IN THE SUPREME COURT OF IOWA
Supreme Court No. 17-1727

STATE OF IOWA,
Plaintiff-Appellee,

vs.

RONALD SKYLER STEENHOEK,
Defendant-Appellant.

APPEAL FROM THE IOWA DISTRICT COURT
FOR BOONE COUNTY
THE HONORABLE TIMOTHY J. FINN, JUDGE

APPELLEE'S BRIEF

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ROUTING STATEMENT

Transfer to the Court of Appeals is appropriate because the issues raised involve the application of existing legal principles. Iowa R. App. P. 6.1101(3)(a). Despite Steenhoek's statement to the contrary, the Court can and should resolve this case without overturning Iowa Supreme Court precedent.

STATEMENT OF THE CASE

Nature of the Case

Defendant Ronald Skyler Steenhoek pleaded guilty to theft in the second degree, a class D felony, in violation of Iowa Code sections 714.1 and 714.2(2). Steenhoek appeals the resulting sentence and order of restitution. The Honorable Timothy J. Finn entered judgment and imposed sentence.

Course of Proceedings

Steenhoek accurately outlines the course of proceedings and disposition in the district court. *See* Iowa R. App. P. 6.903(3); Appellant's Brief at 11-12.

Facts

Background

On January 30, 2017, Noah Dalgliesh and Tyrae Manns drove to Boone to hang out with a juvenile named J.M. Minutes of Testimony

at 2; Confidential App. 5. After spending some time at J.M.'s house, the three got into Dalgliesh's car to drive to a friend's house. Minutes of Testimony at 2; Conf. App. 5.

While driving, Dalgliesh noticed a car following closely behind him. Minutes of Testimony at 2; Conf. App. 5. Dalgliesh saw the driver take off his jacket to reveal a police officer's blue shirt. Minutes of Testimony at 2; Conf. App. 5. The driver, who turned out to be Steenhoek, bumped Dalgliesh's car and motioned for Dalgliesh to pull over. Minutes of Testimony at 2; Conf. App. 5. Dalgliesh did so. Minutes of Testimony at 2; Conf. App. 5. Impersonating a police officer, Steenhoek ran toward the vehicle with what looked to be a gun drawn, shouting for Dalgliesh and Manns to get out of the car. Minutes of Testimony at 1-2; Conf. App. 4-5; Sentencing Hearing Transcript, Oct. 16, 2017, 10:19-11:15. Dalgliesh and Manns obeyed Steenhoek's order and exited the car. Minutes of Testimony at 2; Conf. App. 5. Steenhoek continued to yell at the two men, ordered them to place their hands on the car, roughly patted them down, and kept demanding that they turn over "the gun." Minutes of Testimony at 2; Conf. App. 5; Sent. Hr'g Tr. 11:16-12:6.

Unable to find a gun in the car or on either Dalgliesh or Manns, Steenhoek took their cell phones, car keys, and wallets. Minutes of Testimony at 2; Conf. App. 5; Sent. Hr'g Tr. 12:7-20; 22:15-24:3. Manns had $1,000 in cash in his wallet and pockets; Steenhoek took all of Mann's money. Minutes of Testimony at 2; Conf. App. 5. Steenhoek then ran back to his car and quickly drove away. Minutes of Testimony at 2; Conf. App. 5.

Steenhoek did not order J.M. out of the car, nor did he take any of her belongings. Minutes of Testimony, Application to Search Warrant, Attachment A; Conf. App. 10. Dalgliesh and Manns both noted that J.M. had been texting or messaging someone while they were driving and that she had walked away after the incident. Minutes of Testimony, Application to Search Warrant, Attachment A; Conf. App. 10. Steenhoek admitted during his sentencing hearing that J.M. had told him where he could find Dalgliesh and Manns. Sent. Hr'g Tr. 20:17-21:9. Steenhoek had targeted Dalgliesh and Manns—specifically seeking Manns's gun—because Manns had earlier threatened to shoot I.N., the sixteen-year-old son of Steenhoek's best friend. Sent. Hr'g Tr. 10:5-22; 20:13-16.

Steenhoek was charged by trial information with two counts of first degree robbery, in violation of Iowa Code sections 711.1(1)(a) and 711.2. Trial Information; App. 7. After negotiations, Steenhoek pleaded guilty to the reduced charge of one count of theft in the second degree. Record of Plea of Guilty; App. 12.

Sentencing and Appeal

On October 16, 2017, the district court sentenced Steenhoek to a term not to exceed five years in prison and ordered him to pay a $750 fine and surcharge. Order of Disposition at 1-2; App. 14-15. In imposing a term of imprisonment, the court recognized that there were mitigating facts weighing against a sentence of imprisonment. *See* Sent. Hr'g Tr. 37:20-21. The court, however, found it significant that Steenhoek had a "fairly lengthy criminal record" and was involved in a "particularly violent" crime. Sent. Hr'g Tr. 37:7-38:1. The district court pointed to the fact that Steenhoek had not taken advantage of the "numerous opportunities" he had been given to rehabilitate and seek drug treatment. Sent. Hr'g Tr. 38:10-17. Finally, the court noted that Steenhoek was at an age at which he might begin to make some positive changes in his life. Sent. Hr'g Tr. 38:18-24.

In imposing restitution, the district court ordered Steenhoek "to pay the costs of this action and . . . reimburse the state for the reasonable fees of his court-appointed attorney." Order of Disposition at 2; App. 15. The court's order, however, does not include even a temporary amount of court costs or attorney fees "identified up to that time." *See* Iowa Code § 910.3. The court gave Steenhoek's attorney ten days to file a statement of the legal services he provided, but the court entered no supplemental restitution orders imposing costs or fees. Order of Disposition at 2; App. 15; *see generally*, Docket entries. Nor is there a plan of payment on the docket. *See* Order of Disposition at 2; App. 15; *see generally*, Docket entries. In its order, the court simply stated that "[a]ll fines, costs, and fees are due immediately and shall be considered delinquent if not paid within 30 days of today's date." Order of Disposition at 2; App. 15.

Steenhoek now appeals the district court's sentencing and restitution order. Steenhoek argues that the court erred in assessing financial obligations without first making a determination of his reasonable ability to pay those obligations. *See* Appellant's Brief at 13-40. Steenhoek also contends that the district court abused its discretion when it sentenced Steenhoek to a term of imprisonment.

See Appellant's Brief at 40-46. For all of the reasons discussed below, Steenhoek's claims have no merit.

ARGUMENT

I. Steenhoek's Restitution Challenge is Premature, Not Directly Appealable, and Must be Dismissed Because There is no Plan of Restitution in Place.

Motion to Dismiss

Steenhoek's ability-to-pay claim is not properly before this Court because it is not yet ripe. Nor has Steenhoek exhausted his remedies below, as required. For those reasons, this Court should dismiss Steenhoek's restitution claim. *See Iowa Coal Min. Co., Inc. v. Monroe County*, 555 N.W.2d 418, 432 (Iowa 1996) ("If a claim is not ripe for adjudication, a court is without jurisdiction to hear the claim and must dismiss it."); *State v. Jackson*, 601 N.W.2d 354, 357 (Iowa 1999) (declining to grant relief on a defendant's ability-to-pay challenge where the plan of restitution was not yet complete and the defendant had not yet petitioned the district court for modification under Iowa Code section 910.7).

A district court is not required to consider a defendant's reasonable ability to pay until "the plan of restitution contemplated by Iowa Code section 910.3 [i]s complete . . . ." *Jackson*, 601 N.W.2d at 357; *see also State v. Swartz*, 601 N.W.2d 348, 354 (Iowa 1999);

State v. Campbell, No. 15-1181, 2016 WL 4543763, at *4 (Iowa Ct. App. Aug. 31, 2016) (stating that the sentencing court is not required to consider the defendant's ability to pay until it has issued "the order constituting the plan of restitution"). Until that obligation is triggered, a defendant's challenge on ability-to-pay grounds is premature. *See Jackson*, 601 N.W.2d at 357 (stating that it was precluded from granting the defendant the relief he sought).

At the time of Steenhoek's appeal, his plan of restitution was not complete. The district court had ordered that Steenhoek pay court costs and attorney fees, but it did not include even a temporary amount of costs or fees in its sentencing order. Order of Disposition at 2; App. 15. Nor had it entered any supplemental orders setting forth the amounts of those costs and fees. Until the district court has "at a minimum, an estimate of the total amount of restitution," it had no obligation to assess Steenhoek's ability to pay costs and fees. *See Campbell*, 2016 WL 4543763, at *4. And Steenhoek may not challenge the district court's failure to make an ability-to-pay determination until that obligation exists. *See, e.g.*, *State v. Brown*, No. 16-1118, 2017 WL 2181568, at *4 (Iowa Ct. App. May 17, 2017) (concluding that the defendant's ability-to-pay challenge was

premature because "the trial court had not yet entered a plan of restitution that would trigger the trial court's obligation to determine [the defendant's] reasonable ability to pay"); *State v. Alexander*, No. 16-0669, 2017 WL 510950, at *3 (Iowa Ct. App. Feb. 8, 2017) (holding that the district court's restitution order was "incomplete and not directly appealable" where the district court had "expressly reserved the amounts to be included in the plan of restitution for a later determination"); *State v. Kemmerling*, No. 16-0221, 2016 WL 5933408, at *1 (Iowa Ct. App. Oct. 12, 2016) ("Because the total amount of restitution had not yet been determined by the time the notice of appeal was filed, any challenge to the restitution order in this case is premature."); *see also State v. McMurry*, No. 16-1722, 2017 WL 4317302, at *4 (Iowa Ct. App. Sept. 27, 2017) (stating that a preliminary restitution order with no restitution amount would not be properly before the court).

Nor is Steenhoek entitled to directly appeal the district court's reasonable ability to pay finding—or lack thereof—until he moves under Iowa Code section 910.7 for modification of the plan of restitution or plan of payment, or both. *See State v. Richardson*, 890 N.W.2d 609, 626 (Iowa 2017) (reaffirming *Jackson*'s principle "that

ability-to-pay challenges to restitution are premature until the defendant has exhausted the modification remedy afforded by Iowa Code section 910.7").

Thus, until the district court completes the plan of restitution and Steenhoek exhausts his remedies under Iowa Code section 910.7, Steenhoek's claim is not ripe and not directly appealable. *See Jackson*, 601 N.W.2d at 357. Because Steenhoek's restitution claim is not properly before this Court, it must be dismissed.

II. If the Court Reaches the Merits, it Should Reaffirm that a District Court is Not Required to Make a Reasonable-Ability-to-Pay Finding Until it Orders the Specific Amounts of Restitution to be Paid.

Steenhoek makes two restitution arguments on appeal. First, he asks this Court to hold that sentencing courts have an "affirmative obligation to preemptively" determine a defendant's reasonable ability to pay court costs, attorney fees, and jail room and board "before issuing a plan of restitution." See Appellant's Brief at 10 & 14 (emphasis omitted). Because it did not follow this rule, Steenhoek argues, the district court in this case erred. Alternatively, Steenhoek contends that the district court's sentencing order did include a plan of restitution and a restitution plan of payment, thus triggering the court's obligation to determine whether Steenhoek had the

reasonable ability to pay court costs and attorney fees. *See* Appellant's Brief at 38-40.

As discussed above, this Court should dismiss Steenhoek's restitution claim because the issue is unripe and not properly before the Court. Nor is this case—which does not include even a temporary plan of restitution—the proper vehicle for the Court to "adopt a new clear standard for how sentencing courts" determine a defendant's reasonable ability to pay. *See* Appellant's Brief at 38. Finally, should the Court determine that the obligation to make a reasonable-ability-to-pay finding was triggered here, it should also conclude that Steenhoek *does* have the ability to pay court costs and attorney fees.

Preservation of Error

Steenhoek incorrectly asserts that his restitution claim is a challenge to an illegal sentence that he may bring at any time. *See* Appellant's Brief at 13. While that may be true of a defendant's challenge to the amount of restitution found in the sentencing order, *see State v. Janz*, 358 N.W.2d 547, 549 (Iowa 1984), it is not the case for a reasonable-ability-to-pay challenge, particularly when the district court made no finding of the defendant's ability to pay in its sentencing order. *See Campbell*, 2016 WL 4543763, at *3; *see also*

State v. Bullock, No. 15-0982, 2017 WL 4049276, at *2 (Iowa Ct. App. Sept. 13, 2017) (stating that a reasonable-ability-to-pay challenge "does not automatically bring his claim within the ambit of an illegal sentence"). "The ability to pay is an issue apart from the amount of restitution and is therefore not an 'order incorporated in the sentence' and is therefore not directly appealable as such." *State v. Jose*, 636 N.W.2d 38, 45 (Iowa 2001) (alteration omitted).

Steenhoek cannot yet bring his reasonable-ability-to-pay claim because events below have not yet triggered the district court's obligation to make such a finding. Once the district court enters a supplemental order completing the plan of restitution, Steenhoek will have the opportunity to challenge the district court's finding (or lack thereof) that he has the reasonable ability to pay those amounts. After exhausting that remedy, Steenhoek may then bring his claim back to this Court.

Standard of Review

This Court reviews restitution orders for correction of errors at law. *Jose*, 636 N.W.2d at 43. When reviewing a restitution order, the Court "determine[s] whether the court's findings lack substantial evidentiary support, or whether the court has not properly applied the

law." *State v. Bonstetter*, 637 N.W.2d 161, 165 (Iowa 2001). To the extent that Steenhoek raises a constitutional claim, the Court's review is de novo. *See State v. Love*, 589 N.W.2d 49, 50 (Iowa 1998).

A defendant seeking "to upset an order for restitution" for court costs and attorney fees "'has the burden to demonstrate a failure of the trial court to exercise discretion or abuse of discretion.'" *State v. Kaelin*, 362 N.W.2d 526, 528 (Iowa 1985) (quoting *State v. Storrs*, 351 N.W.2d 520, 522 (Iowa 1984)); *State v. Ihde*, 532 N.W.2d 827, 829 (Iowa Ct. App. 1995).

Merits

A. The restitution statute and the Constitution require that the district court determine the defendant's reasonable ability to pay certain types of restitution, but not until the court orders a specific amount owed.

1. Restitution Framework

Restitution is mandatory in every criminal case in which the defendant is found or pleads guilty. Iowa Code § 910.2(1). The sentencing court is required to order pecuniary damages to the defendant's victims and to the clerk for fines, penalties, and surcharges. *Id.*; *Id.* §§ 910.1(3) & (4). To the extent the defendant is reasonably able to pay, the court must also impose other payments such as contributions to a local anticrime organization,

reimbursements to the crime victim compensation program, restitution to public agencies, court costs including correctional fees, and court-appointed attorney fees. *Id.* § 910.2(1). If the court finds that the defendant is unable to pay certain costs and fees, it may instead order that the defendant perform community service. *Id.* § 910.2(2).

Everyone involved in the criminal case has a role in compiling the restitution figures. The county attorney is tasked with providing the court with "a statement of pecuniary damages to victims of the defendant . . . ." *Id.* § 910.3. If the amount is not available at the time of sentencing, the county attorney has thirty days after that date to provide the statement to the court. *Id.* It is the clerk of court's job to provide the court with a statement of court-appointed attorney fees and court costs including correctional fees. *Id.*

At sentencing or "at a later date to be determined by the court," *the sentencing court* is required to "set out the amount of restitution . . . and the persons to whom restitution must be paid." *Id.* (emphasis added). "If the full amount of restitution cannot be determined at the time of sentencing, the court shall issue a temporary order determining a reasonable amount for restitution identified up to that

time." *Id.* The court must then "issue a permanent, supplemental order, setting the full amount of restitution[,]" and "further supplemental orders, if necessary." *Id.* Together, these orders are "known as the plan of restitution." *Id.*; *see State v. Harrison*, 351 N.W.2d 526, 528 (Iowa 1984) (stating that a restitution order "must include a plan of restitution setting out the amounts and kind of restitution in accordance with the priorities established in section 910.2").

"After sentencing in which a plan of restitution is ordered, the next step is establishing a plan of payment." *Harrison*, 351 N.W.2d at 528. The plan of payment is a schedule of payments that will allow the defendant to carry out the plan of restitution. *Id.* When a defendant is incarcerated, the director of the Iowa department of corrections is required to "prepare a restitution plan of payment or modify any existing plan of payment." Iowa Code § 910.5(1)(d). Unlike when a defendant is placed on probation, however, an incarcerated defendant's "plan of payment is not initially made subject to court approval or change." *See Harrison*, 351 N.W.2d at 528-29 (comparing Iowa Code sections 910.4 and 910.5).

Nevertheless, at any time during the defendant's probation, parole, or incarceration, the defendant "may petition the court on any matter related to the plan of restitution or restitution plan of payment and the court shall grant a hearing" if one is warranted. Iowa Code § 910.7(1). The court may modify the plan of restitution or plan of payment, or both. *Id.* § 910.7(2).

2. Reasonable ability to pay

At issue here is the sentencing court's finding—or lack thereof—of Steenhoek's reasonable ability to pay the costs of the action, court costs including sheriff's fees, and attorney fees. The parties agree that the sentencing court is constitutionally required to make an ability-to-pay finding. *See Harrison*, 351 N.W.2d at 529 (emphasis and alterations omitted) ("We believe that section 910.2 requires the sentencing court to order restitution in the plan of restitution 'for court costs, court-appointed attorney fees or the expense of a public defender when applicable' only 'to the extent that the offender is reasonably able to make such restitution'"); *see also Goodrich v. State*, 608 N.W.2d 774, 776 (Iowa 2000) (stating that "[t]he 'reasonable able to pay' requirement enables section 910.2 to

withstand constitutional attack"); Appellant's Brief at 26. The question is when the court is required to make that determination.

The State acknowledges that the case law is less than clear at points, but it urges the Court to abide by *Swartz* and *Jackson*, and conclude that the sentencing court "is not required to give consideration to the defendant's ability to pay" until "the plan of restitution contemplated by Iowa Code section 910.3 [i]s complete . . . ." *Jackson*, 601 N.W.2d at 357; *Swartz*, 601 N.W.2d at 354. In the case of a defendant serving a term of imprisonment, the court's determination of whether the defendant is reasonably able to pay costs and fees "is more appropriately based on [his] ability to pay the current installments than his ability to ultimately pay the total amount due." *State v. Van Hoff*, 415 N.W.2d 647, 649 (Iowa 1987).

Under the current law, if the district court sets forth the full amount of restitution and payment plan in its sentencing order, it should make a reasonable-ability-to-pay finding based on the installment amounts. *See Harrison*, 351 N.W.2d at 529; *Van Hoff*, 415 N.W.2d at 649. In that case, the defendant may directly appeal the finding. *See State v. Kurtz*, 878 N.W.2d 469, 472 (Iowa Ct. App. 2016). If, however, the district court postpones entry of the plan of

restitution, the court should determine whether the defendant has the reasonable ability to pay each amount—in installments, if appropriate—as it enters them in supplemental orders. *See* Iowa Code §§ 910.2 & 910.3. The defendant, however, may not appeal those findings until he challenges them in the district court under Iowa Code section 910.7. *See Jackson*, 601 N.W.2d at 357.

Steenhoek proposes two alternative "standard[s] for assessing restitution against a criminal defendant[,] each admittedly "fraught with problems." *See* Appellant's Brief at 31-37. Again, the State agrees with the premise of each: If, at the time of sentencing, the district court has at least a temporary amount of restitution identified up to that time, it should determine whether the defendant has the reasonable ability to pay that amount. *See* Iowa Code §§ 910.2 & 910.3. Upon the entry of each supplemental restitution order comprising the plan of restitution, the district court should revisit its reasonable-ability-to-pay finding.

The State does not agree, however, that the defendant has the right to be heard on the reasonable-ability-to-pay issue *before* the district court issues each supplemental restitution order. *See* Appellant's Brief at 31-37. The statute and the constitution simply do

not require that. The defendant will of course be provided notice upon the entry of each supplemental order. And the defendant has the right to challenge the amount of restitution, including the ability-to-pay finding, with the help of court-appointed counsel if he challenges each supplemental order within thirty days of its entry. *See* Iowa Code §§ 910.3 & 910.7; *State v. Blank*, 570 N.W.2d 924, 926 (Iowa 1997) (holding that, to be considered an extension of the criminal proceeding, a defendant's "petition under section 910.7 must be filed within thirty days from the entry of the challenged order").

After thirty days, the defendant may still challenge the order, but it will be a civil proceeding with no court-appointed counsel. *See State v. Jose*, 636 N.W.2d 38, 46-47 (Iowa 2001) (discussing *State v. Alspach*, 554 N.W.2d 882 (Iowa 1996) and *Blank*). In sum, a defendant seeking to challenge an ability-to-pay finding made at sentencing or through supplemental restitution orders has adequate remedies without the solutions Steenhoek suggests. Steenhoek's proposals would give the defendant rights and remedies beyond those required by the statute or constitution.

Either way, because the district court has not yet entered even a temporary plan of restitution in this case, it was not required to make

a reasonable-ability-to-pay finding. Accordingly, it did not err, even under the proposals offered by Steenhoek.

B. Because the sentencing order did not include a plan of restitution and because the district court has not yet entered any supplemental orders imposing the amount of restitution, the court was not yet required to determine whether Steenhoek had the reasonable ability to pay court costs or attorney fees.

Alternatively, Steenhoek claims that the court costs listed in the Combined General Docket at the time of sentencing constitute at least a temporary plan of restitution that triggered the sentencing court's obligation to assess Steenhoek's reasonable ability to pay those costs.[1] As such, Steenhoek argues, the district court erred by not making that finding on the record. *See* Appellant's Brief at 38. Again, Steenhoek's claim has no merit.

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[1] Steenhoek also argues that the district court's general statement in its sentencing order that "[a]ll fines, costs, and fees are due immediately and shall be considered delinquent if not paid within 30 days of today's date" constitutes at least a temporary restitution plan of payment. *See* Order of Disposition at 2; App. 15; *see State v. Tanner*, No. 14-1963, 2016 WL 4384468, at *5 (Iowa Ct. App. Aug. 17, 2016) (finding that a similar statement "constituted a restitution plan of payment"). The State disagrees. The district court included the 30-days language for court debt collection purposes, *see* Iowa Code § 602.8107(2)(d), not as a plan of payment for an amount of restitution that it had not yet calculated. Nevertheless, because there was not even a temporary plan of restitution here, it is not necessary for the Court to resolve this issue.

To start, there cannot be a complete or even a temporary restitution plan without a court order setting forth the amount and type of restitution ordered. *See* Iowa Code § 910.3 (requiring that "the court shall set out the amount of restitution[,]" either at sentencing or in "a permanent, supplemental order, setting the full amount of restitution"). Although the county attorney, clerk of court, public defender, and sheriff or municipality each has a role in compiling the numbers, the statue plainly requires that the court issue restitution orders setting forth the amount of restitution. *See id*. The district court may order these amounts in its sentencing order, or at a later time in supplemental orders. *See id.* Either way, however, the amount is not enforceable against the defendant until the district court makes it part of an order. *See Campbell*, 2016 WL 4543763, at *3 n.4 (citing *Bader v. State*, 559 N.W.2d 1, 3-4 (Iowa 1997)) (questioning "the propriety of sending an account to collections before the court has completed the plan of restitution and determined the total amount due").

That is precisely what happened here. In its sentencing order, the court imposed court costs and attorney fees, without setting forth an amount of either. Order of Disposition at 2; App. 15. As Steenhoek

points out, at the time of judgment, the combined general docket report showed $160 in court costs, including sheriff's fees. Combined General Docket; App. 26. But there is no supplemental court order imposing these amounts. A search of Steenhoek's financial account on Iowa Courts Online now shows a total of $2,969.50 in "costs," although again, there is no associated court order imposing the costs. Iowa Courts Online Search, https://www.iowacourts.state.ia.us (last visited, May 1, 2018). Nor is there a breakdown of what each cost is for. *Id.*

Without a supplemental restitution order imposing these costs, they are not a part of the plan of restitution. *See State v. Martin*, No. 11-0914, 2013 WL 4506163, at *2 & n.3 (Iowa Ct. App. Aug. 21, 2013) (stating that where the sentencing order contains no restitution amounts and there are no supplemental orders, "no restitution has been ordered" and "there is nothing for [the defendant] to challenge"). And without a plan of restitution, the district court did not yet have an obligation to determine whether Steenhoek had the reasonable ability to pay those amounts. Indeed, a finding without at least "an estimate of the total amount of restitution" is "premature and lack[s] evidentiary support." *See Campbell*, 2016 WL 4543763, at

*4. The district court did not err by failing to assess Steenhoek's reasonable ability to pay the $160 in court costs that appeared on the Combined General Docket at the time of sentencing.

At most, this Court should affirm with instructions for the district court to enter a final plan of restitution setting forth the restitution amounts. *See Campbell*, 2016 WL 4543763, at *4. At that point, the district court should determine whether Steenhoek has the reasonable ability to pay the full amount or whatever installments it imposes. *See id.*; *see also Van Hoff*, 415 N.W.2d at 648. If Steenhoek "believes the forthcoming plan of restitution does not reflect his reasonable ability to pay, he may petition the district court for modification under Iowa Code section 910.7. *See Campbell*, 2016 WL 4543763, at *4.

C. The record demonstrates that Steenhoek did have the ability to pay $160 in court costs.

Even if this Court found that there was a plan of restitution in place at the time of sentencing and that the district court was required to make an ability-to-pay determination, the record supports a determination that Steenhoek has the reasonable ability to pay $160 in court costs. *C.f. Kaelin*, 362 N.W.2d at 528 (refusing to hold that a district court's failure to state on the record its reasons for ordering

restitution for court costs and attorney fees invalidates the restitution order).

Steenhoek testified at the sentencing hearing about his employability and intelligence. *See* Sent. Hr'g Tr. 5:2-19:4. Specifically, Steenhoek testified that he had recently made a lot of positive changes in his life, including marrying his high school girlfriend who is employed as a nurse. Sent. Hr'g Tr. 13:11-14:8. Although Steenhoek and his wife had determined that it was not a priority for him to work in the near term, he believed that "[t]he first day [he went] out looking" for a job, he would be able to get one. Sent. Hr'g Tr. 14:22-15:9. According to Steenhoek, if placed on probation or in drug treatment, he would be "able to secure employment in the community[.]" Sent. Hr'g Tr. 18:3-8. Steenhoek also testified that the directors of a halfway house at which he had spent time "absolutely loved" him because he fixed things, did maintenance work, and polished floors. Sent. Hr'g Tr. 17:13-18. Finally, Steenhoek stated that he had spent at least some time in college as a civil engineering student on a "full ride." Sent. Hr'g Tr. 28:21-29:1. On this record, the district court could have determined that Steenhoek has the

reasonable ability to pay court costs, costs of incarceration, and attorney fees.

For all of those reasons, this Court should decline to reach the merits and dismiss Steenhoek's appeal of this issue on ripeness and exhaustion grounds. At most, the Court should affirm but instruct the district court to issue "a permanent, supplemental order, setting forth the full amount of restitution[,]" as required by Iowa Code section 910.3. At that point, the district court will be required to determine whether Steenhoek is reasonably able to pay the amounts owed.

III. The District Court Properly Exercised its Discretion When Sentencing Steenhoek to a Term of Imprisonment.

Preservation of Error

Finally, Steenhoek argues that the district court abused its discretion in sentencing him to a term of imprisonment. *See* Appellant's Brief at 40-46. Errors in sentencing "may be challenged on direct appeal even in the absence of an objection in the district court." *State v. Lathrop*, 781 N.W.2d 288, 292-93 (Iowa 2010).

Standard of Review

Where a challenged sentence falls within the statutory parameters, this Court "presume[s] it is valid and only overturn[s] for an abuse of discretion or reliance on inappropriate factors." *State v.*

Hopkins, 860 N.W.2d 550, 554 (Iowa 2015). To overcome this presumption of validity, the Court "require[s] an affirmative showing the sentencing court relied on improper evidence." *State v. Washington*, 832 N.W.2d 650, 660 (Iowa 2013). On review, the Court "do[es] not decide the sentence [it] would have imposed, but whether the sentence imposed was unreasonable." *Hopkins*, 860 N.W.2d at 554 (citing *State v. Formaro*, 638 N.W.2d 720, 725 (Iowa 2002)).

Merits

Steenhoek argues that the district court abused its discretion by focusing primarily on Steenhoek's prior criminal record, at the expense of mitigating factors. *See* Appellant's Brief at 45. Steenhoek contends that the sentence he received is "unfair and excessive" and that he should have received a term of probation. Appellant's Brief at 46. The record demonstrates, however, that the district court properly weighed the relevant factors and exercised its discretion when deciding that a term of imprisonment was warranted here.

Section 901.5 of the Iowa Code provides that, "[a]fter reviewing and examining all pertinent information," the court shall consider among a number of sentencing options, including a term of confinement or a suspended sentence of probation. Iowa Code §

901.5; *see State v. Thomas*, 659 N.W.2d 217, 221 (Iowa 2003) (citing Iowa Code § 907.3) ("Following a plea or verdict of guilt, a court may, subject to exceptions, defer judgment, defer sentence, or suspend sentence."). The sentencing court determines which of the statutory options "is authorized by law for the offense," and "which of them or which combination of them, *in the discretion of the court*, will provide maximum opportunity for the rehabilitation of the defendant, and for the protection of the community from further offenses by the defendant and others." Iowa Code § 901.5 (emphasis added).

In addition to considering "the societal goal of sentencing criminal offenders," the court must also consider "the nature of the offense, the attending circumstances, the age, character and propensity of the offender, and the chances of reform." *Formaro*, 638 N.W.2d at 724-25 (citing *State v. August*, 589 N.W.2d 740, 744 (Iowa 1999)). Finally, "before deferring judgment or suspending sentence, the court must additionally consider the defendant's prior record of convictions or deferred judgments, employment status, family circumstances, and any other relevant factors . . . ." *Id.* 725 (citing *State v. Pappas*, 337 N.W.2d 490, 493 (Iowa 1983)). Although one factor alone cannot be determinative, the district court is free to give

one factor greater weight than others, so long as it takes all relevant factors into account. *See State v. Wright*, 340 N.W.2d 590, 593 (Iowa 1983).

Here, the district court properly addressed the sentencing factors and appropriately applied each to Steenhoek's case. Sent. Hr'g Tr. 37:5-39:3. It considered the nature of Steenhoek's offense, noting that it was a particularly violent theft. Sent. Hr'g Tr. 37:12-15. The court took into account Steenhoek's age, his past failed attempts at rehabilitation, and his long criminal history. Sent. Hr'g Tr. 37:9-11; 38:13-39:3.

Contrary to Steenhoek's argument, the district court also considered mitigating factors, such as Steenhoek's employability, his lack of recent offenses, and his recently stable family circumstances. *See* Sent. Hr'g Tr. 37:7-21. Steenhoek testified at the sentencing hearing, and his counsel elicited information about Steenhoek's background, the unusual nature of the offense, his prior convictions, his drug addiction, and his marriage. Sent. Hr'g Tr. 5:2-19:3. Steenhoek made a favorable impression on the district court: The court stated that although its initial reaction to Steenhoek's criminal record was that a prison sentence was appropriate here, Steenhoek's

testimony made "a good argument why that should not be done." Sent. Hr'g Tr. 37:7-21; 38:6-8. Although the district court may not have specifically discussed each mitigating factor it considered, the record demonstrates that it did in fact consider them. *See State v. Boltz*, 542 N.W.2d 9, 11 (Iowa Ct. App. 1995) (stating that "the failure to acknowledge a particular sentencing circumstance does not necessarily mean it was not considered").

In the end, the court found that Steenhoek's lengthy criminal history, the violent nature of the offense, and his failure to take advantage of treatment and opportunities he had been given in the past weighed in favor of a sentence of imprisonment. Because the district court properly exercised its discretion here, Steenhoek's sentence should be affirmed.

CONCLUSION

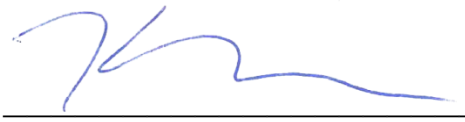
For all of the reasons set forth above, the State respectfully requests that this Court dismiss Steenhoek's challenge to the district court's restitution order, and affirm the court's sentencing order.

REQUEST FOR NONORAL SUBMISSION

The State requests that this case be submitted without oral argument. Should the Court grant oral argument, the State asks to be heard.

Respectfully submitted,

THOMAS J. MILLER
Attorney General of Iowa



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CERTIFICATE OF COMPLIANCE

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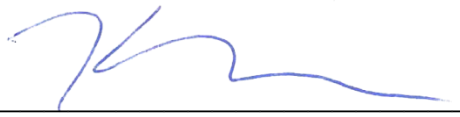

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