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IN THE SUPREME COURT FOR THE STATE OF IOWA
Supreme Court No.17-1909
Monona County No. SRCR016184

APPEAL FROM THE IOWA DISTRICT
FOR MONONA COUNTY

THE HONORABLE DUANE E. HOFFMEYER

THE STATE OF IOWA,
Plaintiff-Appellee,

vs.

LORI DEE MATHES,
Defendant-Appellant

SUPPLEMENTAL BRIEF OF THE APPELLANT

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INTRODUCTION

The Iowa Supreme Court requested parties to provide supplemental briefing on two questions and has invited the contributions of amici. “Order,” The Supreme Court of Iowa, December 11, 2016, 1-2. The questions are:

> Whether the court has subject matter jurisdiction to assess court costs in a criminal case when the court dismisses all the charges. See In re Estate of Falck, 672 N.W.2d 785, 789–90 (Iowa 2003) (discussing subject matter jurisdiction).
>
> If the court does have subject matter jurisdiction, does the court have the authority to assess costs or, in the alternative, is the assessment of costs an illegal sentence under these circumstances?

The factual and procedural backgrounds to the appeal are described in the briefs of the parties and are not rehearsed here. The arguments advanced by amici curiae State Appellate. Defenders Office and the American Civil Liberties Union -I, IA Legal Aid, Fines and Fees Just. Cent. Br. 17.

ARGUMENT I: DISTRICT COURTS LACK SUBJECT MATTER JURISDICTION TO ASSESS COURT COSTS WHEN ALL CRIMINAL CHARGES IN A CASE ARE DISMISSED.

"'Subject matter jurisdiction' refers to the power of a court to deal with a class of cases to which a particular case belongs." In re Estate of Falck, 672 N.W.2d 785, 789 (Iowa 2003) (citing Christie v. Rolscreen Co., 448 N.W.2d 447, 450 (Iowa 1989)).

> A party can raise subject matter jurisdiction at any time in the proceeding. If a court enters a judgment without jurisdiction over the subject matter, the judgment is void. A void judgment is subject to a collateral attack. Unlike personal jurisdiction, a party cannot waive or vest by consent subject matter jurisdiction. A party cannot confer subject matter jurisdiction on the court by an act or procedure.

Id. (citations omitted). Subject matter is a creature of constitutional and statutory provision. Id.; State v. Propps, 897 N.W.2d 91 (Iowa 2017).

> The interrelation between the constitutional grant of authority to the courts and the legislature's right to prescribe procedures is delineated in Laird Brothers v. Dickerson, 40 Iowa 665, 670 (1875):

> From these constitutional and legislative provisions it is plain to be seen that the District Courts are courts of general jurisdiction, and, except so far as the manner of its exercise is prescribed by the statute, it has jurisdiction over every cause brought within its district. This idea of the general and unlimited jurisdiction of the District Court is further illustrated by the fact that they are styled the District Court for the State, held in and for a particular county, and the judges of the District Courts are judges for the state, with authority to grant writs running into any part of the state and to hold District Courts in districts other than those in which they were elected. It is therefore clear, beyond question, that the District Courts have general jurisdiction of all matters brought before them. But the manner of the exercise of this general and inherent jurisdiction is prescribed by law.

In the Matter of Guardianship of Matejski, 419 N.W.2d 576, 577 (Iowa 1988) (emphases added).

To answer the question of whether a court has subject matter jurisdiction is not a simple "yes/no" question nor merely a question of subject matter jurisdiction over a criminal case. That is the beginning, not the end, of the inquiry. Contra Iowa Cnty. Attorney Assoc. Amicus Br. 11 ("There can be no possible claim that the district court lacked

subject matter jurisdiction over this criminal case. This is, frankly, an easy question.") The question of subject matter jurisdiction is what provisions the legislature, subject to constitutional requirements, made for the exercise of jurisdiction.

Because subject matter jurisdiction is subject to constitutional and legislative provisions, it follows courts have subject matter jurisdiction to the extent of those provisions.

> We do not understand by this article that the legislature have the right to limit or restrict the jurisdiction thus conferred upon the district courts by the constitution, but merely to define and regulate the manner in which that jurisdiction shall be employed.

Matejski, 419 N.W.2d at 577 (quoting Hutton v. Drebilbis, 2 Greene 593, 594–95 (Iowa 1850)).

Additionally, subject matter jurisdiction may end when the case becomes moot. Although based on the federal "cases and controversies" concept, the observation by the Southern District of Iowa applies to Iowa state cases as well. "When

the issues presented in a case are no longer 'live' or the parties lack a legally cognizable interest in the outcome, the case becomes moot and the court no longer has subject matter jurisdiction." Liles v. Am. Corrective Counseling Servs., Inc., 201 F.R.D. 452, 454 (S.D. Iowa 2001) (citing County of Los Angeles v. Davis, 440 U.S. 625, 631, 99 S.Ct. 1379, 59 L.Ed.2d 642 (1979)). Conversely, when a case is cognizable, the court may properly exercise subject matter jurisdiction. Wilson v. IBP, Inc., 558 N.W.2d 132, 138 (Iowa 1996) ("Whatever their merit or lack thereof, both of the alleged intentional torts are cognizable, if at all, outside the scope of the workers' compensation act. Thus, the district court properly exercised subject matter jurisdiction over these questions.") Once the charges against Mathes had been dismissed, there was nothing left that was cognizable in contrast to the fines, fees, and costs assessed when a defendant is convicted or acquitted. Iowa Code §§ 815.9(5), (6). The district court had subject matter jurisdiction over criminal cases but lacked subject matter jurisdiction over

dismissed cases, such as but not only Mathes's case.

Because subject matter is a creature of constitutions and legislation, understanding subject matter jurisdiction is a matter of statutory interpretation. "What did the legislature intend?" "The polestar of statutory interpretation is the intent of the legislature." State v. Carpenter, 616 N.W.2d 540, 542 (Iowa 2000) (citing State v. Schultz, 604 N.W.2d 60, 62 (Iowa 1999)).

"The rule that inclusion implies exclusion is a useful tool of statutory construction, but is subordinate to the primary rule that legislative intent governs statutory interpretation." Carpenter, 616 NW2d at 543 (citing 2A Norman J. Singer, Sutherland Statutory Construction § 47.23, at 315 (6th ed.2000)).

Interpreting by noticing omission of a provision where it might be expected is regarded as a canon of interpretation. "We acknowledge the rule of statutory construction that legislative intent can be expressed by omission as well as by inclusion. Carpenter, 616 N.W.2d at 543 (quote marks and

citations omitted). More fundamentally, the rule is "a product of 'logic and common sense.' " 2A Singer § 47.24.

> As the maxim [expressio unius est exclusio alterius] is applied to statutory interpretation, where a form of conduct, the manner of its performance and operation, and the persons and things to which it refers are designated, there is an inference that all omissions should be understood as exclusions.

2A Norman J. Singer & J.D. Shambie Singer, eds., Statutes and Statutory Construction § 47:23, (7th ed.2007).

It is not merely that Iowa Code § 815.9 omits a parallel provision for dismissed cases to the provisions in §§ 815.9(5) and (6) for convictions and acquittals. The provisions are very similar.

> 5. 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.
>
> 6. 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.

In these provisions, "form of conduct, the manner of its performance and operation, and the persons and things to which it refers are designated." Singer § 47:23. The Court should infer that the "omission" of such a paragraph pertaining to dismissed cases "should be understood as exclusions." Id.

The Court doesn't have to depend solely on inference based on an omission. Before 2012, Iowa Code § 815.9(4) read:

> If the case is a criminal case, all costs and fees incurred for legal assistance shall become due and payable to the clerk of the district court by the person receiving the legal assistance not later than the date of sentencing, or if the person is acquitted or the charges are dismissed, within thirty days of the acquittal or dismissal.

As the briefs by amici discuss, in 2012 the Iowa legislature excised the provision requiring payment of

attorney fees by people whose criminal charges had been dismissed. Brief of the State Appellate Defenders Office, 17-18; Brief of the American Civil Liberties Union of Iowa, Jane Dow (Iowa Legal Aid), and Fines and Fees Justice Center, 17. It wouldn't have been difficult to draft a paragraph parallel to §§ 815.9(5) and 815.9(6). There is no such paragraph.

The "expressio unius" principle "does not apply if there is a "special reason for mentioning one thing and none for mentioning another which is otherwise within the statute." Furthermore, the rule is not applied where there is no evidence of legislative intent for it to apply." Carpenter, 616 N.W.2d at 544 (quoting 2A Singer § 47.23, at 318, § 47.24, at 325; further citation omitted). But there is no evidence of a "special reason," and there is evidence of legislative intent that the omission was an exclusion.

Iowa Code § 815.9, in pertinent part, establishes the subject matter jurisdiction of the courts as to "total costs and fees incurred for legal assistance" in cases of conviction and

acquittal. The legislature intended that such subject matter jurisdiction not extend to dismissed cases. As the brief of the ACLU-I et al. examines in detail, not only do the federal and state constitutions not only not make such provision for dismissed cases, the constitutions bar such provisions. There was no subject matter jurisdiction enabling the district court to charge costs and fees to Mathes when the court dismissed her case and there were no other charge.

ARGUMENT II: THE RESTITUTION ORDER IMPOSED ON MATHES EXCEEDED THE DISTRICT COURT'S AUTHORITY.

"Subject matter jurisdiction" and "authority" are distinguishable in several ways. First, "subject matter jurisdiction" and "authority" differ in that "subject matter jurisdiction" pertains to a general class of cases whereas "authority" refers to the court's right to determine a specific case. In re Estate of Falck, 672 N.W.2d at 789–90 (internal citations and quotation punctuation omitted). Secondly, a lack of "subject matter jurisdiction" means that an order is void. "In contrast to subject matter jurisdiction, 'a court's

lack of authority is not conclusively fatal to the validity of an order.'" Klinge v. Bentien, 725 N.W.2d 13, 16 (Iowa 2006) (quoting In re Marriage of Seyler, 559 N.W.2d 559 N.W.2d 7, 10 n. 3 (Iowa 1992). "Consequently, an order entered without authority is voidable rather than void." Id. (citing In re Estate of Falck, 672 N.W.2d at 790). Third, "Thus if a party waives the court's [lack of] authority to hear a particular case, the judgment becomes final and is not subject to collateral attack." Id. (citing In re Estate of Falck, 672 N.W.2d at 790. As a corollary, "[W]here subject matter jurisdiction exists, an impediment to a court's authority can be obviated by consent, waiver or estoppel." Id. (quoting State v. Mandicino, 509 N.W.2d 481, 483 (Iowa 1993)). Conversely, "subject matter jurisdiction cannot be conferred by consent, waiver, or estoppel." Id.

When a district court requires reimbursement of attorney fees and other costs by a defendant whose case has been completely dismissed, the district court acts outside its subject matter jurisdiction and the requirement that the

defendant pay is void. Even if the district court's order were within the court's subject matter jurisdiction, the order would be voidable if the court lacked authority to issue the order. If such an order were merely voidable, then the problem of authority was susceptible to "consent, waiver, or estoppel." .

The Court has stated clearly that restitution orders apply to determining the allocation of costs for charges which led to convictions.

> [W]here the plea agreement is silent regarding the payment of fees and costs, that only such fees and costs attributable to the charge on which a criminal defendant is convicted should be recoverable under a restitution plan."

State v. Petrie, 478 N.W.2d 620, 622 (Iowa 1991). This clear statement is in tension with the same court's comment, "We stress that nothing in this opinion prevents the parties to a plea agreement from making a provision covering the payment of costs and fees." Id.

The Court ordered "Fees and costs not clearly associated with any single charge should be assessed

proportionally against the defendant. Since the defendant was only convicted on one of three counts he should be required to pay only one-third of these costs." Id. The Court "reverse[d] the district court's order directing the defendant to pay restitution on the entire amount of court costs and attorney fees awarded in this case." Id. In Mathes's case, there were no charges of conviction.

More recently, the Court stated bluntly (if somewhat tautologically), "a sentencing order that imposes an obligation on a defendant to pay court costs not authorized by law would be illegal." State v. McMurry, 925 N.W.2d 592, 596 (Iowa 2019) (citing City of Cedar Rapids v. Linn County, 267 N.W.2d 673, 673 (Iowa 1978)). Differing from Petrie, McMurry found that "costs and fees would have been incurred in the prosecution of a count of conviction even if the dismissed counts had not been prosecuted, equity does not support apportionment." Id. at 601. McMurry echoed the confidence about plea agreements expressed in Petrie: "that the parties are free to agree to the apportionment of fees and

costs in a plea agreement." McMurry, 925 N.W.2d at 601.

> In McMurry, we modified the third portion of the Petrie rule to hold that court costs not associated with any single count must be taxed to the offender, not apportioned. Thus, the only costs that are not now part of the court costs assessed against the offender in a multicount criminal case are those clearly attributed to the dismissed counts.

State v. Ruth, 925 N.W.2d 589, 591 (2019). It was Mathes's situation that the only costs not assessable to her were the only charges against her.

Additionally, both Petrie and McMurry dealt with multi-charge prosecutions in which the defendants were convicted of some but not all of the charges. Again, this is not Mathes's situation. Further limiting the applicability of Petrie and McMurry is that the defendants, unlike Mathes, were convicted on some but not all of the charges. Contra Iowa Cnty. Attorney Assoc. Amicus Br. 15-16, McMurry does not support the restitution order imposed on Mathes because her situation was significantly different from McMurry's and that of any other defendant found guilty of any of the

charges in a multi-charge case.

As pointed out by the Iowa Appellate Defender's brief, care must be taken to ensure that a plea agreement indeed reliably attests to an agreement (and is not mere boilerplate). Br. 24. As amici ACLU et al. emphasize, the bargaining relationship involved in a defendant's "consent, waiver, or estoppel" might well be grossly unequal. " In some cases:

> . . . gross inequality of bargaining power, together with terms unreasonably favorable to the stronger party, may confirm indications that the transaction involved elements of deception or compulsion, or may show that the weaker party had no meaningful choice, no real alternative, or did not in fact assent or appear to assent to the unfair terms.

Br. 24 (quoting State v. Baldon, 829 N.W.2d 785, 801 (Iowa 2013)). The effect is that a plea agreement becomes a contract of adhesion.

There is another ground for concern. Plea agreements may be useful compared to contracts. "Plea bargains are akin to contracts." State v. Macke, 933 N.W.2d 226, 238

(Iowa 2019) (Mansfield, J., concurring in part and dissenting in part). "A plea bargain also may be regarded as a contract where both sides ordinarily obtain a benefit." Id. (quoting. Rhoades v. State, 880 N.W.2d 431, 449 (Iowa 2016).

So also, defendants and defense attorneys are comparable to principals and agents. Mathes asserts that she gave her attorney/agent a clear statement of what she could afford to pay. The order of disposition imposed significantly more than the $500 Mathes was willing to accept. This similar to Dillon v. City of Davenport, 366 N.W.2d 918 (Iowa 1985) in which the City "claimed its attorney either lacked authority to settle or exceeded his authority by agreeing to a final settlement." 366 N.W.2d at 923.

> Upon de novo review of the facts we also find that the council conferred actual authority upon McDonald to settle the case for a sum not more than $150,000 with conditions on when payment was to be made. We find that no restriction was placed on this amount for reimbursement or credit for paid or sick leave. McDonald acted within his authority in making the oral settlement for $150,000. We agree with the trial

> court finding that the later addition concerning group insurance was beyond McDonald's authority and must be deleted from the settlement agreement.

Id at 925.

Mathes received no notice and hearing about her reasonable ability to pay. "Reasonable ability to pay" has long been a requirement in a court exercising authority to imposing costs and fees on defendants. State v. Harrison, 351 N.W.2d 526, 529 (Iowa 1984) ("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].* " (emphasis supplied)); State v. Van Hoff, 415 N.W.2d 647, 648 (Iowa 1987) ("A defendant's reasonable ability to pay is a constitutional prerequisite for a criminal restitution order such as that provided by Iowa Code chapter 910;" citations omitted); State v. Dudley, 766 N.W.2d 606, 614 (Iowa 2009) ("Therefore,

under the statutory scheme governing the obligations of acquitted defendants, an acquitted defendant will be charged with the full expense of his legal assistance without regard to whether he will ever have the funds or means to pay the judgment. The very safeguard that sustained the constitutionality of the recoupment statutes applied to convicted defendants in Fuller and Haines is absent here;" citations omitted). Statutorily, Iowa Code § 815.9(5) and (6) each put limits on a court's authority to impose restitution. § 815.9(5) ("to the extent to which the person is reasonably able to pay"); § 815.9(6) ("to the extent the person is reasonably able to pay, after an inquiry which includes notice and reasonable opportunity to be heard").

The references and the details of what is required of courts in exercising their authority to impose restitution can be multiplied. Mathes got none of this protection. Even if the Court finds subject matter jurisdiction for courts to impose restitution on defendants whose criminal cases have been dismissed, the Court should vacate the restitution order

and remand the case to the district court for exceeding authority.

ARGUMENT III: THE RESTITUTION ORDER IMPOSED ON MATHES WAS AN ILLEGAL SENTENCE.

For reasons offered above, the restitution order imposed was illegal.

> An illegal sentence is one that is not permitted by statute. An illegal sentence is void and not subject to the usual concepts of waiver, whether from a failure to seek review or other omissions of error preservation. Because an illegal sentence is void, it can be corrected at any time.

State v. Woody, 613 N.W.2d 215, 217 (Iowa 2000) (citations and quote marks omitted). "Neither party may rely on a plea agreement to uphold an illegal sentence." Id. at 218. Even a sentence that has not been expressly prohibited may be an illegal sentence. "We have on numerous occasions held that the imposition of a sentence that is not permitted by statute is an illegal sentence, and such sentence is void and must be vacated." State v. Suchanek, 326 N.W.2d 263, 265 (Iowa 1982) (citations omitted). "This court has held that

imposition of a sentence that varies with the statutory requirements is a 'void act.'" State v. Marti, 290 N.W.2d 570, 581 (Iowa 1980). "Where a court has imposed a sentence which is void either because of lack of jurisdiction, or because it was not warranted by statute for the particular offense, this can be set aside and a valid sentence substituted.'" State v. Taylor, 258 Iowa 94, 96, 137 N.W.2d 688, 689 (Iowa 1965) (citing Note: 44 A.L.R. 1212).

As argued above, the restitution order imposed on Mathes was outside the district court's subject matter jurisdiction, exceeded the court's authority, and, Mathes alleges, violated her instructions to her attorney based on her ability to pay. For all these reasons, the restitution was illegally imposed. But aside from all these considerations and as also argued above, the order was illegal because it was outside the provisions of Iowa Code § 815.9. As an illegal sentence, the restitution order was inherently void.

CONCLUSION

For the reasons set forth above and others advanced by

the amici, the Court should find that the restitution order that the district court imposed on Mathes lacked the support of subject matter jurisdiction, exceeded the court's authority, and was inherently void as illegal. The order should be vacated, the case then being remanded to the district court for action consistent with this Court's decision.

Respectfully submitted,

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CERTIFICATE OF FILING AND SERVICE

This brief was filed electronically on January 15, 2020, with the Clerk of Court for the Supreme Court of Iowa through the Electronic Document Management System (EDMS) and that notice of said filing will be sent by the EDMS to the Attorney General for Iowa. This brief will also be served on the Appellant on January 16, 2018, by postal mail, all costs prepaid.

/s/ Rees Conrad Douglas AT0002097

CERTIFICATE OF COMPLIANCE
WITH IOWA R. APP. P. 6.903(g)(1)

This brief complies with the type-volume limitation of Iowa R. App. P. 6.903(1)(g)(1) or (2) because:

This brief contains 3705 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).

This brief complies with the typeface requirements of Iowa. R. App. P. 6.903(1)(e) and the type-style requirements of Iowa R. App. P. 6.903(1)(f) because this brief has been prepared in a proportionally spaced typeface using WordPerfect X8 in 14 point Century Schoolbook.

/s/ Rees Conrad Douglas AT0002097

COST CERTIFICATE

I hereby certify that the cost of printing this brief was $0 because the brief was electronically filed.

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