

IN THE SUPREME COURT OF IOWA

STATE OF IOWA

Petitioner-Appellant,

v.

IOWA DISTRICT COURT
FOR WOODBURY COUNTY,

Defendant-Appellee.

Supreme Court No. 21-1753

APPEAL FROM THE IOWA DISTRICT COURT
FOR WOODBURY COUNTY
HONORABLE JEFFREY L. POULSON
HONORABLE JEFFREY A. NEARY

APPELLEE'S APPLICATION FOR FURTHER REVIEW
OF THE DECISION OF THE IOWA COURT OF APPEALS
FILED AUGUST 3, 2022

MARTHA J. LUCEY
State Appellate Defender

ASHLEY STEWART
Assistant Appellate Defender
astewart@spd.state.ia.us
appellatedefender@spd.state.ia.us

STATE APPELLATE DEFENDER'S OFFICE
Fourth Floor Lucas Building
Des Moines, Iowa 50319
(515) 281-8841 / (515) 281-7281 FAX
ATTORNEYS FOR DEFENDANT-APPELLEE

CERTIFICATE OF SERVICE

On the 23rd day of August, 2022, the undersigned certifies that a true copy of the foregoing instrument was served upon Defendant-Appellant by placing one copy thereof in the United States mail, proper postage attached, addressed to John Michael Baker, 2017 W. 14th Street, Sioux City, Iowa 51103.

APPELLATE DEFENDER'S OFFICE



ASHLEY STEWART
Assistant Appellate Defender
Appellate Defender Office
Lucas Bldg., 4th Floor
321 E. 12th Street
Des Moines, IA 50319
(515) 281-8841
astewart@spd.state.ia.us
appellatedefender@spd.state.ia.us

AS/sm/3/22

AS/lr/4/22

AS/lr/8/22

QUESTIONS PRESENTED FOR REVIEW

Whether the district court's sentence was illegal because Baker was not convicted of a class "d" forcible felony?

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STATEMENT IN SUPPORT OF FURTHER REVIEW

The Court of Appeals erred when it held that the district court could not sentence Baker to a fine-only. In a case where the defendant is convicted of a class “D” felony that is not a forcible felony, the court can sentence the defendant to a deferred or suspended sentence, further the court can impose a fine-only sentence.

Without the forcible felony, the court can look to Iowa Code section 901.5 to guide the sentencing. The code instructs that a “court may pronounce a judgement and impose a fine or sentence the defendant to confinement, or both, and suspend the execution of the sentence or any part of it as provided by chapter 907.” Iowa Code § 901.5 (2021).

The Court of Appeals incorrectly determined that a fine-only sentence could not be imposed if the underlying crime was not a forcible felony. Baker respectfully requests that the Iowa Supreme Court overturn the decision of the Court of Appeals.

STATEMENT OF THE CASE

The district court sentenced Baker to a fine-only after his conviction of Iowa Code § 124.401(5). (09/27/21 Order of Disposition)(App. pp. 23-36). The State filed a motion to correct an illegal sentence. (10/28/21 State's Motion)(App. pp. 42-43). The district court denied the State's motion. (11/17/21 Order)(App. pp. 44-49). The State filed a petition for writ of certiorari. (01/20/22 Writ)(App. pp. 50-51). This Court granted the State's application for discretionary review challenging the district court sentencing. (01/20/22 Application Granted)(App. pp. 50-51).

Course of Proceeding

On April 12, 2021, a trial information was filed charging Baker with possession of a controlled substance, to wit methamphetamine, third violation in breach of Iowa Code section 124.401 (5). (Trial Information)(App. pp. 4-5). Baker entered a written plea of not guilty on April 21, 2021. (Written Plea of Not Guilty)(App. pp. 6-7). Baker and the

State reached a plea agreement on May 11, 2021, agreeing that Baker would plead guilty as charged. The agreement also stated that Baker would leave his sentencing up to the discretion of the district court. (Plea Agreement)(App. pp. 8-12). On May 11, 2021, Baker plead guilty, in writing, to possession of a controlled substance, third violation. (05/11/21 Waiver of Rights and Plea of Guilty)(App. pp. 13-22).

Baker was sentenced on September 27, 2021. The district court sentenced Baker to an indeterminate five-year incarceration, suspended, with no probation. The court further that Baker pay a fine of \$1,025.00 with a 15 percent surcharge. (Order of Disposition)(App. pp. 23-36).

Facts

Baker admitted to possession of methamphetamine, third violation. (Plea Agreement, Waiver of Rights and Guilty Plea) (App. pp. 8-12, 13-22).

ARGUMENT

I. THE DISTRICT COURT'S SENTENCE WAS NOT ILLEGAL BECAUSE BAKER WAS NOT CONVICTED OF A CLASS "D" FORCIBLE FELONY.

Error Preservation: The State preserved error by objecting to the fine-only sentence and receiving an adverse ruling. (Sent. Tr. p. 21, L3-12; 10/ 28/22 State's Motion; 11/17/21 Order)(App. pp. 44-49).

Standard of Review: The court reviews challenges to correct an illegal sentence for correction of legal errors. Goodwin v. Iowa Dist. Ct., 936 N.W.2d 634, 643 (Iowa 2019).

Discussion: "[S]entences imposed without statutory authorization are illegal and void. State v. Louisell, 865 N.W.2d 590, 597 (Iowa 2015). "The legislature possesses the inherent power to prescribe the punishment for crime, and the sentencing authority of the courts is subject to that power." State v. Iowa Dist. Ct., 308 N.W.2d 27, 30 (Iowa 1981).

A "maximum" sentence for a class "D" felon, who is not a habitual offender "shall not be confined for no more than five

years and in addition shall be sentenced to a fine of not more than one-thousand dollars.” Iowa Code § 902.9(1)(e).

The State cites State v. Peterson, in which the defendant committed a forcible felony, making him ineligible for a deferred judgment, deferred sentence, or a suspended sentence. 327 N.W.2d 735 (Iowa 1982). Based on the forcible felony, the Iowa Supreme Court held: “We do not find that the language of section 909.1 “clearly and unmistakably” manifested a legislative intent to allow a *forcible felony* only to be fined, when to the contrary, sections 909.9(4) ... show clear intent that forcible felons should be confined.” Id. at 738 (emphasis added).

Unlike Peterson, the instant case does not involve a forcible felony, therefore, the argument made by Peterson cannot be relied upon. Peterson stated that “it would not be in compliance with the legislative intent on forcible felonies to preclude a deferred judgment, deferred sentence, and a suspended sentence and yet permit a fine instead of

confinement. 327 N.W.2d 735, 738 (Iowa 1982). However, in a situation where the class “D” felony is not a forcible and a deferred or suspended sentence is an option, it can also be argued that a fine-only sentence is legal.

Without the forcible felony, the court can look to Iowa Code section 901.5 to guide the sentencing. The code instructs that a “court may pronounce a judgement and impose a fine or sentence the defendant to confinement, or both, and suspend the execution of the sentence or any part of it as provided by chapter 907.” Iowa Code § 901.5 (2021).

Because this case did not involve a forcible felony, the court did not institute an illegal sentence. If the court intended for all class “D” felonies to be subjected to confinement and a fine, Baker respectfully request clarification from the court.

CONCLUSION

For all the above reasons, the defendant requests this court affirm his sentence.

ATTORNEY'S COST CERTIFICATE

The undersigned, hereby certifies that the true cost of producing the necessary copies of the foregoing Application for Further Review was \$1.50, and that amount has been paid in full by the Office of the Appellate Defender.

CERTIFICATE OF COMPLIANCE WITH TYPEFACE REQUIREMENTS AND TYPE-VOLUME LIMITATION FOR FURTHER REVIEWS

This application complies with the typeface and type-volume requirements of Iowa R. App. P. 6.1103(4) because:

[X] this application has been prepared in a proportionally spaced typeface using Bookman Old Style, font 14 point and contains 934 words, excluding the parts of the application exempted by Iowa R. App. P. 6.1103(4)(a).



Dated: 8/23/22

ASHLEY STEWART
Assistant Appellate Defender
Appellate Defender Office
Lucas Bldg., 4th Floor
321 E. 12th Street
Des Moines, IA 50319
(515) 281-8841
astewart@spd.state.ia.us
appellatedefender@spd.state.ia.us