

**IN THE COURT OF APPEALS OF IOWA**

No. 23-0545  
Filed March 6, 2024

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

**vs.**

**EDWIN EDGARDO DIAZ,**  
Defendant-Appellant.

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Appeal from the Iowa District Court for Sac County, Angela L. Doyle, Judge.

Edwin Edgardo Diaz appeals his convictions and sentences. **AFFIRMED.**

Eric W. Manning of Manning Law Office, P.L.L.C., Urbandale, for appellant.

Brenna Bird, Attorney General, and Anagha Dixit, Assistant Attorney  
General, for appellee.

Considered by Greer, P.J., and Chicchelly and Buller, JJ.

**CHICCHELLY, Judge.**

Edwin Edgardo Diaz appeals the sentences imposed following his convictions for tampering with a witness, false imprisonment, and extortion after pleading guilty to the three counts and waiving his presence at sentencing. The district court sentenced him to an indeterminate two-year term of incarceration for tampering with a witness, a five-year term for extortion, and time served for false imprisonment. It ordered the sentences to run concurrently and suspended the terms of incarceration, imposing probation instead. These sentences were consistent with his signed plea agreement.

Because Diaz pleaded guilty, he has no right of appeal unless there is good cause, meaning a legally sufficient reason. Iowa Code § 814.6(1)(a)(3) (2023); see *State v. Damme*, 944 N.W.2d 98, 104 (Iowa 2020). In attempting to assert good cause, Diaz contends his sentences are illegal because they violate his constitutional rights to due process and against the imposition of cruel and unusual punishment. He first contends he should have instead received structured probation and asks us to overrule existing precedent, arguing that “[t]his court should reconsider the primacy of *Criswell* and overturn the precedent. This is due to the potential Constitutional violations that can result from District Court abuse of discretion.”<sup>1</sup> Thus, while it seems Diaz argues that the sentencing court abused

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<sup>1</sup> Diaz challenges the “primacy” of *State v. Criswell*, 242 N.W.2d 259, 261 (Iowa 1976) (finding consecutive sentencing for separate offenses allowable, even if they derive from the same incident or series of incidents). But “we are not at liberty to overrule controlling supreme court precedent.” *Aria v. State*, No. 22-1315, 2023 WL 8801738, at \*4 (Iowa Ct. App. Dec. 20, 2023) (cleaned up). We therefore decline to consider this challenge and instead focus on his constitutionality argument.

its discretion in not imposing structured probation, Diaz was granted probation. Because Diaz is requesting probation upon appeal, we therefore find no issue to review. Moreover, Diaz's general challenges about cruel and unusual punishment and the implications of *Criswell* are not developed enough for our consideration. See *State v. Short*, 851 N.W.2d 474, 479 (Iowa 2014); see also Iowa R. App. P. 6.903(2)(g)(3).

Diaz further contends the sentence is illegal because it is "grossly disproportionate" under the *Solem* test. See *Solem v. Helm*, 463 U.S. 277, 292 (1983) (establishing a proportionality analysis to determine whether a sentence violates the Eighth Amendment). To determine if a punishment is disproportionate, courts consider "objective criteria, including (i) the gravity of the offense and the harshness of the penalty; (ii) the sentences imposed on other criminals in the same jurisdiction; and (iii) the sentences imposed for commission of the same crime in other jurisdictions." *Id.* It is "rare" for a sentence to satisfy the *Solem* test and be considered "grossly disproportionate." *State v. Oliver*, 812 N.W.2d 636, 650 (Iowa 2012). But Diaz only challenges the first element: that the severity of the punishment does not fit the crime. He fails to adequately address the other two steps of the analysis and does not identify any abuse of discretion by the court other than "he was not given the chance to succeed under a more strictly supervised level of probation." But "[t]he choice of one particular sentencing option over another" does not mean the court erred. *State v. Formaro*, 638 N.W.2d 720, 725 (Iowa 2002). The imposed sentence here certainly does not rise to the high level required of the proportionality test. *Oliver*, 812 N.W.2d at 650.

Upon our de novo review,<sup>2</sup> we find there is nothing in the record to suggest that the sentence is illegal and likewise affirm.

Diaz also argues the trial court should have demanded that he appear for sentencing and sua sponte ordered a competency evaluation. See Iowa Code § 812.3(1) (allowing the court to “schedule a hearing to determine probable cause” of incompetency). “Probable cause exists for a competency hearing when a reasonable person would believe that there is a substantial question of the defendant’s competency.” *State v. Einfeldt*, 914 N.W.2d 773, 779 (Iowa 2018). But there is no evidence here to suggest the district court should have ordered a hearing. Because Diaz waived his right to appear at sentencing, the court never had any personal interactions with Diaz. See *State v. Emanuel*, 967 N.W.2d 63, 69 (Iowa Ct. App. 2021) (noting a defendant may waive their right to be present at sentencing). Diaz conceded the court was never “given . . . the opportunity to address [his] competency.” Yet, in support of his contention, Diaz points to a letter he mailed to the prosecutor, which the prosecutor forwarded to the court. But this letter was sent after sentencing had already occurred, and Diaz filed his appeal before the court could consider its contents. Because we cannot consider issues that were not properly raised and decided on below, we therefore find no reason for the trial court to have ordered a competency hearing sua sponte. See *Aria*, 2023 WL 8801738, at \*2 (declining to consider an issue the district court failed to rule upon).

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<sup>2</sup> We generally review sentences for correction of errors at law. *Damme*, 944 N.W.2d at 103. But “[w]hen a defendant attacks the constitutionality of a sentence, our review is de novo.” *State v. Seats*, 865 N.W.2d 545, 553 (Iowa 2015).

Because neither Diaz's conviction nor sentence violated his constitutional rights or constituted error, we affirm both.

**AFFIRMED.**