IN THE SUPREME COURT OF IOWA

STATE OF IOWA, Plaintiff-Appellee, v. RONALD SKYLER STEENHOEK, Defendant-Appellant.	)))))))))	S.CT. NO. 17-1727

APPEAL FROM THE IOWA DISTRICT COURT
FOR BOONE COUNTY
HONORABLE TIMOTHY J. FINN AND
HONORABLE MICHAEL J. MOON, JUDGES

APPELLANT'S APPLICATION FOR FURTHER REVIEW OF THE DECISION OF THE IOWA COURT OF APPEALS FILED SEPTEMBER 26, 2018

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CERTIFICATE OF SERVICE

On October 16, 2018, the undersigned certifies that a true copy of the foregoing instrument was served upon Defendant-Appellant by placing one copy thereof in the United States mail, proper postage attached, addressed to Ronald S. Steenhoek, 1322 Mamie Eisenhower, Boone, IA 50036.

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QUESTIONS PRESENTED FOR REVIEW

I. DID THE DISTRICT COURT ERR IN ASSESSING FINANCIAL OBLIGATIONS TO STEENHOEK WITHOUT FIRST MAKING A CONSTITUTIONALLY MANDATED DETERMINATION OF HIS REASONABLE ABILITY TO PAY?

II. DID THE COURT ABUSE ITS DISCRETION WHEN IT SENTENCED STEENHOEK TO FIVE YEARS CONFINEMENT?

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STATEMENT IN SUPPORT OF FURTHER REVIEW

COMES NOW Defendant Ronald Skyler Steenhoek and pursuant to Iowa R. App. 6.1103 requests further review of the September 26, 2018, decision in State of Iowa v. Ronald Skyler Steenhoek, Supreme Court No. 17-1727.

1. The Iowa Court of Appeals erred in finding that Steenhoek was not denied deprived of his constitutional rights when the District Court failed to preemptively determine his reasonable ability to pay before assessing restitution. (Opinion).

2. The Iowa Court of Appeals erred in finding the District Court did not abuse its discretion when it sentenced Steenhoek to five years confinement. (Opinion).

STATEMENT OF THE CASE

Ronald Skyler Steenhoek seeks further review of the Court of Appeals decision affirming the District Court's order that he pay restitution following his conviction for Theft in the Second Degree, and his sentence of five years confinement.

ARGUMENT

I. THE DISTRICT COURT ERRED IN ASSESSING FINANCIAL OBLIGATIONS TO STEENHOEK WITHOUT FIRST MAKING A CONSTITUTIONALLY MANDATED DETERMINATION OF HIS REASONABLE ABILITY TO PAY.

The Court of Appeals found that Steenhoek's claim was not "ripe" because a plan of restitution had not been established by the District Court. (Opinion-p. 4). Furthermore, the Court of Appeals found that the established law requires both a restitution plan and a payment plan prior to being able to address the issue on direct appeal. (Opinion-p. 5-6)(*citing* State v. Jackson, 601 N.W.2d 354, 357 (Iowa 1999)). In issuing its opinion, the Court of Appeals failed to address the statutory requirement established in Iowa Code Section 910.3 that requires the District Court establish at

least a temporary restitution plan at the time of sentencing, as well as the established Supreme Court precedent that contradicts Jackson, requiring a finding of the defendant's reasonable ability to pay prior to establishing a restitution plan. See Iowa Code § 910.3 (2017); see also State v. Harrison, 351 N.W.2d 526, 529 (Iowa 1984) (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 reasonable able to [make such restitution].'"); and State v. Haines, 360 N.W.2d 797 (Iowa 1985) (The statute requires the district court to "determine whether the defendant is reasonably able to pay and to sentence accordingly.").

Steenhoek contends that the District Court has an affirmative obligation to 1) preemptively make a determination regarding his reasonable ability to pay restitution (court costs, attorney fees, jail room and board, etc.) before issuing a plan of restitution; 2) establish, at the very least, a temporary

restitution plan at the time of sentencing; or, in the alternative, 3) by ordering Steenhoek to pay restitution in the form of court costs, the Clerk of Court was statutorily required to assess said fees and costs to Steenhoek once they were filed with the Clerk—absent any further requirement for a court order-effectively establishing a restitution plan. See Goodrich v. State, 608 N.W.2d 774, 776 (Iowa 2000); State v. Coleman, 907 N.W.2d 124, 149 (Iowa 2018); see also Iowa Code § 910.3 (2017) ("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.") (emphasis added); see also Iowa Code § 602.8102(141) (2017)("Carry out duties relating to the entry of judgment as provided in rule of criminal procedure 2.23, Iowa court rules."); Iowa Code §§ 625.8 and 602.8102(99) (2017) (The clerk of court must collect the court reporter fees); Iowa Code § 602.8102(135) (2017) ("Carry out duties relating to deferred judgments, probations, and restitution as provided in sections 907.4 and 907.8, and

chapter 910."); Iowa Code § 602.8106(1) (2017) (The clerk of court is to collect filing fees in criminal cases where judgment is rendered).

a. The District Court must preemptively make a determination as to reasonable ability to pay restitution.

The cases all concur that the sentencing court is constitutionally required to make a determination as to the defendant's reasonable ability to pay. The question is **when** this determination needs to be made. Harrison, Haines, Van Hoff, Goodrich, Dudley, and Coleman all agree that the determination must be made **before** the order or plan of restitution is put into place. See Harrison, 351 N.W.2d at 529; Haines, 360 N.W.2d at 797; State v. Van Hoff, 415 N.W.2d 647, 648 (Iowa 1987); Goodrich, 608 N.W.2d at 776; State v. Dudley, 766 N.W.2d 606, 615 (Iowa 2009); Coleman, --N.W. --, 2018 WL 672132 at *16.

But the issue the sentencing court is faced with, when making the determination before the total amount of restitution is known, is how to make a determination when the

entire set of circumstances is unknown. See Haines, 360 N.W.2d at 796; Van Hoff, 415 N.W.2d at 648-9. In an attempt to address this concern, the Court in Jackson stated that until the complete plan of restitution was completed by the court, "the court is not required to give consideration to the defendant's ability to pay." Jackson, 601 N.W.2d at 357. The problem with this interpretation is that it is in direct conflict with section 910.2. Additionally, the Court did not clarify what it considers a "complete plan of restitution." This is particularly concerning when considered in light of the extended amount of time it may take the court to complete the plan of restitution. While 910.3 requires the State to submit restitution applications within 30-days of sentencing, the Court of Appeals has interpreted that timeline to be a guideline. See State v. Bradley, 637 N.W.2d 206, 212-213 (Iowa Ct. App. 2001) (Failure by the State to meet the thirty-day requirement for restitution applications in 910.3 "is merely directory and not mandatory." Furthermore, "the State's failure to comply with the thirty-day requirement will

not affect the validity of subsequent proceedings unless prejudice is shown.") (citations omitted).

The Jackson Court went further, requiring the defendant to request modification of the plan of payment under 910.7 prior to being able to appeal restitution. Jackson, 601 N.W.2d at 357. The Court in Jose tried to further distinguish the issue, stating that the "reasonability to pay" is not a directly appealable issue because it is addressing the plan of payment not the plan of restitution. State v. Jose, 636 N.W.2d 38, 45 (Iowa 2001).

In addition to that confusion, the Court of Appeals has applied their own interpretation to this issue in some of its recent opinions, further mudding the waters.[1] In Kurtz, the Court of Appeals interpreted Harrison to require two parts to a "restitution order": the plan of restitution and the plan of payment. State v. Kurtz, 878 N.W.2d 469, 471 (Iowa Ct. App. 2016); See also State v. Johnson, 887 N.W.2d 178, 183 (Iowa

[1] Defendant does note that the Court of Appeals cases are not controlling law on this issue, and once again urges this Court to address this matter and clarify the law.

Ct. App. 2016). It is unclear how the Court of Appeals reached this determination since the only place in Harrison where the phrase "restitution order" appears is in relation to the Court's decision of the case ("we vacate the restitution order..." and "We vacate and remand the restitution order..." Harrison, 351 N.W.2d at 327, 329), and neither section 910.2, 910.3, 910.4, or 910.5 mentions the creation of a "restitution order" by the sentencing court.[2] See Iowa Code §§ 910.2, 910.3, 910.4, 910.5 (2017). The analysis portion of Harrison specifically refers to the two-part process of restitution: the plan of restitution ordered by the court, and the plan of payment established by the department of corrections or similar agency, but says nothing regarding a complete "restitution order".

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[2] A review of the Supreme Court cases discussed above reveals the term "restitution order" used for the first time in Janz. It appears the Court uses the term "restitution order" interchangeably with the phrase "plan of restitution." State v. Janz, 358 N.W.2d 547, 548 (Iowa 1984) ("The State's fallback position is that a **plan of restitution or restitution order** is never appealable because there is no specific authority for such an appeal in Iowa Code section 814.6 (1983).")(emphasis added). The use of the phrase "restitution order" in both Van Hoff and Kaelin also seem to use the term interchangeably with "plan of restitution." State v. Kaelin, 362 N.W.2d 526, 527-528 (Iowa 1985); Van Hoff, 415 N.W.2d at 648-649.

Harrison, 351 N.W.2d at 528-529. The Kurtz court found that until a defendant had both portions, the plan of restitution and the plan of payment, or the "restitution order", *prior to the notice of appeal being filed*, a direct appeal on restitution could not occur.[3] Kurtz, 878 N.W.2d at 472. The Court of Appeals in Alexander provided a succinct statement of this position:

> Our rule regarding the ability to appeal a restitution order can be summarized as follows: A restitution order is not appealable until it is complete; the restitution order is complete when it incorporates both the total amounts of the plan of restitution and the plan of payment. A defendant must also petition the court for a modification before they challenge the amount of restitution. If the above requirements are met, our Constitution requires the court to make a finding of the defendant's reasonable ability to pay.

State v. Alexander, No. 16-0669, 2017 WL 510950, at *3 (Iowa Ct. App. Feb. 8, 2017).

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[3] The issue with this position is the unlikelihood that a defendant will have both the plan of restitution and plan of payment prior to the notice of appeal being filed. While a defendant has 30-days from the date of sentencing to file his notice of appeal, most file their notice of appeal immediately or shortly thereafter sentencing. Furthermore, the State has a minimum of 30-days in which to file for restitution. See Bradley, 637 N.W.2d at 212-213. In this case, the defendant filed his notice of appeal three days after sentencing. (Order of Disposition; Notice of Appeal)(App. pp. 14-18).

The current state of the law is inapposite of the Iowa Code and the constitutionally mandated requirement that the Court determine the defendant's reasonable ability to pay prior to creating the plan of restitution. To require a defendant to obtain a "complete plan of restitution" or a "complete restitution order" **and** to first request modification under 910.7, before being able to directly appeal the plan of restitution is a shirking of the sentencing court's responsibilities established by the Iowa Legislature. A sentence is inherently illegal, and thus directly appealable, if the sentencing court ordered restitution without making a determination as to the defendant's reasonable ability to pay.

b. The District Court had an affirmative obligation to issue, at the very least, a temporary plan of restitution at the time of sentencing.

The District Court erred in failing to provide a temporary plan of restitution at the time of sentencing, in violation of Iowa Code section 910.3. The Court of Appeals opined that the issue of whether the District Court failed to determine his reasonable ability to pay was not ripe because "Steenhoek has

not been issued a plan of restitution by the district court..." (Opinion –p. 4). The Court of Appeals cited to Iowa Code section 910.3, stating that a plan of restitution "is a court order **setting the full amount of restitution.**" (Opinion-p. 4)(emphasis added). To further this position, the Court of Appeals cited to a series of unpublished opinions and one Supreme Court opinion all holding that the issue is not ripe on appeal because the respective district courts had not established a restitution plan. (Opinion-p. 4-5).

Iowa Code section 901.3 states that *at the time of sentencing* the district court:

> shall set out the amount of restitution...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 of restitution identified up to that time**. At a later date as determined by the court, the court shall issue a permanent, supplemental order, setting the full amount of restitution. The court shall order further supplemental orders, if necessary. **These court orders shall be known as the plan of restitution.**

Iowa Code § 910.3 (2017)(emphasis added). It is not one specific order from the district court that is considered the

plan of restitution, but each one individually and all of the orders together. A district court must establish a plan of restitution at the time of sentencing, whether final or temporary.

While section 910.3 requires the State to file all restitution claims within 30-days of sentencing, the Court of Appeals has found that the 30-day period is not a mandatory period but "merely directory," and a delay by the State in filing for restitution will not "affect the validity of subsequent proceedings unless prejudice is shown." See Bradley, 637 N.W.2d at 212-213. To hold that a defendant cannot appeal his sentence, specifically the restitution portion, until all restitution amounts have been filed with the Court, and that there is no definite timeframe in which the State must comply with the statute, effectively precludes a defendant from ever appealing a valid portion of his sentence.

By failing to establish even a temporary plan of restitution at sentencing, the District Court erred and this

Court should reverse and remand Steenhoek's case for a new sentencing hearing.

c. By ordering Steenhoek to pay restitution in the form of court costs, the District Court effectively established a temporary restitution plan.

By ordering Steenhoek to pay court costs and attorney fees, the District Court created a restitution plan within the meaning of section 910.3, albeit a temporary one because the amounts were unknown. By issuing the Order of Disposition sentencing Steenhoek to pay court costs and attorney's fee, even with unknown amounts, the matter of assessment and enforcement of those amounts became a matter for the clerk of court. See Iowa Code §§ 602.8102(141), 625.8, 602.8102(99), 602.8102(135), and 602.8106(1) (2017).

The clerk is required to send the restitution plan to the Department of Correctional Services if the defendant is placed on probation. Iowa Code §§ 907.8 and 910.4 (2017). The court is required to send the restitution plan to the Department of Correction if the defendant is incarcerated. Iowa Code § 910.5(1)(a) (2017). The clerk of court carries out

this duty for the court. Iowa Code § 602.8102(135), (141) (2017). The restitution plan is complete after sentencing when the clerk assesses the fines, fees, surcharges and other restitution as order by the judgment order. In general, nothing more will filed unless the defendant is sentenced to custody of the Department of Corrections. The 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) (2017).

The restitution plan of payment is final at the time of sentencing. Generally, the court requires payment of fines, surcharges, attorney fees and other restitution be paid the day of sentencing. Iowa Ct. R. 26.2(1)("A person shall be instructed to pay the court debt with the office of the clerk of court on the date of imposition of the court debt."); Iowa Code § 602.807(1)(a) (2017)(""Court debt" means all fines, penalties, court costs, fees, forfeited bail, surcharges under chapter 911, victim restitution, court-appointed attorney fees or expenses of a public defender ordered pursuant to section 815.9, or fees

charged pursuant to section 356.7 or 904.108."). However, at sentencing, the court may establish a payment plan. Iowa Ct. R. 26.2(2)(1)-(5). The sentencing order did establish a payment plan in the Order of Disposition: "All 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)(App. pp. 14-16).

A review of Iowa Courts Online shows that Steenhoek has been assessed with $2,969.50 in court costs and attorney fees. See Iowa Courts Online Financials for case number FECR111198, https://www.iowacourts.state.ia.us. These amounts have been assessed without any subsequent order from the Court directing the amount of restitution.

Between the Order of Disposition establishing a temporary restitution plan and the payment plan established within the Order of Disposition, this Court should grant further review to clarify the status of the law regarding restitution.

II. THE COURT ABUSED ITS DISCRETION WHEN IT SENTENCED STEENHOEK TO FIVE YEARS CONFINEMENT.

The district court abused its discretion in imposing judgment. In exercising its discretion, "the district court is to weigh all pertinent matters in determining a proper sentence including the nature of the offense, the attending circumstances, the defendant's age, character, and propensities or chances of reform." State v. Loyd, 530 N.W.2d 708, 713 (Iowa 1995)(quoting State v. Johnson, 513 N.W.2d 717, 719 (Iowa 1994)).

Sentencing decisions of the district court are cloaked with a strong presumption in their favor. Where, as here, a defendant does not assert that the imposed sentence is outside the statutory limits, the sentence will be set aside only for an abuse of discretion. An abuse of discretion is found only when the sentencing court exercises its discretion on grounds or for reasons clearly untenable or to an extent clearly unreasonable. State v. Thomas, 547 N.W.2d 223, 225 (Iowa 1996)(citations omitted).

"When a sentence is not mandatory, the district court must exercise its discretion in determining what sentence to impose." Thomas, 547 N.W.2d at 225. In considering sentencing options the court is to determine, in its discretion, which of the authorized sentences will provide both the 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; State v. Hildebrand, 280 N.W.2d 393, 395 (Iowa 1979). The courts owe a duty to the public as much as to defendant in determining a proper sentence. State v. August, 589 N.W.2d 740, 744 (Iowa 1999). The punishment should fit both the crime and the individual. Id.

"The nature of the offense alone cannot be determinative of a discretionary sentence." State v. Dvorsky, 322 N.W.2d 62, 67 (Iowa 1982). However, the district court enjoys the latitude to place greater importance on one sentencing consideration over others. State v. Wright, 340 N.W.2d 590, 593 (Iowa 1983). "The application of these goals and factors to an

individual case, of course, will not always lead to the same sentence." State v. Valin, 724 N.W.2d 440, 445 (Iowa 2006). In determining whether the district court considered pertinent matters in imposing a particular sentence, we look to all parts of the record to find supporting reasons. State v. Jason, 779 N.W.2d 66, 76 (Iowa Ct. App. 2009).

In this case the district court sentenced Steenhoek to five years confinement. (Sent. Tr. p. 39 L1-3; Order of Disposition) (App. pp. 14-16). The Court indicated that it considered the following:

> When I looked at the PSI before I came in, I frankly—every judge makes kind of a initial call in their mind what they think is appropriate. I looked at your fairly lengthy criminal record and I have to say that prison seemed to me to be a logical choice to make.
>
> I looked at the nature of the crime here. It appeared to me that it was particularly violent, although there was no one injured apparently, but to pull someone over in a road and rob them essentially. I guess that wasn't the charge you pled guilty to but theft in the second degree, particularly violent. Okay.
>
> So that kind of shifted me towards thinking prison was the appropriate sentence here.
>
> Then I heard your side of this and you make a good argument why that should not be done.

So I don't want to get your hopes up that I'm not going to send you to prison because I am; and the reason is that the nature of the offense, your prior record, and the fact that what you're pleading guilty to is a relatively insignificant crime. I know it carries with it a five year prison term but the fact of the matter is what I know and you probably know is that if I send you to prison, you're probably going to spend less than two years there, two and a half years the way things are set up.

And I would think that if you conduct yourself in prison the way you presented yourself here, that's going to be less than that. I can't guarantee that. That's out of my hands.

What I do is sentence you to a term not to exceed five years. I think that's the appropriate sentence here for these reasons.

One is that you have a very lengthy criminal record. That you have been given numerous opportunities to rehabilitate yourself by treatment for drug addiction and those factors kind of mitigate against giving you a sentence that keeps you in the community.

The other thing I need to mention is that at age forty-four, that is an age my experience suggests that if you're ever going to change, that's probably about the age you're going to change. That's something that happens to people, men in particular, when they get past forty, that they tend to think about the things that are a little more long-term in nature.

And so that's why I don't feel bad about sending you to prison.

(Sent. Tr. p. 37 L7-p. 39 L1).

The Court abused its discretion by focusing primarily on one factor, Steenhoek's prior criminal record, and not taking into consideration the mitigating factors present. Steenhoek's lack of offenses between 2013 and the current offense indicate an individual who is working towards becoming better and avoiding criminal misconduct. Steenhoek's prior successful experiences with parole indicate someone who is a good choice for probation. Additionally, his recent marriage to a woman who is well established in a job and the community reflects positively on him and his determination to make positive personal changes. (Sent. Tr. p. 13 L11-p. 19 L3; PSI)(Conf. App. pp. 67-85). The Court did not give adequate consideration to these factors in denying Steenhoek probation.

It is within this Court's power to determine that the District Court abused its discretion and to vacate an unfair and excessive sentence. Wright, 340 N.W.2d at 592. In this case, Steenhoek should have received probation. Steenhoek's sentence should be vacated and the case remanded for re-sentencing.

CONCLUSION

Ronald Steenhoek respectfully requests this Court gran his application for further review and reverse and remand his case to the District Court for a new sentencing hearing.

ATTORNEY'S COST CERTIFICATE

The undersigned, hereby certifies that the true cost of producing the necessary copies of the foregoing Application for Further Review was $1.48, and that amount has been paid in full by the Office of the Appellate Defender.

MARK C. SMITH
State Appellate Defender

BRENDA J. GOHR
Assistant Appellate Defender

CERTIFICATE OF COMPLIANCE WITH TYPEFACE REQUIREMENTS AND TYPE-VOLUME LIMITATION FOR FURTHER REVIEWS

This application complies with the typeface and type-volume requirements of Iowa R. App. P. 6.1103(4) because:

[X] this application has been prepared in a proportionally spaced typeface using Bookman Old Style, font 14 point and contains 3,796 words, excluding the parts of the application exempted by Iowa R. App. P. 6.1103(4)(a).

Dated: 16 OCTOBER 2018

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IN THE COURT OF APPEALS OF IOWA

No. 17-1727
Filed September 26, 2018

STATE OF IOWA,
Plaintiff-Appellee,

vs.

RONALD SKYLER STEENHOEK,
Defendant-Appellant.

Appeal from the Iowa District Court for Boone County, Timothy J. Finn, Judge.

The defendant appeals his conviction and sentence for theft in the second degree. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and Brenda J. Gohr, Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, and Katherine M. Krickbaum, Assistant Attorney General, for appellee.

Considered by Potterfield, P.J., and Bower and McDonald, JJ.

POTTERFIELD, Presiding Judge.

Ronald Steenhoek appeals his conviction and sentence for theft in the second degree in violation of Iowa Code sections 714.1 and 714.2(2) (2017). Steenhoek argues the district court erred by assessing financial obligations to him without first making a determination of his reasonable ability to pay and abused its discretion when it sentenced him to five years' imprisonment.

I. Background Facts and Proceedings.

In May 2017, Steenhoek was charged with two counts of first-degree robbery. In September, the State filed an amended trial information charging Steenhoek with one count of theft in the second degree. Steenhoek plead guilty to the amended charge. Pursuant to a plea agreement, both sides were permitted to recommend sentences but Steenhoek was required to pay a fine of $750 plus surcharges, additional fines and fees, restitution, and court costs.

In October, the district court accepted Steenhoek's guilty plea and sentenced him. After hearing from the State and from Steenhoek, the district court sentenced Steenhoek to a prison term not to exceed five years and imposed the minimum fine of $750 plus surcharges, court costs, and attorney fees. The court gave the following rationale for its sentence:

> When I looked at the PSI before I came in, I frankly—every judge makes kind of an initial call in their mind what they think is appropriate. I looked at your fairly lengthy criminal record and I have to say that prison seemed to me to be a logical choice to make.
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> I looked at the nature of the crime here. It appeared to me that it was particularly violent, although there was no one injured apparently, but to pull somebody over in a road and rob them essentially. I guess that wasn't the charge you pled guilty to but theft in the second degree, particularly violent. Okay.
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> So that kind of shifted me towards thinking prison was the appropriate sentence here.

> Then I heard your side of this and you make a good argument why that should not be done.
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> So I don't want to get your hopes up that I'm not going to send you to prison because I am; and the reason is that the nature of the offense, your prior record, and the fact that what you're pleading guilty to is a relatively insignificant crime. I know it carries with it a five year prison term but the fact of the matter is what I know and you probably know is that if I send you to prison, you're probably going to spend less than two years there, two and a half years the way things are set up.
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> And I would think that if you conduct yourself in prison the way you presented yourself here, that's going to be less than that. I can't guarantee that. That's out of my hands.
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> One is that you have a very lengthy criminal record. That you have been given numerous opportunities to rehabilitate yourself by treatment for drug addiction and those factors kind of mitigate against giving you a sentence that keeps you in the community.
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> The other thing I need to mention is that at age forty-four, that is an age my experience suggests that if you're ever going to change, that's probably about the age you're going to change. That's something that happens to people, men in particular, when they get past forty, that they tend to think about the things that are a little more long-term in nature.
>
> And so that's why I don't feel bad about sending you to prison.

Steenhoek appeals.

II. Standard of Review.

We review the sentence imposed by the district court for errors at law. *State v. Grandberry*, 619 N.W.2d 399, 400 (Iowa 2000). Steenhoek claims he was deprived of his constitutional rights because the district court failed to determine his reasonable ability to pay before imposing a plan of restitution. We review Steenhoek's constitutional claims de novo. *See State v. Love*, 589 N.W.2d 49, 50 (Iowa 1998).

III. Discussion.

Steenhoek first argues the district court erred by assessing financial obligations to him without making a determination of his reasonable ability to pay. Steenhoek was assessed a fine of $750 plus surcharges, additional fines and fees, and court costs. Steenhoek describes the issue in this case as whether the district court had an obligation to preemptively make a determination regarding his reasonable ability to pay fines, surcharges, and costs before issuing a plan of restitution. A plan of restitution is a court order setting the full amount of restitution. Iowa Code § 910.3. Here, Steenhoek has not been issued a plan of restitution by the district court, nor has the district court made a determination of his reasonable ability to pay.

The State argues Steenhoek's claim is not ripe. We agree. "If a claim is not ripe for adjudication, a court is without jurisdiction to hear the claim and must dismiss it." *Iowa Coal Min. Co. v. Monroe Cty.*, 555 N.W.2d 418, 432 (Iowa 1996).

"A restitution order is not appealable until it is complete; the restitution order is complete when it incorporates both the total amounts of the plan of restitution and the plan of payment." *State v. Alexander*, No. 16-0669, 2017 WL 510950, at *3 (Iowa Ct. App. Feb. 8, 2017); *see also State v. Swartz*, 601 N.W.2d 348, 354 (Iowa 1999) ("We conclude that he may not advance [a claim that the district court ordered restitution without first making a determination of the defendant's ability to pay] in this court on the present record for two reasons. First, it does not appear that the plan of restitution contemplated by Iowa Code section 910.3 was complete at the time the notice of appeal was filed. Second, Iowa Code section 910.7 permits an offender who is dissatisfied with the amount of restitution required by

the plan to petition the district court for a modification. Until that remedy has been exhausted we have no basis for reviewing the issue that defendant raises."); *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."); *State v. Martin*, No. 11-0914, 2013 WL 4506163, at *2 (Iowa Ct. App. Aug. 21, 2013) ("We find, because no restitution order is yet in place, Martin's challenge is premature."); *State v. Wilson*, No. 00-0609, 2001 WL 427404, at *3 (Iowa Ct. App. Apr. 27, 2001) ("We cannot address this issue at this time because no plan of restitution was completed at the time Wilson filed his notice of appeal and the record before us on appeal contains no court order dictating a plan for payment of restitution."). While "a court must determine a criminal defendant's ability to pay before entering an order requiring such defendant to pay criminal restitution," *Goodrich v. State*, 608 N.W.2d 774, 776 (Iowa 2000), here, the district court has not yet ordered the amount or plan of restitution. Steenhoek's restitution claim is premature.

To the extent Steenhoek argues the district court was required to determine his reasonable ability to pay prior to ordering the plan of restitution, our case law dictates otherwise: "Until [a plan of restitution] is done, the court is not required to give consideration to the defendant's ability to pay." *State v. Jackson*, 601 N.W.2d 354, 357 (Iowa 1999). Steenhoek urges us to overturn precedent, arguing "the current state of the law is inapposite of the Iowa [C]ode and the constitutionally mandated requirement that the [c]ourt determine the defendant's reasonable ability to pay prior to creating the plan of restitution." We do not possess the power

to overturn precedent. *See, e.g.*, *State v. Miller*, 841 N.W.2d 583, 584 n.1 (Iowa 2014) ("Generally, it is the role of the supreme court to decide if case precedent should no longer be followed."); *State v. Hastings*, 466 N.W.2d 697, 700 (Iowa Ct. App. 1990) ("We are not at liberty to overturn Iowa Supreme Court precedent.").

Next, Steenhoek argues the district court abused its discretion when it sentenced him to five years of incarceration. Steenhoek argues the district court failed to exercise its discretion because it focused primarily on Steenhoek's criminal record and failed to consider mitigating factors. Steenhoek argues his lack of criminal record between 2013 and the current offense is a mitigating factor the court failed to consider, along with his recent marriage.

We will not reverse the sentence imposed absent an abuse of discretion or some defect in the sentencing procedure. *See State v. Formaro*, 638 N.W.2d 720, 724 (Iowa 2002). When the sentence imposed is within the statutory limits, it is "cloaked with a strong presumption" in its favor. *Id.* Steenhoek's sentence is within the statutory limits. *See* Iowa Code § 902.9(1)(e).

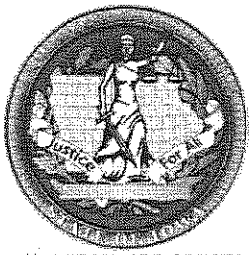
"In applying the abuse of discretion standard to sentencing decisions, it is important to consider the societal goals of sentencing criminal offenders, which focus on rehabilitation of the offender and the protection of the community from further offenses." *Formaro*, 638 N.W.2d at 724–25. We must also consider "the nature of the offense, the attending circumstances, the age, character and propensity of the offender, and the chances of reform." *Id.* "Furthermore, 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, as well as which of

the sentencing options would satisfy the societal goals of sentencing." *Id.* Although a sentencing court has a duty to consider all the circumstances of a case, it is not required to "specifically acknowledge each claim of mitigation urged by a defendant." *State v. Boltz*, 542 N.W.2d 9, 11 (Iowa Ct. App. 1995) ("[T]he failure to acknowledge a particular sentencing circumstance does not necessarily mean it was not considered.").

Here, the sentencing court noted Steenhoek's criminal record, the nature of the crime, his history of failing to respond to substance-abuse treatment, and his age. The district court did not abuse its discretion but made a reasoned choice to impose a term of imprisonment not to exceed five years.

We affirm.

AFFIRMED.



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