

IN THE SUPREME COURT OF IOWA

**SUPREME COURT NO. 21-0590
(Woodbury County No. SRCR099190)**

**J.D. RAY ANDERSON
*Certiorari Petition-Appellant***

v.

**IOWA DISTRICT COURT FOR WOODBURY COUNTY
*Defendant-Appellee***

**APPEAL FROM THE DISTRICT COURT OF WOODBURY
COUNTY**

**THE HONORABLE ZACHARY HINDMAN PRESIDING AT
MOTION TO CORRECT ILLEGAL SENTENCE**

FINAL BRIEF OF CERTIORARI PETITIONER

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CERTIFICATE OF FILING

I hereby certify:

That I filed the attached typewritten Final Brief of Certiorari
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I hereby certify:

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**ATTORNEY FOR DEFENDANT-APPELLANT ATTORNEY'S
COST CERTIFICATE**

I, Thomas Hurd, hereby certify that the actual cost of reproducing the necessary copies of the preceding Final Brief of Certiorari Petitioner was \$0.00 and that amount has been paid in full by this attorney's firm.

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**IOWA CODE 902.13 DOES NOT APPLY TO ANDERSON'S
CONVICTION. ACCORDINGLY, HIS SENTENCE IS
ILLEGAL AND SHOULD BE REVERSED.**

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ROUTING STATEMENT

This case should be retained by the Supreme Court as it presents a several substantial issues of first impression. R. App. Pro. 6.1101(2)(c). The issues of first impression center around the 2017 enactment of 2017 Acts 83 (hereinafter HF 263) and include each of the following:

- 1) Whether Iowa Code 902.13 applies to every offense under Iowa Code 708.2A(4) or only to a third conviction under Iowa Code 708.2A(4) (a so called “third-third” conviction)
- 2) Relatedly, whether subsequent to the enactment of HF 263, a suspended sentence is available for a conviction under Iowa Code 907.3(3) for a violation of Iowa Code 708.2A(4) which is not a third-third.
- 3) Relatedly, whether subsequent to the enactment of HF 263, a conviction for Domestic Abuse Assault 3rd offense is a forcible felony in light of the express authorization of probation for the same offense under Iowa Code 905.16. *See*, 2017 Acts 83, § 9.
- 4) Relatedly, whether subsequent to the enactment of HF 263, a conviction under Iowa Code 708.2A(4) which is not a third-

third is subject to the maximum accumulation of earned time of fifteen percent pursuant to Iowa Code 903A.2(1)(a)(1).

The Court has never had an opportunity to interpret Iowa Code 902.13 or any of the other provisions affected by HF 263 subsequent to their enactment in 2017.

The case will provide important clarity to the courts in making sentencing decisions, could affect many sentencing decisions, and closely parallels other cases where the Court has recently granted certiorari. Noll v. Iowa Dist. Court for Muscatine Cnty., 919 N.W.2d 232, 234 (Iowa 2018). It may also provide direction to the legislature to clarify the law. Accordingly, the petition for certiorari should be granted and the case should be retained.

STATEMENT OF THE CASE

Nature of the Case: This is a petition for writ of certiorari from a denial of a motion to correct illegal sentence on April 13, 2021.

Course of Underlying Proceedings: On April 20, 2017 the Governor of Iowa signed HF 263, “[a]n act relating to the criminal offense of domestic abuse third offense and unauthorized placement of a global positioning device, and providing penalties”, into law. 2017 Acts, ch. 83 §1 (hereinafter “HF 263”)

On October 25, 2017 JD Anderson (hereinafter “Anderson”) was charged by Trial Information with the crime of Domestic Abuse Third Offense under Iowa Code 708.2A(4). Trial Information filed in Woodbury County No. SRCR099190; App. at 7. The case proceeded to trial on May 31, 2018 wherein Anderson was convicted of Domestic Abuse Assault. Jury Verdict, App. at 9. The jury expressly found Anderson not guilty of Domestic Abuse Assault Causing Bodily Injury arising from the same incident. Jury Verdict, App. at 9. Anderson then stipulated to his prior offenses as follows: a December 7, 2006 conviction for domestic abuse assault and a July 5, 2011 conviction for domestic abuse assault causing bodily injury. Trial Tr. Vol. 3 at 43-58 (colloquy with Court on prior convictions). On July 9, 2018 the

Court sentenced him to prison. Order of Disposition; App. at 10. The Court imposed a mandatory minimum sentence of three years imposed pursuant to Iowa Code 902.13. Order of Disposition; App. at 10. Anderson appealed but his appeal was denied and Procedendo on the appeal issued on March 31, 2020. Procedendo; App. at 23.

Anderson through counsel filed a motion for hearing on his sentence on March 23, 2021. Appearance; App at 26. The Court ultimately treated this as a motion to correct an illegal sentence which the Court denied on April 13, 2021. Order Denying Motion to Correct Illegal Sentence; App. at 28. Anderson timely filed Notice of Appeal on May 3, 2021. Notice of Appeal; App. at 51.

Facts Relevant to Review: On April 20, 2017 the Governor of Iowa signed HF 263, “An act relating to the criminal offense of domestic abuse third offense and unauthorized placement of a global positioning device, and providing penalties”, into law. HF 263.

Anderson was convicted of Domestic Abuse Assault on May 31, 2018 following a trial by jury. Jury Verdict, App. at 9. Anderson than stipulated to his prior offenses as follows: a December 7, 2006 conviction for domestic abuse assault and a July 5th 2011 conviction for domestic abuse assault causing bodily injury. Trial Tr. Vol. 3 at 56.

Neither of Anderson's prior offenses were for a prior violation of Iowa Code 708.2A(4) (prior third offense). Trial Tr. Vol. 3 at 56. At the conclusion of trial, the County Attorney repeatedly urged the Court that Anderson's conviction was a forcible felony (Trial Tr. Vol. 3 at 42, 46, 59) and the Court ultimately determined Anderson would be held in custody without bond pending sentencing "Based on the Court's review of the applicable law in the case...". Trial Tr. at 59.

The case came before the Court for sentencing on July 6, 2018. The prosecutor again advocated Anderson's conviction was a forcible felony to which Anderson's attorney agreed it was "according to the law." Sent Tr. at 39. The Court then sentenced Anderson to five years imprisonment with the requirement he serve a minimum of three years before being eligible for parole. Order of Disposition; App. at 10. The Court denied the Anderson bond on appeal pursuant to Iowa Code 811.1(2) (denying Defendant bond on appeal for convictions of a forcible felony). Sent. Tr. at 45. Other facts will be discussed as relevant.

ARGUMENT

THE PETITION FOR WRIT OF CERTIORARI SHOULD BE GRANTED AND THE SENTENCE REVERSED BECAUSE IOWA CODE 902.13 DOES NOT APPLY TO DEFENDANT'S CONVICTION

Issue Preservation: The general rule requiring error preservation is not applicable to void, illegal, or procedurally defective sentences. State v. Thomas, 520 N.W. 2d 311, 313 (Iowa Ct. App. 1994). Thus, a defendant is not required to raise an alleged sentencing defect in trial court in order to preserve a right of direct appeal on that ground. State v. Wilson, 294 N.W.2d 824, 825-26 (Iowa 1980).

Standard of Review: The Court reviews an illegal-sentence challenge for correction of errors at law. Noll v. Iowa Dist. Court for Muscatine Cnty., 919 N.W.2d 232, 234 (Iowa 2018). Likewise, "[o]ur standard of review for questions of statutory interpretation is for correction of errors at law." Id. "We also review an original certiorari action for the correction of errors at law. 'Illegality exists when the court's findings lack substantial evidentiary support, or when the court has not properly applied the law.'" Id.

ARGUMENT

The Petition for Writ of Certiorari should be granted and the sentence reversed because Iowa Code 902.13 was not triggered for Defendant's conviction. The plain language and legislative history of Iowa Code 902.13 and several related statutes enacted through 2017 Acts, ch. 83 (hereinafter collectively referred to as "HF 263") make quite clear that the Legislature did not intend for Iowa Code 902.13 to apply to every conviction for domestic abuse assault third offense. Rather, Iowa Code 902.13 applies only to "a third or subsequent offense of domestic abuse assault under section 708.2A, subsection 4," or a so-called "third-third offense."

Anderson was convicted under section 708.2A, subsection 4, but his two prior offenses were not third offenses. Trial Tr. Vol. 3 at 56. Because Anderson was not convicted of a third-third offense for domestic abuse assault, Iowa Code 902.13 is inapplicable. Accordingly, the mandatory minimum sentence imposed on Anderson under Iowa Code 902.13 is illegal and Anderson is also not subject to the maximum accumulation of earned time at fifteen percent under Iowa Code 903A.2(1)(b)(1) as his sentence is a

Category A and not Category B sentence (capping earned time for Category B sentences at fifteen percent).

Prior to 2017, Iowa law was clear that persons convicted of domestic abuse assault third offense could not receive a deferred judgment, deferred sentence, or suspended sentence. Iowa Code 708.2A(7)(b) (2017 ed.) (“A person convicted of violating subsection 4 ... cannot receive a suspended or deferred sentence or a deferred judgment...”). Such individuals were also categorically required to serve a minimum of one year of their sentence. *Id.* However, this was not the law at the time of Anderson’s charge, trial, or conviction, and is not the law today.

In 2017, the Iowa Legislature revised a number of statutes relating to domestic abuse third offense convictions under Iowa Code 708.2A(4). *See*, 2017 Acts, ch. 83 (HF 263). HF 263 repealed prior Iowa Code 708.2A(7)(b) (2017 ed.) which had previously categorically prevented deferred judgment, sentencing, and suspended sentence options and categorically required a one year mandatory minimum sentence for convictions under Iowa Code 708.2A(4) (domestic abuse third offense). 2017 Acts, ch. 83 § 1. In its place, HF 263 created the current version of Iowa Code 708.2A(7)(b) which provides as follows:

b. A person convicted of a violation referred to in subsection 4 shall be sentenced as provided under section 902.13.

HF 263 contemporaneously created Iowa Code 902.13 which provides as follows:

A person who has been convicted of a third or subsequent offense of domestic abuse assault under section 708.2A, subsection 4, shall be denied parole or work release until the person has served between one-fifth of the maximum term and the maximum term of the person's sentence as provided in subsection 2.

Notice that Iowa Code 902.13 contains ambiguous and duplicative language referring to a “third or subsequent offense” and then in the same sentence immediately referring to a conviction “under 708.2A” (domestic abuse third offense). This language also differs from the language used to categorically impose mandatory minimums for domestic abuse third offense under prior law. *See*, Iowa Code 708.2A(7)(b) (2017 ed.) (referring to a conviction for “violating subsection 4” without any reference to whether the conviction was a “third or subsequent offense” for violating subsection 4).

Further support for the argument the Legislature intend 902.13 to not apply to every conviction for domestic abuse third offense can be found in HF 263 as HF 263 also amended several parts of Iowa

Code 907.3 relating to a deferred judgment, deferred sentence, or suspended sentence options. 2017 Acts, ch. 83 § 10, 11, 12. While the amendments to Iowa Code 907.3(1)(a) (deferred judgment) & Iowa Code 907.3 (2)(a) (deferred sentence) make clear that these options continue to be categorically unavailable for “a violation referred to in section 708.2A(4)” without reference to Iowa Code 902.13, the amendment to Iowa Code 907.3(3) is intentionally crafted in different language. Under the amendment to 907.3(3) passed in HF 263 the unavailability of a suspended sentence does not categorically turn on “a violation referred to in section 708.2A(4)” but on “the sentence imposed under section 902.13 for a violation referred to in section 708.2A(4).” separates “the sentence imposed under 902.13” from a conviction under Iowa Code 708.2A(4). This language is distinctly different than the categorical language used in 907.3(1) and (2) and distinctly separates “the sentence imposed under 902.13” from a conviction under Iowa Code 708.2A(4).

At the same time HF 263 also created Iowa Code 905.16. 2017 Acts, ch, 83 § 9. Iowa Code 905.16 provides as follows:

1. A person **placed on probation**, parole, work release, or any other type of conditional release **for domestic abuse assault in violation of section 708.2A, subsection 4**,

may be supervised by an electronic tracking and monitoring system in addition to any other conditions of supervision.

(emphasis added).

When interpreting the statutory provisions contained in HF 263, the Court's goal is to determine and effectuate the Legislature's intent. Ramirez-Trujillo v. Quality Egg, L.L.C., 878 N.W.2d 759, 770 (Iowa 2016) (citing United Fire & Cas. Co. v. St. Paul Fire & Marine Ins. Co., 677 N.W.2d 755, 759 (Iowa 2004)). To determine legislative intent, we look to the language chosen by the Legislature and not what the Legislature might have said. *Id.* (citing Schadendorf v. Snap-On Tools Corp., 757 N.W.2d 330, 337 (Iowa 2008)). We consider related statutes on the same subject and seek to harmonize them. State v. Jensen, 378 N.W.2d 710, 711 (Iowa 1985). Absent a statutory definition, we consider statutory terms in the context in which they appear and give each its ordinary and common meaning. Ramirez-Trujillo v. Quality Egg, L.L.C., 878 N.W.2d 759, 770 (Iowa 2016) (citing Rojas v. Pine Ridge Farms, L.L.C., 779 N.W.2d 223, 235 (Iowa 2010)). When reasonable persons could disagree as to what a statute means, the meaning of the statute is ambiguous. *Id.* (citing Holstein Elec. v. Breyfogle, 756 N.W.2d 812, 815 (Iowa 2008)). Ambiguity may

arise due to uncertainty concerning the meaning of particular words or upon examination of all the statute's provisions together in context. Id.

When the meaning of the statute is ambiguous, we may consider rules of statutory construction in our interpretive analysis. Id. We assess the statute in its entirety rather than isolated words or phrases to ensure our interpretation is harmonious with the statute as a whole. Id. (citing Schadendorf, 757 N.W.2d at 337). Because we presume the legislature included every part of the statute for a purpose, we avoid construing a statutory provision in a manner that would make any portion thereof redundant or irrelevant. Id. (citing Rojas, 779 N.W.2d at 231 and Iowa Code § 4.4(2)). [S]tatute[s] should be construed as to give meaning to all of them, if this can be done, and each statute should be afforded a field of operation. So, where the enactment of a series of statutes results in confusion and consequences which the legislature may not have contemplated, the courts must construe the statutes to reflect the obvious intent of the legislature and permit the practical application of the statutes. Judicial Branch & State Court Adm'r v. Iowa Dist. Court for Linn Cnty., 800 N.W.2d 569, 576-77 (Iowa 2011). Penal statutes are to be

strictly construed, with any doubt resolved against the State and in favor of the accused. Mears v. State Pub. Defs. Office, 834 N.W.2d 872 (Iowa Ct. App. 2013)

Considering all the statutes affected by HF 263, Iowa Code 905.16 by its plain terms expressly contemplates that a person can be placed on probation for a violation of Iowa Code 708.2A(4). This is a distinct departure from prior law and it is impossible to read Iowa Code 905.16 *in pari materia* with Iowa Code 907.3(3) and Iowa Code 902.13 and reason otherwise without rendering Iowa Code 905.16 superfluous. Rather, the authorization for probation in Iowa Code 905.16 brings into clear focus why the legislature chose different language for Iowa Code 907.3(3) than it chose when amended Iowa Code 907.3(1) & (2), namely, because the legislature contemplates by the same legislation (HF 263) that persons convicted of domestic abuse third offense who are not convicted of a “third-third” are not categorically barred from receiving suspended sentence and there is a class of convictions under Iowa Code 708.2A(4) for which a suspended sentence remains available.

Unpacking when a suspended sentence is available or unavailable for a conviction under Iowa Code 708.2A(4) turns on the language of Iowa Code 907.3(3) which turns itself on Iowa Code 902.13. This gives meaning to the use of two clauses in the phrase “convicted of a third or subsequent offense of domestic abuse assault under section 708.2A, subsection 4” language in Iowa Code 902.13. The legislature is not superfluously repeating the term “third or subsequent offense” to refer to a statute that already refers to a third offense. The Legislature doesn’t do this with enhanced statutes. *See*, Iowa Code 321J.2(1)(c) & 321J.5 (referring only to third offenses for operating while intoxicated as a “third offense” without repeating the statute. *See also*, 124.401(5) (language for third offense controlled substance does not make duplicative references). Rather the Legislature is precisely articulating, in the overall statutory context enacted by the same legislation (HF 263), exactly which offenses under Iowa Code 708.2A(4) come within the purview of 902.13 and are ineligible for probation, and exactly which offenses under Iowa Code 708.2A(4) do not come within the purview of Iowa Code 902.13, do not authorize a mandatory minimum sentence, and remain eligible for a suspended sentence.

While interpreting the statutes affected by HF 263 in this manner might seem unexpected, there are ample reasons the Legislature might decide to write the law relating to domestic abuse third offense convictions in this way. The prior law was a one size fits all approach which made suspended sentences categorically unavailable – an approach ill-suited to the wide variety of situations which can lead to a conviction for domestic abuse assault third offense. This case is a good example of just that because here the Jury expressly rejected the complaining witnesses testimony (Trial Tr. Vol. 2 at 32-35) the assault caused bodily injury and found Anderson not guilty on that charge. Anderson was convicted of conduct which ordinarily would amount to a simple misdemeanor absent enhancement. Perhaps the Legislature, while they recognized the seriousness of domestic violence, and viewed it as appropriate to maintain prior law allowing such a circumstance to be enhanced to a class D felony, also felt that the appropriate way to balance a variety of factors involved in these cases was to not make every conviction for domestic abuse third offense subject to mandatory prison with a lengthy mandatory minimum but place discretion in the judiciary who are most familiar with the facts of each individual and each case.

The Legislature also has to balance punishment against prison capacity. As shown by the 2016 Annual Report of the Iowa Department of Corrections, Iowa Prisons were exceeding capacity in 2015 & 2016. Iowa Department of Corrections FY2016 Annual report at 21 (indicating ending prison population 959 inmates over capacity for FY2015 and 885 inmates over capacity for FY2016) (available at https://doc.iowa.gov/sites/default/files/documents/2017/01/fy16_doc_annual_report_1.pdf) (last visited June 4, 2022). The electronic monitoring also passed as part of HF 263 has been shown by reports released by the Iowa Department of Corrections prior to the enactment of HF263 to be one of the most beneficial programs for community releases per dollars spent. Iowa Results First: Return on Investment for Corrections Programs 2012 at 2-5 (indicating electronic monitoring returns benefits between \$3.70-\$6.43 in benefits for every dollar spent for prison releases and high risk probationers) (available at <https://doc.iowa.gov/data/research-reports/iowa-results-first-return-investment-corrections-programs-2012>) (last visited June 4, 2022). Given the variety of goals the Legislature has this is a highly appropriate Legislative choice and a choice the Judiciary should not interfere with. Ours is not to reason

why, but to read and apply. "Ours not to reason why, ours but to read, and apply. Anderson v. State, 801 N.W.2d 1, 1 (Iowa 2011). For the foregoing reasons, the Court should grant the petition for writ of certiorari vacate Anderson's sentence and remand for a resentencing.

CONCLUSION

For the reasons stated, Anderson respectfully requests this Court remand for a new sentencing hearing.

ORAL SUBMISSION REQUEST

Defendant-Appellant requests to be heard at oral argument.

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