would be appropriate. Iowa R. App. P. 6.1101(2)(c-d).

STATEMENT OF THE CASE

Nature of the Case

Defendant-Appellant, Ronald Pagliai (hereinafter “Appellant”), appeals his sentence from an Order of Disposition concerning case numbers AGCR369554¹ and AGCR375425. D0051 Dispo Order at 1 (02/15/2024). The Order of Disposition adjudicates the Appellant guilty of two counts of Theft in the Third Degree – Enhanced, an aggravated misdemeanor, in violation of Iowa Code § 714.2(3). D0051 Dispo Order at 1 (02/15/2024). The district court sentenced the Appellant to a period of incarceration not to exceed 41 days, ordered him to pay Category B Restitution and victim pecuniary damages, and ordered him to participate in victim offender dialogue. D0051 Dispo Order at 2 (02/15/2024). The district court also ordered the

¹ There are four different case numbers associated with this appeal, but the docket numbers for AGCR369554 are being used for purposes of the Statement of the Case.

Appellant to pay the court costs associated with the dismissal of two other cases, SMAC409228 and AGCR374090. Dispo Order at 3 (02/15/2024).

Course of Proceedings

The State charged Appellant in four different cases, one count each of Theft in the Third Degree – Enhanced an an aggravated misdemeanor, in violation of Iowa Code § 714.2(3), in case numbers in case numbers AGCR375425, AGCR369554, and AGCR374090; D0019 Trial Information at 1, AGCR375425 (12/21/23); D0010 Trial information at 1, AGCR369554 (7/5/23); D009 Trial Information at 1, AGCR374090 (11/9/23). In SMAC409228, Appellant was charged with one count of Interference with Official Acts, a simple misdemeanor, in violation of Iowa Code § 719.1(1)(b). D001 Criminal Complaint at 1, SMAC409228 (10/30/23).

Appellant entered a guilty plea wherein in exchange for a guilty plea as charged in AGCR369554 and AGCR375425, the State would dismiss case numbers AGCR374090 and SMAC409228. D0025 Waiver of Rights and Plea of Guilty at 1-9, AGCR375425 (2/15/24). Although AGCR374090 and SMAC409228 were dismissed, costs were assessed to Appellant. D0024 Order of Disposition at 3, AGCR375425 (2/15/24). Per Iowa Courts Online, Appellant owes approximately \$490.00 in court costs. Appellant timely filed a Notice of Appeal on February 26, 2024, that was approved by the Supreme Court of Iowa on June 13, 2024, for the

important legal issues this appeal implicates. Appeal No. 24-0353 Order at 1 (06/13/2024).

Statement of Facts

Throughout the calendar year of 2023, the Appellant was charged with four separate crimes. D0051 Dispo Order at 1-3 (02/15/2024). During plea negotiations, all four crimes cases were resolved through a global plea agreement. D0051 Dispo Order at 1-3 (02/15/2024). Appellant eventually entered into a plea agreement with the State. D0051 Dispo Order 1 (02/15/2024). One of the conditions of the plea agreement was that two of the cases would be dismissed if the Appellant plead guilty to the two counts of Theft in the Third Degree – Enhanced. D0051 Dispo Order 3 (02/15/2024). However, a condition of the two cases being dismissed was that the Appellant was to pay the court costs associated with those dismissed cases. D0051 Dispo Order at 2-3 (02/15/2024). The Appellant ultimately agreed to the State’s plea offer, including paying the court costs associated with the two dismissed cases. *See generally* D0051 Dispo Order.

ARGUMENT

I. A DISTRICT COURT DOES NOT HAVE THE AUTHORITY TO ORDER A DEFENDANT TO PAY CATEGORY B RESTITUTION UPON THE DISMISSAL OF A CASE.

Preservation of Error:

Appellant pled guilty, and therefore must establish good cause for this Court to consider his appeal. See Iowa Code § 814.6(1)(a)(3). The Iowa Supreme Court held, “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, 104-05 (Iowa 2020). Here, Appellant is challenging his sentence, thus good cause exists for this appeal to proceed despite it arising from a guilty plea. *State v. Damme*, 944 N.W.2d 98, 104-05 (Iowa 2020); *State v. Cabrera*, 2020 Iowa App. LEXIS 921, *2 (Iowa Ct. App. Sept. 23, 2020) (refusing to summarily dismiss a defendant’s appeal when challenging the sentence imposed); *State v. Harden*, 2020 Iowa App. LEXIS 829, *1-*2 (Iowa Ct. App. Aug. 19, 2020) (permitting a defendant’s appeal to proceed when challenging whether the district court Stated sufficient reasons for imposing a particular sentence).

Standard of Review:

The standard of review of a sentence from a guilty plea is for correction of errors at law. Iowa R. App. P. 6.907; *State v. Formaro*, 638 N.W.2d 720, 724 (Iowa 2002). “We will not reverse a sentence unless there is “an abuse of discretion or

some defect in the sentencing procedure.” *State v. Damme*, 944 N.W.2d 98 (Iowa 2020), quoting *Fomaro*, 638 N.W.2d at 724. This includes instances where the appellant may challenge the district court’s authority or the legality of a sentence. *State v. Oetken*, 613 N.W.2d 679, 686 (Iowa 2000); *State v. Parker*, 747 N.W.2d 196, 212 (Iowa 2008). The court will find an abuse of discretion when “the district court exercises its discretion on grounds or for reasons that were clearly untenable or unreasonable.” *State v. Thompson*, 856 N.W.2d 915, 918 (Iowa 2014).

Discussion:

Subject matter jurisdiction implicates the authority of a court to address a type of case. *In re Estate of Falck*, 672 N.W.2d 785, 789 (Iowa 2003). “Unlike personal jurisdiction, a party cannot waive or vest by consent subject matter jurisdiction.” *In re Estate of Dull*, 303 N.W.2d 402, 406 (Iowa 1981). To establish such a claim, the court must have authority either constitutionally or statutorily. *State v. Propps*, 897 N.W.2d 91, 96 (Iowa 2017). Neither the United States Constitution nor the Iowa Constitution express that a district court has the subject matter jurisdiction to order a criminal defendant in a dismissed case to pay Category B Restitution (specifically, court costs, and court appointed attorney fees). *See generally* U.S. CONST; *see also* IOWA CONST. Therefore, an analysis of whether a court has statutory analysis to order Category B Restitution is necessary. *See Propps*, 897 N.W.2d at 96.

A. The plain language of Iowa Code section 815.9 dictates that the requirement to pay court costs only applies in cases that result in a conviction or acquittal.

Iowa Code § 815.9 details the financial criteria for indigent persons who need legal assistance. Specifically, under subsections (5) and (6), an indigent person receiving legal assistance is responsible for court costs and court appointed attorney fees, but only if the case resulted in a conviction, acquittal, or a non-criminal case. Iowa code section 815.9. When interpreting the plain language of a statute, the scope cannot be broadened beyond the words written. *Brakke v. Iowa Dep't of Natural Resources*, 897 N.W.2d 522 (Iowa 2017). In other words, when the meaning is clearly presented by the plain language of the statutes, the Court does not continue to look for other possible alternatives. *State v. Iowa Dist. Ct. for Johnson County*, 730 N.W.2d 677 (Iowa 2007); see also *State v. Wickes*, 910 N.W.2d 554 (Iowa 2018) (citing “when the terms and meaning of a statute are plain and clear, we enforce the statute as written.”).

The language of Iowa Code § 815.9(5) states:

If the person receiving legal assistance is *convicted in a criminal case*, the total costs and fees incurred for legal assistance shall be ordered paid when the reports submitted pursuant to subsection 4 are received by the court, and the court shall order the payment of such amounts as restitution, to the extent to which the person is reasonably able to pay, or order the performance of community service in lieu of such payments...

Iowa Code § 815.9(6) is similar written:

If the person receiving legal assistance is *acquitted in a criminal case or is a party in a case other than a criminal case*, the court shall order the payment of all or a portion of the total costs and fees incurred for legal assistance, to the extent the person is reasonably able to pay, after an inquiry which includes notice and reasonable opportunity to be heard.

The plain language of both sections explicitly states that court costs associated with a case are only applicable to a conviction, acquittal, or a non-criminal case. *See Brakke*, 897 N.W.2d at 533.

A statute is not plain or clear “if reasonable minds could differ or be uncertain as to the meaning of the statute.” *See id.* Black Law’s Dictionary 11th Edition refers to an acquittal as the “[t]he legal certification...that an accused person is not guilty of the charged offense.” Black Law’s Dictionary 11th Edition. Comparatively, a dismissal as a “[t]ermination of an action, claim, or charge... esp. a judge’s decision to stop a court case through the entry of an order or judgement *that imposes no civil or criminal liability on the defendant with respect to the case.*”

The plain language, and the ordinary meaning behind the language, indicate that a criminal defendant for whom a case has been dismissed is not responsible for the Category B Restitution incurred in connection to that charge. *See Id.*, *see also* Iowa Code section 815.9(5-6). Here, two cases against Appellant were dismissed without a fact finder making a determination as to Appellant's criminal liability or lack thereof. The procedure by which Appellant’s cases were disposed of does not fit either the definition of a conviction or an acquittal. *See Id.* Therefore, according

to the plain language of Iowa Code section 815.9 subsections (5) and (6), the district court lacked subject matter jurisdiction to order Appellant to pay Category B Restitution in the cases that were dismissed. *See Id., see also, Wickes*, 910 N.W.2d 554.

B. Iowa Code §815.9’s Legislative History Supports the Assertion that Dismissed Cases were not Contemplated to be Cases where Category B Restitution may be Assessed.

Changes to Iowa Code § 815.9 reflect the legislature’s intent to not to require defendants to pay Category B Restitution on dismissed cases. Statutes are amended with a purpose, so that “[t]he repeal of a statute typically destroys the effectiveness of the statute, and the repealed statute is deemed never to have existed.” *Wieslander v. Iowa Dep’t of Transp.*, 506 N.W.2d 516, 522 (Iowa 1999). Further, the history of a statute includes the omission or inclusion of terms, both of which expressed the intent of the legislature. *State v. Beach*, 630 N.W.2d 598, 600 (Iowa 2001). But the “[i]ntent may be expressed by the omission... of statutory terms.” *State v. Beach*, 630 N.W.2d 598, 600 (Iowa 2001).

The right to recover on Category B Restitution in criminal convictions was introduced to Iowa in 1982. S.F. 2280, 69th Gen. Assemb. (Iowa 1982); Iowa Code § 910.2. The following year the Legislature codified Iowa Chapter 815 to focus solely on the fees associated with defending indigent people. S.F. 495, 70th Gen.

Assemb. (Iowa 1983). A decade later, in 1993, the Legislature introduced Iowa Code § 815.9A which stated:

Costs incurred for indigent defense shall be paid to the clerk of the district court by the person receiving the services not later than the date of sentencing or, if the person is acquitted or the charges are dismissed, within thirty days of the acquittal or dismissal.

In the beginning, the statute did include dismissed cases for Category B Restitution. However, by 1999, six years after the creation of the statute, it was repealed altogether by 99 Acts, Ch. 135, § 31.

Despite Iowa Code § 815.9A being repealed, parts of it were rearranged and inserted into Iowa Code § 815.9(3) and (4). S.F. 451, 78th Gen. Assemb. (Iowa 1999). Subsection (4) specifically discusses how a public defender shall report their service fees and states: “[i]n a criminal case, the report shall be submitted within a reasonable period of time after the date of sentencing, acquittal, or dismissal.” The wording of subsection (4) shows that it was not the legislature’s intent to include dismissed criminal cases in subsections (5) and (6) when regarding the payment of court costs for convictions, acquittals, or non-criminal cases. See *Beach*, 630 N.W.2d at 600. The Legislature has carefully constructed Iowa Code Chapter 815 how they intend it to be. See generally Iowa Code § 815.

Additional amendments were made to Iowa Code 815.9 in 2012, specifically subsection (3), that were prompted by *State v. Dudley*. See generally 766 N.W.2d 606 (Iowa 2009). In *Dudley*, the defendant was acquitted of a criminal charge, but

order to pay court costs. *Id.* at 611. Failure to do so may have resulted in contempt. *Id.* The Iowa Supreme Court ruled, among several issues, that “chapter 815 restricts the restitution obligation of a convicted defendant represented by a public defender to a statutory fee, but not the repayment or restitution obligation of all other indigent defendants, including acquitted defendants such as Dudley.” *Id.*

“We presume that, when the legislature enacts a statute, it intends ‘[a] just and reasonable result.’” *State v. Shlyter*, 763 N.W.2d 575, 581 (Iowa 2009). This sentiment remains true when also considering omitted words from a statute. *Brakke*, N.W.2d at 538-539. The omission of “dismissed” from the applicable language of Iowa Code § 815.9 was not only purposeful, as discussed with the history behind the statute, but also reasonable. This is because convictions or acquittals typically will require more resources and attorney time to obtain as they go through the stages of motions, hearings, and perhaps a trial. Further, it is not reasonable to expect someone for whom a case has been dismissed to pay the associated costs, the State files the charges, a defendant does not ask for the charges to be brought against them.

Based on the statutory interpretation and supporting case law, district courts do not hold statutory authority to issue criminal defendants Category B Restitution in dismissed cases. Because there is neither constitutional nor statutory authority to order the payment of Category B Restitution in dismissed cases, criminal defendants in dismissed cases cannot be ordered by a district court to reimburse Category B

Restitution. Here, the district court lacked both constitutional and statutory authority to order Appellant to pay Category B Restitution in cases that were dismissed. Therefore, the district court's order requiring Appellant to pay Category B Restitution should be reversed and vacated.

C. Prior Iowa Supreme Court precedents lead to the conclusion that District Courts do not have the authority to order Category B Restitution in a Dismissed Case.

The Supreme Court of Iowa was faced a similar situation as the one the Appellant presents now. In *Anderson*, the Court had to determine “whether a county is entitled to be reimbursed by a defendant for fees paid to his court-appointed attorney for representing defendant as an indigent defendant in a criminal prosecution.” 164 N.W.2d 129, 130 (Iowa 1969). The Court issued the following ruling:

We hold that in the absence of statutory authorization taxing expenditures made under this section as part of the costs, no right of recovery can be had by the county through independent suit. This is especially true where, as here, the defendant against whom judgment is sought was acquitted in the criminal matter.

Id. at 135.

It is important to note that *Woodbury County* was discussing a defendant who was acquitted of their criminal charges, rather than dismissed. *Id.* at 136. Regardless, the holding indicated that unless the district court has explicit statutory authority, then the district courts cannot order reimbursement costs.

The Court also ruled in *State v. Shuyter* that Category B Restitution may not be collected through criminal contempt proceedings. 763 N.W.2d 575, 585 (Iowa 2009). To determine the answer, the Court conducted their own statutory interpretation on Iowa Code § 815.9 and found that district courts do not have the necessary authority as they are limited to civil collections, not criminal contempt. *Id.* at 581-82. While the issue in *Shuyter* is different compared to the Appellant's, it highlights that the Court has reviewed, and found, that Iowa Code § 815.9 has limitations on district courts and the authority they possess. *See generally Shuyter.*

Recently, the Court has already issued a similar ruling in 2019. *State v. Topete*, Case No. 18-1330, Order to Reverse and Remand. The defendant's motion to dismiss was granted, but the district court ordered the defendant to pay their attorney's costs. *State v. Topete*, Case No. 18-1330, Order to Reverse and Remand. After reviewing the statute, the Supreme Court of Iowa issued an Order to reverse and remand the case and clearly stated "Iowa Code Section 815.9(6) does not authorize the imposition of attorney fees on dismissed counts." *State v. Topete*, Case No. 18-1330, Order to Reverse and Remand.

While the order in *Topete* was issued following a motion to dismiss for a speedy trial violation, and not an agreement to pay costs, it is still instructive here, because it contains conclusions from a review of §815.9's legislative history. *See Id.* As discussed above, changes to §815.9 include the exclusion of dismissed cases from

the list cases wherein Category B Restitution may be assessed. *See* Iowa Code sections 815.9 (2023), 815.9A (1993) (Repealed). Here, while Appellant agreed to pay costs as part of the plea agreement he reached with the State, this Court’s prior rulings addressing the assessment of costs in dismissed cases imply that the district court was without authority to order the payment of Category B Restitution in Appellant’s dismissed cases. *See Id.*, *see also*, *Topete*, Case No. 18-1330. Therefore, this Court should reverse and vacate the district court’s order requiring Appellant to pay costs in the cases that were dismissed.

D. Whether Appellant agreed to pay costs is irrelevant, because Appellant could not have agreed for the district court to issue an order where it lacked the authority to do so.

“Unlike personal jurisdiction, a party cannot waive or vest by consent subject matter jurisdiction.” *In re Estate of Dull*, 303 N.W.2d 402, 406 (Iowa 1981). The payment of court costs as a condition of the dismissal of two of the four cases was part of the agreement reached by the parties below. D0025 Waiver of Rights and Plea of Guilty at 1-9, AGCR375425 (2/15/24). However, a party cannot waive subject matter discretion, and the district court lacked the subject matter jurisdiction to order the payment of costs in a dismissed case. Therefore, Appellant’s agreement, or lack thereof, is irrelevant to the analysis of whether Appellant may be ordered to pay costs in a dismissed case. Accordingly, this court should reverse and vacate the order requiring appellant to pay Category B Restitution in the dismissed cases.

II. ORDERING A DEFENDANT IN A DISMISSED CASE TO PAY CATEGORY B IS A VIOLATION OF BOTH DUE PROCESS AND THE RIGHT TO COUNSEL IN CRIMINAL PROSECUTIONS.

Preservation of Error:

Appellant pled guilty, and therefore must establish good cause for this Court to consider his appeal. See Iowa Code § 814.6(1)(a)(3). The Iowa Supreme Court held, “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, 104-05 (Iowa 2020). Here, Appellant is challenging his sentence, thus good cause exists for this appeal to proceed despite it arising from a guilty plea. *State v. Damme*, 944 N.W.2d 98, 104-05 (Iowa 2020); *State v. Cabrera*, 2020 Iowa App. LEXIS 921, *2 (Iowa Ct. App. Sept. 23, 2020) (refusing to summarily dismiss a defendant’s appeal when challenging the sentence imposed); *State v. Harden*, 2020 Iowa App. LEXIS 829, *1-*2 (Iowa Ct. App. Aug. 19, 2020) (permitting a defendant’s appeal to proceed when challenging whether the district court Stated sufficient reasons for imposing a particular sentence).

Standard of Review:

Constitutional challenges are reviewed de novo. *State v. Keene*, 629 N.W.2d 360, 363 (Iowa 2001). “In doing so, we must remember that statutes are cloaked with a presumption of constitutionality.” *State v. Hernandez-Lopez*, 639 N.W.2d 226, 233 (Iowa 2002). Therefore, the “challenger bears a heavy burden, because it must prove

the unconstitutionality beyond a reasonable doubt. *State v. Seering*, 801 N.W.2d 655,661 (Iowa 2005) (citing *Hernandez-Lopez*, 639 N.W.2d 226, 233 (Iowa 2002)).

Discussion:

Having a dismissed defendant pay for their court costs constitutes a violation of the individual's right to due process. *See Giaccio v. State of Pa.*, 382 U.S. 399 (1966) (citing to "punish a defendant after finding him not guilty... violates the most rudimentary concept of due process of law."). Under the United States Constitution, Amendments V, VI, and XIV, and the Iowa Constitution Article I, the Appellant's right to counsel and right to due process are at risk.

A. Right to Counsel

Any defendant in a criminal case is entitled to the help of counsel. U.S. CONST., amend VI; IOWA CONST., art. 1, § 10. This right exists to enforce due process, and specifically for those who have limited resources. *See* U.S. CONST., amend. V, XIV.

State v. Dudley is one instance where the defendant's right to counsel was at risk. 766 N.W.2d 606 (Iowa 2009). Dudley was acquitted of a criminal charge, but the trial court ordered that he pay the full cost of the services his lawyer provided. *Id.* at 611. The Court ultimately found that "[t]he imposition of a mandatory reimbursement obligation on acquitted defendants without any consideration of their ability to pay infringes on their right to counsel." *Id.* at 626.

The Appellant is an indigent person; hence he qualifies for court appointed counsel. *See* Iowa Code § 815.10(1)(a). Because of the Appellant’s status, his options were either to represent himself or accept the assistance of court appointed counsel and its potential fees. *See* Iowa Code § 815.9.

B. Due Process

The Due Process Clause of the United States Constitution states that no individual shall “be deprived of life, liberty, or property, without due process of law.” U.S. CONST., amend. V, XIV. Within the clause is a presumption of innocence. *Id.* Because whether the defendant was found not guilty, acquitted, or had their case dismissed, their life was likely “interrupted and subjected to great stress, and he may have incurred financial hardship through loss of job or potential working hours. His reputation may have been greatly damaged.” *Fuller v. Oregon*, 417 U.S. 40, 49-50 (1974).

The United States Supreme Court issued a ruling in 2017 finding that Colorado’s Exoneration Act violated the Fourteenth Amendment right to a defendant’s due process. *Nelson v. Colorado*, 581 U.S. 128, 130, (2017). To determine whether the defendant was entitled to obtaining a refund as an exoneree, the Court used the three-prong balancing test from *Mathews v. Eldridge*: (1) privacy interest of the individual, (2) risk of erroneous deprivation, and (3) the government’s interest). 424 U.S. 319, 335 (1976). Ultimately, the Court found that there was a risk

of erroneous deprivation that effected the defendant's constitutional rights because the risk involved "a defendant whose conviction has already been overturned that she will not recover funds taken from her solely on the basis of a conviction no longer valid." *Nelson*, 581 U.S. at 134, 138.

Justice Alito's concurrence stated he agreed with the outcome, but not with the method used to get there. *Id.* at 140. Instead, Justice Alito argued that the *Medina* standard is more apt than the balancing test from *Mathews v. Eldridge*. *Id.* This test "applies when we are called upon to 'asses[s] the validity of state procedural rules which . . . are part of the criminal process.'" *Id.* "Under *Medina*, a state rule of criminal procedure not governed by a specific rule set out in the Bill of Rights violates the Due Process Clause of the Fourteenth Amendment only if it offends a fundamental and deeply rooted principle of justice. Regardless of which test is used, a court "may not presume a person, adjudged guilty of no crime, nonetheless guilty enough for monetary exactions." *Nelson*, 581 U.S. at 136. Accordingly, punishing a criminal defendant by ordering them to pay their court costs after having their case dismissed is a violation of their right to presumption of innocence under the Due Process Clause. *See generally Nelson*, 581 U.S.128.

To "punish a defendant after finding him not guilty... violates the most rudimentary concept of due process of law." *Giaccio v. State of Pa.*, 382 U.S. 399, 400 (1966). Additionally, when a case is tried, "The presumption of innocence

remains with the defendant throughout the trial unless the evidence establishes guilt beyond a reasonable doubt.” Iowa Model Jury Instruction 100.4. Appellant was analogously presumed innocent upon being charged and maintained the presumption of innocence up to the dismissal of his case. Although the Appellant only had his case dismissed, rather than a verdict of not guilty, the same principles apply in the sense that he is no longer charged with a crime, nor has he been convicted a crime. *See Giaccio*, at 400. Just as assessing costs in a case where there has been an acquittal has an unjustly punitive effect, assessing costs in a case where this has been a dismissal is similarly unjustly punitive. *See Nelson*, 581 U.S. at 136. case. Therefore, this Court should reverse and vacate the district court order requiring Appellant to pay costs on the cases that were dismissed.

III. THE DISTRICT COURT LACKED AUTHORITY TO ORDER CATEGORY B IN A DISMISSED CASE, IT THEREFORE ENTERED AN ILLEGAL SENTENCE.

Preservation of Error:

Appellant pled guilty, and therefore must establish good cause for this Court to consider his appeal. See Iowa Code § 814.6(1)(a)(3). The Iowa Supreme Court held, “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, 104-05 (Iowa 2020). Here, Appellant is challenging his sentence, thus good cause exists for this appeal to proceed despite it arising from a

guilty plea. *State v. Damme*, 944 N.W.2d 98, 104-05 (Iowa 2020); *State v. Cabrera*, 2020 Iowa App. LEXIS 921, *2 (Iowa Ct. App. Sept. 23, 2020) (refusing to summarily dismiss a defendant’s appeal when challenging the sentence imposed); *State v. Harden*, 2020 Iowa App. LEXIS 829, *1-*2 (Iowa Ct. App. Aug. 19, 2020) (permitting a defendant’s appeal to proceed when challenging whether the district court Stated sufficient reasons for imposing a particular sentence).

Standard of Review:

The standard of review of a sentence from a guilty plea is for correction of errors at law. Iowa R. App. P. 6.907; *State v. Formaro*, 638 N.W.2d 720, 724 (Iowa 2002). “We will not reverse a sentence unless there is “an abuse of discretion or some defect in the sentencing procedure.”” *State v. Damme*, 944 NW.2d 98 (Iowa 2020), quoting *Fomaro*, 638 N.W.2d at 724. This includes instances where the appellant may challenge the district court’s authority or the legality of a sentence. *State v. Oetken*, 613 N.W.2d 679, 686 (Iowa 2000); *State v. Parker*, 747 N.W.2d 196, 212 (Iowa 2008). The court will find an abuse of discretion when “the district court exercises its discretion on grounds or for reasons that were clearly untenable or unreasonable.” *State v. Thompson*, 856 N.W.2d 915, 918 (Iowa 2014).

Discussion:

While district courts lack the subject matter jurisdiction to order Category B Restitution to be paid by a dismissed defendant, that does not necessarily mean the

district court's authority is "fatal to the validity of the order." *In re Marriage of Seyler*, 559 N.W.2d 7, 10 n.3 (Iowa 1997). The Appellant contends that, in addition to the district court lacking subject matter jurisdiction, the district court's order resulted in an illegal sentence.

Courts do not have the power to impose court costs without express statutory authority. *See Woodbury County v. Anderson*, 164 N.W.2d 129 (Iowa 1969) (Holding that an acquitted defendant cannot be assessed the costs of his defense without statutory authorization to do so.) If a court acts outside what is authorized by statute or case law, the resulting sentence would be an illegal sentence, and consequently, void. Iowa R. Crim. P. 2.24(5); *State v. Louisell*, 865 N.W.2d 590, 597 (Iowa 2015).

For the reasons discussed above, district courts lack statutory authority to assess Category B Restitution in dismissed cases. Here, because the district court lacked the authority to assess Category B Restitution in Appellant's case, it rendered an illegal sentence. The order for Appellant to pay Category B Restitution is accordingly void, and this court should reverse and vacate it. *See Id.*

Lastly, all four of these cases were disposed of with one order and as part of one plea agreement. D0025 Waiver of Rights and Plea of Guilty at 1-9, AGCR375425 (2/15/24); D0024 Order of Disposition at 3, AGCR375425 (2/15/24). However, because the court lacked the authority to order the payment of costs in the

dismissed cases, and the disposition of all four cases occurred in one plea bargain, and one order, the entirety of the order must be reversed and vacated. *See, State v. Mitchell*, 650 N.W.2d 619, 621 (Iowa 2002) (Holding that an entire plea bargain was invalidated when one of the charges in the guilty plea which was entered lacks a factual basis.)

CONCLUSION

For the aforementioned reasons, Appellant respectfully requests this court vacate Appellant's sentence, and that this case be remanded with directions to the district court for resentencing Appellant without requiring him to pay court costs and court appointed attorney's fees.

REQUEST FOR ORAL ARGUMENT

Notice is hereby given that upon submission of the cause to the Supreme Court of Iowa, Appellant hereby requests to be heard in oral argument.

/s/ Erin M. Carr

ATTORNEY'S COST CERTIFICATE

I hereby certify that the cost of printing the foregoing Appellant's Proof Brief and Argument was the sum of \$ 0.00.

/s/ Erin M. Carr
Erin M. Carr

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