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IN THE SUPREME COURT OF IOWA

STATE OF IOWA, Plaintiff-Appellee, v. INEZ N. LUNA, Defendant-Appellant.	Page Co. No. FECR107364 S. Ct. No. 25-0726

APPEAL FROM THE IOWA DISTRICT COURT
FOR PAGE COUNTY
HONORABLE CRAIG DREISMEIER, JUDGE

APPELLANT'S BRIEF AND ARGUMENT AND REQUEST FOR ORAL ARGUMENT

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STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

I. The evidence was insufficient as a matter of law to establish that Inez Luna acted with the requisite specific intent to commit a sex act or sexual exploitation.

II. The trial court erred by not considering all relevant sentencing factors and imposing incarceration based solely on the nature of the offense.

III. The trial court imposed an illegal sentence by suspending Mr. Luna's fine without also sentencing him to probation.

ROUTING STATEMENT

The Iowa Supreme Court should retain this case because one of the issues raised involves "substantial questions of enunciating or changing legal principles." 6.1101(2)(f) (2024). The Iowa Court of Appeals has questioned the validity of *State v. Lee*, 561 N.W.2d 353 (Iowa 1997) because of the unambiguous text of Iowa Code Sections 901.5(3) (2023) and 907.3(3) (2024). *State v. Cullum*, No. 23-0911, 2025 WL 2057904, *4, (Iowa Ct. App. July 23, 2025) (en banc) ("Given the aforementioned supreme court precedent, if any Iowa court is to decide the district court is without the authority to suspend fines while imposing incarceration, we believe it must be our supreme court."); *Id.* at *9 (Langholz, J. specially concurring) ("…if *Lee* were a published decision of our court, I would not be inclined to give it much stare decisis respect."); *Id.* at *8 (Buller, J. specially concurring) ("I concur in the judgment to vacate the fine, finding myself in part boxed in by existing supreme court precedent.").

NATURE OF THE CASE

Defendant-Appellant Inez Luna appeals his conviction, sentence, and judgment for Enticing a Minor, a Class D felony in violation of Iowa Code Section 710.10(2) (2023), and two counts of assault, simple misdemeanors in violation of Iowa Code Sections 708.1(2)(a) and 708.2(7) (2023), entered following a bench trial in Page County District Court. D0047, Order Setting Hearing at 1, 8 (2/10/2025). The trial court sentenced Mr. Luna to concurrent sentences of incarceration, including 5 years for enticing a minor and 10 days for each of the assault charges. D0059, Order of Disposition at 1 (4/21/2025). The trial court also imposed three suspended fines—one for each charge—and found that Mr. Luna did not have the ability to pay Category B restitution. D0059 at 1.

Mr. Luna contends that the evidence was insufficient to support his conviction on Count I because it created a reasonable doubt regarding his specific intent. He also contends that the trial court abused its discretion by sentencing him to incarceration after considering only one factor—the nature of the offense. Even if the

trial court did not abuse its discretion, it imposed an illegal sentence by suspending Mr. Luna's fines without also granting probation.

STATEMENT OF THE FACTS

On May 2, 2024, Mr. Luna began communicating with T.A through Snapchat, a digital messaging application. D0077, Trial Tr. p. 12 L. 1-5 (7/16/2025). T.A. was 14 years old and a friend of Mr. Luna's daughter, B.L. D0047, at 1. T.A. indicated that Mr. Luna treated her "like [his] own daughter, like a family member," but he eventually went too far and sent inappropriate messages. D0080, Sentencing Transcript p. 15 L. 9-25 (7/16/2025).

On May 9, 2024, Mr. Luna texted T.A. on Snapchat asking if she would like to go for a drive with him. D0047 at 2. This drive never occurred, and on that same day Mr. Luna asked T.A. to delete her messages and he complimented her lips. D0047 at 2. On May 12, Mr. Luna briefly messaged T.A. informing her that he was driving around. D0047 at 2. On May 17—more than a week after the invitation to go for a drive—Mr. Luna texted T.A. while she was

at school inquiring about which swimsuit she planned to wear to the waterpark trip with his daughter and girlfriend the next day. D0047 at 2. Mr. Luna encouraged T.A to wear a two-piece swimsuit, called her "gorgeous," and referred to their "secret friendship." D0047 at 2.

Starting on May 17, T.A. spent the weekend with B.L. D0047 at 3. T.A., Mr. Luna, and B.L. were in B.L.'s bedroom reorganizing when B.L. briefly stepped out. D0047 at 3; D0077 p. 22 L.21-25. When she stepped out, Mr. Luna "grabbed [T.A.'s] hand, pulled her closer, put his other hand on her chin and asked her for a kiss." D0047 at 3. T.A. told him no and Luna did not kiss her. D0047 at 3; D0077 at p. 23 L. 1, 11-12.

Later during that same weekend, on May 19, Mr. Luna approached T.A. on the stairs, slapped her buttocks, and said "move." D0047 at 3. T.A. did not know whether Mr. Luna did this on purpose, and on cross-examination she testified that Mr. Luna frequently does the same to B.L. D0047 at 3. T.A. indicated that the

contact might have been similar to what Mr. Luna does with his daughter. D0077 at p. 30 L. 13-15.

ARGUMENT

I. The evidence was insufficient as a matter of law to establish that Inez Luna acted with the requisite specific intent to commit a sex act or sexual exploitation.

Preservation of Error: Mr. Luna moved for judgment of acquittal on Count I, arguing that the evidence was insufficient to establish that he acted with the specific intent to commit an illegal sex act or sexual exploitation as required by Iowa Code Section 710.10(2) (2023). D0077 at p. 45 L. 5-25 – p. 46 L. 1-25. Regardless, a motion for judgment of acquittal is no longer required to preserve error from a jury trial. *State v. Crawford*, 972 N.W.2d 189, 196-98 (Iowa 2022).

Scope and Standard of Review: The Court considers the evidence in the light most favorable to the State, and it considers all the evidence presented at trial, not just the evidence that supports the verdict. *State v. Adney*, 639 N.W.2d 246, 250 (Iowa Ct. App. 2001). The verdict must be supported by substantial evidence,

"such evidence as could convince a rational trier of fact that the defendant is guilty beyond a reasonable doubt." *Id.* The evidence presented must do more than create speculation, suspicion, or conjecture. *State v. Hamilton*, 309 N.W.2d 471, 479 (Iowa 1981).

Merits: "[T]he Due Process Clause protects the accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged." *In re Winship*, 397 U.S. 358, 364 (1970). *See also Patterson v. New York*, 432 U.S. 197, 211 (1977) (recognizing requirement of proof beyond a reasonable doubt was the "universal rule" long before *Winship*). Review of a sufficiency claim requires not simply determining whether the jury was properly instructed, but "whether the record evidence could reasonably support a finding of guilt beyond a reasonable doubt." *Jackson v. Virginia*, 443 U.S. 307, 318 (1979).

"[T]he relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a

reasonable doubt." *Id.* at 319. The Third Circuit has explained the *Jackson* standard as requiring "the finder of fact 'to reach a subjective state of *near certitude* of the guilt of the accused.'" *Travillion v. Superintendent Rockview SCI*, 982 F.3d 896, 902 (3rd Cir. 2020) (quoting *Jackson v. Virginia*, 443 U.S. 307, 315 (1979)).

To prove that Mr. Luna enticed T.A. with a sexual purpose in violation of Iowa Code Section 710.10(2), the State must prove that he intended "to commit an illegal sex act upon or sexual exploitation of [T.A.]" at the time of the alleged enticement. Iowa Code Section 710.10(2) (2023). That code section provides, in full, that:

> 2. A person commits a class "D" felony when, without authority *and with the intent to commit an illegal sex act upon or sexual exploitation of a minor under the age of sixteen, the person entices* or attempts to entice a person reasonably believed to be under the age of sixteen including a law enforcement officer or agent posing as a minor under the age of sixteen.

Id. (emphasis added). If the State did not prove that Mr. Luna enticed or attempted to entice T.A. with the requisite specific intent, then the trial court erred by finding him guilty. *Id.*; *State v. Brown*,

No. 24-0409, 2025 WL 1824288, *2 (Iowa Ct. App. July 2, 2025); *Itani v. State*, No. 23-0479, 2024 WL 110332, *3 (Iowa Ct. App. January 10, 2024).

Unless substantial evidence proves that the defendant acted with the specific intent to commit an illegal sex act or sexual exploitation, this Court must reverse. *Brown*, No. 24-0409, 2025 WL 1824288, at *2. In *Brown*, the trial court convicted the defendant of enticing a minor in violation of Iowa Code Section 710.10(4) (2023). *Brown*, No. 24-0409, 2025 WL 1824288, at *1. Notably, a conviction under Section 710.10(4) requires an "intent to commit an illegal act upon a minor…," while Mr. Luna's conviction under Section 710.10(2) requires the more serious intent to commit an illegal sex act or sexual exploitation. *Id.* at *2. The defendant in *Brown* stalked a minor through multiple aisles of a store, looked her "up and down," continued stalking her outside of the store, referred to her as "pretty," offered her a ride, and provided no benign reason for doing so. *Id.* at *3. Based on these facts, the Court of Appeals

held that substantial evidence proved that the defendant acted with the specific intent to commit an illegal act upon a minor. *Id.*

Multiple conversations where a defendant expresses his desire to meet-up with a minor to have sex is sufficient to support a conviction under Iowa Code Section 710.10(2). *Itani*, No. 23-0479, 2024 WL 110332, at *3. In *Itani*, the defendant told his 14-year-old cousin via multiple digital conversations that he desired to have sex with her. *Id.* Over a span of two months, the defendant messaged her that he was "sex addicted," asking if it "[w]ould be weird if we fucked[,]" planning a location for them to "sneak off[,]" inquiring if "fucking is good or possible," requesting to "stay the night," and expressing his desire for a "3 way." *Id.* The Court of Appeals held that the evidence supported the defendant's intent and "multiple "slight acts."" *Id.* (quoting *State v. Ball*, No. 17-1332, 2018 WL 3471604, at *1-2 (Iowa Ct. App. Jul. 18, 2018)).

Here, the evidence does not conclusively establish that Mr. Luna acted with the specific intent to commit an illegal sex act upon or sexual exploitation of T.A. The State relied on a variety of

Snapchat digital text messages as evidence of intent, but Mr. Luna sent most of these messages after he invited T.A. to go for a drive. D0077 at p. 12 L. 1-25 – p. 13 L. 1-20; D0045, Exh. 1, Snapchat Messages (7/10/2025). On May 9, 2024, Mr. Luna invited T.A. to go for a ride in his car. D0047 at 2. Unlike the defendant's stalking behavior in *Brown*—which supported a less serious intention to commit an illegal act—there is nothing about the offer of a ride itself that suggests Mr. Luna intended to commit an illegal sex act. The State points to a text exchange from May 17 about T.A.'s swimsuit, but this exchange was 8 days after the alleged attempted enticement. D0077 at p. 47 L. 16-18; D0047 at 2. This Court should not conjecture as to Mr. Luna's intent on May 9 based on evidence from a week later.

Text messages on or before May 9 are speculative at best. On that day, Mr. Luna sent messages calling T.A. "buttercup" and complimenting her lips. D0045. Unlike the defendant in *Itani*, who repeatedly and explicitly made plans to sneak off with a minor and have sex, Mr. Luna never discussed sex with T.A. The district court

recognized Mr. Luna's benign motive to bolster T.A. self-awareness and self-esteem. D0080 at p. 15 L. 9 – 12. A rational trier of fact might consider the messages to be questionable, but they are insufficient to establish Mr. Luna's specific intent beyond a reasonable doubt. Because the State failed to prove the essential elements of the crime, the District Court erred in denying Mr. Luna's motion for acquittal.

The evidence is insufficient to prove that Mr. Luna had the requisite specific intent at the time of the overt act. At trial, the State argued that Count I was charged "on diverse occasions between on or about May 2nd and on or about May 31st." D0077 at p. 48 L. 11-16. This description of the charge is accurate, but the only potentially enticing action in that timeframe is Mr. Luna's message inviting T.A. to go for a drive with him. The evidence does not establish Mr. Luna's specific intent at the time of that message. D0045. Even if the subsequent messages somehow support a finding of intent, they do not contain a subsequent enticing action. D0045. Unlike the messages in *Itani*, the subsequent conversation

contains no mention of sex and is devoid of plans to meet up or sneak off. Because Mr. Luna never acted with the specific intent to commit an illegal sex act or sexual exploitation upon T.A., the evidence is insufficient to support Mr. Luna's conviction on Count One.

At sentencing, the judge indicated that Mr. Luna likely had good and innocent intentions. D0080 at p. 15 L. 9-19. The judge stated that "[p]erhaps the *intentions were innocent* enough in regards to trying to bolster the self-awareness or self-esteem of this minor child, *but the manner* in which this went forward was I think completely inappropriate." D0080 at p. 15 L. 9-12 (emphasis added). The judge again repeated that "[T.A.] has indicated you treated her like your own daughter, like a family member. I honestly think that *you probably had good intentions* in regards to that." D0080 at p. 15 L. 16-19 (emphasis added). These colloquial statements are incompatible with a specific intent to sexually exploit a minor. Unlike the defendant in *Brown*, Mr. Luna had a benign motivation for his actions. If Mr. Luna had acted with the

specific intent to commit an illegal sex act with his daughter's 14-year-old friend, the judge would not have referred to his intentions as "innocent" or "good."

Substantial evidence did not establish a near certitude of guilt for Mr. Luna's conviction on Count I Enticing a Minor. Iowa Code Section 710.10(2) (2023). Mr. Luna's conviction, sentence, and judgment should be vacated and his case remanded for dismissal. *See State v. Miller*, 4 N.W.3d 29, 37 (Iowa 2024) ("A party that fails to present sufficient evidence to prove its case on the merits in the trial court does not get a do-over.").

II. The trial court erred by not considering all relevant sentencing factors and imposing incarceration based solely on the nature of the offense.

Preservation of Error: Review of Mr. Luna's sentence is properly before this Court upon direct appeal despite the absence of objection in the trial court. *See State v. Thomas*, 520 N.W.2d 311, 313 (Iowa Ct. App. 1994). *See also State v. Young*, 292 N.W.2d 432, 434-35 (Iowa 1980) (improper factor claim reviewed despite lack of

objection at sentencing); *State v. Dvorsky*, 322 N.W.2d 62, 67 (Iowa 1982).

Scope and Standard of Review: A sentence imposed by the district court is reviewed for errors at law. Iowa R. App. P. 6.907 (2024); *State v. Thomas*, 547 N.W.2d 223, 225 (Iowa 1996). A sentence imposed in accordance with applicable statutes will be overturned only for an abuse of discretion or a defect in the sentencing procedure. *State v. Wright*, 340 N.W.2d 590, 592 (Iowa 1983).

Merits: When imposing a criminal sentence, "[t]he court *shall* ensure that the basis for the sentence imposed appears in the record." Iowa Rule of Criminal Procedure 2.23(2)(f) (2025) (emphasis added). The court "shall consider", *inter alia*, "[t]he content *and* recommendation of the presentence investigation report" and "[a]ll other factors required by law to be considered." *Id.* (emphasis added). The trial court must explain which aspects of the presentence investigation (PSI) report it considered. *State v. Fuhlman*, No. 22-1042, 2023 WL 6291565, *2 (Iowa App. Sept. 27,

2023) (“While the statement of reasons referenced the presentence investigation report, it did not specify in even the most general terms which aspects of the report drove the court's decision.”).

The trial court must at least consider “minimal essential factors,” including “the nature of the offense; the attendant circumstances; and the defendant's age, character, propensities, and chances of reform….” *State v. Dvorsky*, 322 N.W.2d 62, 67 (Iowa 1982) (quoting *State v. Hildebrand*, 280 N.W.2d 393, 396 (Iowa 1979)). No single factor is determinative. *State v. McKeever*, 276 N.W.2d 385, 387 (Iowa 1979) (“…each decision must be made on an individual basis, and no single factor, including the nature of the offense, will be solely determinative.”).

The sentencing court in this case evaluated Mr. Luna’s remorse, employment status, low risk of reoffending, good intentions, and the fact that he had no prior sexual offenses as factors supporting a reduced sentence. D0080 at p. 13 L. 8 – p. 17 L. 15. During the court’s explanation of the factors in favor of Mr. Luna, it repeatedly returned to only one factor supporting

incarceration—the manner of the offense. D0080 at p. 13 L. 8 – p. 17 L. 15. Additionally, the trial court failed to consider Mr. Luna's age and the content of the PSI report, which included favorable information regarding Mr. Luna's low risk of reoffending. D0080 at p. 13 L. 8 – p. 17 L. 15; D0055, PSI Report at 10 (3/11/2025).

Multiple factors opposed a sentence of incarceration. The court recognized that most of Mr. Luna's prior offenses were "a number of years ago" and that none of the offenses had "any sort of a sexual element." D0080 at p. 13 L. 23 – p. 14 L. 3. Despite recognizing that this factor did not warrant incarceration, the trial court listed "Defendant's extensive criminal history" as a reason supporting incarceration in the written sentencing order. D0059 at 3. The trial court also recognized that Mr. Luna expressed remorse and had a job that he could return to. D0080 at p. 14 L. 5-7, 20-22. Despite recognizing that Mr. Luna's remorse "[wasn't] for naught," it sentenced him to the maximum length of incarceration for a class D felony. D0080 at p. 14 L. 20-22, p.16 L.16-20; Iowa Code Section 902.9(1)(e) (2023).

The psychosexual evaluation concluded that Mr. Luna has a low risk of reoffending and does not need sex offense specific treatment. D0056, Psychosexual Evaluation at 19-20 (4/9/2025). Mr. Luna scored low on the Static-99R and Stable 2007. D0056 at 20. The evaluation notes Mr. Luna's age as a factor reducing his likelihood of reoffending. D0056 at 20. Despite noting Mr. Luna's low risk of reoffending—and despite not mentioning his age even once—the trial court included "Defendant's need for and likelihood to achieve rehabilitation" in the written sentencing order. D0080 at p. 14 L. 9-11; D0059 at 3. The court correctly recognized that Mr. Luna is unlikely to reoffend, and the psychosexual evaluation concluded that he does not need sex offense specific treatment. Because of these facts, the trial court should have also recognized that Mr. Luna's need for rehabilitation was low.

Neither the oral explanation of reasons nor the written sentencing order explained which aspects of the PSI report drove the court's decision. The written sentencing order lists "[i]nformation and recommendations contained in the presentence

investigation report" as a reason for the sentence imposed. D0059 at 3. This statement does not include which aspects of the PSI drove the court's decision, as required in *Fuhlman*. *State v. Fuhlman*, No. 22-1042, 2023 WL 6291565, at *2. While the PSI report recommended incarceration, its content contained information supporting Mr. Luna's low risk of future violence and victimization. D0055, Pre-Sentence Investigation Report at 9 (3/11/2025). The oral explanation of reasons is similarly lacking. The trial court made two references to the PSI report, one on page 13 of the sentencing transcript ("I have considered… the Presentence Investigation Report") and page 17 of the same transcript ("I've considered… the information contained within the Presentence Investigation Report"). D0080 at p. 13 L. 16-19, p. 17 L. 10-14. These vague statements do not contain "[t]he content *and* recommendation of the presentence investigation report" as required by Iowa Rule of Criminal Procedure 2.23(2)(f) (2025).

Despite considering multiple factors that do not support a sentence of incarceration, and failing to consider required factors

such as Mr. Luna's age, the trial court sentenced Mr. Luna to five years in prison—the maximum for a class D felony—based solely on the nature of the offense. Iowa Code Section 902.9(1)(e) (2023). On page 14 of the sentencing transcript, the trial court explained "I'd be remiss if, ultimately speaking, sir, I didn't tell you what I was most concerned about… The circumstances of this case really are what trouble me more than anything with what's going on." D0080 at p. 14 L. 11-24. On page 15 the court repeated "[t]he messages that were sent and obviously the actions that I saw amounting and leading up to this conviction I just think in the end are significant[.]" D0080 at p. 15 L. 23-25. The trial court considered multiple factors that did not support incarceration, but imposed incarceration based solely on the nature of the offense.

The District Court's sole reliance on the nature of Mr. Luna's offenses in imposing a sentence of incarceration constitutes an abuse of discretion. Mr. Luna should be resentenced. *State v. Laffey*, 600 N.W.2d 57, 62 (Iowa 1999).

III. The trial court imposed an illegal sentence by suspending Mr. Luna's fine without also sentencing him to probation.

Preservation of Error: Challenges to illegal sentences are exempted from error preservation requirements. *State v. Chawech*, 15 N.W.3d 78, 84 (Iowa 2024) ("The second category of excepted challenges is illegal sentences."). Courts may correct illegal sentences at "*any* time." *Id.* at 85 (emphasis in original). The recent amendment to Iowa Rule of Criminal Procedure 2.24(5)(a) clarifying that "district court[s]" may correct an illegal sentence at any time does not affect the authority of appellate courts. Iowa Rule of Criminal Procedure 2.24(5)(a) cmt. (2025) ("Former rule 2.24(5)(a) said, "The court may correct an illegal sentence at any time." The revised rule recognizes that the rules of criminal procedure govern proceedings in the trial courts, not the appellate courts. However, *the revised rule is not intended to affect existing law regarding the authority of appellate courts to correct illegal sentences.*") (emphasis added).

Scope and Standard of Review: This court reviews "challenges to illegal sentences for correction of legal errors…" *Jefferson v. Iowa District Court for Scott Cnty.*, 926 N.W.2d 519, 522 (Iowa 2019) (quoting *State v. Harrison*, 914 N.W.2d 178, 187–88 (Iowa 2018)).

Merits: "Sentencing is wholly a creature of statute. The district court can impose only a sentence authorized by statute.... A sentence not authorized by statute is illegal and void." *State v. Wieneke*, No. 20-0126, 2021 WL 219222, *1 (Iowa Jan. 22, 2021) (citations omitted). This Court's statutory interpretation "begin[s] with the text of the statute." *State v. Shorter*, 945 N.W.2d 1, 7 (Iowa 2020). (quoting *State v. Mathias*, 936 N.W.2d 222, 227 (Iowa 2019)) (alteration in original).

The relevant sentencing statutes do not authorize courts to suspend a defendant's fine without also placing the defendant on probation. *State v. Laue*, No. 23-0208, 2023 WL 8448475, *2 (Iowa Ct. App. Dec. 6, 2023) (Ahlers, J. concurring in part) ("I believe

suspension of part of the sentence—in this case, the fine—without placing Laue on probation amounts to an illegal sentence.").

Iowa Code Section 901.5 authorizes various sentencing options for district courts. *Id.*; Iowa Code Section 901.5 (2023). Section 901.5(3) is relevant here because the District Court suspended Mr. Luna's fine. D0059 at 1. This section provides that "The court may pronounce judgment and impose a fine or sentence the defendant to confinement, or both, and suspend the execution of the sentence or any part of it as provided in chapter 907." Iowa Code Section 901.5(3) (2023).

Chapter 907 imposes an obligation for district courts to place a defendant on probation whenever they suspend part of a sentence. *Laue*, No. 23-0208, 2023 WL 8448475 at *2 (Ahlers, J. concurring in part). Section 907.3(3) is the starting point because "it is the option dealing with suspending any part of the sentence." *Id.* That section provides that "the court may suspend the sentence *and place the defendant on probation upon such terms and conditions as it may require*." *Id.* (quoting Iowa Code Section

907.3(3) (emphasis in original). Nothing in the relevant statues authorize district courts to suspend a defendant's fine without also placing the defendant on probation. *Id.* at 3. Here, the trial court suspended Mr. Luna's fine but did not place him on probation. D0059 at 1; D0080 at p. 16 L. 15 – p. 17 L. 17. This sentence is not authorized by the statutory text and is illegal.

A district court that suspends a defendant's fine and does not place the defendant on probation has suspended the fine "in name only." *Laue*, No. 23-0208, 2023 WL 8448475 at *3 (Ahlers, J. concurring in part). Because the district court did not place Mr. Luna on probation, "there is no future event that could trigger [the defendant's] obligation to pay the suspended fine." *Id.* (Ahlers, J. concurring in part) (citing *State v. Grey*, 514 N.W.2d 78, 79 (Iowa 1994) ("Suspending a fine and imposing no fine are not equivalent: a suspended sentence is subject to later being executed if the defendant fails to comply with conditions set by the court.")). This outcome is not permitted by Iowa Code Section 902.9(1)(e) (2023), which provides that "'[a] class "D" felon… *shall be sentenced to a*

fine of at least one thousand twenty-five dollars but not more than ten thousand two hundred forty-five dollars." (emphasis added). Because the district court functionally waived Mr. Luna's fine by not placing him on probation, it imposed an illegal sentence.

The Court of Appeals' recent opinion in *State v. Cullum*, No. 23-0911, 2025 WL 2057904 (Iowa Ct. App. July 23, 2025) does not give trial courts authority to forgo mandatory fines. In *Cullum*, the Court of Appeals held, *inter alia,* that the trial court had authority to suspend a fine even though statutory language made the fine mandatory. *Id.* at *5. The Court of Appeals is correct that district courts generally have discretion to suspend mandatory fines—but this is only the case if they also grant probation. Because the trial court suspended Mr. Luna's fines without also granting probation, it violated Iowa Code Section 907.3(3) (2024).

While the Court of Appeals held that a trial court may suspend a fine without also imposing probation, the Iowa Supreme Court should hold that those sentences are not authorized by statute. *Cullum*, No. 23-0911, 2025 WL 2057904 at *4-*6 ("…if any Iowa

court is to decide the district court is without the authority to suspend fines while imposing incarceration, we believe it must be our supreme court."). In addition to the previous argument, the Court of Appeals primarily relied on Supreme Court precedent from *State v. Lee*, 561 N.W.2d 353 (Iowa 1997) along with the Supreme Court's silence in other cases. *Id.* at *4-6. ("We find that silence significant."). One concurring judge referred to the Supreme Court having "impliedly blessed suspending fines absent probation." *Id.* at *8 (Buller J. specially concurring).

The Court of Appeals reliance on *Lee* is correct only insofar as the court is bound by Supreme Court precedent, but is incorrect based on the text of the statute. *Id.* at *9 (Langholz, J. specially concurring) ("I see nothing in the words of the Iowa Code that gives a district court the power to essentially waive a fine by suspending it without also putting a defendant on probation."). In *Lee*, the Iowa Supreme Court invented a distinction between suspending sentences of incarceration and suspending sentences of fines that is neither found in statute nor supported by other caselaw. *Id.* (citing

State v. Chana, 476 N.W.2d 38, 40 (Iowa 1991) ("A sentence is generally defined as any punishment imposed by the court; it is not limited to a term of incarceration."); Iowa Code Section 907.3(3) (2024). Because the statutory text is unambiguous, this Court should hold that trial courts may not suspend a convicted defendant's fines without also granting probation.

Concerns about practical convenience are secondary to the clear textual analysis of the relevant sentencing statutes. *Id.* (Buller, J. specially concurring) ("I agree with the majority on the practical realities of criminal sentencing.... But ... text is our touchstone in analyzing a statute. ... I concur in the judgment to vacate the fine, finding myself in part boxed in by existing supreme court precedent."); *Laue*, No. 23-0208, 2023 WL 8448475 at *3 (Ahlers, J. concurring in part) ("Our courts are not at liberty to ignore the language chosen by our legislature and replace it with our ideas of justice and equality."). Because the statutory text is clear, this Court should hold that trial courts may not suspend a defendant's fine without also granting probation.

Here, the trial court imposed an illegal sentence by suspending Mr. Luna's fine without also granting him probation. D0059 at 1; D0080 at p. 16 L. 15 – p. 17 L. 17. Because Mr. Luna's prison sentence is illegal, this Court should vacate the sentence and remand for the trial court to grant probation. *See Cullum*, No. 23-0911, 2025 WL 2057904 at *10-12 (Ahlers, J. concurring in part and dissenting in part) ("…if the court wanted to suspend the fines, it would have also been required to place [the defendant] on probation.").

CONCLUSION

For the reasons stated above, the defendant respectfully requests this Court to vacate his conviction and remand his case to the District Court for dismissal, or, alternatively, to vacate his sentence and remand for resentencing.

REQUEST FOR ORAL SUBMISSION

Counsel requests this case be submitted with oral argument. Because Appellant requests a correction of prior Supreme Court precedent, oral argument would likely be helpful for this Court to

resolve the disagreement between the statutory text and *State v. Lee*, 561 N.W.2d 353 (Iowa 1997).

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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