

IN THE SUPREME COURT OF IOWA  
Supreme Court No. 17-1909

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STATE OF IOWA,  
Plaintiff-Appellee,

vs.

LORI DEE MATHES,  
Defendant-Appellant.

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APPEAL FROM THE IOWA DISTRICT COURT  
FOR MONONA COUNTY  
THE HONORABLE DUANE E. HOFFMEYER, JUDGE

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**APPELLEE'S BRIEF**

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FINAL

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**STATEMENT OF THE ISSUE PRESENTED FOR  
REVIEW**

**I. The district court acted in accordance with the parties' agreement and the statute when it ordered the defendant to pay attorney fees.**

*State Public Defender v. Iowa Dist. Ct.*, 582 N.W.2d 34  
(Iowa 1999)

*State v. Alspach*, 554 N.W.2d 882 (Iowa 1996)

*State v. Mayberry*, 415 N.W.2d 644 (Iowa 1987)

*State v. Petrie*, 478 N.W.2d 620 (Iowa 1991)

Iowa Code § 815.9

Iowa Code § 815.9(4)(a)

Iowa Code § 815.9(6)

Iowa Code §§ 814.5 and 814.6

Iowa Code § 814.6

Iowa Code § 910.1(1)

Iowa Code § 815.9(3)

Iowa Code § 815.9(5)

Iowa R. App. P. 6.907

Iowa R. App. P. 6.103(1)

**ROUTING STATEMENT**

This case can be decided based on existing legal principles.

Transfer to the Court of Appeals would be appropriate. Iowa R. App.

P. 6.1101(3).

**STATEMENT OF THE CASE**

**Nature of the Case**

Lori Dee Mathes appeals the district court's order requiring her to pay attorney fees after the charges against her were dismissed by the agreement of the parties. The Honorable Duane E. Hoffmeyer

presided over the proceedings in Monona County, Iowa. The issue in the appeal is whether the court erred when it ordered her to pay attorney fees.

### **Course of Proceedings**

On February 3, 2016, the State charged Lori Dee Mathes with possession of a controlled substance, third offense, a violation of Iowa Code section 124.401(5), and punishable as a class D felony. Trial Information SRCR016184 (2/3/16); App. 11.

### **Facts**

On November 22, 2015, Onawa police officer Lee Kirkpatrick executed a search warrant at Mathes's home. Kirkpatrick Min.; Conf. App. 5. Mathes admitted to the officer that she had marijuana in the house and gave the officer a container with marijuana in it. Kirkpatrick Min.; Conf. App. 5. According to the Monona County clerk of court, Mathes had previous convictions for possession of a controlled substance in 2000 and delivery of a schedule II controlled substance in 1992. Kahl Min.; Conf. App. 5. Additional facts will be discussed below as relevant to the State's case.

## ARGUMENT

### **I. The district court acted in accordance with the parties' agreement and the statute when it ordered the defendant to pay attorney fees.**

#### **Jurisdiction**

As set forth in its previously-filed motion to dismiss, the State does not agree that Mathes may appeal from the court's dismissal of the charges. On October 20, 2016, the State filed a motion to dismiss based upon the "agreement of the parties." Mot. To Dismiss (10/20/17); App. 65. On October 22, 2016, the district court entered a dismissal order that provided:

By agreement of the parties, administrative fees of the county sheriff, court-appointed attorney fees, and restitution are taxed to the Defendant. Based upon information in the case file and other information provided by the parties, the court finds that the Defendant has the reasonable ability to pay. The Defendant shall pay fees, costs, and other expenses of court-appointed counsel in the amount approved by the State Public Defender.

Dismissal (10/22/17); App. 66.

The State does not agree that this is a matter Mathes may appeal. Under Iowa Code section 814.6, the right to appeal is granted to a defendant from a "final judgment of sentence." Iowa Code § 814.6. There was no final judgment of sentence; the court dismissed the prosecution. Dismissal (10/22/17); App. 66. Because the case was dismissed, Mathes has no statutory right to appeal.

Similarly, the Rules of Appellate Procedure do not provide Mathes with an avenue for relief either. Under Iowa Rule of Appellate Procedure 6.103(1):

*All final orders and judgments of the district court involving the merits or materially affect the final decision may be appealed to the supreme court, except as provided in this rule, rule 6.105, and Iowa Code sections 814.5 and 814.6.*

Iowa R. App. P. 6.103(1)(emphasis added). If the case has been dismissed, and Mathes agreed to the payment of the costs and fees, there is nothing that would materially affect the final decision. Dismissal (10/22/17); App. 66.

Should this court treat the notice of appeal as a petition for writ of certiorari, the petition must be denied. A “petition for writ of certiorari is proper when the district court is alleged to have exceeded its jurisdiction or to have acted illegally.” *State Public Defender v. Iowa Dist. Ct.*, 582 N.W.2d 34, 36 (Iowa 1999). The State submits that the district court did not act illegally in this case but in accordance with the parties’ agreement. Dismissal (10/22/17); App. 66. In her letter to the court, Mathes agreed she would pay costs. Letter (11/16/17); App. 68-69. In exchange for the dismissal of the felony charge, Mathes agreed to pay the costs and fees associated with

the prosecution. Dismissal (10/22/17), Letter (11/16/17); App. 66, 68-69.

If the district court did err, it was only in the language it used when it ordered Mathes to pay “administrative fees of the county sheriff, court-appointed attorney fees, and restitution are taxed to the Defendant.” This language is similar to what a court would say when imposing an order of restitution, which is statutorily required in cases involving “criminal activities.” Iowa Code § 910.1(1). “Criminal activities” means:

any crime for which there is a plea of guilty, verdict of guilty, or special verdict upon which a judgment of conviction is rendered and any other crime committed after July 1, 1982, which is admitted or not contested by the offender, whether or not prosecuted.

Iowa Code § 910.1(1). There was no guilty plea, no verdict of guilty, nor was there a special verdict in which a conviction was entered. Because Mathes was not convicted of any “criminal activities” the provisions of chapter 910 do not apply.

This is borne out by the fact that this court has long held that “restitution is a phase of sentencing.” *State v. Alspach*, 554 N.W.2d 882, 883 (Iowa 1996); *State v. Mayberry*, 415 N.W.2d 644, 647 (Iowa 1987). There was no sentence imposed in this case. If no sentence



was imposed, there is no statutory authorization to impose restitution. Iowa Code ch. 910.

The State notes that in certain cases, the parties could agree an offender would pay restitution for dismissed *counts* that are related to another conviction. *State v. Petrie*, 478 N.W.2d 620, 622 (Iowa 1991) (nothing prevents the parties to a plea agreement from making a provision covering the payment of costs and fees). But, that did not occur in this case because there was no conviction. The State submits that when all charges were dismissed, and no conviction entered, the court could not impose restitution. Thus, the court need not make a “reasonable ability” to pay determination. The court did not exceed its jurisdiction nor did it act illegally. There is no basis for the court to grant certiorari.

### **Preservation of Error**

The State also disagrees that error was preserved. Mathes contends that a criminal defendant “may challenge restitution at the time of sentencing and may file a timely appeal in the criminal case of any restitution order.” Def. Brief at 10. As set forth above, when no judgment of sentence has been entered there can be no restitution

order. Because Mathes has no other basis on which to establish she preserved error, her claim has not been preserved.

Additionally, Mathes waived any challenge by agreeing to pay the costs and fees. Dismissal (10/22/17); App. 66. In her letter to the court, she also admitted she agreed to pay the fees. Letter (11/16/17); App. 68-69. She should not be allowed to bypass error preservation when the terms of her agreement with the State specified she would pay the costs and fees.

### **Scope of Review**

The scope of review is for correction of errors at law. Iowa R. App. P. 6.907.

### **Merits**

The district court's dismissal order must be affirmed. The district court's order imposing attorney fees incorporated the parties' agreement. Because Mathes agreed to pay the attorney fees incurred as part of the agreement, the court committed no error.

Iowa Code section 815.9 contains several provisions regarding legal assistance and reimbursement for that assistance when a person is granted an appointed attorney. Section 815.9(3) provides:

If a person is granted an appointed attorney, the person shall be required to reimburse the state for the total cost of legal assistance provided to the person pursuant to this section.

Iowa Code § 815.9(3). Iowa Code section 815.9(4)(a) provides:

If the appointed attorney is a public defender, the attorney shall submit a report to the court specifying the total hours of service plus expenses incurred in providing legal assistance to the person. In a criminal case, the report shall be submitted within ten days of the date of sentencing, acquittal or dismissal. . . .

Iowa Code § 815.9(4)(a). Section 815.9(5) discusses the

reimbursement when a person has been *convicted* of a crime:

If the person receiving legal assistance is convicted in a criminal case, the total costs and fees incurred for legal assistance shall be ordered paid when the reports submitted pursuant to subsection 4 are received by the court and the court shall order the payment of such amounts as restitution, to the extent to which the person is reasonably able to pay, or order the performance of community service in lieu of such payments, in accordance with chapter 910.

Iowa Code section 815.9(5)(emphasis added). Iowa Code section

815.9(6) addresses the reimbursement of legal assistance when a

person has been *acquitted* of a crime:

If the person receiving legal assistance is *acquitted* in a criminal case or is a party in a case other than a criminal case, the court shall order the payment of all or a portion of the total costs and fees incurred for legal assistance, to the extent the person is reasonably able to pay, after an inquiry which includes notice and reasonable opportunity to be heard.

Iowa Code § 815.9(6) (emphasis added). When all of these provisions are considered together, it is clear that a defendant who is appointed counsel is required by statute to reimburse the State for the cost of legal assistance whether the defendant is convicted or acquitted.

These sections do not apply in the instant case because Mathes was neither convicted nor acquitted of criminal charges. Rather, the charges against her were dismissed by agreement of the parties. In a case such as this, section 815.9 does not apply. Mathes agreed to pay her attorney fees. Dismissal (10/22/17); App. 66. The court memorialized the agreement and there was no need for the court to consider the “reasonable ability to pay.” Subsequent to the dismissal, Mathes reaffirmed the agreement when she acknowledged she agreed to pay costs in a letter to the district. Letter (11/16/17); App. 68-69. Mathes’ challenge is nothing more than an attempt to change the terms of the agreement the State had with her. Her characterization of this as a restitution order under which the court must make a “reasonable ability to pay determination” is incorrect. It is not a restitution order but the memorialization of the agreement between the parties. The State acted in good faith in dismissing the charges.

This court should require Mathes to uphold her portion of the agreement and pay the attorney fees. The district court must be affirmed.

### **CONCLUSION**

The appeal should be dismissed or, alternatively, the district court's dismissal order requiring Mathes to pay attorney fees must be affirmed.

### **REQUEST FOR NONORAL SUBMISSION**

This case involves a routine challenge to the district court's order dismissing the case. Oral argument is not necessary to resolve the issue. In the event argument is set, the State request to be heard.

Respectfully submitted,

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## CERTIFICATE OF COMPLIANCE

This brief complies with the typeface requirements and type-volume limitation of Iowa Rs. App. P. 6.903(1)(d) and 6.903(1)(g)(1) or (2) because:

- This brief has been prepared in a proportionally spaced typeface using Georgia in size 14 and contains **1,822** words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).

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