

IN THE SUPREME COURT OF IOWA
Supreme Court No. 19-1228

STATE OF IOWA,
Plaintiff-Appellee,

vs.

DANTREON LEVON NEWMAN,
Defendant-Appellant.

APPEAL FROM THE IOWA DISTRICT COURT
FOR POLK COUNTY
THE HONORABLE JEFFREY FARRELL, JUDGE

APPELLEE'S BRIEF

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FINAL

TABLE OF CONTENTS

TABLE OF AUTHORITIES..... 3

STATEMENT OF THE ISSUES PRESENTED FOR REVIEW 4

ROUTING STATEMENT..... 5

STATEMENT OF THE CASE..... 5

ARGUMENT..... 6

**I. Newman has no right of appeal from his guilty plea.
This Court should dismiss the appeal. 6**

**II. Newman cannot litigate a claim of ineffective
assistance of counsel at this time. Newman’s claim cannot
prevail on the present record. 7**

**III. The district court’s failure to order a competency
evaluation was not error. 12**

CONCLUSION14

REQUEST FOR NONORAL SUBMISSION.....15

CERTIFICATE OF COMPLIANCE16

TABLE OF AUTHORITIES

Federal Cases

<i>Dusky v. United States</i> , 362 U.S. 402 (1960).....	13
<i>Strickland v. Washington</i> , 466 U.S. 668 (1984).....	9

State Cases

<i>Alcala v. Marriot Int’l, Inc.</i> , 880 N.W.2d 669 (Iowa 2016)	9
<i>Jones v. State</i> , 479 N.W.2d 265 (Iowa 1991)	13
<i>State v. Einfeldt</i> , 914 N.W.2d 773 (Iowa 2018)	12
<i>State v. Heuer</i> , No. 15–2031, 2016 WL 6270124 (Iowa Ct. App. Oct. 26, 2016).....	12
<i>State v. Hildebrant</i> , 405 N.W.2d 839 (Iowa 1987)	9
<i>State v. Lucas</i> , 323 N.W.2d 228 (Iowa 1982).....	12, 13, 14
<i>State v. Lyman</i> , 776 N.W.2d 865 (Iowa 2010).....	9, 10, 11
<i>State v. Macke</i> , 933 N.W.2d 226 (Iowa 2019).....	7
<i>State v. McKettrick</i> , 480 N.W.2d 52 (Iowa 1992)	9
<i>State v. Ondayog</i> , 722 N.W.2d 778 (Iowa 2006)	8
<i>State v. Pederson</i> , 309 N.W.2d 490 (Iowa 1981)	10
<i>State v. Rieflin</i> , 558 N.W.2d 149 (Iowa 1996)	10, 11
<i>State v. Straw</i> , 709 N.W.2d 128 (Iowa 2006).....	9

State Statutes

Iowa Code § 814.7.....	7, 8
Iowa Code § 812.3(1)	12
Iowa Code § 814.6(1)(a)(3)	6, 7
Iowa Code § 814.6.....	7

**STATEMENT OF THE ISSUES PRESENTED FOR
REVIEW**

**I. Newman has no right of appeal from his guilty plea.
This Court should dismiss the appeal.**

Authorities

State v. Macke, 933 N.W.2d 226 (Iowa 2019)
Iowa Code § 814.6(1)(a)(3)
Iowa Code § 814.6

**II. Newman cannot litigate a claim of ineffective
assistance of counsel at this time. Newman's claim
cannot prevail on the present record.**

Authorities

Strickland v. Washington, 466 U.S. 668 (1984)
Alcala v. Marriot Int'l, Inc., 880 N.W.2d 669 (Iowa 2016)
State v. Hildebrant, 405 N.W.2d 839 (Iowa 1987)
State v. Lyman, 776 N.W.2d 865 (Iowa 2010)
State v. McKettrick, 480 N.W.2d 52 (Iowa 1992)
State v. Ondayog, 722 N.W.2d 778 (Iowa 2006)
State v. Pederson, 309 N.W.2d 490 (Iowa 1981)
State v. Rieflin, 558 N.W.2d 149 (Iowa 1996)
State v. Straw, 709 N.W.2d 128 (Iowa 2006)
Iowa Code § 814.7
Iowa Code § 812.3(1)

**III. The district court's failure to order a competency
evaluation was not error.**

Authorities

Dusky v. United States, 362 U.S. 402 (1960)
Jones v. State, 479 N.W.2d 265 (Iowa 1991)
State v. Einfeldt, 914 N.W.2d 773 (Iowa 2018)
State v. Heuer, No. 15–2031, 2016 WL 6270124
(Iowa Ct. App. Oct. 26, 2016)
State v. Lucas, 323 N.W.2d 228 (Iowa 1982)

ROUTING STATEMENT

None of the retention criteria in Iowa Rule of Appellate Procedure 6.1101(2) apply to the issues raised in this case, transfer to the Iowa Court of Appeals is appropriate. Iowa R. App. P. 6.1101(1).

STATEMENT OF THE CASE

Nature of the Case

Following his guilty plea to lascivious acts with a child, Dantreon Newman appeals. The Honorable Jeffrey Farrell accepted Newman's plea and rendered sentence.

Course of Proceedings

The State accepts the defendant's course of proceedings as adequate and essentially correct. Iowa R. App. P. 6.903(3). Of particular note for this appeal is the fact that the district court entered sentence on July 10, 2019. 7/10/2019 Order of Disposition; App. 25–28.

Facts

On September 3, 2017, thirteen-year-old C.W. was standing outside her apartment when she was approached by Newman. 3/3/2019 Mins. p.10; App. 18. Newman asked if C.W. would have sex with him. *Id.* C.W. told Newman “no because she's 13, she's too young.” *Id.* at 6; App. 14. Newman told her she wasn't and said he was

going to take her to an apartment where kids hang out. *Id.* After the two arrived at a vacant apartment, Newman requested she perform oral sex on him; she refused. *Id.* at p.10–11; App. 18–19. Newman then pushed C.W. to the ground and sexually assaulted her; as it occurred C.W. asked Newman to stop. *Id.* at p.6–7, 11; App. 14–15, 19. After he finished, C.W. attempted to pull up her pants and run. *Id.* at p.7; App. 15. Newman told her “no,” forced C.W. into another room, and sexually assaulted her again. *Id.* at p.7, 11; App. 15, 19. Afterwards, C.W. was able to walk home.

C.W. and her mother contacted police and C.W. later selected Newman’s photo from a six-person photographic line-up. 3/3/2019 Mins of Test. p.6; App. 14. A warrant was issued for Newman’s arrest. 3/3/2019 Mins. p.8; App. 16. He was located in Raymond County, Mississippi and extradited to Iowa for resolution of the case. *Id.*

ARGUMENT

I. Newman has no right of appeal from his guilty plea. This Court should dismiss the appeal.

Effective July 1, 2019, defendants have no right to appeal a final judgment of sentence for a conviction obtained by guilty plea. Iowa Code § 814.6(1)(a)(3). The Iowa Supreme Court has used the date that “judgment and sentence” are entered to determine whether section

814.6's appeal prohibition applies. *See State v. Macke*, 933 N.W.2d 226, 228 (Iowa 2019). Here, the district court entered judgment on Newman's conviction on July 10, 2019. 7/10/2019 Order of Disposition; App. 25–28. Because judgment was entered after July 1, 2019, Newman has no right to appeal. Iowa Code § 814.6(1)(a)(3). Newman's conviction was not for an A felony. Newman has not alleged or established "good cause" as to why the appeal should be permitted to proceed. This is one ground upon which this Court may dismiss the appeal.

II. Newman cannot litigate a claim of ineffective assistance of counsel at this time. Newman's claim cannot prevail on the present record.

Authority to Consider Claim

This Court's review is also foreclosed because the first portion of Newman's brief attacks his counsel's failure to obtain a competency hearing prior to permitting him to plead guilty to the crime. Appellant's Br. 11–14. Iowa Code section 814.7—also effective July 1, 2019—shifts the forum for all claims of ineffective assistance of counsel from direct appeal to postconviction relief proceedings under chapter 822. Iowa Code § 814.7 (2019) (requiring ineffective assistance of counsel claims to "be determined by filing an application

for postconviction relief pursuant to chapter 822” and that such claims “shall not be decided on direct appeal from the criminal proceedings”). Because the district court entered judgment after July 1, section 814.7 precludes litigating his ineffective assistance of counsel claim in a direct appeal. The matter may be litigated in a postconviction relief action, should Newman choose to do so.

The appeal should be dismissed.

Preservation of Error

The State does not contest error preservation. Claims of ineffective assistance of counsel are excepted from Iowa’s ordinary rule of error preservation. *See, e.g., State v. Ondayog*, 722 N.W.2d 778, 784 (Iowa 2006).

Standard of Review

Iowa courts review ineffective assistance of counsel claims de novo. *See, e.g., Ondayog*, 722 N.W.2d at 783.

Merits

Newman claims that his attorney was not reasonably competent because counsel did not request a competency evaluation pursuant to Iowa Code chapter 812. Appellant’s Br. 12–14. On this record, he can satisfy neither of his burdens.

For this claim to succeed, Newman must show his counsel (1) breached an essential duty and (2) that prejudice resulted from the breach. *Strickland v. Washington*, 466 U.S. 668, 687 (1984). The burden is upon him to establish both elements. *See State v. McKettrick*, 480 N.W.2d 52, 55 (Iowa 1992). The standard is a difficult one. Iowa courts employ a heavy presumption that trial counsel's actions are reasonable under the circumstances and that they fall within the normal range of professional competency. *State v. Hildebrant*, 405 N.W.2d 839, 841 (Iowa 1987); *Strickland*, 466 U.S. at 689. To successfully establish prejudice, an applicant must show that there is a reasonable probability that but for his or her trial counsel's errors, the outcome would have been different. *State v. Straw*, 709 N.W.2d 128, 138 (Iowa 2006). If either element is missing, then the claim fails altogether and the reviewing court need not address the remaining element. *McKettrick*, 480 N.W.2d at 56.

Iowa law presumes that a defendant is competent until such time the defendant establishes by a preponderance of evidence he is not. *See State v. Lyman*, 776 N.W.2d 865, 874 (Iowa 2010), overruled on other grounds by *Alcala v. Marriot Int'l, Inc.*, 880 N.W.2d 669, 708 n.3 (Iowa 2016). "A history of mental illness, standing alone,

does not mean the defendant is incompetent.” *State v. Rieflin*, 558 N.W.2d 149, 153 (Iowa 1996), overruled on other grounds by *Lyman*, 776 N.W.2d at 873. If the evidence is in equipoise, the presumption of competency prevails. *State v. Pederson*, 309 N.W.2d 490, 496 (Iowa 1981).

Newman cannot prevail on this record. There is no indication in the plea colloquy with the district court that Newman was not competent to waive his right to trial. *See generally* Plea Tr. Newman’s attorney did not believe any defense to the crime existed. Plea Tr. p.17 line 14–p.18 line 1. When the presentence investigation indicated Newman had previously been diagnosed with ADHD, bipolar disorder, and schizophrenia, the matter was discussed at sentencing. PSI p.8; App. 77. Counsel explained his decision making and why he did not believe a competency evaluation was worth seeking or a diminished capacity defense worth pursuing:

We talked about, in this case, obviously, he has a lot of bad options. We talked about some of the things that were very complicated. We talked about the registry and special sentences and how that information would affect him, potentially, for his whole life if he was convicted as charged. During those conversations, which were really complex, Mr. Newman was able to appropriately process the information, weigh it, and make what I thought

was the best decision. So that raised absolutely no concerns for me whatsoever about his competency.

...

Those are just a few of the examples of why I would not have moved for a competency evaluation in this case. And for the same reasons, I would say that I wouldn't have advanced, and I don't think Mr. Newman would have wanted me to advance, a diminished responsibility defense at trial.

Sent. Tr. p.2 line 19–p.4 line 16. Newman agreed with counsel's assessment. Plea Tr. p.4 line 22–p.5 line 4. The judge at the sentencing hearing was the same that accepted Newman's plea, and found that Newman understood the proceeding. Sent Tr. p.5 line 5–8. Newman agreed with the district court's assessment that he was competent. Sent. Tr. p.5 line 9–10. It is true the PSI report indicated that Newman had prior diagnoses for mental illness. PSI p.8; App. 77. But a past diagnosis does not automatically mean that Newman was incompetent at the time he tendered his plea. *Rieflin*, 558 N.W.2d at 153. Newman did not develop any additional record below regarding what present diagnoses he possessed and to what extent they affected his ability to appreciate the charge, understanding the proceedings, or assisting in the defense. *See Lyman*, 776 N.W.2d at 874; Iowa Code §

812.3(1). This forecloses any claim that counsel breach an essential duty, and Newman's claim collapses.

III. The district court's failure to order a competency evaluation was not error.

Preservation of Error

Although Newman did not file a motion in arrest of judgment and specifically requested that the district court proceed to sentencing, the State cannot contest error preservation. Iowa courts have excepted a claim that the district court failed to conduct a sua sponte competency hearing from the traditional rule of error preservation. *State v. Lucas*, 323 N.W.2d 228, 230 (Iowa 1982); see also *State v. Heuer*, No. 15–2031, 2016 WL 6270124, at *2 (Iowa Ct. App. Oct. 26, 2016).

Standard of Review

Iowa court's review whether a trial court should have ordered a competency determination de novo. *State v. Einfeldt*, 914 N.W.2d 773, 778 (Iowa 2018).

Merits

When a defendant claims that due process was violated by the district court's failure to sua sponte request a competency hearing, Iowa courts examine relevant factors including (1) defendant's

irrational behavior, (2) the defendant's demeanor in court, and (3) prior medical opinions on competence. *Lucas*, 323 N.W.2d at 232. This critical inquiry is whether Newman had "sufficient present ability to consult with his attorney with a reasonable understanding—and whether he has a rational as well as factual understanding of the proceedings against him." *Id.* (quoting *Dusky v. United States*, 362 U.S. 402, 402 (1960)).

Newman alleges that the record below is "not sufficient to determine Mr. Newman's rational understanding of the proceedings before him." Appellant's Br. 19. Because he believes it is impossible to make a competency determination based on the passage of time, he asks this Court to reverse his convictions and remand the matter. To the contrary, this Court should affirm.

It should do so because the insufficiency in the record precludes reversal, rather than demands it. Again, Iowa courts presume a defendant is competent—it is Newman's burden to rebut this presumption. *See Jones v. State*, 479 N.W.2d 265, 270 (Iowa 1991). Although Newman now raises questions regarding his competence to enter a guilty plea, the record established below indicates that neither the court, nor Newman's attorney, nor Newman himself believed he

was incompetent. Sent. Tr. p.2 line 19–p.4 line 16; p.4 line 22–p.5 line 10. His actions and statements during both hearings were unremarkable. *See generally* Plea Tr.; Sent. Tr. Although he was apparently previously diagnosed with mental illness, there are no contemporaneous medical opinions about his competency; likely because no one was concerned with his ability to understand the proceedings. A de novo review of this record does not raise a substantial question of Newman’s competency. It does not demonstrate the district court erred in failing to order a competency hearing. *Lucas*, 323 N.W.2d at 233. Accordingly, Newman was not denied due process. This Court should affirm.

CONCLUSION

Newman cannot appeal his guilty plea and cannot litigate his ineffective assistance of counsel claim on direct appeal. The record does not support a finding that the district court erred when it did not order competency evaluation. The appeal should be dismissed and Newman’s conviction affirmed.

REQUEST FOR NONORAL SUBMISSION

The State does not request oral argument.

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 **1,947** words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).

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