

**IN THE SUPREME COURT OF IOWA
NO. 20-1530
BLACK HAWK COUNTY NO. FECR231289**

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

vs.

**VEIL JACOBY JACKSON-DOUGLASS,
Defendant-Appellant.**

**APPEAL FROM THE IOWA DISTRICT COURT IN AND FOR
BLACK HAWK COUNTY, IOWA
THE HON. BRADLEY J. HARRIS**

**APPELLANT'S SUPPLEMENTAL BRIEF AND MOTION FOR
DELAYED APPEAL**

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CERTIFICATE OF SERVICE

I certify that on or before August 27, 2021, the undersigned counsel served a copy of the “Appellant’s Supplemental Brief and Motion for Delayed Appeal” upon the State by electronically transmitting a copy of the same to the Criminal Appeals Division of the Iowa Attorney General’s Office through the use of the EDMS system. I, Richard Hollis, further certify that on or before August 27, 2021 I served a copy of the Appellant’s Supplemental Brief and Motion for Delayed Appeal upon Appellant Veil J. Jackson-Douglass (whose inmate number is 6494547) by depositing a copy of the same into a mail receptacle at a post office, with first-class or priority mail, postage prepaid affixed, addressed to Veil Jackson-Douglass, using the following address: Newton Correctional Facility, P.O. Box 218, Newton, IA 50208.

By: /s/
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STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

1. Jackson-Douglass was not, practically speaking, “represented by counsel within the meaning of Iowa Code Section 814.6A at the time Jackson-Douglass what was deemed a *pro se* notice of appeal.

State v. Davis, 922 N.W.2d 326, 330 (Iowa 2019).

State v. Feregrino, 756 N.W.2d 700, 707 (Iowa 2008).

Lado v. State, 804 N.W.2d 248 (Iowa 2011).

Strickland v. Washington, 466 U.S. 668 (1984).

United States v. Cronin, 466 U.S. 648 (1984).

Iowa Code Section 814.6A.

Merriam-Webster Dictionary. <https://www.merriam-webster.com/dictionary/represent>.

2. The Amended Notice of Appeal relates back to Jackson-Douglass’s *pro se* notice of appeal.

Estate of Kuhns v. Marco, 620 N.W.2d 488 (Iowa 2000).

3. In the alternative, Jackson-Douglass requests that this Court please grant Jackson-Douglass a delayed appeal.

Anderson v. State, No. 19-2016 (Iowa 2021).

Blanchard v. Bennett, 167 N.W.2d 712 (Iowa 1969).

Horstman v. State, 210 N.W.2d 427, 430 (Iowa 1973).

Jensen v. State, 312 N.W.2d 581, 582 (Iowa 1981).

Powell v Alabama, 287 U.S. 45, 53 S.Ct. 55, 77 L.Ed. 158 (1932).

Roe v. Flores-Ortega, 528 U.S. 470, 483, 120 S.Ct. 1029, 1038, 145 L.Ed.2d 985, 999 (2000).

State v. Anderson, 308 N.W.2d 42, 44 (Iowa 1981).

State v. Wetzel, 192 N.W.2d. 764-765 (Iowa 1971).

Swanson v. State, 406 N.W.2d 792 (Iowa 1987).

United States Constitution, Fifth, Sixth, and Fourteenth Amendments.

STATEMENT OF THE CASE

On August 28, 2020, Appellant Veil J. Jackson-Douglass (hereinafter “Jackson-Douglass”) signed a “Written Guilty Plea and Waiver of Rights (Request for Formal P.S.I.)” (hereinafter “Guilty Plea Document”). Guilty Plea Document, unnumbered pg. 7. Appendix (hereinafter “A”, pg. 11. His attorney, Matthew HOFFEY (hereinafter “Defense Counsel”) filed this document on the same date. Combined General Docket Entries, pg. 9. In this document, Jackson-Douglass pled guilty to Sexual Abuse in the Third Degree, in alleged violation of Iowa Code Section 709.4(1)(b)(3)(d), a Class C Felony. Guilty Plea Document, unnumbered pg. 2, Paragraph 6. A, pg. 6. The Order Following Guilty Plea indicates that the Court conducted a guilty plea proceeding in which “[t]he Defendant appeared together with Attorney Matt HOFFEY”. Order Following Guilty Plea, pg. 1. A, pg. 13. The District Court sentenced Jackson-Douglass to an “indeterminate term of confinement” not to exceed ten years. Judgment and Sentence, pg. 1. A, pg. 15. The Court suspended the fine of \$1,000 the associated 15% surcharge. Judgment and Sentence, pg. 1. A, pg. 15. The Court ordered the prison sentence in this case to run concurrently “with the sentence imposed in Case No. FECR044643 in BV County”. Judgment and Sentence, pg. 2. A, pg. 16. The Court gave Jackson-Douglass credit for time served, and ordered

Jackson-Douglass to pay restitution according to the provisions set forth in Paragraph 7(c) of the Judgment and Sentence. Judgment and Sentence, pgs. 2 and 3. A, pgs. 16, 17.

On November 9, 2020 the Clerk's Office electronically filed a *pro se* document submitted by Jackson-Douglass requesting he be allowed to withdraw his plea (hereinafter "the November 9, 2020 filing"). November 9, 2020 filing, pg. 1. A, pg. 20. The Clerk's Office filed this as a "Req to Reconsider". Combined General Docket Report, pg. 10. The District Court denied the November 9, 2020 filing in its order dated November 18, 2020 (hereinafter "the November 18, 2020 Order"), pg. 1. A, pg. 24.

STATEMENT OF THE FACTS

On August 28, 2020, Appellant Veil J. Jackson-Douglass (hereinafter "Jackson-Douglass") signed a "Written Guilty Plea and Waiver of Rights (Request for Formal P.S.I.)" (hereinafter "Guilty Plea Document"). Guilty Plea Document, unnumbered pg. 7. A, pg. 11. His attorney, Matthew Hoffey (hereinafter "Defense Counsel") filed this document on the same date. Combined General Docket Entries, pg. 9. In this document, Jackson-Douglass pled guilty to Sexual Abuse in the Third Degree, in alleged violation of Iowa Code Section 709.4(1)(b)(3)(d), a Class C Felony. Guilty Plea Document, unnumbered pg. 2, Paragraph 6. A, pg. 6. The Order

Following Guilty Plea indicates that the Court conducted a guilty plea proceeding in which “[t]he Defendant appeared together with Attorney Matt Hoffey”. Order Following Guilty Plea, pg. 1. A, pg. 13. The District Court sentenced Jackson-Douglass to an “indeterminate term of confinement” not to exceed ten years. Judgment and Sentence, pg. 1. A, pg. 15. The Court suspended the fine of \$1,000 the associated 15% surcharge. Judgment and Sentence, pg. 1. A, pg. 15. The Court ordered the prison sentence in this case to run concurrently “with the sentence imposed in Case No. FECR044643 in BV County”. Judgment and Sentence, pg. 2. A, pg. 16. The Court gave Jackson-Douglass credit for time served, and ordered Jackson-Douglass to pay restitution according to the provisions set forth in Paragraph 7(c) of the Judgment and Sentence. Judgment and Sentence, pgs. 2 and 3. A, pgs. 16, 17.

On November 9, 2020 the Clerk’s Office electronically filed a *pro se* document submitted by Jackson-Douglass requesting he be allowed to withdraw his plea (hereinafter “the November 9, 2020 filing”). November 9, 2020 filing, pg. 1. A, pg. 20. The Clerk’s Office filed this as a “Req to Reconsider”. Combined General Docket Report, pg. 10. The District Court denied the November 9, 2020 filing in its order dated November 18, 2020 (hereinafter “the November 18, 2020 Order”), pg. 1. A, pg. 24.

Of particular interest to the jurisdictional question, it is noteworthy that on October 29, 2020 Jackson-Douglass' attorney, Matthew HOFFEY (hereinafter "HOFFEY"), filed a "Withdrawal of Counsel - Closed Case" in which he requested that both he personally and the Waterloo Office of the State Public Defender's Office be removed from indexing on Jackson-Douglass' case. Withdrawal of Counsel - Closed Cases, pg. 1. On November 16, 2020, Jackson-Douglass filed a "Motion to Appeal Sentencing", which the Clerk's Office filed as a notice of appeal. Motion to Appeal Sentencing, pg. 1. A, pg. 21.

ARGUMENT

I. JACKSON-DOUGLASS WAS NOT, PRACTICALLY SPEAKING, "REPRESENTED BY COUNSEL WITHIN THE MEANING OF IOWA CODE SECTION 814.6A AT THE TIME JACKSON-DOUGLASS FILED WHAT WAS DEEMED A *PRO SE* NOTICE OF APPEAL.

Between HOFFEY filed his motion to withdraw on October 29, 2020 and the date the Court permitted HOFFEY to withdraw, the record shows that Jackson-Douglass filed both a "Motion to Reconsider Sentence" on November 9, 2020 and the "Motion to Appeal Sentencing" on November 16, 2020. Motion to Reconsider Sentence, pg. 1. Motion to Appeal Sentencing, pg. 1. A, pgs. 20, 21. In the latter document Jackson-Douglass specifically requested "the Court to grant this motion to appeal on behalf of my plea."

Motion to Appeal Sentencing”, pg. 1. A, pg. 20. Presumably, Hoffey, since he had not been permitted to withdraw, received notification of these documents. The revised version of Iowa Code Section 814.6 prohibiting *pro se* filings by a person is represented by counsel had been in effect since July 1, 2019, some sixteen months before Jackson-Douglass’ November, 2020 *pro se* filings. If Hoffey had any awareness of how this change in the law could affect Jackson-Douglass, Hoffey did not prove any such awareness by filing an amended notice of appeal on Jackson-Douglass’s behalf. Combined General Docket Report, November 17, 2020, pgs. 1-14. Combined General Docket Report, December 9, 2020, pgs. 1-15.

In certain instances, a person seeking to prove an ineffective assistance of counsel claim does not have to show actual prejudice because prejudice can be presumed. In the aforementioned *Strickland v. Washington*, 466 U.S. 668 (1984) case, the United States Supreme Court noted that “[a]ctual or constructive denial of the assistance of counsel altogether is legally presumed to result in prejudice”. Similarly, in *United States v. Cronin*, 466 U.S. 648 (1984) the United States Supreme Court stated the following:

Similarly, if counsel entirely fails to subject the prosecution’s case to meaningful adversarial testing, then there has been a denial of Sixth Amendment rights that makes the adversary process itself presumptively unreliable. No specific showing of

prejudice was required in *Davis v. Alaska*, 415 U.S. 308, 94 S.Ct. 1105, 39 L.Ed.2d 347 (1974), because the petitioner has been “denied the right of effective cross-examination” which “would be constitutional error of the first magnitude and no amount of showing of want of prejudice would cure it.” *Id.*, at 318, 94 S.Ct. at 1111 (citing *Smith v. Illinois*, 390 U.S. 129, 131, 88 S.Ct. 748, 749, 19 L.Ed.2d 956 (1968); and *Brookhart v. Janis*, 384 U.S. 1, 3, 86 S.Ct. 1245, 1246, 16 L.Ed.2d 314 (1966)).

Similarly, in *Lado v. State*, 804 N.W.2d 248 (Iowa 2011) the Supreme Court of Iowa stated the following:

Defense counsel, however, may also commit “structural errors.” Structural errors are not merely errors in a legal proceeding, but errors “affecting the framework within which the trial proceeds.” *Arizona v. Fulminante*, 499 U.S. 279, 310, 111 S.Ct. 1246, 1265, 113 L.Ed. 2d 302, 331 (1991). We have recognized structural error occurs when: (1) counsel is completely denied, actually or constructively, at a crucial stage of the proceeding; (2) where counsel does not place the prosecution’s case against meaningful adversarial testing; or (3) where surrounding circumstances justify a presumption of ineffectiveness, such as where counsel has an actual conflict of interest ... *State v. Feregrino*, 756 N.W.2d 700, 707 (Iowa 2008) (citing *Cronic*, 466 U.S. at 659, 104 S.Ct. at 2047, 80 L.Ed. 2d at 668).

Hoffey’s failure to file an amended notice of appeal on Jackson-Douglass’s appeal is a structural error. This failure is an “[a]ctual or constructive denial of the assistance of counsel altogether is legally presumed to result in prejudice” within the meaning of *Strickland v. Washington*, 466 U.S. 668 (1984). Hoffey’s failure to file an amended notice of appeal was a failure “to subject the prosecution’s case to meaningful

adversarial testing” within the meaning of *United States v. Cronin*, 466 U.S. 648 (1984).

Hoffey’s failure to file an Amended Notice of Appeal also fits within the three categories of structural error recognized by this Court and mentioned in *Lado v. State*, 804 N.W.2d 248 (Iowa 2011), namely where

(1) counsel is completely denied, actually or constructively, at a crucial stage of the proceeding; (2) where counsel does not place the prosecution’s case against meaningful adversarial testing; or (3) where surrounding circumstances justify a presumption of ineffectiveness, such as where counsel has an actual conflict of interest ... *State v. Feregrino*, 756 N.W.2d 700, 707 (Iowa 2008) (citing *Cronin*, 466 U.S. at 659, 104 S.Ct. at 2047, 80 L.Ed. 2d at 668).

The time between the time of the filing of the judgment and sentence being appealed from and the time new counsel is appointed to assist with the appeal is a “critical stage of the proceeding” within the meaning of the authority noted above because a party must take appropriate action or risk dismissal of the action based upon jurisdictional issues, which obviously, is a risk Jackson-Douglass has now encountered. Hoffey’s failure to take any action was a “complete denial of counsel, actually or constructively at a critical stage of the proceeding within the meaning of *Lado v. State*, 804 N.W.2d 248 (Iowa 2011), *United States v. Cronin*, 466 U.S. 648 (1984), and *State v. Feregrino*, 756 N.W.2d 700, 707 (Iowa 2008). Hoffey’s failure to file an amended notice of appeal fits within the second category of structural

error recognized by this Court because this failure represented a failure to “place the prosecution’s case against meaningful adversarial testing”. Hoffey did not take any action to perfect this appeal when Hoffey obviously had notice of Jackson-Douglass’ desire to do so. *State v. Lado*, 804 N.W.2d 248 (Iowa 2011), *United States v. Cronin*, 466 U.S. 648 (1984), and *State v. Feregrino*, 756 N.W.2d 700, 707 (Iowa 2008).

Hoffey’s failure to file an amended notice of appeal on Jackson-Douglass’ behalf fits within the third category of structural error recognized by this court because it was an instance of “3) where surrounding circumstances justify a presumption of ineffectiveness”. *Lado v. State*, 804 N.W.2d 248 (Iowa 2011), *United States v. Cronin*, 466 U.S. 648 (1984), and *State v. Feregrino*, 756 N.W.2d 700, 707 (Iowa 2008). The “surrounding circumstances” that “justify a presumption of ineffectiveness” are that Jackson-Douglass filed both a “Motion to Appeal Sentencing” (a *pro se* notice of appeal” and a “Motion to Reconsider Sentence”. Motion to Appeal Sentence, pg. 1 and Motion to Reconsider Sentence, pg. 1. A, pgs. 20, 21. Because Hoffer was still on this criminal case at the time of these *pro se* filings, Hoffer presumably also received notifications of these filings. Combined General Docket Report, November 17, 2020, pgs. 1-14. Thus, Jackson-Douglass put Hoffer on actual notice of his desire to appeal by

filing his “Motion to Appeal Sentencing” (a *pro se* notice of appeal) and a “Motion to Reconsider Sentence”. Motion to Appeal Sentence, pg. 1 and Motion to Reconsider Sentence, pg. 1. A, pgs. 20, 21.

After the sentencing proceedings on October 15, 2020 Hoffey completely abandoned Jackson-Douglass and did nothing to assist Jackson-Douglass despite being put on actual notice of Jackson-Douglass’ intent to appeal by Jackson-Douglass’s “Motion to Appeal Sentencing” (a *pro se* notice of appeal” and a “Motion to Reconsider Sentence”. Motion to Appeal Sentence, pg. 1 and Motion to Reconsider Sentence, pg. 1. A, pgs. 20, 21. Combined General Docket Report, November 17, 2020, pgs. 1-14. Court Reporter Memorandum and Certificate, October 15, 2020, pg. 1.

Hoffey’s failure to file an amended notice of appeal on Jackson-Douglass’ behalf amounted to “constructive denial of counsel” within the meaning *State v. Lado*, 804 N.W.2d 248 (Iowa 2011). Therefore, at the time he filed what the Clerk’s Office treated as a Notice of Appeal on November 16, 2020 Jackson-Douglass was subject to “constructive denial of counsel”. Therefore, pursuant to Iowa Code Section 814.6A(1). Jackson-Douglass was not “represented by counsel within the meaning of Iowa Code Section 814.6A(1) Therefore, this Court has jurisdiction over this appeal.

In *State v. Davis*, 922 N.W.2d 326, 330 (Iowa 2019) this Court stated the following with regard to the interpretation of statutes:

When interpreting section 804.20 [or any other statute], our primary goal is to give effect to the legislature’s intent as expressed in the statute’s words. *Lamoreux*, 875 N.W.2d at 177. “We seek a reasonable interpretation which will best effectuate the purpose of the statute” *State v. Walker*, 804 N.W.2d 284, 290 (Iowa 2011) (quoting *State v. Johnson*, 528 N.W.2d 638, 640 (Iowa 1995)). *We give words their ordinary meaning absent legislative definition. Id. (emphasis added).*

State v. Davis, 922 N.W.2d 326, 330 (Iowa 2019).

The “ordinary meaning” of “represented” can be found in the *Merriam-Webster Dictionary*. <https://www.merriam-webster.com/dictionary/represent>. In part, the *Merriam-Webster Dictionary* states that the “Legal Definition of *represent*” is 1.: to substitute in some capacity for: act the part of, in place of, or for (as another person) *usually by legal right ... (b) to provide legal representation to as a lawyer*” *Merriam-Webster Dictionary*. <https://www.merriam-webster.com/dictionary/represent> (emphasis added).

This definition requires means that the core of the term “represent” is *action* on behalf of another. The phrasing “to act the part of, in place of, or for (as another person) usually by legal right” explicitly establishes this. *Merriam-Webster Dictionary*. <https://www.merriam->

webster.com/dictionary/represent. Similarly, the phrasing “to provide legal representation to as a lawyer” similarly establishes that “represent” in the context of representing a client means taking affirmative action as an attorney of a client. Since Hoffey completely abandoned Jackson-Douglass and took no action whatsoever on Jackson-Douglass’s behalf after sentencing, Hoffey did not represent Jackson-Douglass within the meaning of Iowa Code Section 814.6A when Jackson-Douglass filed what was deemed to be a *pro se* notice of appeal. Motion to Appeal Sentence, pg. 1 and Motion to Reconsider Sentence, pg. 1. A, pgs. 20, 21. Combined General Docket Report, November 17, 2020, pgs. 1-14. Court Reporter Memorandum and Certificate, October 15, 2020, pg. 1.

Thus, at the time Jackson-Douglass filed what was deemed to be a *pro se* notice of appeal, Jackson-Douglass had the status of a *pro se* defendant not represented by counsel pursuant to Iowa Code Section 814.6A, and therefore the prohibition of Iowa Code Section 814.6A against *pro se* filings by defendants represented by counsel does not apply to the filings Jackson-Douglass submitted after sentencing, including, but not limited to, what was deemed Jackson-Douglass’ *pro se* notice of appeal. Motion to Appeal Sentence, pg. 1 and Motion to Reconsider Sentence, pg. 1.

A, pgs. 20, 21. Combined General Docket Report, November 17, 2020, pgs. 1-14. Court Reporter Memorandum and Certificate, October 15, 2020, pg. 1.

II. THE AMENDED NOTICE OF APPEAL RELATES BACK TO JACKSON-DOUGLASS' *PRO SE* NOTICE OF APPEAL.

The undersigned counsel filed an Amended Notice of Appeal on December 8, 2020. Amended Notice of Appeal, pgs. 1-3. Although the undersigned counsel is not conceding this to be the case, if this Court rejects the premise that Jackson-Douglass was a *pro se* defendant not represented by counsel within the meaning of Iowa Code Section 814.6A set forth in Section I of this Brief and Motion for Delayed Appeal, this Amended Notice of Appeal fixed any such potential problem because the Amended Notice of Appeal is obviously not a *pro se* filing and relates back to what was deemed Jackson-Douglass' *pro se* notice of appeal. In *Estate of Kuhns v. Marco*, 620 N.W.2d 488, 495 (Iowa 2000) this Court held that where an amendment to a petition in a civil action did not change the claims or cause “prejudice of the type sought to be avoided by the governing statute of limitations”, then the amendment should be allowed on the basis of the relation-back doctrine. *Estate of Kuhns v. Marco*, 620 N.W.2d 488, 495 (Iowa 2020). The filing of the Amended Notice of Appeal did not change the claim that Jackson-

Douglass raised what was deemed his *pro se* notice of appeal, namely that Jackson-Douglass challenged his conviction and sentence. Furthermore, the State cannot show prejudice from this Amended Notice of Appeal because the State did not need to file a brief or any other document in response to the Amended Notice of Appeal. The State did not need to file any document in this appeal for months after the Amended Notice of Appeal. Indeed, the State did not file its Proof Brief in this appeal for several months after the undersigned counsel filed the Amended Notice of Appeal (for various reasons) and filed its Proof Brief in this case on June 23, 2021. EDMS Entry, June 23, 2021.

Accordingly, the filing of the Amended Notice of Appeal relates back to the filing of what was deemed Jackson-Douglass' *pro se* notice of appeal and fixes any potential problem caused by the fact that Jackson-Douglass filed this document *pro se* when represented by counsel and that Iowa Code Section 814.6A has language that suggests that Jackson-Douglass could not do so, although as discussed at length in Section I of this brief, Jackson-Douglass is not conceding this point because he contends that he was not represented by counsel within the meaning of Iowa Code Section 814.6A at the time Jackson-Douglass filed what was deemed to be his *pro se* notice of appeal.

III. IN THE ALTERNATIVE, JACKSON-DOUGLASS REQUESTS THAT THIS COURT PLEASE GRANT JACKSON-DOUGLASS A DELAYED APPEAL.

If the Court rejects the first two arguments raised in this brief, then in the alternative, Jackson-Douglass respectfully requests that this Court please grant Jackson-Douglass a delayed appeal.

In *Anderson v. State*, No. 19-2016 (Iowa 2021) this Court stated the following:

The issue of the timeliness of appeals is jurisdictional for civil and criminal cases. *See Swanson v. State*, 406 N.W.2d 792 (Iowa 1987). The failure to timely appeal generally terminates appellate jurisdiction. *Jensen v. State*, 312 N.W.2d 581, 582 (Iowa 1981). However, under certain circumstances, we have granted delayed appeals where it appears that state action or other circumstances beyond appellant's control have frustrated an intention to appeal ... [and] the denial of a right of appeal would violate the due process or equal protection clause of the fourteenth amendment to the federal constitution. *Swanson*, 406 N.W.2d at 792-93.

Our grant of delayed appeals has mostly been reserved to direct appeal of criminal cases. *See, e.g., State v. Anderson*, 308 N.W.2d 42, 44 (Iowa 1981); *Horstman v. State*, 210 N.W.2d 427, 430 (Iowa 1973); *State v. Wetzel*, 192 N.W.2d 764-765 (Iowa 1971).

Anderson v. State, No. 19-2016 (Iowa 2021).

As noted above, Hoffey's abandonment of Jackson-Douglass after sentencing and his failure to file an Amended Notice of Appeal on Jackson-

Douglass' behalf was a classic example of ineffective assistance of counsel rising to the level of structural error from which legal harm can be presumed.

This ineffective assistance of counsel meets the two basic requirements set forth above for granting delayed appeals.

First, Hoffey's complete abandonment of Jackson-Douglass after sentencing and Hoffey's failure to file an Amended Notice of Appeal are "circumstances beyond appellant's control" that "have frustrated an intention to appeal" within the meaning of *Swanson v. State*, 406 N.W.2d 792 (Iowa 1987) and *Anderson v. State*, No. 19-2016 (Iowa 2021). As noted above, Jackson-Douglass made his intent to appeal very clear to Hoffey and to the State by filing both a "Motion to Appeal Sentencing" (a *pro se* notice of appeal" and a "Motion to Reconsider Sentence". Motion to Appeal Sentence, pg. 1 and Motion to Reconsider Sentence, pg. 1. A, pgs. 20, 21. Combined General Docket Report, November 17, 2020, pgs. 1-14. Jackson-Douglass' intent to appeal could not have been clearer to all concerned. Thus, the first criterion for granting a delayed appeal that Jackson-Douglass' obvious intent to appeal was "frustrated" within the meaning of *Swanson v. State*, 406 N.W.2d 792 (Iowa 1987) and *Anderson v. State*, No. 19-2016 (Iowa 2021) was met.

Hoffey's complete abandonment of Jackson-Douglass after sentencing and Hoffey's failure to file an Amended Notice of Appeal also meets the second criterion for this Court's granting a delayed appeal, namely that "the denial of a right of appeal would violate the due process or equal protection clause of the fourteenth amendment to the federal constitution" within the meaning of *Swanson v. State*, 406 N.W.2d 792 (Iowa 1987) and *Anderson v. State*, No. 19-2016 (Iowa 2021). This failure by Hoffey violated Jackson-Douglass' right to due process of law pursuant to the Fifth Amendment to the United States Constitution as made applicable to state criminal prosecutions by the Fourteenth Amendment to the United States Constitution.

As discussed above, Hoffey's failure to file an Amended Notice of Appeal was an instance of ineffective assistance of counsel so serious that legal harm prejudice can be presumed from this error and does not have to be proven according to this Court in *Lado v. State*, 804 N.W.2d 248 (Iowa 2011) and *State v. Feregrino*, 756 N.W.2d 700, 707 (Iowa 2008) and by the United States Supreme Court in *Strickland v. Washington*, 466 U.S. 668 (1984) and *United States v. Cronin*, 466 U.S. 648 (1984).

However, the violation of Jackson-Douglass's right to effective assistance of counsel not only violated Jackson-Douglass' right to counsel

pursuant to the Sixth Amendment of the United States Constitution as applied to State criminal prosecutions by the Fourteenth Amendment to the United States Constitution but it also violated Jackson-Douglass's right to both due process of law pursuant to, respectively, the Fifth Amendment to the United States Constitution as made applicable to State criminal prosecutions by the Fourteenth Amendment to the United States Constitution.

This is so, because according to this Court in *Lado v. State*, 804 N.W.2d 248 (Iowa 2011) “structural errors are not merely errors in a legal proceeding, but errors ‘affecting the framework within which the trial proceeds’ *Arizona v. Fulminante*, 499 U.S. 279, 310, 111 S.Ct. 1246, 1265, 113 L.Ed. 2d 302, 331 (1991).” This quoted language from *Arizona v. Fulminante*, 499 U.S. 279, 310, 111 S.Ct. 1246, 1265, 113 L.Ed. 2d 302, 331 (1991) should be interpreted broadly to apply any type of proceeding, including an appeal. If an instance of ineffective assistance of counsel is so significant so as to constitute a structural error “affecting the framework” in which the proceedings occur, then this error simultaneously triggers violations of a defendant's rights to due process of law pursuant to the Fifth Amendment to the United States Constitution as made applicable to the Fourteenth Amendment to the United States Constitution.

In *Lado v. State*, 804 N.W.2d 248, 252 (Iowa 2011) this Court noted that “[i]n cases where defense counsel fails to file an appeal against the defendant’s wishes, the Court has determined the ‘serious denial of the entire judicial proceeding itself ... similarly demands a presumption of prejudice.’” The Court cited to *Roe v. Flores-Ortega*, 528 U.S. 470, 483, 120 S.Ct. 1029, 1038, 145 L.Ed.2d 985, 999 (2000) for this proposition.

Hoffey’s complete abandonment of Jackson-Douglass after sentencing and Hoffey’s failure to file an amended notice of appeal on behalf of Jackson-Douglass after Jackson-Douglass filed what was deemed a *pro se* notice of appeal is essentially a “failure to file an appeal against the defendant’s wishes”, thus bringing this situation within a type of structural error specifically described by this Court in *Lado v. State*, 804 N.W.2d 248, 252 (Iowa 2011) and by the United States Supreme Court in *Roe v. Flores-Ortega*, 528 U.S. 470, 483, 120 S.Ct. 1029, 1038, 145 L.Ed.2d 985, 999 (2000).

In *Lado v. State*, 804 N.W.2d 248, 252 (Iowa 2011) this Court stated the following:

“[T]he right to effective assistance of counsel is recognized not for its own sake, but because of the effect it has on the ability of the accused to receive a fair trial.” *United States v. Cronin*, 466 U.S. 648, 658, 104 S.Ct. 2039, 2046, 80 L.Ed. 657, 667 (1984). In other words, a person’s right to counsel is only implicated

when attorney error undermines the reliability and fairness of the criminal process.

Lado v. State, 804 N.W.2d 248, 252 (Iowa 2011).

Hoffey's failure to file an amended notice of appeal is precisely such an error. This Court in *Lado v. State*, 804 N.W.2d 248, 252 (Iowa 2011) clearly implies that an attorney's ineffective assistance of counsel rising to the level of structural error violates a defendant's right to due process of law pursuant to the Fifth Amendment to the United States Constitution as made applicable to state criminal prosecutions by the Fourteenth Amendment to the United States Constitution. As the Court is well aware, if an attorney's error harms "the ability of the accused to receive a fair trial" within the meaning of *Lado v. State*, 804 N.W.2d 248, 252 (Iowa 2011) and *United States v. Cronin*, 466 U.S. 648 (1984), then that error deprives the defendant of his/her "liberty" without "due process of law", thus violating the defendant's right to due process of law pursuant to the Fifth Amendment to the United States Constitution as made applicable to state criminal prosecutions by the Fourteenth Amendment to the United States Constitution.

In *United States v. Cronin*, 466 U.S. 648, 653-654 (1984) the Court stated that "[w]ithout counsel, the right to a trial itself would be "of little

avail” [Footnote 8]. *United States v. Cronin*, 466 U.S. 648, 653-654 (1984).

The Court further stated that “[o]f all the rights that an accused person has, the right to be represented by counsel is by far the most pervasive for it affects his ability to assert any other rights he may have.” [Footnote 10]”, citing to Schaefer, *Federalism and State Criminal Procedure*, 70 Harv. L.Rev. 1, 8 (1956).

In Footnote 8 of *United States v. Cronin*, 466 U.S. 648, 653-654 (1984) the Court explicitly linked the right to counsel pursuant to the Sixth Amendment of the United States Constitution to the right to due process of law pursuant to the Fifth Amendment to the United States Constitution. The Court stated the following:

Time has not eroded the force of Justice Sutherland’s opinion for the Court in *Powell v Alabama*, 287 U.S. 45, 53 S.Ct. 55, 77 L.Ed. 158 (1932):

“The right to be heard would be, in many cases, of little avail if did not comprehend the right to be heard by counsel ... If in any case, civil or criminal, a state or federal court were arbitrarily to refuse to hear a party by counsel, employed by and appearing for him, it reasonably may not be doubted that such a refusal would be a denial of a hearing, and therefore, of due process in the constitutional sense.”

United States v. Cronin, 466 U.S. 648, 653-654 (1984), citing to *Powell v Alabama*, 287 U.S. 45, 53 S.Ct. 55, 77 L.Ed. 158 (1932)

The hypothetical noted above in *Powell v Alabama*, 287 U.S. 45, 53 S.Ct. 55, 77 L.Ed. 158 (1932) is significantly different from the facts of this case because, as discussed at length above, after sentencing, Jackson-Douglass was not represented by counsel as a practical matter nor did Hoffer take any action on Jackson-Douglass' behalf.

However, the language quoted above from *Powell v Alabama*, 287 U.S. 45, 53 S.Ct. 55, 77 L.Ed. 158 (1932) and quoted from in *United States v. Cronin*, 466 U.S. 648, 653-654 (1984) is relevant to the case at bar because this language explicitly states that if a party's right to be represented by an attorney is violated, then this violation also simultaneously violates a defendant's right to due process of law pursuant to the Fifth Amendment to the United States Constitution. This principle is thus clearly implied in *Lado v. State*, 804 N.W.2d 248, 252 (Iowa 2011) but rather clearly stated in *United States v. Cronin*, 466 U.S. 648, 653-654 (1984) and *Powell v Alabama*, 287 U.S. 45, 53 S.Ct. 55, 77 L.Ed. 158 (1932).

Thus, because Jackson-Douglass can show a structural error implicating his due process rights, Jackson-Douglass has met the second criterion set forth in *Anderson v. State*, No. 19-2016 (Iowa 2021) for granting a delayed appeal, in addition to meeting the first.

In *Anderson v. State*, No. 19-2016 (Iowa 2021) this Court denied Anderson's request for delayed appeal in large measure because "Anderson waited six months after learning of his attorney's failure to timely file a notice of appeal before filing his motion for delayed appeal." The case at bar is readily distinguishable from the situation in *Anderson* because Jackson-Douglass, despite being completely abandoned by his attorney, managed to file what was deemed a *pro se* notice of appeal in a much shorter time period. Furthermore, within seven days after the undersigned counsel's appointment, the undersigned counsel filed an Amended Notice of Appeal. Combined General Docket Report, December 9, 2020, pg. 11. There was no delay in requesting a delayed appeal (in the alternative) in this case. Although the undersigned counsel is not conceding that Iowa Code Section 814.6A's prohibition on *pro se* filings by defendants represented by counsel applies to this appeal, the undersigned counsel has made this request within the provided for by this Court for doing so in its recent order directing further briefing which included instruction to address the issue of the granting of a delayed appeal. For all of these reasons, this case is distinguishable from *Anderson v. State*, No. 19-2016 (Iowa 2021).

Blanchard v. Bennett, 167 N.W.2d 712 (Iowa 1969) differs from the case at bar because the Court addressed in that case was whether a

conviction should be reversed based upon an attorney's failure to "properly perfect an appeal whereas at this point in the proceedings, obviously, the issues are not the substantive issues raised in this appeal but rather whether this Court should permit this appeal to proceed. Similarly, this case is distinguishable from *Swanson v. State*, 406 N.W.2d 792 (Iowa 1987), where this Court denied an appellant a right to a delayed appeal, to the extent that Jackson-Douglass can show "that a valid due process argument might be raised should the right of appeal be denied" because of the structural error caused by Hoffey's abandonment of Jackson-Douglass after sentencing and his failure to file an Amended Notice of Appeal on Jackson-Douglass's behalf. *Swanson v. State*, 406 N.W.2d 792 (Iowa 1987).

CONCLUSION AND PRAYER FOR RELIEF

Jackson-Douglass has shown good cause for challenging his conviction and sentence within the meaning of Iowa Code Section 814.6(1)(a)(3) and therefore should be permitted to do so on direct appeal.

WHEREFORE, if this Court does not believe Jackson-Douglass' appeal was timely, Jackson-Douglass requests this Court please grant Jackson-Douglass a delayed appeal.

WHEREFORE, Jackson-Douglass requests that this Court please strike the conviction at issue in this appeal, and remand this case to the

District Court with instructions to strike the conviction at issue with prejudice to the State.

WHEREFORE, only in the alternative, Jackson-Douglass requests that the Court please strike the conviction at issue in this appeal and grant him a new trial with respect to the case appealed from.

WHEREFORE, Jackson-Douglass requests that only in the alternative to the foregoing requests, Jackson-Douglass requests that the Court please strike Jackson-Douglass' sentence and remand the case for new sentencing proceedings.

WHEREFORE, Jackson-Douglass requests that if the Court remands this case to the District Court, that this Court please order that any further District Court proceedings be conducted by a different judge.

WHEREFORE, Jackson-Douglass requests that the Court order any other relief for Jackson-Douglass that the Court deems to be in the interest of justice.

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**CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME
LIMITATION, TYPEFACE REQUIREMENTS, AND TYPE-STYLE
REQUIREMENTS**

1. This Supplemental Brief and Motion for Delayed Appeal complies with the type-volume limitation of Iowa R. App. P. 6.903(1)(g)(1) or (2) because this brief contains 5,295 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).

2. This Brief and Motion for Delayed Appeal complies with the typeface requirements of Iowa R. App. P. 6.903(1)(3) 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 a version of Microsoft Word that was produced on or before 2003 in Times New Roman, 14 point type.

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