

IN THE SUPREME COURT OF IOWA

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STATE OF IOWA, )  
 )  
 Plaintiff-Appellee, )  
 )  
 v. ) S.CT. NO. 17-0270  
 )  
 TYSON JAMES RUTH, )  
 )  
 Defendant-Appellant. )

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APPEAL FROM THE IOWA DISTRICT COURT  
FOR GREENE COUNTY  
HONORABLE ADRIA A.D. KESTER, JUDGE

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APPELLANT'S APPLICATION FOR FURTHER REVIEW  
OF THE DECISION OF THE IOWA COURT OF APPEALS  
FILED SEPTEMBER 27, 2017

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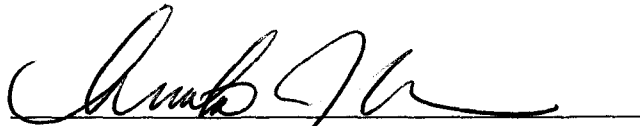
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ATTORNEYS FOR DEFENDANT-APPELLANT

**CERTIFICATE OF SERVICE**

On October 13, 2017 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 Tyson J. Ruth, No. 1037926, 1985 NE 51<sup>st</sup> Place, Des Moines, IA 50313-2517.

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**QUESTION PRESENTED FOR REVIEW**

**WHETHER THE DISTRICT COURT ERRED IN ASSESSING COSTS TO MR. RUTH FOR THE DISMISSED COUNTS AS THERE WAS NO INDICATION IN THE RECORD THAT PAYMENT FOR THE DISMISSED CHARGES WERE PART OF THE PLEA AGREEMENT?**

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**STATEMENT IN SUPPORT OF FURTHER REVIEW**

COMES NOW Defendant-Appellant and pursuant to Iowa R. App. P. 6.1103 requests further review of the September 27, 2017, decision in State of Iowa v. Tyson James Ruth, Supreme Court No. 17-0270.

The Iowa Court of Appeals erred in finding that his sentence was not illegal. (Opinion).

## STATEMENT OF THE CASE

Tyson J. Ruth seeks further review of the Court of Appeals decision affirming his conviction for theft in the second degree, in violation of Iowa Code sections 714.1 and 714.2(2).

## ARGUMENT

**THE DISTRICT COURT ERRED IN ASSESSING COSTS TO MR. RUTH FOR THE DISMISSED COUNTS AS THERE WAS NO INDICATION IN THE RECORD THAT PAYMENT FOR THE DISMISSED CHARGES WERE PART OF THE PLEA AGREEMENT.**

The record does not reflect any agreement between the parties to the court costs associated with the dismissed charges to Mr. Ruth.

The district court's sentencing order assessing all court costs to Mr. Ruth, rather than only the costs associated with the count of which he was convicted, amounted to a statutorily unauthorized, and therefore illegal, sentence. (Order of Disposition) (App. pp. 12-15).

Court costs "are taxable only to the extent provided by statute." City of Cedar Rapids v. Linn County, 267 N.W.2d

673, 673 (Iowa 1978). See also City of Des Moines v. State ex rel. Clerk of Court, 449 N.W.2d 363, 364 (Iowa 1989) (similarly stating). “In the absence of such statutory authorization, a court has no power to award costs against a defendant...” Woodbury County v. Anderson, 164 N.W.2d 129, 133 (Iowa 1969) (quoting 20 Am.Jur.2d, Costs, section 100). See also State v. Poyner, No. 06-1100, 2007 WL 4322193, at \*2 (Iowa Ct. App. Dec. 12, 2007) (holding defendant “did not receive an illegal sentence” because taxation of costs to him was authorized by statute).

Under the Iowa Code, a court may make a defendant responsible for court costs associated with a particular charge only when the defendant pleads or is found guilty on such charge. No statutory provision authorizes making a defendant responsible for court costs associated with a charge that is ultimately dismissed by the State. See Iowa Code § 815.13 (2017) (stating prosecution “fees and costs are recoverable by the [prosecuting] county... from the defendant unless the defendant is found not guilty or *the action is dismissed...*”)



(emphasis added); Iowa Code § 910.2 (2017) (“In all criminal cases *in which there is a plea [or] verdict of guilty...*, the sentencing court shall order that restitution be made by each offender... to the clerk of court for... court costs....”) (emphasis added).

“... Iowa Code section 815.13 and section 910.2 clearly require... that only such... costs attributable to the charge on which a criminal defendant is convicted should be recoverable under a restitution plan” and “costs not clearly associated with any single charge should only be assessed proportionally against the defendant.” State v. Petrie, 478 N.W.2d 620, 622 (Iowa 1991) (holding restitution order should have been limited to requiring Defendant to pay court costs associated with charge on which he was convicted and should not have included costs relating to charges dismissed pursuant to plea agreement that was silent on payment of fees and costs). See also State v. Dudley, 766 N.W.2d 606, 624 (Iowa 2009) (“...[I]t is elementary that a winning party does not pay court costs.”); State v. Hill, No. 03-0560, 2004 WL 433844, at \*2 (Iowa Ct.

App. March 10, 2004) (district court erred in ordering defendant to pay total court costs from mistrial, as defendant was required to pay restitution only for court costs associated with the charge to which he ultimately pled guilty, and court costs not clearly associated with the charge to which he pled guilty should be assessed against defendant at a rate of one-half); State v. Wheeler, No. 11-0827, 2012 WL 3026274, at \*1-2 (Iowa Ct. App. July 25, 2013) (Defendant should not have been taxed court costs on charge that was dismissed by the State).

While parties to a plea agreement are free to “mak[e] a provision covering the payment of costs” even in the absence of independent statutory authorization, no such plea provision was included in the present case. See Petrie, 478 N.W.2d at 622 (holding it was error to require the defendant to pay court costs attributable to dismissed charges where order for payment of costs was not authorized by statute and plea agreement was silent on payment of costs).

Because defendant's ordered payment of court costs associated with the dismissed charges are neither authorized by statute, nor required under the plea agreement in the present case, the court entered an illegal sentence in assessing to Mr. Ruth the costs of the entire action rather than only assessing to him the costs associated with the charge of which he was convicted. The court's order taxing costs to Mr. Ruth should be vacated, and this matter should be remanded to the district court with instructions to limit assessment of costs owed by him to those associated with the charges on which he was convicted. See Petrie, 478 N.W.2d at 622 ("... only such... costs attributable to the charge on which a criminal defendant is convicted should be recoverable under a restitution plan" and "costs not clearly associated with any single charge should only be assessed proportionally against the defendant.").

This matter should be reversed and remanded for correction of the sentencing order and abrogating the portion

of the order compelling him to pay costs for the dismissed charges.

### **CONCLUSION**

WHEREFORE, Tyson Ruth respectfully requests that this matter be reversed and remanded for correction of the sentencing order to relieve him of the obligation to pay costs for the dismissed charges.

### **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 \$ 1.89, and that amount has been paid in full by the Office of the Appellate Defender.

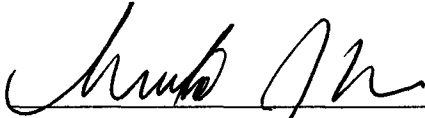
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**BRENDA J. GOHR**  
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**CERTIFICATE OF COMPLIANCE WITH TYPEFACE  
REQUIREMENTS AND TYPE-VOLUME LIMITATION  
FOR FURTHER REVIEWS**

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 933 words, excluding the parts of the application exempted by Iowa R. App. P. 6.1103(4)(a).



Dated: 13 October 2017

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IN THE COURT OF APPEALS OF IOWA

No. 17-0270  
Filed September 27, 2017

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

vs.

**TYSON JAMES RUTH,**  
Defendant-Appellant.

---

Appeal from the Iowa District Court for Greene County, Adria A.D. Kester,  
District Associate Judge.

The defendant challenges his sentence following conviction of 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 Kyle P. Hanson, Assistant  
Attorney General, for appellee.

Considered by Danilson, C.J., and Tabor and McDonald, JJ.

MCDONALD, Judge.

In an eight-count trial information, the State charged Tyson Ruth with ongoing criminal conduct, two counts of burglary in the third degree, two counts of theft in the second degree, and three counts of possession of controlled substances. To resolve the charges, Ruth and the State entered into a plea agreement. Pursuant to the agreement, Ruth pleaded guilty to one count of theft in the second degree, and the State agreed to dismiss the remaining seven counts of the trial information. The district court accepted Ruth's guilty plea, sentenced Ruth to an indeterminate term of incarceration not to exceed five years, and ordered Ruth to pay court costs. The record is silent on whether the parties had reached an agreement regarding the assessment of court costs associated with the dismissed counts.

On appeal, Ruth contends the portion of the sentence requiring him to pay court costs constitutes an illegal sentence. Our review is for the correction of legal error. See *State v. Sisk*, 577 N.W.2d 414, 416 (Iowa 1998).

Controlling authority holds the assessment of court costs associated with dismissed counts in a multi-count trial information constitutes an illegal sentence unless the plea agreement provides the defendant shall be taxed costs associated with the dismissed counts. See *State v. Petrie*, 478 N.W.2d 620, 622 (Iowa 1991). The legal justification for the rule has been called into doubt. See *State v. Smith*, No. 15-2194, 2017 WL 108309, at \*4–5 (Iowa Ct. App. Jan. 11, 2017) (noting the relevant statutes allow the assessment of costs for dismissed charges in a multi-count trial information, noting *Petrie* is internally inconsistent,

and noting the rule provides little benefit to the criminal defendant). That being said, it is the controlling rule.

Even though *Petrie* is controlling, the defendant must still prove the assessment of court costs constitutes an illegal sentence. In this instance, the record is silent on whether the plea agreement allowed for the assessment of costs associated with dismissed charges. The defendant can prove his sentence was illegal if he can establish he was actually assessed costs solely attributable to the dismissed counts of the trial information. See *State v. Young*, No. 16-0154, 2017 WL 935071, at \*4 (Iowa Ct. App. Mar. 8, 2017) (“In *Petrie*, it is clear fees and costs were incurred relative to the dismissed charges.”); *State v. Johnson*, 887 N.W.2d 178, 182 (Iowa Ct. App. 2016) (“The fact that some counts were dismissed does not automatically establish that a part of the assessed court costs are attributable to the dismissed counts.”). Here, Ruth has not established he was actually assessed costs associated with the dismissed counts. The general docket report shows the court costs as filing fees, court reporter fees, and sheriff’s transportation fees, all of which can be reasonably attributed to the offense to which Ruth pleaded guilty. Ruth has failed to prove his sentence is illegal. See *Young*, 2017 WL 935071, at \*5.

In a separate pro se filing, Ruth contends his trial counsel was ineffective for withdrawing a motion to suppress against his wishes, failing to raise various grounds for a defense, and failing to defend against a sentencing breach. As a general rule, this court does not often consider ineffective-assistance claims on direct appeal. *State v. Straw*, 709 N.W.2d 128, 133 (Iowa 2006). “Only in rare cases will the trial record alone be sufficient to resolve the claim on direct



appeal.” *Id.* The record before us is insufficient to resolve Ruth’s claims. We preserve the claims for postconviction relief. See Iowa Code § 814.7(3) (2017).

For the foregoing reasons, we affirm Ruth’s sentence and preserve his pro se claims for postconviction-relief proceedings.

**AFFIRMED.**



State of Iowa Courts

<b>Case Number</b>	<b>Case Title</b>
17-0270	State v. Ruth

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