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

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**STATE OF IOWA,**
**Plaintiff-Appellee**

**vs.**

**TYJUAN LEVELL TUCKER,**
**Defendant-Appellant.**

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

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# APPELLANT'S FINAL REPLY BRIEF

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## INTRODUCTION

The State argues that Tucker's appeal from his guilty plea should not be heard by this court in part because (1) the issues raised by the legislature's amendments to Iowa Code § 814.6(1)(a)(3) (2020) were not preserved below, (2) Tucker does not have a constitutional right to appeal and is therefore not harmed by § 814.6(1)(a)(3)'s application, and (3) Tucker has alternative means available to protect his constitutional rights despite the application of § 814.6(1)(a)(3). The State also proposes procedures for determining good cause that are not supported by the statute, and faults Tucker for failing to comply with procedures it made up for the purposes of preserving the statute's application on appeal. For obvious reasons, the issues with § 814.6(1)(a)(3) require resolution by the courts sooner rather than later. For the reasons discussed below, the Court should reject the State's interpretation of § 814.6(1)(a)(3).

## I. THE STATE'S DEFINITION OF GOOD CAUSE IS NOT CONSISTENT WITH THE CANNONS OF STATUTORY CONSTRUCTION

Based on Senator Dawson's statements related to the 2019 amendments to the criminal code, the State argues "good cause" under § 814.6(1)(a)(3) must mean "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.[1] Despite what was said on the legislative floor, the cannons of statutory construction support a broad construction of "good cause."

First, resort to legislative intent is only on the table where the language is ambiguous. *Voss. v. Iowa Dep't of Transp.*, 621 N.W.2d 208, 211 (Iowa 2011).

> An ambiguity in a statute can arise in two ways. First, it may arise from the meaning of particular words in the statute. Second, it may arise from the general scope and meaning of a statute in its totality. Moreover, an ambiguity exists only if reasonable minds could differ on the meaning.
>
> Generally, we presume words used in a statute have their ordinary and commonly understood meaning. We rely on the dictionary as one source to determine the meaning of a word left undefined in a statute.

*McGill v. Fish*, 790 N.W.2d 113, 118-19 (Iowa 2010).

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

As discussed in Tucker's opening brief, "good cause" has a commonly understood legal meaning that, although flexible, can be reduced to a "legally sufficient reason" under the circumstances. *See, e.g.* Black's Law Dictionary (11th Ed. 2019) ("Good cause" defined as "a legally sufficient reason"); *Wiese v. Iowa Dept. of Job Srv.*, 389 N.W.2d 676, 680 (Iowa 1986) (good cause depends on the circumstances of each case). Tucker requests the court interpret good cause as it has always done – by requiring a legally sufficient reason for appeal, and not an extraordinary or compelling one. In this case, good cause is that the plea agreement was involuntary. An involuntary plea is a legally sufficient reason to review a conviction by plea agreement because a judgment can only be entered on a knowing and voluntary plea. *State v. Straw*, 709 N.W.2d 128, 133 (Iowa 2006) ("Due process requires the defendant enter his guilty plea voluntarily and intelligently."). As discussed in Tucker's opening brief, there is record evidence calling into question whether Tucker understood the plea procedures.

By contrast, the State wants to interpret "good" cause to mean "compelling" or "extraordinary" cause. If the legislature wanted compelling or extraordinary cause to permit an appeal from a guilty

plea, it should have stated so. *See State v. Macke*, 933 N.W.2d 226, 233 (Iowa 2019) ("[W]e must apply the new enactment as written, not by what the legislature might have said or intended."). "Good" cause does not bear that definition. This conclusion is bolstered by the presumption that "[t]he legislature is aware of our cases interpreting its statutes and the rules established within them." *Id.* (citation omitted); *see also In re Vajgrt*, 801 N.W.2d 570, 574 (Iowa 2011) ("The legislature is presumed to know the state of the law, including case law, at the time it enacts a statute." (citation omitted)).

## II. THE AMENDMENTS TO § 814.6(1)(a)(3) DO NOT PROVIDE THE PROCEDURE THE STATE FAULTS TUCKER FOR SKIPPING

The State argues that Tucker has sought to avoid the operation of § 814.6(1)(a)(3) by filing an appeal without seeking permission, through motion practice establishing good cause to do so, and that he must be punished for this procedural irregularity by refusing to hear his appeal. In reality, the legislature amended § 814.6(1)(a)(3) with little thought to the procedural consequences of requiring a defendant to establish good cause before appealing his guilty plea. The suggested procedure by the State is not supported by §

814.6(1)(a)(3), which does not direct defendants to *any* particular procedure.

The suggestion that defendants should file a motion to establish good cause using Iowa R. App. P. 6.1002 is inadequate. First, filing deadlines are not extended by filing a motion under Rule 6.1002. A defendant attempting to establish good cause to appeal through such a motion will lose their right to appeal by the passage of the deadline while the motion is being considered. Second, there does not appear to be any precedent holding that a defendant is entitled to the assistance of an attorney or to release on bond under Rule 6.1002. Third, if the whole point of the amendments to § 814.6(1)(a)(3) was to conserve appellate resources, the result of requiring a motion to establish good cause will be to multiply appellate procedures.

Regardless of which method is used to establish good cause, it must be noted that the Courts of Appeals have the discretion to consider an improperly filed appeal as if it were filed under the proper rule. Iowa R. App. P. 6.108 ("If . . . the appellate court determines another form of review was the proper one, the case shall not be dismissed, but shall proceed as though the proper form of review had

been requested."). The complaint about the form of review selected in this case is academic.

## III. PRESERVATION IS NOT A BAR TO DETERMINING THE CONSTITUTIONALITY OF THE AMENDMENTS TO § 814.6(1)(a)(3).

Preservation is typically considered jurisdictional – a party must preserve an issue below before a court will consider it on appeal. *See, e.g., Meier v. Senecaut*, 641 N.W.2d 532, 537 (Iowa 2002). However, there are several exceptions to the error preservation requirement in criminal cases because the courts recognize that some errors can't adequately be addressed and considered by the courts below. *See, e.g., State v. Ondayog*, 722 N.W.2d 778, 784 (Iowa 2006) (Ineffective assistance of counsel claims are an exception to the traditional error-preservation rules). A constitutional challenge to a statute which limits the appellate courts' jurisdiction could not have been raised below for several reasons.

First, a court always has jurisdiction to determine the scope of its own jurisdiction. *City of Des Moines v. Des Moines Police Bargaining Unit Ass'n*, 360 N.W.2d 729, 730 (Iowa 1985). Whether the Court can hear Tucker's appeal from his guilty plea and sentence is primarily a question of jurisdiction for the appellate courts to

decide. The district courts simply don't have jurisdiction to consider the appellate courts' jurisdiction.

Second, there was no basis for bringing a motion challenging the constitutionality of a statute that controls the right to appeal before the district court. Notably, the state is silent on where and how Tucker should have preserved this issue. It begs credulity to believe that a district court would entertain a motion determining a defendant's right to appeal before the guilty plea or sentence was entered. None of the rules of criminal procedure provide for such a motion. After a guilty plea, a defendant can file a motion in arrest of judgment to void or withdraw the plea. But, the constitutionality of a jurisdictional statute on appeal probably is not a ground to argue whether a plea was made knowingly and voluntarily.[2] Similarly, the constitutionality of these statutes would not impact whether a sentence was illegal or not, and a court would be disinclined to

[2] This is distinguishable from whether the advice a defendant was given about his right to appeal makes the guilty plea knowing and voluntary. A plea deal based on wrong information was not made knowingly.

consider constitutional arguments that are not relevant to determining the issues before it.

For this reason, it is not surprising that the most recent Iowa Supreme Court case to consider the applicability of § 814.6(1)(a)(3) did not consider whether the issues related to the statute's retroactivity were preserved below. *Macke*, 933 N.W. 2d 226. There was no method for preserving the issue, it was first raised before and first required to be ruled upon by the court whose jurisdiction the statute impacted. Preservation was not required below, and the lack of preservation is not now an impediment to hearing this appeal.

## IV. THE CONSTITUTIONAL RIGHT TO APPEAL

The state argues that the amendments to § 814.6(1)(a)(3) are constitutionally sound regardless of how they are attacked because there is no constitutional right to appeal a criminal case, therefore, there is no issue with restricting the right to appeal before the judgment is entered.

It is a technically correct statement of law that there is no constitutional right to appeal. But this oft-repeated rule omits the truth that the vast majority of constitutional rights are only truly protectable during the appeal process. This is true even for people

who plead guilty and waive their trial rights, because the waiver of trial rights is not a waiver of all constitutional rights. A person who pleads guilty still has a right to effective assistance of counsel under the Sixth Amendment of the U.S. Constitution and article I, § 10 of the Iowa Constitution; to a constitutional sentence under the Fifth and Eighth Amendments and article I, §§ 9 and 17; and to relief from judgment in the event of actual innocence under the Fifth Amendment and article I, §§ 9 and 17. *See, e.g. Schmidt v. State*, 909 N.W.2d 778 (Iowa 2018).

Two issues hang in the balance when eliminating the statutory right to appeal. On one side, the state is concerned about the budget and the workload of the appeals courts. On the other side, the state risks "erroneous and uncorrectable rulings, the disruption of other procedures that depend on robust appellate rights, and diminished faith in the judicial system." Cassandra Burke Robertson, *The Right to Appeal*, 91 N.C. L. Rev. 1219, 1223 (2013). In *Macke*, the Iowa Supreme Court recognized that the amendments were designed to disadvantage defendants:

> The State argues the amendment to section 814.7 merely changes the forum for ineffective-assistance claims, without eliminating the right to relief altogether.

> This statutory change, however, results in significant disadvantages to some defendants and can mean the difference between freedom and incarceration while the case proceeds. A direct appeal is typically a much faster vehicle for relief and allows for release on appeal bond for certain offenses. *See* Iowa Code § 811.5 (governing appeal bonds). By contrast, postconviction proceedings often take much longer while defendants remain incarcerated without a right to release on bond. *Summage v. State*, 579 N.W.2d 821, 823 (Iowa 1998) (per curiam) (holding appeal bonds are not available in postconviction proceedings); *see also State v. Brubaker*, 805 N.W.2d 164, 170-71 (Iowa 2011) ("[P]reserving ineffective-assistance-of-counsel claims that can be resolved on direct appeal wastes time and resources.") (quoting *State v. Truesdell*, 679 N.W.2d 611, 616 (Iowa 2004)).

*Macke*, 933 N.W.2d at 233.

The state is balancing financial concerns against the risk of wrongful convictions, to the detriment of defendants' constitutional rights, and to the disadvantage of defendants – particularly indigent defendants – who must wait in prison to have their rights vindicated. It is reasonable to consider whether the line the state has drawn is justified because a defendant pled guilty. It is reasonable to question whether the cost savings to the state are worth the risk of wrongful convictions.

## CONCLUSION

The 2019 amendments to the Iowa Criminal Code, directing the manner in which a defendant who pleads guilty or receives ineffective assistance of counsel can protect their constitutional rights after conviction, are deeply flawed. The Court should step in to provide guidance, because defendants – even those like Tucker, who plead guilty – ought to have a clear and understandable mechanism for protecting their constitutional rights.

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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 7,000 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 2,063 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 Reply Brief on Appellant by mailing one copy to:

Tyjuan Tucker
Defendant-Appellant

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