IN THE SUPREME COURT OF IOWA
Supreme Court No. 19-2082

STATE OF IOWA,
Plaintiff-Appellee,

vs.

TYJAUN LEVELL TUCKER,
Defendant-Appellant.

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

APPELLEE'S BRIEF

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ROUTING STATEMENT

The defendant urges the Supreme Court to retain this case to decide issues related to the constitutionality of recent amendments to sections 814.6 and 814.7 of the Code. Defendant's Proof Br. at 7–8. Although those issues could warrant retention, the defendant did not preserve error on those claims and they are not properly before the Court. *See* Division I.

This case can be transferred to the Court of Appeals. Iowa R. App. P. 6.1101(3).

STATEMENT OF THE CASE

Nature of the Case

The defendant, Tyjaun Levell Tucker, appeals his conviction and sentence for theft in the second degree, a Class D felony in violation of Iowa Code sections 714.1 and 714.2(2). The defendant pled guilty in the Polk County District Court, the Hon. Lawrence McLellan presiding.

Course of Proceedings

The State rejects the numerous instances of commentary, unsupported by the record, contained in the defendant's course of proceedings. Defendant's Proof Br. at 8. The defendant's procedural assertions that are tethered to the record, unlike those that are

unsupported, and are adequate and essentially correct. Defendant's Proof Br. at 8–10.

Facts

The defendant (then a Mediacom technician) was working at the home of an elderly couple in Urbandale when he stole $2,750 cash from a dresser in the couple's master bedroom. Minutes, pp. 1–2; Conf. App. 4–5. The victims, aged 84 and 92, knew the exact amount of money stolen because they had been saving it for a trip and recently counted it. Minutes, .PDF pages 5–7; App. 8–9.

ARGUMENT

I. This Appeal Should Be Dismissed. The 2019 Amendments to Sections 814.6 and 814.7 Are Constitutional.[1]

Motion to Dismiss

This appeal should be dismissed because the Court lacks authority to decide the claims presented for two independent reasons. First, there is no right to direct appeal of a guilty plea for judgments entered after July 1, 2019. And second, this Court lacks authority to

[1] The State arranges the issues in a different order than the defendant because the application of amendments to Iowa Code sections 814.6 and 814.7 dispose of this appeal.

Division I of this brief is a motion to dismiss the appeal for lack of jurisdiction and addresses the unpreserved constitutional arguments presented in Division III of the defendant's brief.

decide ineffective-assistance claims related to judgments decided after that same date.

Judgment was entered here on November 20, 2019, and notice of appeal was filed on December 11, 2019. *See* 11/20/2019 Judgment; App. 9–14; 12/11/2019 Notice of Appeal; App. 15. The provisions of sections 814.6 and 814.7 amended by Senate File 589 apply to this appeal. *See State v. Trane*, 934 N.W.2d 447, 464 (Iowa 2019); *State v. Macke*, 933 N.W.2d 226, 227 (Iowa 2019).

There is no right to appeal a guilty plea. The defendant did not file an application or petition seeking good-cause review.

The General Assembly has removed this Court's power to decide the direct appeal of any guilty plea, other than a Class A felony, absent a showing of good cause. Iowa Code § 814.6(1)(a)(3) (2020). This is an appeal of a guilty plea and thus the defendant must show good cause. He has not done so here. The defendant's allegation that the plea was involuntary cannot be reached because it was not preserved. *See* Division II. His allegation that counsel was ineffective cannot be decided on direct appeal. *See* Iowa Code § 814.7 (2020). And his constitutional challenges were not preserved. *See* Division I, Error-Preservation Section. Whatever definition "good cause" may involve,

it does not permit an appeal when none of the briefed issues can be decided.

If this Court believes it must give a definition of "good cause" in this case, the only interpretation of "good cause" supported by the structure of Senate File 589 is that "good cause" reaches only issues that cannot be resolved by other tribunals.

The legislation amending section 814.6 specifically provides that direct appellate review is only available if a criminal defendant who pleads guilty "establishes good cause" or seeks discretionary review of a denied motion in arrest of judgment. *See* SF589, §§ 28–29 (88th Gen. Assem.). The bill shifts all ineffective-assistance claims, including those related to a guilty plea, from direct appeal to postconviction litigation. *See* SF589, § 31 (88th Gen. Assem.). The bill also limits relief for guilty-plea defects to only those defects that caused the defendant plead guilty rather than stand trial. *See* SF589, § 33 (88th Gen. Assemb., codified at new Code section 814.29). Finally, existing law permits litigation of illegal-sentence challenges in the district court "at any time" and in the appellate courts by certiorari. Iowa R. Crim. P. 2.24(5)(a); *State v. Propps*, 897 N.W.2d 91, 97 (Iowa 2017).

This legislative scheme is incompatible with the defendant's suggestion that "good cause" embraces a wide range of claims, including the unpreserved challenges he asserts here. *See* Defendant's Proof Br. at 13–14. To hold as the defendant suggests would undermine the intent of the legislation, which was to reduce congestion in the appellate courts and encourage efficient use of appellate resources by limiting the Court's direct-appeal review of guilty pleas. It would also render the addition of the new discretionary-review ground for motions in arrest a nullity, as such a ground would be unnecessary if "good cause" was a broad standard. And it would be inconsistent with the new standard for plea defects, as the General Assembly would not have prohibited relief for immaterial defects while simultaneously encouraging the appeal of the same immaterial errors. *See* Iowa Code § 814.29 (2020).

The State maintains here, as it has in other cases, that considering statements by legislators during floor debate is generally inappropriate and unhelpful in deciding disputes over legislative intent. After all, the statement of an individual legislator is just that—the statement of an individual legislator. Nonetheless, the State recognizes that this Court has recently looked to the recorded videos

of floor debates when attempting to determine legislative intent and the defendant cites such authority in his brief. *See State v. Ortiz*, 905 N.W.2d 174, 180 (Iowa 2017); *State v. Doe*, 903 N.W.2d 347, 354 (Iowa 2017); Defendant's Proof Br. at 30 & n.6. If this Court looks to floor debates here, this strengthens the State's argument and undercuts the defendant's claim that "good cause" embraces a wide range of issues, including his unpreserved claims.

The floor manager of Senate File 589 was Senator Dan Dawson of Pottawattamie County. According to Senator Dawson's floor remarks, "good cause" means "extraordinary circumstances where the system has failed the defendant, for example where there was a complete failure of the defense counsel, [or the] court interfered with the plea process or improperly induced a plea of actual innocence." Senate Floor Debate, SF589 (Amendment S-3212), April 25, 2019, 3:25:30–3:26:00 P.M.[2] Senator Dawson further explained that this provision, in tandem with other changes related to guilty-plea appeals in SF589, "limits frivolous appeals, saves the state resources, and also resolves cases at the district court level…." *Id.* During floor debate on

[2] Available at https://www.legis.iowa.gov/dashboard?view=video&chamber=S&clip=s20190425031315902&dt=2019-04-25&offset=702&bill=SF%20589&status=r .

a previous version of the bill, Senator Dawson also referred to the Legislature's intent to reduce the "bloated appeals system … in the Iowa courts" and "knock down on the excessive caseload … in the appeals courts." Senate Floor Debate, SF589, April 1, 2019, 5:43:10–5:43:55 P.M.; *see also id.* at 5:47:45–5:48:15 (criticizing the Court's 2013 revision of Iowa Rule of Appellate Procedure 6.1005, which has—in practice—halted the dismissal of frivolous appeals).[3]

If the Court considers these remarks, they demonstrate the General Assembly's intent to define "good cause" narrowly rather than broadly—"good cause" means "extraordinary circumstances," not routine non-frivolous challenges. Under such a standard, or the more refined one put forward by the State above (a claim that cannot be raised before another tribunal), the defendant cannot demonstrate good cause and the appeal must be dismissed.

The legislative text also contemplates that the defendant should have sought permission from this Court to seek review of his guilty plea, rather than filing a notice of appeal and hoping the Court grants him relief. Section 814.6 only permits appellate review of a non-

[3] Available at https://www.legis.iowa.gov/dashboard?view=video&chamber=S&clip=s20190401125340169&dt=2019-04-01&offset=14871&bill=SF%20589&status=i.

Class-A guilty plea when "the defendant establishes good cause." Iowa Code §814.6(1)(a)(3). This language makes "establish[ing] good cause" a predicate to appellate review. A notice of appeal cannot achieve this. The defendant should instead have been required to file a petition or application with this Court, to be resolved through motion practice after an opportunity for the State to resist. Following motion practice, the Court could then either grant or deny appellate review based on whether the defendant had "establishe[d] good cause," similar to the Court's current practice of granting or denying applications for discretionary review or petitions for certiorari.

Requiring the defendant to affirmatively plead "good cause" in motion practice furthers the legislative purpose behind Senate File 589's provisions related to appeals: to conserve resources by limiting unnecessary appeals and having more cases resolved by the district, rather than appellate, courts. Resolving most guilty-plea cases at the application stage will obviate the need for both parties' counsel to file unnecessary merits briefs and will allow the Court to better deploy its resources screening out unnecessary appeals before the merits stage and transfer. In contrast, allowing defendants to obtain review by means of a notice of appeal and deciding good cause at the merits-

briefing stage would gut the efficiency and resource-conservation that Senate File 589 strives for.

The Court lacks authority to decide ineffective-assistance claims on direct appeal.

Regardless of whether the defendant can establish good cause, however, this appeal must be dismissed for a second reason: the only claims presented are assertions of ineffective assistance. The defendant explicitly concedes that he did not preserve error for Division I of his brief. Defendant's Proof Br. at 12. He ignores the rule requiring "[a] statement addressing how the issue was preserved for appellate review, with references to the places in the record where the issue was raised and decided," for Divisions II and III, likely because he did not preserve those claims in any fashion. Iowa R. App. P. 6.903(2)(g)(1); Defendant's Proof Br. at 17, 21. The only way these unpreserved claims can be raised is through an allegation of ineffective assistance, and the General Assembly has removed this Court's authority to decide ineffective-assistance claims on direct appeal. *See* Iowa Code § 814.7 (2020) ("…the claim shall not be decided on direct appeal from the criminal proceedings"). As a result, even if the defendant could show "good cause," the appeal must be

dismissed because the Court lacks authority to reach the issues presented.

Preservation of Error

The motion to dismiss, raised by the State above, is an appellate motion that could not be raised below.

The defendant's constitutional challenges, raised in Division III of his brief and addressed in Division I here, were not preserved. They cannot be heard in this appeal. *See, e.g.*, *State v. Rutledge*, 600 N.W.2d 324, 325 (Iowa 1999).

To the extent the defendant may assert in reply that these issues relate to appellate practice, this does not obviate the need to preserve error. While the State could not move to dismiss this (then nonexistent) appeal in the district court, the defendant had the opportunity to preserve a challenge to the constitutionality of the amendments to sections 814.6 and 814.7 and his failure to do so bars relief. *E.g., Rutledge*, 600 N.W.2d at 325.

Standard of Review

Had the defendant actually preserved the challenges he makes now, he would face an uphill climb due to the standard of review. All "statutes are cloaked with a presumption of constitutionality." *State*

v. Hernandez-Lopez, 639 N.W.2d 226, 233 (Iowa 2002). To invalidate a statute, the "challenger bears a heavy burden" and "must prove the unconstitutionality beyond a reasonable doubt." *Id.*

Merits

As relates to the foregoing motion to dismiss, the defendant raises three constitutional challenges to the relevant statutory amendments. First, he claims the amendment to section 814.6 is contrary to the separation of powers. Defendant's Proof Br. at 22–27. This claim fails under the plain text of the Iowa Constitution and existing precedent interpreting the same. Second, he claims the same amendment violates Equal Protection and urges strict scrutiny. Defendant's Proof Br at 27–31. This claim fails because, among other reasons, "people who plead guilty to crimes" are not a suspect class and the distinction drawn by the General Assembly was rational. Third, the defendant makes a vague constitutional challenge to the amendment to section 814.7. Defendant's Proof Br. at 31–34. This claim is little more than the defendant's disagreement with the Legislature on a policy matter and it provides no basis for relief. This Court should reject all of the defendant's claims, if it decides to reach them despite the obvious failure to preserve error.

A. Section 814.6(1)(a), regulating guilty-plea appeals, does not offend separation of powers.

The Iowa Constitution establishes the Supreme Court as a tribunal for the correction of errors at law, "under such restrictions as the general assembly may, by law, prescribe." Iowa Const. Art. V, § 4. Consistent with the text of the Iowa Constitution, the Supreme Court has repeatedly held that appellate jurisdiction in Iowa is "statutory and not constitutional." *State v. Hinners*, 471 N.W.2d 841, 843 (Iowa 1991).

To that end, "when the Legislature prescribes the method for the exercise of the right of appeal or supervision, such method is exclusive, and neither court nor judge may modify these rules without express statutory authority, and then only to the extent specified." *Home Sav. & Tr. Co. v. Dist. Court of Polk Cty.*, 95 N.W. 522, 524 (Iowa 1903). In other words, "the power is clearly given to the General Assembly to restrict this appellate jurisdiction."

Lampson v. Platt, 1 Iowa 556, 560 (1855) (comma omitted).[4]

Being "purely statutory," the grant of "appellate review is … subject to strict construction." *Iowa Dep't of Revenue v. Iowa Merit Employment Comm'n*, 243 N.W.2d 610, 614 (Iowa 1976). Absent a statute authorizing an appeal, this Court cannot acquire jurisdiction by means of appeal. *See Crowe v. De Soto Consol. Sch. Dist.*, 66 N.W.2d 859, 860 (Iowa 1954) ("It is our duty to reject an appeal not authorized by statute."). Such authorizing statutes can be modified, and the authority to hear a particular class of appellate cases "may be granted or denied by the legislature as it determines." *James v. State*, 479 N.W.2d 287, 290 (Iowa 1991). Under Iowa's constitutional structure, the role of the judiciary is to decide controversies, but the

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[4] *Lampson* involved interpretation of a materially identical predecessor provision in the 1846 Constitution. The only difference between the 1846 and 1857 provisions is that commas were added to set off "by law," as follows: "shall constitute a court for the correction of errors at law, under such restrictions as the general assembly may, by law, prescribe." Iowa Const. Art. V, § 3 (1846). These commas did not change the meaning of the provision. In any event, section 814.6 is obviously a restriction made "by law."

And if there was any lingering question about a potential change in meaning over time, it is relevant that the Court's territorial analogue also had its jurisdiction "limited by law." *See United States ex rel James Davenport & Pet. for Mandamus to Cty. Commissioners of Dubuque Cty.*, Bradf. 5, 11 (Iowa Terr. 1840), 1840 WL 4020. Such restrictions are part of Iowa's constitutional history.

General Assembly is the arbiter of which "avenue of appellate review is deemed appropriate" for a particular class of cases. *See Shortridge v. State*, 478 N.W.2d 613, 615 (Iowa 1991), *superseded by statute on other grounds.*

These holdings show that the legislative branch in Iowa possesses nearly unbounded authority to regulate the taking of appeals at law. *See, e.g. James*, 479 N.W.2d at 290; *State v. Olsen*, 162 N.W. 781, 782 (Iowa 1917); *State v. Johnson*, 2 Iowa 549, 549 (1856). Because the source of the Supreme Court's authority to decide criminal appeals is through acts of the General Assembly, not the Constitution, it necessarily follows that legislation in this area is consistent with, rather than repugnant to, the separation of powers.

To the extent the foregoing does not dispose of the question, a trip through Iowa's history confirms the propriety of the amendment to section 814.6. For more than two centuries, the General Assembly has been active in this area, repeatedly adding to or subtracting from the Supreme Court's appellate jurisdiction:

- **From 1838 into the early years of statehood**, the Territorial Legislature and General Assembly authorized the Supreme Court to hear writs of error for non-capital criminal defendants "as a matter of course" (essentially authorizing appeals), whereas the Court only had authority to hear writs in capital cases upon "allowance"

of a Judge of the Supreme Court (akin to modern discretionary review). *See* Iowa Code § 3088, 3090–91 (1851); Iowa Code ch. 47, §§ 76–77 (Terr. 1843); Iowa Code ch. Courts, §§ 76–77, p. 124 (Terr. 1839).

- **In the late 19th and into the 20th Century,** the General Assembly authorized a somewhat convoluted system of appellate review related to various incarnations of mayoral, police, justice of the peace, superior, municipal, circuit, and district courts.[5] As a general matter, the district court had authority to hear all appeals from inferior tribunals, often as a trial anew. *See, e.g.*, Iowa Code § 6936 (1919) (district court had original and appellate jurisdiction of criminal actions), § 9241 (1919) ("trial anew" for appeals from justice court); § 161 (1873) (district court had original and appellate jurisdiction of criminal actions). The criminal decisions of the district court were then in turn reviewable by the Supreme Court. *E.g.*, Iowa Code § 9559 (1919); Iowa Code § 4520 (1873).

- **From approximately 1924 until 1971**, the General Assembly granted the Supreme Court authority to review "by appeal" "any judgment, action, or decision of the district court in a criminal case," for both indictable and non-indictable offenses. *See* Iowa Code § 793.1 (1966) (all criminal cases); § 762.51 (1966) (non-indictable); ch. 658, § 13994 (1924) (all criminal cases); ch. 627, § 13607 (1924) (non-indictable).

- **In 1972**, the General Assembly established the modern unified court system and stripped the Supreme Court of authority to review non-indictable criminal cases, other than by discretionary review. *See* 1972 Iowa Acts, ch. 1124 (64th Gen. Assem., 2nd Sess.); *id.* § 73.1 ("No judgment of conviction of a nonindictable misdemeanor … shall be appealed to the supreme court except by discretionary

[5] For a discussion of the these disparate and often-overlapping courts, see Charles F. Wennestrum, *Historical Development of the Iowa Judiciary*, 35 Annals of Iowa 491, at 506–521 (Winter 1961).

review as provided herein."); *id.* § 275 (amending 793.1); *id.* § 282 (repealing 765.51). The General Assembly also entirely stripped the Court of authority to review acquittals in non-indictable cases. *Id.* § 73.1.

- **In 1979,** following substantial revisions throughout the criminal portions of the Code, the General Assembly granted the appellate courts authority to hear appeals from all "final judgment[s] of sentence," but again denied the Supreme Court authority to decide appeals from simple-misdemeanor and ordinance-violation convictions absent discretionary review. Iowa Code § 814.6 (1979).

- **Now, in 2019**, the General Assembly has stripped the appellate courts of authority to decide most appeals following a guilty plea, other than for Class A felonies. *See* 2019 Iowa Acts ch. 140, § 28 (88th Gen. Assem.)

Senate File 589 was the latest in a long line of jurisdiction-stripping and jurisdiction-conferring statutes. Like the earlier legislation, SF589 variously strips and grants jurisdiction from the appellate courts pursuant to the General Assembly's prerogative to regulate appellate jurisdiction. *See* Iowa Const. Art. V, § 4. This is the separation of powers contemplated by the Iowa Framers. Ironically, it is the defendant who urges a violation of this separation in his brief, by asking this Court to encroach upon authority delegated to the legislative branch. The Court should decline to do so.

The defendant does not substantively confront the language of Article V, section 4 that permits the General Assembly to "restrict[]"

appellate jurisdiction. He instead writes that the "legislature cannot *deprive* the courts of their jurisdiction," which is apparently different than restricting jurisdiction. Defendant's Proof Br. at 23. But even if one generally accepts that proposition, the cases the defendant cites do not support his claim here.

The first case cited by the defendant, *Matejski*, is about whether the district court had authority to order a sterilization in the absence of legislation expressly granting or denying that authority. *Matter of Guardianship of Matejski*, 419 N.W.2d 576, 576–80 (Iowa 1988). *Matejski* is inapposite for two reasons. First, while *Matejski* involved an absence of legislation regarding jurisdiction, the legislation at issue here is directly on point. *Compare id.* ("The parties agree that no Iowa statute specifically and expressly addresses such jurisdiction."), *with* Iowa Code § 814.6(1)(a)(3) (regulating jurisdiction). Second, *Matejski* concerned analysis of district-court jurisdiction under Article V, section 6 of the Iowa Constitution, not Supreme-Court jurisdiction under Article V, section 4. *Mateksji*, 419 N.W.2d at 576–80. These constitutional provisions involve different language. The General Assembly is permitted to impose "restrictions" on appellate jurisdiction, but may only regulate the "manner" of

district-court jurisdiction. *Compare* Iowa Const. Art. V, § 4, *with* Iowa Const. Art. V, § 6. The General Assembly thus has more power to regulate the Supreme Court than the district court. *Matejski* does not support the defendant's claim.

The second case cited by the defendant, *Schrier*, is about the statute of limitations in a postconviction proceeding. *Schrier v. State*, 573 N.W.2d 242, 244–45 (Iowa 1997). This case supports the State's position in this appeal, rather than the defendant's. The Supreme Court held that the district court had "subject matter jurisdiction" to decide an untimely postconviction application because the court could broadly hear all cases that were actions in law, equity, or special proceedings. *Id.* at 244. However, the Court correctly recognized that "[t]he legislature may prescribe regulations for the manner in which the jurisdiction is exercised." *Id.* at 244. That is exactly what the amendment to section 814.6 does: it regulates the manner in which the Supreme Court can exercise jurisdiction of criminal appeals. When "a party fails to follow the statutory procedures for invoking the court's authority," a court "lacks authority to hear a particular case." *Id.* at 244–45. This too tracks the amendment to section 814.6, which specifies that the Court lacks authority to decide

guilty-plea appeals absent compliance with the statutory procedure, to wit: a showing of "good cause." Iowa Code § 814.6(1)(a). *Schrier* does not help the defendant.

The remainder of the defendant's argument in Division II.A is a list of policy complaints, making evident that he disagrees with the General Assembly about the policy questions underlying Senate File 589. Defendant's Proof Br. at 24–26. Presumably the defendant would have voted against the bill. Instead, it passed both chambers unanimously and was signed by the Governor. *See* BillBook, SF589 (88th Gen. Assemb.). In any event, this Court's role is not to second-question the policy judgments that inhere in legislation, but instead to decide its constitutionality:

> The legislature may pass any kind of legislation it sees fit so long as it does not infringe the state or federal constitutions. Courts do not pass on the policy, wisdom, advisability or justice of a statute. The remedy for those who contend legislation which is within constitutional bounds is unwise or oppressive is with the legislature.

City of Waterloo v. Selden, 251 N.W.2d 506, 508 (Iowa 1977). The amendment to section 814.6 is exactly the kind of "restriction[] … the general assembly may, by law, prescribe" authorized by the Iowa

Constitution. Iowa Const. Art. V, § 4. The statute does not offend separation of powers.

B. The General Assembly drew a rational distinction between guilty pleas and trials. It was similarly rational to afford special protection to pleas involving a Class A felony.

The defendant next asserts that the amendment to section 814.6 violates equal protection. Defendant's Proof Br. at 27. The defendant's argument rests on a foundation with two fatal defects. He first ignores that a person who admits guilt is not similarly situated to a person who asserts innocence and demands trial. *See* Defendant's Proof Br. at 28. And second, he asserts without any supporting authority or argument that strict scrutiny applies to this statute regulating criminal appeals. Defendant's Proof Br. at 28.

First, the defendant's abbreviated assertion that he is similarly situated to a person who is convicted following trial cannot withstand any serious examination. Unlike a trial, pleading guilty waives all defenses that are not intrinsic to the voluntariness of the plea. *See State v. Antenucci*, 608 N.W.2d 19, 19 (Iowa 2000). Iowa law has long recognized that "[a] guilty plea is normally understood as a lid on the box, whatever is in it, not a platform from which to explore

further possibilities." *Kyle v. State*, 322 N.W.2d 299, 304 (Iowa 1982) (internal citation and quotation marks omitted).

"A plea of guilty … is itself a conviction." *State v. LaRue*, 619 N.W.2d 395, 397 (Iowa 2000) (quoting *Boykin v. Alabama,* 395 U.S. 238, 242 (1969)). In other words, "a guilty plea implicitly eliminates any question of the defendant's guilt." *State v. Mann*, 602 N.W.2d 785, 789 (Iowa 1999). This is the opposite of a trial, the purpose of which is to decide the question of guilt.

Also unlike a trial, in which the defendant is afforded a full panoply of constitutional rights, a defendant who pleads waives those rights, and thus "the State is entitled to expect finality in the conviction." *Id.* at 789. The crucial differences between a plea and trial are too many to list, but key among them are that a trial requires proof beyond a reasonable doubt, decided by a unanimous jury if the defendant so elects, and a plea requires only a factual basis reviewed by a judge. The defendant who pleads guilty is not similarly situated to the defendant who is convicted at trial. This reason alone is sufficient to defeat the defendant's Equal Protection claim.

That said, the Court can also reject the defendant's claim because his unsupported assertion that the statute triggers strict

scrutiny is wrong under existing case law. In his brief, the defendant does not actually make any argument for why strict scrutiny is warranted. Defendant's Proof Br. at 28–29. This Court should find the argument and waived and end the analysis here. *See* Iowa R. App. P. 6.903(2)(g)(3) ("Failure to cite authority in support of an issue may be deemed waiver of that issue.").

If the Court does address the question of scrutiny, the only conceivable argument even remotely hinted at in the defendant's brief is that he believes the statute infringes upon a "fundamental right." Defendant's Proof Br. at 28 (citing *Varnum v. Brien*, 763 N.W.2d 862, 879 (Iowa 2009)). But this argument is flat wrong. There is no right to a criminal appeal under either the state or federal constitutions. *Griffin v. Illinois*, 351 U.S. 12, 18 (1956) ("[A] State is not required by the Federal Constitution to provide appellate courts or a right to appellate review at all."); *State v. Hinners*, 471 N.W.2d 841, 843 (Iowa 1991) ("In Iowa the right of appeal is statutory and not constitutional."); *see also In re C.M.*, 652 N.W.2d 204, 210 (Iowa 2004) ("[T]he right to appeal is not a fundamental right, nor even a constitutional right." (citing *Abney v. United States*, 431 U.S. 651, 656 (1977)). There is no fundamental right at issue here. Nor is there any

colorable argument that persons who plead guilty are a protected class, even if the defendant had advanced such an argument. *See Arnold v. State*, 384 S.W.3d 488, 495 (Ark. 2011) ("The disadvantaged class in the instant case is comprised of people who plead not guilty and are convicted at trial, and this class is not constitutionally suspect.").

And even if there were a fundamental right to some manner of post-judgment review for all guilty pleas, the statutory scheme of Senate File 589 does not infringe upon that interest. The same claims that could be raised before July 1, 2019, can still be raised after—just through different procedures. While the defendant may not obtain appellate review through a notice of appeal following a guilty plea absent good cause, he can still apply for discretionary review, file a petition for writ of certiorari, file a motion to correct an illegal sentence (and subsequently file a petition for writ of certiorari seeking appellate review of the same), or file a postconviction action (and subsequently file a notice of appeal seeking review of the same). "[E]very relevant case has made it clear that a change in the number of tribunals authorized to hear a litigant's arguments does not implicate the litigant's substantive rights." *Santos v. Guam*, 436 F.3d

1051, 1056 (9th Cir. 2006) (Wallace, J., concurring) (collecting cases); *see also Bruner v. United States*, 343 U.S. 112, 116–17 (1952) (statute that "simply reduced the number of tribunals authorized to hear and determine such rights and liabilities" did not alter any substantive rights). In other words, a litigant has no right to present a particular claim in a particular tribunal. *Santos*, 436 F.3d at 1056 (Wallace, J., concurring) (collecting cases). The defendant cannot invoke strict scrutiny on this basis.

Having established strict scrutiny is not appropriate, the inquiry instead shifts to whether there is a rational basis for lines drawn by the statute. The defendant makes no attempt to refute the rational bases for the statute in his brief. *See* Defendant's Proof Br. at 30–31. The Court could find this claim waived and end the inquiry. But if the Court decides to explore the question, the lines drawn by the statute are rational.

The first line drawn by section 814.6(1)(a) is between persons who plead guilty and persons who assert they are not guilty and are only convicted after trial. This distinction is rational, for many of the same reasons that establish that a criminal offender who pleads guilty is not similarly situated to an offender who demands trial. Pleas

waive a variety of claims and are intended to a put "lid on the box," not serve as a "a platform from which to explore further possibilities." *Kyle*, 322 N.W.2d at 304. Also, the plea itself serves as a conviction, "eliminat[ing] any question of the defendant's guilt." *Mann*, 602 N.W.2d at 789; *see LaRue*, 619 N.W.2d at 397. It is rational, if not self-explanatory, that a guilty plea should be less susceptible to appellate reversal than a trial verdict, as a "a guilty plea implicitly eliminates any question of the defendant's guilt." *Mann*, 602 N.W.2d at 789. In contrast, a defendant who demands trial has not admitted guilt and has contested the State's assertions that he is guilty, which the General Assembly could rationally believe warrants additional safeguards in the form of direct appellate review. This distinction passes muster.

The second line drawn by the statute is between pleas of guilty to Class A felonies and pleas to other crimes. This kind of distinction, based on the grade of offense, is not new. For example, the Supreme Court has lacked authority to review simple-misdemeanor convictions for decades. *See* Iowa Code § 814.6 (1979); 1972 Iowa Acts, ch. 1124 (64th Gen. Assem., 2nd Sess.). Similarly, the Court's rules distinguish between the guilty-plea procedures afforded to

misdemeanants versus felons. *See* Iowa R. Crim. P. 2.8(2). The General Assembly could rationally believe that extra procedural safeguards were needed to review Class A guilty pleas (which all impose a sentence of life without parole) while those same safeguards were not necessary for lesser offenses. This distinction also passes muster.

Finally, the defendant does not acknowledge that various restrictions on the ability to appeal guilty-plea convictions exist elsewhere in the country, either by statute or court rule. *See* Cal. Penal Code § 1237.5 (2019); Kan. Stat. Ann. § 22-3602 (2019); Md. Code Ann., Cts. & Jud. Proc. § 12-302(e)(2); Fla. R. App. P. 9.140(b)(2); Ill. S.Ct. R. 604(d).; Okla. Ct. Crim. App. R. 4.2; Tex. R. App. P. 25.2(a)(2). The defendant has not cited any case, from any of those jurisdictions or any other, accepting his Equal Protection argument. *See* Defendant's Proof Br. at 27–31. The statute is not constitutionally infirm.

C. Section 814.7, regulating guilty pleas, does not offend the Constitution. The General Assembly has regulated the tribunal to decide ineffective-assistance cases before and is permitted to do so.

Next, the defendant makes some type of constitutional challenge regarding amendments to section 814.7. *See* Defendant's

Proof Br. at 31–34. The claim is somewhat vague. The last few sentences reference "separation of powers," so the State assumes that is the basis of the defendant's challenge, despite the concept's absence from the preceding pages. Defendant's Proof Br. at 33–34.

A discussion of the General Assembly's history of regulating ineffective-assistance claims is notably absent from the defendant's brief. Defendant's Proof Br. at 31–34. That history informs resolution of the issue.

Before 2004, ineffective-assistance claims had to be raised on direct appeal to even preserve the claim for postconviction relief. *See, e.g., Collins v. State*, 477 N.W.2d 374, 376 (Iowa 1991); *Washington v. Scurr*, 304 N.W.2d 231, 235 (Iowa 1981). In 2004, the General Assembly enacted legislation that became section 814.7, which regulated ineffective-assistance claims in three ways:

1. It established that ineffective-assistance claims "need not" be raised on direct appeal "in order to preserve the claim for postconviction relief."

2. It directed that a party "may" but was "not required to" raise ineffective-assistance claims on direct appeal if the party "ha[d] reasonable grounds to believe that the record was adequate to address the claim on direct appeal."

3. It authorized the appellate courts facing such claims to either "decide the record is adequate to decide the claim"

> on direct appeal or instead "choose to preserve the claim" for postconviction relief.

2004 Iowa Acts, ch. 1017, § 2 (80th Gen. Assemb.). In 2019, the General Assembly again regulated ineffective-assistance claims, this time by providing that such claims "shall not be decided on direct appeal," effectively shifting all ineffective-assistance claims to postconviction relief proceedings. *See* 2019 Iowa Acts, ch. 140, § 31 (88th Gen. Assemb.). That provision is at issue here.

The 2019 statute is nothing more than another iteration of the regulating legislation first passed in 2004. At the risk of repeating what has already been said in Division I.A, the Iowa Constitution expressly permits the General Assembly to restrict or otherwise regulate the jurisdiction of Iowa courts. *See* Iowa Const. Art. V, §§ 4, 6. That is what the General Assembly did in 2004 and did again in 2019.

Much like the predecessor legislation in 2004, the 2009 amendment to section 814.7 "attempts to conserve judicial resources and place the defendant's claim in the court that is most informed to handle it." *Hannan v. State*, 732 N.W.2d 45, 51 (Iowa 2007) (interpreting the 2004 legislation). This was the "legislature's attempt to fix a procedural wrong," which is an appropriate exercise

of the power granted to the General Assembly by the Constitution. *See id.* at 51; Iowa Const. Art. V, §§ 4, 6.

The defendant offers little beyond policy disagreement to support his request that this Court invalidate the new Code section. *See* Defendant's Proof Br. at 31–34. Perhaps reasonable people could differ on the public policy question of whether appellate courts or postconviction courts are best suited as a "first stop" for ineffective-assistance claims.[6] But this Court's role is not to second-guess policy choices; instead the judiciary must permit all legislation that is not repugnant to the Constitution. *See, e.g., Selden*, 251 N.W.2d at 508. As with the previous claim about separation of powers, it is ironically the defendant that urges this Court to violate the boundaries between our branches of government: he wishes this Court to seize authority properly assigned to the General Assembly by the Iowa Framers. The Court should decline to do so. Section 814.7 is permitted by Article V, section 4 of the Constitution.

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[6] For an overview of the different approaches various jurisdictions have taken to whether ineffective assistance should be addressed on direct appeal, see *Woods v. State*, 701 N.E.2d 1208, 1215 (Ind. 1998), *cert. denied*, 528 U.S. 861 (1999).
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This Court should reject the constitutional challenges to amended sections 814.6 and 814.7, for the reasons expressed above. The heart of the defendant's claim is that he thinks Senate File 589 was a bad law and may require he pursue his claims in postconviction relief instead of on direct appeal. Yet "[t]he remedy for those who contend legislation which is within constitutional bounds is unwise or oppressive is with the legislature," not the courts. *Selden*, 251 N.W.2d at 508. The Iowa Constitution authorizes exactly the kind of regulation or restriction of jurisdiction contained in these statutes. The defendant is not entitled to relief.

II. The Defendant Did Not File a Motion in Arrest of Judgment. This Waives All Claims Related to Plea Defects.[7]

Preservation of Error

The defendant admits error was not preserved because he did not file a motion in arrest of judgment. Defendant's Proof Br. at 12. Despite this, he frames his argument as if he preserved error. *See* Defendant's Proof Br. at 12–17.

[7] Division II of this brief corresponds to Division I of the defendant's brief.

The defendant separately addresses ineffective assistance in the subsequent Division of his brief, as does the State here.

Standard of Review

If error had been preserved, review would be for correction of errors at law. *State v. Keene*, 630 N.W.2d 579, 581 (Iowa 2001).

Merits

"[A] defendant's failure to file a motion in arrest of judgment bars a defendant from challenging the adequacy of guilty plea proceedings on appeal." *State v. Gant*, 597 N.W.2d 501, 503 (Iowa 1999). The defendant concedes a motion in arrest of judgment was not filed and he does not contest the adequacy of any related advisory. *See* Defendant's Proof Br. at 12–17. This ends the inquiry and the Court must affirm on this issue. *E.g.*, *Gant*, 597 N.W.2d at 503.

Moreover, even setting aside the foregoing bar to recovery, the defendant does not identify any defect in the plea in Division I of his brief. *See* Defendant's Prof Br. at 12–17. He makes some assertions about the conduct of counsel, which the State will address (to the extent relevant) in the following Division. *See* Defendant's Prof Br. at 12–17.

Finally, even if the defendant had filed a motion in arrest of judgment alleging a defect in the plea proceedings, he would have to prove that he "more likely than not would not have pled guilty if the defect had not occurred" in order to obtain relief. *See* Iowa Code § 814.29 (2020). This "burden applies whether the challenge is made through a motion in arrest of judgment or on appeal." Iowa Code § 814.29. Again, the defendant has not asserted a defect. But even if he had, he fails to assert he more likely than not would have demanded a trial, as required by section 814.29. *See* Defendant's Proof Br. at 15–17.

III. On this Record, the Defendant Cannot Prove Breach of an Essential Duty or the Reasonable Probability He Would Have Demanded a Trial Rather than Plead Guilty.

Preservation of Error

If this Court finds it can reach the ineffective-assistance issue, error preservation would not bar review. *See State v. Wills*, 696 N.W.2d 20, 22 (Iowa 2005).

Standard of Review

If this Court finds it can reach the ineffective-assistance issue, reviewed is novo. *See Wills*, 696 N.W.2d at 22.

Merits

The defendant's only substantive contention on appeal is that he believes counsel was ineffective. Defendant's Proof Br. at 17–21. But he does not lay out a viable ineffective-assistance claim in his brief. He does not clearly identify breach of any essential duty nor does he identify evidence proving that, with counsel who did something different, he would not have pled guilty and would have instead demanded a trial. *See Hill v. Lockhart*, 474 U.S. 52, 57–59 (1985); *State v. Straw*, 709 N.W.2d 128, 137 (Iowa 2006).

The defendant's assertions all revolve around a confusing exchange between the defendant and the court, in which the defendant appears to (perhaps sarcastically) complain about the judge placing him under oath for the plea, asking if he had to "stretch the truth" if the judge asked him "something." Sent. tr. p. 6, line 17 — p. 7, line 8. The judge responded to the defendant by telling him "you have to state the truth." *Id.*

It is unclear exactly what the defendant wishes his attorney would have done differently, but he appears to assert in part that he may not have been actually guilty. *See* Defendant's Proof Br. at 15–21. An offender can plead guilty without ever admitting guilt—even if

the offender subjectively believes or has convinced himself he is not guilty. *See North Carolina v. Alford*, 400 U.S. 25, 32-38 (1970). But even setting *Alford* aside, this defendant did admit guilt, in his words, to all essential elements of the offense:

> **THE COURT:** So tell me, in your own words, what you did to commit the crime.
>
> **THE DEFENDANT:** I'm guilty of the theft.
>
> **THE COURT:** And tell me what you did to commit that theft. What did you do?
>
> (An off-the-record discussion was held.)
>
> **THE DEFENDANT:** I took money.
>
> **THE COURT:** And who did you take the money from?
>
> **THE DEFENDANT:** The victims.
>
> **THE COURT:** And do you know -- what are the victims' names?
>
> **THE DEFENDANT:** Gordan [K.] and Betty [M.].
>
> **THE COURT:** And did they give you permission to take this money?
>
> **THE DEFENDANT:** No.
>
> **THE COURT:** And did this occur on or about August 6th of 2019?
>
> **THE DEFENDANT:** Yes.

> **THE COURT:** And did that occur here in Polk County, Iowa?
>
> **THE DEFENDANT:** Yes.
>
> **THE COURT:** And did you intend to give this money back to [the victims]?
>
> **THE DEFENDANT:** No.
>
> **THE COURT:** And was the amount of money that you took greater than $1,500 but less than $10,000?
>
> **THE DEFENDANT:** Yes.

Sent. tr. p. 20, line 21 — p. 21, line 25. The minutes support those admissions. *See* Minutes; Conf. App. 4–13. This record does not establish breach of any essential duty by counsel during the plea hearing.

Nor does the record establish a reasonable probability the defendant would have demanded a trial. The best the defendant offers on this point is the same confusing exchange mentioned above. Defendant's Proof Br. at 21. This does not satisfy the defendant's burden to prove factual assertions by a preponderance of the evidence. The defendant's assertion that he "was not guilty" also fails to move the ball on prejudice, particularly given the defendant's assertion that "innocent people plead guilty" to reduce their sentencing exposure. Defendant's Proof Br. at 21, 26. If anything, the

defendant's explanation to the court that he was pleading guilty to "get the plea that's offered … to get … what's offered to me" suggests he preferred a plea to a trial. Sent. tr. p. 10, lines 10–16.

To the extent this Court does not reject the defendant's claim on the foregoing bases, the claim must be preserved for postconviction relief. The defendant himself admits there were at least ten off-the-record discussions between counsel and the defendant at the plea hearing and this record includes no information about what was or was not said. Defendant's Proof Br. at 11. This Court cannot find trial counsel ineffective without hearing more about those off-the-record conversations. "Even a lawyer is entitled to his day in court, especially when his professional reputation is impugned." *State v. Coil*, 264 N.W.2d 293, 296 (Iowa 1978).

The defendant raising this claim now, on an underdeveloped record, "wastes the party's resources and judicial resources." *State v. Eaton*, No. 14-0789, 2014 WL 7367008, at *1 n.1 (Iowa Ct. App. Dec. 24, 2014). This is the precise evil remedied by the legislation discussed in Division I.

CONCLUSION

This Court should dismiss the appeal because the Court lacks authority to decide direct appeals concerning (a) a guilty plea absent a showing of good cause or (b) ineffective-assistance claims. To the extent the Court reaches the merits, the Court should find the statutes at issue are constitutional and affirm the defendant's conviction.

CONDITIONAL NOTICE OF ORAL ARGUMENT

If the Supreme Court retains this case, oral argument may be helpful to the Court. If the case is transferred to the Court of Appeals, it should be decided on the briefs.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

This brief complies with the typeface requirements and type-volume limitation of Iowa Rs. App. P. 6.903(1)(d) and 6.903(1)(g)(1) or (2) because:

- This brief has been prepared in a proportionally spaced typeface using Georgia in size 14 and contains **7,461** words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).

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