

IN THE SUPREME COURT OF IOWA
Supreme Court No. 19-1442

STATE OF IOWA,
Plaintiff-Appellee,

vs.

TRAVIS JAMES JORDAN,
Defendant-Appellant.

APPEAL FROM THE IOWA DISTRICT COURT
FOR WEBSTER COUNTY
THE HONORABLE KURT L. WILKE, JUDGE

APPELLEE'S BRIEF

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**STATEMENT OF THE ISSUE PRESENTED FOR
REVIEW**

**I. This Appeal is Barred by Iowa Code Sections
814.6(1)(a)(3) and 814.7.**

Authorities

Horner v. State Bd. of Eng'g Examiners, 110 N.W.2d 371
(Iowa 1961)

State v. Dudley, 856 N.W.2d 668 (Iowa 2014)

State v. Macke, 933 N.W.2d 226 (Iowa 2019)

State v. Trane, 934 N.W.2d 447 (Iowa 2019)

Iowa Code § 814

Iowa Code § 814.6(a)(1)(3)

Iowa Code § 814.7

SF589, §§ 28–29, 31 (88th Gen. Assem.)

ROUTING STATEMENT

This case can be decided based on existing legal principles. Transfer to the Court of Appeals would be appropriate. Iowa R. App. P. 6.1101(3).

STATEMENT OF THE CASE

Nature of the Case

This is a direct appeal following a guilty plea to one count of burglary. Travis James Jordan argues that his counsel was ineffective for failure to object to the State's breach of the plea agreement at sentencing.

Course of Proceedings

The State accepts the defendant's course of proceedings as adequate and essentially correct. Iowa R. App. P. 6.903(3).

Facts

Lengthy recitation of the facts is not necessary for the disposition of the issues on appeal. Suffice it to say that Jordan admitted that he "went inside a garage and took something that didn't belong to [him]." Plea Tr. P.11 Ls.2-3.

ARGUMENT

I. **This Appeal is Barred by Iowa Code Sections 814.6(1)(a)(3) and 814.7.**

Statement on Jurisdiction

The Iowa legislature recently barred direct appeals from guilty pleas to non-Class A felonies. Iowa Code § 814.6(1)(a)(3) (effective July 1, 2019). The prohibition applies unless the judgment was entered prior to the July 1, 2019, effective date. *See State v. Macke*, 933 N.W.2d 226, 228 (Iowa 2019); *State v. Trane*, 934 N.W.2d 447, 464 (Iowa 2019). Because the district court entered judgment in this case on August 19, 2019, Jordan has no right to appeal. This Court lacks jurisdiction unless Jordan can establish “good cause.” *See* Iowa Code § 814.6(a)(1)(3).

Jordan argues that his appeal, which alleges only ineffective assistance of counsel at sentencing, is “unique” because he entered his plea in October of 2018 but was not sentenced until August of 2019. Appellant’s Br. P.11. He believes that because of those “unique circumstances,” he should be allowed to appeal under the “previous version of Iowa Code § 814.” Appellant’s Br. P.11. He should not. Jordan’s sentencing was originally scheduled for November 26, 2018. *See* Order Modifying Bond 10/24/18; App. 16-17. But Jordan

absconded and a bench warrant issued for his failure to appear at sentencing. Bench Warrant 11/26/18; App. 22-23. Jordan was arrested on the bench warrant on June 2, 2019. Return of Service 06/03/19; App. 24. Sentencing was rescheduled for August 19, 2019.

This Court has yet to determine what constitutes “good cause” for an appeal under the new section 814.6(1)(a)(3). Although the term is not defined in the statute, the purpose of the change was to restrict direct appellate review of most guilty-plea challenges and shift all ineffective assistance claims to postconviction relief. *See* SF589, §§ 28–29, 31 (88th Gen. Assem.). This Court must consider the overall purpose of the legislation when interpreting its terms. *See Horner v. State Bd. of Eng’g Examiners*, 110 N.W.2d 371, 374 (Iowa 1961) (“[I]n determining the meaning of a statute all provisions of the act of which it is a part, and other pertinent statutes, must be considered.”). Given this background, the State’s position is that “good cause” is limited to extraordinary legal challenges which cannot be heard elsewhere.

Jordan’s failure to appear for his original sentencing hearing and his decision to abscond for more than six months before he was arrested on a bench warrant cannot establish “good cause” to appeal. But even if it could, Jordan’s ineffective assistance of counsel claim

cannot be decided on direct appeal. *See* Iowa Code § 814.7 (effective July 1, 2019). This appeal should be dismissed.

Preservation of Error

The State does not contest error preservation.

Standard of Review

Ineffective assistance of counsel claims cannot be decided on direct appeal. *See* Iowa Code § 814.7 (effective July 1, 2019). If this Court determines that the current version of section 814.7 does not apply to this case, Jordan’s ineffective assistance of counsel claim is reviewed *de novo*.

Merits

Jordan’s sole claim on appeal is ineffective assistance of counsel. But after July 1, 2019, such claims cannot be decided on direct appeal. Iowa Code § 814.7 (effective July 1, 2019) (“An ineffective assistance of counsel claim ... shall not be decided on direct appeal from the criminal proceedings.”). In this case, judgment was entered on August 19, 2019. Because judgment was entered after the effective date of the amendment to section 814.7, the new statute applies to this case. *See Macke*, 933 N.W.2d at 228; *Trane*, 934 N.W.2d at 464. Jordan is free to pursue his ineffective assistance of

counsel claim in an application for postconviction relief under chapter 822.

In any event, Jordan cannot succeed on his ineffective assistance claim because the State was relieved of its obligation to remain silent at sentencing by Jordan's breach of the agreement. The parties agreed that Jordan would plead guilty to the burglary count and the State would dismiss the remaining count and would not seek a habitual offender enhancement. Plea Tr. P.2 Ls.8-16, P.6 Ls.2-3. The parties also agreed that Jordan would be released with supervision prior to sentencing and that the State would not make a sentencing recommendation. Plea Tr. P.2 Ls.8-16.

The district court ordered Jordan to contact the department of correctional services within 48 hours to sign a "contract of expectations or release agreement." Plea Tr. P.15 Ls.6-18. Jordan signed a release agreement that required him to attend court appearances and keep appointments with his probation officer. Release Agreement 10/24/18; App. 18-21. Jordan failed to abide by the terms of his supervision contract when he absconded and failed to appear at his November sentencing hearing. His breach relieved the State of its obligation to remain silent at sentencing. *See State v.*

Dudley, 856 N.W.2d 668, 675 (Iowa 2014) (“The State has no obligation to make available the anticipated benefits of a plea agreement when the defendant fails to perform his or her end of the bargain.”).

CONCLUSION

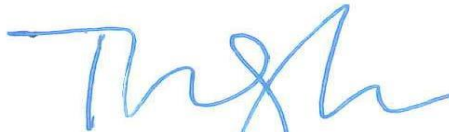
For the foregoing reasons, this appeal should be dismissed. In the alternative, Jordan’s conviction and sentence should be affirmed.

REQUEST FOR NONORAL SUBMISSION

Nonoral submission is appropriate for this case.

Respectfully submitted,

THOMAS J. MILLER
Attorney General of Iowa



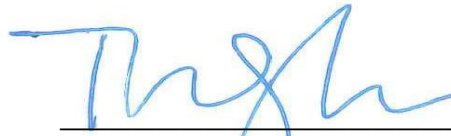
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CERTIFICATE OF COMPLIANCE

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 **985** words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).

Dated: July 30, 2020



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