IN THE SUPREME COURT FOR THE STATE OF IOWA
NO. 19-2082

STATE OF IOWA,
Plaintiff-Appellee

vs.

TYJUAN LEVELL TUCKER,
Defendant-Appellant.

APPEAL FROM THE IOWA DISTRICT COURT FOR POLK COUNTY, JUDGE LAWRENCE P. MCLELLAN

APPELLANT'S FINAL BRIEF AND REQUEST FOR ORAL ARGUMENT

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Rules

Constitutional Provisions

STATEMENT OF ISSUES

I. Tucker's plea of guilty was not knowing and voluntary.

Schmidt v. State, 909 N.W.2d 778 (Iowa 2018)
State v. Finney, 834 N.W.2d 46 (Iowa 2013)
State v. Ortiz, 789 N.W.2d 761 (Iowa 2010)
State v. Utter, 803 N.W.2d 647 (Iowa 2011)
State v. Straw, 709 N.W.2d 128 (Iowa 2006)
Wiese v. Iowa Dept. of Job Srv., 389 N.W.2d 676 (Iowa 1986)
Iowa Code § 814.6
Iowa R. Crim. P. 2.8(2)(b)(4)
Iowa R. Crim. P. 2.24(3)(a)

II. Tucker received ineffective assistance of counsel in entering into the plea agreement.

Hill v. Lockhart, 474 U.S. 52, 59 (1985)
Ledezma v. State, 626 N.W.2d 134 (Iowa 2001)
Nguyen v. State, 878 N.W.2d 744 (Iowa 2016)
State v. Ambrose, 861 N.W.2d 550 (Iowa 2015)
State v. Brothern, 832 N.W.2d 187 (Iowa 2013)
State v. Dalton, 674 N.W.2d 111 (Iowa 2004)
State v. Kress, 636 N.W.2d 12 (Iowa 2001)
State v. Kuhse, 937 N.W.2d 622 (Iowa 2020)
State v. Myers, 653 N.W.2d 574 (Iowa 2002)
State v. Straw, 709 N.W.2d 128 (Iowa 2006)
Strickland v. Washington, 466 U.S. 668 (1984)
U.S. Const. amend. VI
Iowa Const. art. I, § 10

III. Tucker's plea is not covered by Senate File 589.

Diaz v. Padilla, 896 N.W.2d 73 (Iowa 2017)
In re Chambers, 152 N.W.2d 818 (Iowa 1967)
In re Guardianship of Matejski, 419 N.W.2d 576 (Iowa 1988)
Klouda v. Sixth Judicial Dist. Dept. of Corr. Srvs., 642 N.W.2d 255 (Iowa 2002)
Schmidt v. State
Schrier v. State, 573 N.W.2d 242 (Iowa 1997)

State v. Doe, 927 N.W.2d 656 (Iowa 2019)
State v. Goff, 342 N.W.2d 830 (Iowa 1983)
State v. Keene, 630 N.W.2d 579 (Iowa 2001)
State v. Trane, 934 N.W.2d 447 (Iowa 2019)
State v. Rigel, No. 16-0576, 2017 WL 936135 (Iowa Ct. App. Mar. 8, 2017)
State v. Truesdell, 679 N.W.2d 611 (Iowa 2004)
State v. Weitzel, 905 N.W.2d 397 (Iowa 2017)
State v. Woody, 613 N.W.2d 215 (Iowa 2000)
Varnum v. Brien, 763 N.W.2d 862 (Iowa 2009)
Iowa Const. Art. V, § 4
Iowa Const. Art. V, § 6
Iowa Code § 602.4102 (2006)
Iowa Code § 814.6 (2019)
Iowa Code § 814.7 (2019)

ROUTING STATEMENT

Regarding Issues I and II, this case involves the application of existing legal principles and can be transferred to the court of appeals. Iowa R. App. P. 6.1101(3)(a).

Regarding Issue III, Tucker appeals after he pled guilty on November 20, 2019, and was sentenced the same day. Tucker requests the Iowa Supreme Court retain this case because it presents substantial constitutional questions regarding the validity of Senate File 589's amendments to Iowa Code §§ 814.6(1) and 814.7. These arguments also raise substantial issues of first impression and fundamental issues of broad public importance that require ultimate

determination by the Iowa Supreme Court. *See* Iowa Rs. App. P. 6.903(2)(d), 6.1101(2)(a), (c)-(d).

CASE STATEMENT

Tyjuan Levell Tucker appeals the five-year suspended sentence and three-year probation sentence, and victim restitution of $2,750 ordered upon his guilty plea to one count of theft in the second degree, because the plea was not knowing and voluntary. Tucker only briefly discussed the plea with his attorney before entering into the agreement and did not have a full understanding of what he was pleading guilty to. He was prompted through the entire plea hearing, during which he repeatedly asked to confer with his attorney and his attorney directed him what to say. Further, he did not have the ability to review all the discovery in this case before he was coerced into giving up his right to a trial. Had he reviewed this discovery it would have impacted his decision to plead guilty. As a result, his plea was not knowing and voluntary, and it must be invalidated.

FACTS

Tucker was charged by trial information on October 18, 2019, with one count of theft in the second degree, in violation of Iowa Code §§ 714.1 and 714.2(2). (Trial Info., App. 4). According to the Minutes

of Testimony, Tucker was working as a Mediacom representative on August 6, 2019, when he was accused of stealing $2,750 from the bedroom dresser of a house that he was working on. (Min. of Testimony, Conf. App. 4). Tucker was formally arraigned at the Polk County Jail courtroom on October 21, 2019. (Ord. Arr., App. 6). A pretrial conference was set for November 21, 2019, and a jury trial was scheduled for December 16, 2019. (Ord. Arr., App. 6).

On November 20, 2019, Tucker, his attorney Jonah Dyer, and Assistant Polk County Attorney Amanda Johnson appeared before Judge McLellan for a plea and sentencing hearing. (Tr. Plea & Sent. Hrg. Nov. 20, 2019 (hereinafter "Tr."). No written plea agreement or petition to plead guilty was filed; the only record of what the parties agreed to is the November 20, 2019 transcript.

A review of this transcript reveals several concerns that Tucker did not understand the proceedings that he was taking part in. The Court swore Tucker in, as is the usual practice for plea hearings. Tr. 6:11-16. However, shortly after the Court began its recitation, Tucker interrupted with a question:

> THE COURT: Mr. Tucker, a Trial Information was filed on October 18, 2019, charging you in one count; that being theft in the second degree. My understanding is you

previously pled not guilty to that charge, but today you wish to withdraw your plea of not guilty and enter a plea of guilty; is that correct?

THE DEFENDANT: Yeah. I have a question. Why am I being sworn in, though?

THE COURT: Because every defendant who pleads, I swear in because I want you to make these statements under oath.

THE DEFENDANT: So I got to *stretch the truth*, then, if you ask me something?

THE COURT: You have to – yeah, you have to *state the truth*.

THE DEFENDANT: All right.

Tr. 6:17-7:8 (emphasis added). It appears that the Court did not hear Tucker state "stretch the truth" instead and instead heard him say "state the truth." This should have been the initial indication to the Court and the parties involved that Tucker did not understand the purpose of the hearing, and that he was not prepared to plead guilty to theft second.

The hearing continued, and the issues with Tucker's understanding continued. When asked why he was pleading guilty today, Tucker responded "To get the plea that's offered. . . . To get whatever – what's offered to me." Tr. 10:10-16. The Court followed up by asking Tucker if he understood that the Court was not bound by

the plea agreement, and Tucker required an off-the-record discussion with his attorney before he could continue. Tr. 10:17-21. The plea colloquy was interrupted an additional 10 times by off-the-record conversations between Tucker and his attorney before the Court ultimately accepted Tucker's plea. Tr. 13:15, 14:13, 17:4, 17:23, 18:6, 18:13, 18:24, 19:15, 20:19, 21:1.

As the Court proceeded to sentencing, there was further evidence that Tucker did not understand the proceedings. When asked if he wanted to "waive that fifteen days and proceed to immediate sentencing," Tucker stated "[o]ne second]" and had another off-the-record conversation with his attorney. Tr. 24:19-22. The proceedings were interrupted an additional four times before judgment was pronounced. Tr. 25:18, 26:5, 16:25, 27:16.

Tucker had been detained pending his sentencing in this case. Tr. 29:3-4. At the same time, he was dealing with DHS issues with his son. Tr. 29:24-30:1.

ARGUMENT

I. TUCKER'S GUILTY PLEA WAS NOT KNOWING AND VOLUNTARY

A. Standard of Review and Error Preservation

Because trial counsel did not file a motion in arrest of judgment and proceeded straight to sentencing, error was not preserved regarding Tucker's involuntary guilty plea. *See* Iowa R. Crim. P. 2.24(3)(a). However, "failure [to file a motion in arrest of judgment] does not bar a challenge to a guilty plea if the failure to file a motion in arrest of judgment resulted from ineffective assistance of counsel." *State v. Straw*, 709 N.W.2d 128, 133 (Iowa 2006) (citation omitted). As discussed in subdivision I.B., below, Tucker's guilty plea proceeding was tinged throughout by ineffective assistance of counsel. As a result, his appeal is not barred by the failure to file a motion in arrest of judgment.

Iowa Code § 814.6(1)(a)(3) (2020) no longer permits appeals from a guilty plea, unless a defendant establishes good cause. This court should not apply the amendments to § 814.6 (1)(a)(3) for the reasons discussed in subdivisions III(A) and (B) below. However, regardless of

whether the amendments apply, Tucker has established good cause to appeal from his guilty plea.

"Good cause" is not defined by the statute, and the Iowa Supreme Court has not yet had occasion to construe the phrase "good cause" contained in the amendments to § 814.6(1)(a)(3). Black's Law Dictionary defines "good cause" as a "legally sufficient reason." (11th Ed. 2019). In other contexts, the Iowa Supreme Court has recognized that the definition of "good cause" is flexible, considering the circumstances and subject matter to which the term is applied:

> [Good cause] is a term capable of contraction and expansion by construction; reducing it to a fixed meaning or standard is nearly impossible. The meaning of the term "good cause" must be deduced from the facts of each case keeping the stated public policy and the fundamental purpose of the statute in mind. The term encompasses real circumstances, "adequate excuses that will bear the test of reason, just grounds for the action, and always the element of good faith."

Wiese v. Iowa Dept. of Job Srv., 389 N.W.2d 676, 680 (Iowa 1986) (internal citations omitted).

If the court decides that Tucker must establish good cause for appealing his guilty plea, it should hold that an involuntary guilty plea constitutes good cause to appeal under § 814.6(1)(a)(3). By pleading guilty in a criminal case, a defendant gives up several

fundamental constitutional rights – including the right to be found guilty beyond a reasonable doubt before judgment is imposed – all to the benefit of the state. For this reason, the Due Process Clauses of the Fifth and Fourteenth Amendment of the U.S. Constitution and art. I, § 9 of the Iowa Constitution "require[] the trial court to determine the defendant made a knowing and intelligent choice to waive constitutional rights, including the right to a jury trial, the right to protection against self-incrimination, the right to confront witnesses, and the right to plead guilty to the underlying crime." *State v. Finney*, 834 N.W.2d 46, 55 (Iowa 2013). Because the rights given up in a guilty plea are so important, "[e]ven overwhelming objective evidence of guilty . . . will not save a conviction when the subjective requirements of due process have not been met." *Id.* (citation omitted). This court should hold that when counsel was ineffective, resulting in an involuntary guilty plea, the defendant has established good cause to appeal under Iowa Code § 814.6(1)(a)(3).

Iowa courts generally review a defendant's challenge to a guilty plea for correction of errors at law. *State v. Ortiz*, 789 N.W.2d 761, 764 (Iowa 2010). However, where the guilty plea is not knowing and

voluntary because of ineffective assistance of counsel, the standard of review is de novo. *Id.*

B. Argument

"A defendant's plea of guilty is a serious act that he or she must do voluntarily, knowingly, and intelligently with an awareness of the relevant circumstances and consequences." *State v. Utter*, 803 N.W.2d 647, 651 (Iowa 2011) (collecting cases), *overruled on other grounds in Schmidt v. State*, 909 N.W.2d 778 (Iowa 2018). By pleading guilty, a defendant gives up:

> [T]he right to be tried by a jury, and at trial . . . the right to assistance of counsel, the right to confront and cross-examine witnesses against the defendant, the right not to be compelled to incriminate oneself, and the right to present witnesses in the defendant's own behalf and to have compulsory process in securing their attendance.

Iowa R. Crim. P. 2.8(2)(b)(4). During a plea proceeding, the court must determine that the defendant understands those rights, and that he understands by pleading that "there will not be a further trial of any kind, so that by pleading guilty the defendant waives the right to a trial." *Id.* at 2.8(2)(b).

The transcript from Tucker's plea hearing raises questions as to whether he understood the rights that he was giving up by pleading

guilty, and whether he knowingly waived those rights. He stated that he was worried he would have to "stretch the truth" to plead guilty. Tr. 6:17-7:8. He repeatedly interrupted the proceedings to ask his attorney what was going on. At no point did the court, observing this behavior, stop to ensure that Tucker understood why he was in front of the court answering the court's questions.

The Iowa Supreme Court has recognized that "people plead guilty for all sorts of reasons. Many of these reasons are unrelated to whether the defendant actually committed the crime." *Schmidt*, 909 N.W.2d at 789. The Iowa Supreme Court has also acknowledged that refusing to hear challenges to guilty pleas would perpetuate an unjust system. *Id.* at 789-90 ("What kind of system of justice do we have if we permit actually innocent people to remain in prison. It is time that we refuse to perpetuate a system of justice that allows actually innocent people to remain in prison, even those who profess guilt despite their actual innocence."). Tucker's case is a prime example of a defendant pleading guilty because they are being pushed through the system by the court and their trial attorney. The court ignored or misheard Tucker's statement that he would have to stretch the truth to plead guilty. Tucker's attorney repeatedly

prompted him to follow the script, each time that Tucker interrupted the proceedings. Under such circumstances, the conclusion is inescapable that Tucker pled guilty because he found himself in a court proceeding where his guilty plea was being taken. As a result, his plea was not knowing and voluntary, and the judgment against him should be reversed.

II. TUCKER RECEIVED INEFFECTIVE ASSISTANCE OF COUNSEL WITH RESPECT TO HIS GUILTY PLEA

A. Standard of Review and Error Preservation

Iowa Code § 814.7 (2020) no longer permits claims of ineffective assistance of counsel to be decided on direct appeal. However, for the reasons discussed in Division III.C. below, this court should nevertheless hear Tucker's claim. Where a defendant brings an ineffective assistance of counsel claim on direct appeal, the court must first "decide whether the appellate record is adequate to determine the claim. If not, the claim will be preserved for postconviction relief." *State v. Brothern*, 832 N.W.2d 187, 192 (Iowa 2013) (citation omitted). If the record is adequate, claims of ineffective assistance of counsel are reviewed de novo. *See State v. Kuhse*, 937 N.W.2d 622, 627 (Iowa 2020).

B. Argument

The U.S. and Iowa Constitutions' guarantee a criminal defendant the right to effective assistance of counsel. U.S. Const. amend. VI, Iowa Const. art. I, § 10. To prove a claim for ineffective assistance of counsel, a defendant must show (1) that that counsel failed to perform an essential duty and (2) that prejudice resulted. *Strickland v. Washington*, 466 U.S. 668, 687-88 (1984); *Ledezma v. State*, 626 N.W.2d 134, 141-42 (Iowa 2001) (en banc).

To prove a breach of an essential duty, a defendant "must show that counsel's performance was deficient," that is, that counsel "made errors so serious that counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment." *Strickland*, 466 U.S. at 687. The court must consider "whether counsel's assistance was reasonable considering all the circumstances." *Id.* at 688; *Nguyen v. State*, 878 N.W.2d 744, 752 (Iowa 2016). Counsel's performance is measured "against the standard of a reasonably competent practitioner with the presumption that the attorney performed his duties in a competent manner." *State v. Dalton*, 674 N.W.2d 111, 199 (Iowa 2004).

To prove prejudice, a defendant must demonstrate "that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Strickland*, 466 U.S. at 694.

> The likelihood of a different result must be substantial, not just conceivable. A defendant must show the probability of a different result is sufficient to undermine confidence in the outcome. This standard requires us to consider the totality of the evidence, identify what factual findings would have been affected, and determine if the error was pervasive or isolated and trivial.

State v. Ambrose, 861 N.W.2d 550, 557-59 (Iowa 2015) (cleaned up).

Tucker's trial counsel provided ineffective assistance when he plowed through the plea proceeding, despite clear evidence that Tucker did not understand the proceeding and was not willing to testify under oath that he had committed the crime as charged. Tucker's trial counsel was silent when Tucker asked the judge if he had to "stretch the truth" to plead guilty. Tr. 6:17-7:8. Tucker's trial counsel did not stop the proceedings to make sure that Tucker understood what he was pleading to and what he was giving up in the context of his guilty plea, rather, he repeatedly prompted Tucker

along through the plea hearing each time Tucker interrupted the proceedings.

Trial counsel that fails to ensure that a guilty plea is knowing and voluntary fails to perform an essential duty. *State v. Straw*, 709 N.W.2d 128, 134 (Iowa 2006) (counsel breached an essential duty by failing to bring to the court's attention fact that it omitted mention of the punishment defendant could face by pleading guilty during the plea colloquy, and failing to file a motion in arrest of judgment); *State v. Myers*, 653 N.W.2d 574 (Iowa 2002) (counsel breached an essential duty by failing to inform the defendant of the right to compulsory process); *State v. Kress*, 636 N.W.2d 12 (Iowa 2001) (counsel performed below range of normal competency by failing to correct court's misinformation concerning defendant's potential sentence exposure, or to file motion in arrest of judgment raising the issue). Here, Tucker's trial counsel had the information it needed to know that Tucker's plea may not be knowing and voluntary. Instead of bringing this information to the court's attention, or pausing the proceedings to advise Tucker further, outside of the court's presence, Tucker's counsel continued to push him through the guilty plea

script until it was too late to back out. Tucker's counsel then did not file a motion in arrest of judgment to challenge the plea.

To satisfy the prejudice element in the context of a guilty plea, a "defendant must show that there is a reasonable probability that, but for counsel's errors, he or she would not have pleaded guilty and would have insisted on going to trial." *Myers*, 653 N.W.2d at 577 (quoting *Hill v. Lockhart*, 474 U.S. 52, 59 (1985)). Tucker's statement during the opening minutes of his guilty plea indicate that he would in fact have preferred to go to trial. He questioned why he was being placed under oath and asked if he would have to "stretch the truth" in order to plead guilty. Tr. 6:17-7:8. Taken at his word, Tucker was stating that he was not guilty. As a result, Tucker was prejudiced by his trial counsel's pleading him guilty. The guilty plea should be invalidated, and the judgment against Tucker overturned.

III. TUCKER'S PLEA IS NOT COVERED BY SENATE FILE 589

On July 1, 2019, Senate File 589 went into effect, amending Iowa Code § 814.6(1)(a)(3) to eliminate the right to appeal from a guilty plea unless the defendant had entered "a guilty plea for a class 'A' felony" or "the defendant establishes good cause." Iowa Code § 814.7 was similarly amended to provide that "[a]n ineffective

assistance of counsel claim in a criminal case shall be determined by filing an application for postconviction relief pursuant to chapter 822 . . . the claim shall not be decided on direct appeal from the criminal proceedings." Tucker pled guilty and was sentenced on November 20, 2019. For the reasons that follow, the Court should invalidate the amendments made by Senate File 589.

A. Senate File 589 Improperly Restricts the Role and Jurisdiction of Iowa's Appellate Courts relating to Guilty Pleas.

The change to § 814.6 improperly interferes with the separation of powers between the legislature and the judicial branch, with this Court's jurisdiction, and with this Court's role in addressing constitutional violations. "The separation-of-powers doctrine is violated 'if one branch of government purports to use powers that are clearly forbidden or attempts to use powers granted by the constitution to another branch.'" *Klouda v. Sixth Judicial Dist. Dept. of Corr. Srvs.*, 642 N.W.2d 255, 260 (Iowa 2002) (quoting *State v. Phillips*, 610 N.W.2d 840, 842 (Iowa 2000)). The doctrine means that one "branch of government may not impair another in the performance of its *constitutional* duties." *Id.*

Art. V, § 4 of the Iowa Constitution provides the jurisdiction of the Iowa Supreme Court:

> The supreme court shall have appellate jurisdiction only in cases in chancery, and shall constitute a court for the correction of errors at law, under such restrictions as the general assembly may, by law, prescribe; and shall have power to issue all writs and process necessary to secure justice to parties, and shall exercise a supervisory and administrative control over all inferior judicial tribunals throughout the state.

Likewise, Art. V, § 6 provides for the jurisdiction of the district court:

> The district court shall be a court of law and equity, which shall be distinct and separate jurisdictions, and shall have jurisdiction in civil and criminal matters arising from their respective districts, in such manner as shall be prescribed by law.

While the Iowa Constitution provides that limitations on the manner of the courts' jurisdiction can be prescribed by the legislature, the legislature cannot *deprive* the courts of their jurisdiction. *In re Guardianship of Matejski*, 419 N.W.2d 576, 577 (Iowa 1988)(citing *Laird Bros. v. Dickerson*, 40 Iowa 665, 670 (1875)); *Schrier v. State*, 573 N.W.2d 242, 244-45 (Iowa 1997).

Iowa Code § 602.4102(1)[1] describes the jurisdiction of the Iowa Supreme Court's jurisdiction in criminal matters: the supreme court is "a court for the correction of errors at law." Iowa Code § 602.4102(1) (2006). "Once the right to appeal has been granted . . . it must apply equally to all. It may not be extended to some and denied to others." *In re Chambers*, 152 N.W.2d 818, 820 (Iowa 1967) (citing *Waldon v. Dist. Ct. of Lee Cnty.*, 130 N.W.2d 728, 731 (Iowa 1964)). Yet, the amendments to § 814.6 would make challenges to criminal convictions – involving myriad issues of collateral consequences,[2] illegal sentences,[3] whether the state breached the plea agreement recommendation during plea proceedings,[4] and

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[1] Iowa Code § 602.4102(2) also contemplates appellate review of criminal matters.

[2] *See, e.g. Diaz v. Padilla*, 896 N.W.2d 73 (Iowa 2017) (counsel has a duty to inform client of certain collateral consequences of a guilty plea prior to the plea).

[3] *See, e.g. State v. Woody*, 613 N.W.2d 215, 218 (Iowa 2000) ("Neither party may rely on a plea agreement to uphold an illegal sentence.").

[4] *See, e.g. State v. Macke*, 933 N.W.2d 226 (Iowa 2019) (remanding where the state recommended suspended sentence where the written plea agreement was for a deferred judgment).

whether a plea was knowing and voluntary[5] – unreviewable on direct appeal except for where the defendant has pled to a class A felony or established "good cause."

Through this amendment, the legislature purports to have made a judgment that a guilty plea cannot be worthy of an appeal or is somehow unlikely to have been entered in error. The legislature further implicitly asserts that a defendant who has pled guilty always gets the agreement for which they bargained, or a valid and legal sentence. As the Iowa Supreme Court has recognized countless times, this is not true. The Court summarized the evidence to this fact in *Schmidt*:

(1) 74 exonerations nationally in 2016 arose from guilty pleas. 909 N.W.2d at 786.

(2) Guilty pleas are primarily used as a tool to eliminate uncertainty. *Id.* at 786-87.

(3) Guilty pleas can be a result of false confessions during police interrogations. *Id.* at 787.

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[5] *See, e.g. State v. Weitzel*, 905 N.W.2d 397 (2017) (guilty plea not knowing and voluntary where defendant did not have all of the statutorily mandated information prior to pleading guilty).

(4) Innocent people plead guilty for reduced charges and shorter sentences. *Id.* at 787-88. Defendants are choosing the "lesser of two evils." *Id.* at 788.

(5) Innocent people are often pressured to plead guilty under pressure from prosecutors and defense counsel. *Id.* at 788-89.

An appeal from a guilty plea is an essential part of the criminal justice process. By purporting to eliminate this appeal based on its incorrect assumption that all guilty pleas are valid and enforceable, Senate File 589 essentially dictates to the courts how it should treat guilty pleas, in spite of the Court's previous recognition of the importance of a system to review those guilty pleas. The legislature's judgment on this issue is wrong, and, more importantly, it invades the province of the court to protect Iowans' constitutional rights and to do justice. The portions of Senate File 589 which purport to eliminate appeals from guilty pleas violates the separation of powers doctrine, and these amendments should be struck down.

B. Senate File 589 Violates Equal Protection as it relates to the Right to Appeal.

Senate File 589 denies defendants like Tucker equal protection under the law because it deprives him of an equal ability to challenge legal errors on direct appeal.

Both the United States and Iowa Constitutions provide for equal protection of Citizens under the law. U.S. Const. amend. XIV; Iowa const. art. I § 6. "Like the Federal Equal Protection Clause found in the Fourteenth Amendment to the United States Constitution, Iowa's constitutional promise of equal protection is essentially a direction that all persons similarly situated should be treated alike." *Varnum v. Brien*, 763 N.W.2d 862, 878 (Iowa 2009) (citations and internal quotations marks omitted); *see also State v. Doe*, 927 N.W.2d 656, 661 (Iowa 2019).

The first step in analyzing an equal protection claim is determining if the legislation treats similarly situated persons differently. *Doe*, 927 N.W.2d at 662. "[T]o truly ensure equality before the law, the equal protection guarantee requires that laws treat all those who are similarly situated with respect to the purposes of the law alike." *Varnum*, 763 N.W.2d at 883. With respect to the changes

made by Senate File 589, Tucker is in a group of criminal defendants who have been convicted following a guilty plea made in the district court, and who have not been convicted of a class A felony. A similarly situated defendant who went to trial and was adjudged guilty could appeal his conviction and his sentence. Pursuant to Senate File 589, Tucker cannot appeal his conviction and his sentence. The law treats these defendants differently.

The second step in an equal protection claim is to determine whether there is a basis for treating the two groups differently. There are three classes of review for an equal protection claim, based on the underlying classification or right involved: strict scrutiny, intermediate scrutiny, or rational basis scrutiny. Strict scrutiny applies to classifications based on race, alienage, or national origin, or in cases impacting fundamental rights. *Varnum*, 763 N.W.2d at 879. Under a strict scrutiny analysis, classifications among groups are "presumptively invalid and must be narrowly tailored to serve a compelling government interest." *Id.* Tucker submits that this case is deserving of strict scrutiny review.

Under a strict scrutiny review, the disparate treatment between defendants who were adjudged guilty at trial and those defendants

who have pled guilty cannot survive, because they are not narrowly tailored to serve a compelling government interest. A defendant who was found guilty after trial has (presumably) had their guilt proven beyond a reasonable doubt, and, absent other errors, can only displace that adjudication by passing the heavy burden of the substantial evidence standard:

> Our review of claims of insufficient evidence to support a conviction is for correction of errors at law. Substantial evidence exists to support a verdict when the record reveals evidence that a rational trier of fact could find the defendant guilty beyond a reasonable doubt. In making this determination, we review the evidence in the light most favorable to the verdict, including all reasonable inferences that may be deduced from the record.

State v. Truesdell, 679 N.W.2d 611 (Iowa 2004) (cleaned up).

By contrast, a defendant who has pled guilty did not have their guilt adjudicated beyond a reasonable doubt:

> The record to support a factual basis for a guilty plea includes the minutes of testimony, statements made by the defendant and the prosecutor at the guilty plea proceeding, and the presentence investigation report. *Id.* This record, as a whole, must disclose facts to satisfy the elements of the crime. *See State v. Marsan*, 221 N.W.2d 278, 280 (Iowa 1974). However, the trial court is not required to extract a confession from the defendant. *Id.* Instead, it must only be satisfied that the facts support the crime, "not necessarily that the defendant is guilty." 1A Charles Alan Wright, *Federal Practice and Procedure* § 174, at 199 (1999).

State v. Keene, 630 N.W.2d 579, 581 (Iowa 2001). "In other words, a factual basis does not necessarily establish proof beyond a reasonable doubt." *State v. Rigel*, No. 16-0576, 2017 WL 936135, *3 (Iowa Ct. App. Mar. 8, 2017) (citing *State v. Finney*, 834 N.W.2d 46, 50 (Iowa 2013)). As a result, to overturn a guilty plea, a defendant historically has only needed to show that the plea was not knowing and voluntary, rather than demonstrating innocence.

Yet, for the purpose of reducing "waste" and so-called "frivolous appeals" in the criminal justice system,[6] the legislature has elevated the appeal rights of those who have been proved guilty by the state, and have held the state to their burden of proof, over defendants who may have mistakenly or unknowingly entered a plea for any number of reasons. Saving costs is not a compelling government interest. Additionally, the restrictions on appeals from guilty pleas are not narrowly tailored to save costs, because most appeals from guilty pleas will now involve the issue of whether there is "good cause" for

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[6] Senate Video 2019-03-28 at 1:49:10-1:49:20, statements of Senator Dawson, available at https://www.legis.iowa.gov/dashboard?view=video&chamber=S&clip=s20190328125735925&dt=2019-03-28&offset=3054&bill=SF%20589&status=i.

the appeal, an issue which will inevitably require appellate review. This court should reject the Senate File 589 amendments to § 814.6 on equal protection grounds.

C. Senate File 589 Improperly Restricts the Role and Jurisdiction of the Court in Determining Ineffective Assistance of Counsel Claims on Direct Appeal.

Traditionally, the courts have preserved ineffective assistance of counsel claims for postconviction relief proceedings. *State v. Trane*, 934 N.W.2d 447, 465 (Iowa 2019). However, an important exception to this rule has been maintained for cases where has been for cases where the appellate record is adequate to determine the claim. *See, e.g. State v. Goff*, 342 N.W.2d 830, 837-38 (Iowa 1983) ("[T]his is not a case in which postconviction proceedings are necessary to develop the circumstances further regarding the failure of defense counsel . . . ."). In short, the ineffective assistance of counsel is so obvious from the record in some cases that to delay adjudication of the claim is to do an injustice.

Senate File 589 ignores the need for justice in claims of obvious ineffective assistance of counsel by effectively shutting the door on any such claim until postconviction proceedings commence. The previous version of Iowa Code § 814.7(2)-(3) provided:

> A party may, but is not required to, raise an ineffective assistance claim on direct appeal from the criminal proceedings if the party has reasonable grounds to believe that the record is adequate to address the claim on direct appeal.
>
> If an ineffective assistance of counsel claim is raised on direct appeal from the criminal proceedings, the court may decide the record is adequate to decide the claim or may choose to preserve the claim for determination under chapter 822.

Iowa Code § 814.7 (2004). This version of the statute struck an appropriate balance in cases where the ineffective assistance of counsel claim was so obvious that it would be an injustice to make a defendant wait – often while serving a sentence – until postconviction relief to have his claim heard. It allowed the appeals courts to quickly remedy denials of counsel that fundamentally undermined a defendant's conviction, while allowing the courts to appropriately delay cases that simply were not ready to be decided. This version of the statute recognized that the courts, and not the legislature, were in the best position to determine when an ineffective assistance of counsel claim is ready to be decided.

By contrast, Senate File 589 purports to make a judgment that no claim for ineffective assistance of counsel is ever strong enough to

be decided on direct appeal, regardless of the consequences to defendants whose rights were violated:

> An ineffective assistance of counsel claim in a criminal case shall be determined by filing an application for postconviction relief pursuant to chapter 822. The claim need not be raised on direct appeal from the criminal proceedings in order to preserve the claim for postconviction relief purposes, *and the claim shall not be decided on direct appeal from the criminal proceedings*.

Iowa Code § 814.7 (2019) (emphasis added). With the italicized words, the legislature improperly strips the courts of jurisdiction to hear an otherwise valid claim, which is within the court's traditional and appropriate jurisdiction: to correct errors at law. Iowa Code § 602.4102(1).

By forcing the courts to delay adjudication of valid and obvious ineffective assistance of counsel claims that could be resolved on direct appeal, Senate File 589 again violates the separation of powers doctrine. The Iowa Courts of Appeals have a constitutional duty to protect a defendant's right to effective assistance of counsel under the Sixth Amendment to the U.S. Constitution and Art. I, § 10 of the Iowa Constitution. Senate File 589 prevents them from doing so. For the same reasons as discussed above in section III.A., the

amendments to § 814.7 should be rejected as a violation of the separation of powers doctrine. *Klouda*, 642 N.W.2d at 260.

CONCLUSION

Tucker entered an involuntary guilty plea, as a result of ineffective assistance of counsel. This court should reverse the judgment against him and invalidate the guilty plea, without regard to the unconstitutional and unlawful amendments to Iowa Code §§ 814.6 and 814.7.

ORAL ARGUMENT NOTICE

Counsel requests oral argument.

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CERTIFICATE OF COMPLIANCE AND SERVICE

This brief complies with the type-volume limitation of Iowa R. App. P. 6.903(1)(g)(1) (no more than 14,000 words); excluding the parts of the brief exempted by Rule 6.903(1)(g)(1), which are the table of contents, table of authorities, statement of the issues, and certificates. This brief contains 5,400 words.

This brief complies with the typeface requirements of Iowa R. App. P. 6.903(1)(e) and the type-style requirements of Iowa R. App. P.6.903(1)(f) because this brief has been prepared in a proportionally spaced typeface using Microsoft Office Word 2010 in font size 14, Bookman Old Style.

I hereby certify that on May 12, 2020, I did serve Defendant-Appellant's Page Proof Brief on Appellant by mailing one copy to:

Tyjaun Ticker
Defendant-Appellant

/S/ *Andy Dunn*
Dated: May 12, 2020
Andy Dunn