IN THE SUPREME COURT OF IOWA

SUPREME COURT NO. 24-1143
Worth County No. FECR012500

STATE OF IOWA,
Appellant,

v.

DOUGLAS NEAL WARBURTON,
Appellee.

APPEAL FROM
THE DISTRICT COURT OF WORTH COUNTY
THE HONORABLE
DISTRICT COURT JUDGE GREGG R. ROSENBLADT

APPLICATION FOR FURTHER REVIEW
Iowa Court of Appeals Decision: August 20, 2025

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QUESTION PRESENTED FOR FURTHER REVIEW

Whether or not the Iowa Court of Appeals erred when it found that error was not preserved under *Smith* and *Formaro* when Warburton did not file a separate notice of appeal after the court denied his motion for resentencing?

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STATEMENT SUPPORTING FURTHER REVIEW

This case warrants further review for the following reasons:

The Court of Appeals incorrectly determined that Warburton did not preserve his claim based on the Notice of Appeal not implicitly stating that it did not encompass the Order following disposition. However, the Notice of Appeal was filed after the order denying a new sentencing based on failure to give the victim in this matter a chance to submit a victim impact statement. Consequently, the Court of Appeals incorrectly found that error was not preserved.

The Court of Appeals employed a prohibitively restrictive standard in regards to error preservation, which directly conflicts with prior Supreme Court precedent. Precedent requires that the party raise an issue and that "the district court was aware of the claim and litigated it." *See Lamasters v. State*, 821 N.W.2d 856, 864 (Iowa 2012) (quoting *Meier v. Senecaut*, 641 N.W.2d 532, 540 (Iowa 2002)); *see also* Iowa R. App. P. 6.1103(1)(*b*)(1) (2025).

This standard was violated when the Court of Appeals treated the Notice of Appeal as limiting the issues preserved despite it being filed after all relevant orders. It is necessary for this court to accept this case to ensure litigants' claims are being heard in a timely and just manner. *See* Iowa R.

App. P. 6.1103(1)(*b*)(4) and are not arbitrarily restricted by a notice pleading.

Secondly, the Court of Appeals relied on *State v. Smith*, 17 N.W.3d 355, 363 (Iowa 2025) in determining that this issue was unpreserved. However, crucially, in *Smith*, the Notice of Appeal was filed *prior* to the court's issuance of the order on firearm prohibition. The notice of appeal in the instant case was filed *after* the order denying a new sentence. Thus, it was before the District Court and decided by the District Court. There would not have been a necessity to file a separate notice as the original Notice of Appeal in this case was after the final ruling. This differentiates it from both the *Smith* holding and the *Formaro* ruling the Court of Appeals also cited.

Because the Court of Appeals held that *Smith* barred relief, it then did not address the issue regarding the PSI and its short-comings which are interrelated to the claim above.

NATURE OF THE CASE

Defendant–Appellant Douglas Warburton seeks further review of the Court of Appeals' decision affirming his sentence following the district court's denial of his request for a new sentence following the revelation that the minor victim desired to submit a victim impact statement to the court requesting that Warburton not be sent to prison in this matter. a plea agreement was ultimately reached and Warburton entered a written *Alford* plea on April 30, 2024. (D0071; *Alford* Plea; 04/30/2024). In relevant part, Warburton only plead to Count II: Lascivious Acts with a Child. (D0071; *Alford* Plea; 04/30/2024). Importantly, the plea agreement was for the State to adopt the recommendation of the Presentence Investigation Report (hereafter PSI) in addition to recommending sex offender registration, a special sentence, and the dismissal of all other counts and the related Worth Co. Case No. SRCR026838. (D0071; *Alford* Plea at 2; 04/30/2024). The PSI was accordingly conducted and a sentencing hearing was scheduled.

On June 24, 2024, the defense made one minor correction to the PSI before proceeding. (D0109; Sent. Trans. at 4-5; 06/24/2024). The defense called Warburton's son and his niece's guardian, Megan Flugge, to testify on his behalf. (D0109; Sent. Trans. at 9-13; 06/24/2024). At sentencing, the

State deferred to the PSI, pursuant to the agreement, and formally requested a prison sentence. (D0109; Sent. Trans. at 6; ln. 18-25; 06/24/2024). Importantly, the State testified that they had no victim impact statement from the minor child. (D0109; Sent. Trans. at 8; ln. 1-12; 06/24/2024). Following a lengthy colloquy, discussed below, the court ultimately sentenced Warburton to a ten-year prison sentence, including the special sentence and sex offender status as agreed. (D0109; Sent. Trans. at 24-25; ln. 18-25; and D0079; Order of Disposition; 06/24/2024).

The following day, Warburton filed a Motion for Resentencing stating that the guardian ad litem (hereafter GAL) for the child victim contacted defense counsel and indicated that there was actually a victim impact statement. (D0081; Motion for Resentencing; 06/25/2024). The State formally resisted this and argued that they spoke with the GAL on June 26th and that was when a copy was provided to the State. (D0083; Resistance; 07/01/2024). Moreover, the State wrote that "[a]s far as the undersigned knows, the victim impact statement was not in existence at the time of sentencing." (D0083; Resistance; 07/01/2024). Moreover, that "if it was, then somebody can advise differently." (D0083; Resistance; 07/01/2024).

The Court noted this in their ruling and that "[t]here has been no further advice or response." (D0087: Ruling on Resentencing;

07/10/2024). The Court denied resentencing without hearing. (D0087: Ruling on Resentencing; 07/10/2024).

On July 12, 2024, Warburton filed a timely notice of appeal. (D0088; Notice of Appeal 07/12/2024).

The Court of Appeals affirmed the sentence of the District Court on August 20, 2025.

ARGUMENT

I. THE COURT OF APPEALS INCORRECTLY FOUND THAT ERROR WAS NOT PRESERVED UNDER *SMITH* AND *FORMARO* WHEN WARBURTON DID NOT FILE A SEPARATE NOTICE OF APPEAL AFTER THE COURT DENIED HIS MOTION FOR RESENTENCING.

As it relates the issue here appealed, the allegations raised involved Warburton's granddaughter, E.W. (D0001; Criminal Complaint: 06/12/2023). On October 19, 2023, attorney Danielle M. Ellingson was appointed as Guardian Ad Litem to represent, among another victim, E.W.'s interests in the case. (D0043; Order Appointing GAL; 10/19/2023). At sentencing, the prosecutor testified to the court that:

> "generally either talked with Ms. Ellingson; or when I was talking with E.W., I would usually do it with Ms. Ellingson. But I notified Ms. Ellingson obviously of her right -- of the right for E.W. to make a victim impact statement. I have not talked with E.W. about that myself. I thought it more appropriate that her guardian ad litem do so. And I have communicated with that guardian ad litem. She's indicated

> there is no victim impact statement. And so with that, Your Honor, I have none." (D0109; Sent. Trans. at 8; ln. 3-11; 06/24/2024).

While no hearing was held on the matter, counsel for the Defendant argued that Ellingson advised him that "no one had reached out to the victim about filling out a victim impact statement." (D0081; Motion for Resentencing; 06/25/2024). In response, counsel for the State duly filed the Victim Impact Statement on July 1, 2024. This consisted of a handwritten letter by E.W. that, in relevant part, stated as follows:

> "I didn't like what papa did to me. My feelings were hurt by the bad things he did to me. I was feeling scared, mad, and sad. I still want to have a relationship with him because he will always be my papa and I will always be his grandaughter [sic]. He should be able to have his job back and be in our community. I don't think he should go to prison." (D0084: VIS; 07/01/2024).

Following both the defense's motion and the State's resistance, Ellingson was conspicuously silent and there was no further record of exactly when this letter was written or received. Accordingly, the Court held that it "the victim impact statement in this case may have been generated post-sentencing." However, importantly the Court noted that "[i]f either party had requested to continue the sentencing to allow the presentation of a victim impact statement, the Court would likely have done so." (D0087: Ruling on Resentencing at 2; 07/10/2024).

The Court of Appeals erred when it found Warburton did not preserve his claim on appeal due to not filing a separate and distinct notice of appeal after the court denied his motion for resentencing.

On June 24, 2024, the court sentenced Warburton. On June 25, 2024, the Defendant motioned for resentencing to correct procedural error. On July 1, 2024, the State resisted. On July 10, 2024, the Court entered an Order denying the Motion for Resentencing. On July 12, 2024, the Defendant filed his notice of appeal. The Notice of Appeal followed, almost exactly, the template found in Iowa Rule of Appellate Procedure 6.1401 – Form 1.

The Court of Appeals found that because there was not a separate and distinct notice of appeal, that pursuant to *Smith* and *Formaro* that another notice was required to perfect his appeal of the denial of his motion for resentencing.

In *State v. Smith*, the Disposition Order was filed on January 5, 2024, with notice of appeal being filed the same day. The challenged ruling was filed on January 9, 2024 – four days after the notice. It of course could not have encompassed the January 9th order as it was not in existence yet. In that case, the district court did not litigate the issue and decide the issue as it was only raised for the first time on appeal.

In *State v. Formaro,* the Court is quoted as stating, "Notice of appeal from a judgment permits the appealing party to raise all issues properly preserved. *See Iowa Dep't of Human Servs. ex rel. Greenhaw v. Stewart,* 579 N.W.2d 321, 323 (Iowa 1998)." *State v. Formaro*, 638 N.W.2d 720, 727 (Iowa 2002).

In this case, we have a ruling, a motion, a resistance and an order followed by a notice of appeal.

In *Formaro,* the court was referring to whether or not the court could contemplate bail as a collateral issue following a notice of appeal and whether jurisdiction was in the hands of the appellate court or District Court.

The Court went on to further clarify the issue, "nevertheless, we recognize that rulings on collateral or independent issues after final judgment are separately appealable as final judgments. *Bd. of Water Works Trs. v. City of Des Moines,* 469 N.W.2d 700, 702 (Iowa 1991). Thus, when a court addresses the issue of bail following the entry of a judgment and sentence, any appeal from a ruling on the issue must be separately appealed. A defendant cannot rely upon the notice of appeal from the judgment and sentence of the district court." *State v. Formaro*, 638 N.W.2d 720, 727 (Iowa 2002). In *Formaro,* the notice of appeal was also filed prior to the order issued regarding an increase in bail.

The two cases that the Iowa Court of Appeals relies are not on point to the issue at hand.

"If the court's ruling indicates that the court considered the issue and necessarily ruled on it, even if the court's reasoning is 'incomplete or sparse,' the issue has been preserved." *See Meier v. Senecaut*, 641 N.W.2d 532, 540 (Iowa 2002). We have all the elements of error preservation in this matter. This matter is akin to a denial of a motion to enlarge, reconsider or amend. There certainly is not a special process to preserve the right to appeal a denial of said motion. You simply file notice with the boilerplate language from the sample form in the rules. The Court of Appeals is now requiring multiple notices listing out each grievance to preserve error.

The court has jurisdiction to decide this issue on appeal. The Supreme Court should accept this case, make a finding on the merits and clarify *Smith* and *Formaro*. The court of appeals has broadened the requirements of error preservation, demanding additional steps that are not consistent with law.

The Court likewise found that because the Court did not grant the motion for new sentence and Warburton did not object to the lack of the victim impact statement, that error was not preserved regarding that claim.

The record in this case indicates that the State was asked at sentencing if the victim wished to make an impact statement and it indicated that it

spoke to the Guardian Ad Litem and there were no victim impact statements. (D0109; Sent Tr. Pg. 7-8; Ll 25-11; 6/24/24).

The Court relied heavily on the PSI writers statements in this matter citing them at length. (D0109; Sent T. pg. 23-4; Ll 16-1; 6/24/24). The PSI provided no rhyme or reason for a recommendation for prison, yet the district court adopted this recommendation.

Warburton was sixty-six years of age at the time of sentencing. It indicated that Warburton did not have any prior criminal history and that he had never been supervised by the Department of Corrections in the past. (D0077, PSI, pg. 1 & 3; 6/19/24).

It indicated that he had consistent employment for the last nineteen years. (D0077, PSI, pg 10; 6/19/24). Warburton does not have a history of drug or alcohol abuse. (D0077, PSI, pg 8; 6/19/24). The defendant does not have any major mental health issues. (D0077, PSI, pg 9; 6/19/24).

The PSI writer interjected her opinion into the recommendation. There was no evidence in the record to support these statements by the PSI writer. "The victim was in the care of her grandparents when she was sexually abused by her grandfather, she did not only experience the immediate trauma of sexual abuse but also her trust and security has been violated which would add to the intensity of the trauma that she experiences. Crimes

such as these cause a great deal of fear and apprehension to the victim, their families, and others in the community. Children have the right to be protected from those who will exploit them." (D0077, PSI, pg 10; 6/19/24).

The court then echoed the entirety of this statement when handing down the sentence.

It is probable that had the victim impact statement been available, the PSI writer may have made a different recommendation or the court may have handed down a different sentence.

Warburton could not object to the lack of victim impact statement when it had been put forth by the state that the victim did not wish to make one. It was only after learning that this was not accurate could an objection be lodged, which was the day after sentencing. Warburton did so by filing a motion, which was ruled upon by the court.

In this case, we have error preservation. Accordingly, further review is required.

CONCLUSION

For the above-mentioned reasons, Defendant-Appellant, Douglas Neal Warburton, respectfully prays that the Iowa Supreme Court grant Further Review in this matter.

PROOF OF SERVICE AND CERTIFICATE OF FILING

I certify that on the 8th day of September, 2025, I served a copy of this document by mailing a copy to all parties appearing pro se or to their attorneys of record at their respective addresses below:

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CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of Iowa R. App. P. 6.903(1)(g)(1) because the brief contains 2,410 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).

This brief complies with the typeface requirements of Iowa R. App. P. 6.903(1)(e) and the type-style requirements of Iowa R. App. P. 6.903(1)(f) because this brief has been prepared in a proportionately spaced typeface using Microsoft Word in Times New Roman 14 pt. font.

/s/ Karmen R. Anderson 9/8/2025