

IN THE COURT OF APPEALS OF IOWA

No. 21-1709
Filed March 6, 2024

DAVID MIKEL ROBBINS,
Plaintiff-Appellant,

vs.

IOWA DISTRICT COURT FOR MARSHALL COUNTY,
Defendant-Appellee.

Certiorari to the Iowa District Court for Marshall County, John J. Haney,
Judge.

David Robbins petitions for writ of certiorari regarding denial of his request
for a determination of his reasonable ability to pay restitution. **WRIT ANNULLED.**

Thomas M. McIntee, Williamsburg, for appellant.

Brenna Bird, Attorney General, and Martha E. Trout, Assistant Attorney
General, for appellee.

Considered by Badding, P.J., Chicchelly, J., and Vogel, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206
(2024).

VOGEL, Senior Judge.

David Robbins petitions for writ of certiorari regarding the denial of his request for a determination of his reasonable ability to pay restitution. On June 24, 2021,¹ Robbins filed his request for a determination of his reasonable ability to pay restitution from twelve different cases. The State's answer asserted the request was untimely for eleven of the twelve cases because Robbins was "no longer on probation, parole, or incarcerated" and had discharged any prison sentence for those eleven cases. In August, his petition proceeded to a hearing, during which Robbins agreed he was currently supervised or incarcerated in only one of the twelve cases. At the court's request, the parties provided post-hearing filings with detailed breakdowns of Robbins's sentences in the twelve cases, including relevant dates, amounts originally ordered for Category "A" and "B" restitution, and any remaining restitution or other sentences. The court's ensuing order found Robbins did not have a reasonable ability to pay \$71,269.30 in Category "B" restitution for the one case in which he remained in custody. However, because Robbins was not in custody on the eleven remaining cases, the court found his request for a reasonable-ability-to-pay determination was not timely. Robbins filed a motion to reconsider, which the court denied. Robbins then filed a notice of appeal regarding the eleven cases in which the court denied the reasonable-ability-to-pay determination. On the supreme court's request, the parties provided additional argument on whether the matter should instead be reviewed by certiorari rather than appeal. The supreme court ultimately treated the notice of appeal as

¹ The timestamp on Robbins's request says it was e-filed on June 25, 2021, at noon. However, the court's ensuing order found he filed his request on June 24.

a petition for writ of certiorari, granted the petition, and transferred the matter to this court.

“In an original certiorari proceeding, our review is for errors at law.” *Sorci v. Iowa Dist. Ct.*, 671 N.W.2d 482, 488 (Iowa 2003). “A writ of original certiorari lies where the district court has acted illegally. Illegality exists when the court’s findings lack substantial evidentiary support, or when the court has not properly applied the law.” *Id.* at 489.

In 2020, the legislature amended the statutory framework controlling restitution. See 2020 Iowa Acts ch. 1074, §§ 65–83. One provision automatically converted existing restitution orders into permanent restitution orders if those orders lacked “a determination of the defendant’s reasonable ability to pay the restitution.” *Id.* § 73 (codified at Iowa Code § 910.2B(1)(c)). A defendant could challenge this conversion of an existing restitution order into a permanent restitution order by filing a petition under section 910.7 “no later than one year from June 25, 2020.” *Id.* (codified at Iowa Code § 910.2B(2), (4)); see also Iowa Supreme Ct. Order, *In the Matter of Interim Procedures Governing Ability to Pay Determinations and Conversion of Restitution Orders* 4 (July 7, 2020) (“[A] defendant may only challenge the conversion of his or her restitution order to a permanent restitution order, including the ability-to-pay determination, through a section 910.7 petition brought no later than June 25, 2021.”). However the 2020 legislation did not amend the Iowa Code section 910.7(1) requirement that a petition challenging an existing restitution order may only be filed “during the period of probation, parole, or incarceration.”

Before the district court, Robbins argued the Iowa Code allowed him to challenge his eleven existing restitution orders even though he was not currently on probation, on parole, or incarcerated for any of those underlying cases.² In this certiorari action, he abandons that argument, asserting instead that the district court violated his due process rights by denying his request for a reasonable-ability-to-pay determination for restitution orders that never had such a determination.³ Robbins never raised a due process challenge in district court, and the court never addressed such a challenge. For that reason, Robbins did not preserve his due process arguments for our review. See *Sorci*, 671 N.W.2d at 489–91 (finding traditional error preservation rules apply to an original certiorari action, and arguments, including a due process claim, must be raised below before an appellate court may review it).

Finding Robbins failed to properly present any claim for our review, we annul the writ of certiorari.

WRIT ANNULLED.

² Even if Robbins had renewed this argument here, we would find no error in the conclusion that his request for a reasonable ability-to-pay determination was not timely for the eleven cases because he was not on probation, on parole, or incarcerated.

³ Robbins also briefly argues his request for a reasonable-ability-to-pay determination was not defective merely because he separately filed his financial affidavit at a later date. Because the district court did not reject his request for a reasonable-ability-to-pay determination because he separately filed his financial affidavit at a later date, we do not address this argument.