

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

STATE OF IOWA,
Plaintiff-Appellee,

vs.

LORI DEE MATHES,
Defendant-Appellant.

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

APPELLEE'S SUPPLEMENTAL BRIEF

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STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

- I. The district court had subject matter jurisdiction to assess court costs even after it dismissed the all of the charges.**

Authorities

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Hutcheson v. Iowa Dist. Ct., 480 N.W.2d 260 (Iowa 1992)
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Iowa Code § 602.6202
Iowa Code § 602.6104
Iowa Const. art. V, § 6

- II. Even if the charges are dismissed, the court still has authority to enter an order assessing costs.**

Authorities

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(Iowa Ct.App.1990)
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State v. Smith, 753 N.W.2d 562 (Iowa 2008)
Iowa Code § 901.5
Iowa Code § 910.1(1)
Iowa Code § 910.2(1)

STATEMENT OF ISSUES PRESENTED

On December 11, 2019, the Iowa Supreme Court directed the parties to file supplemental briefs in this appeal and address the following issues: Whether the district court had subject matter jurisdiction to enter an order for costs when the charges were dismissed? Also, if the court had jurisdiction, does the court have authority to assess costs or does the assessment of costs constitute an illegal sentence? The State submits that the district court had subject matter jurisdiction to enter the order and it also had the authority to enter an order for court costs. Finally, because the charges were dismissed because of the parties' agreement, no sentence was imposed. Thus, the order cannot be an "illegal sentence." The district court's order must be affirmed.

STATEMENT OF THE CASE

Nature of the Case

Lori Dee Mathes appeals the district court's order requiring her to pay costs and attorney fees for a criminal prosecution 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.

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. By agreement of the parties, the State filed a motion to dismiss the charge. Mot. To Dismiss (10/20/17); App. 65. The court entered an order dismissing the charge on October 22, 2017, and taxed the costs to Mathes.

Dismissal Order (10/22/17); App. 66. The order provided:

By agreement of the parties, administrative fees of the county sheriff, court-appointed attorney fees, and restitution are taxed to the Defendant. Based on 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 Order (10/22/17); App. 66.

Facts

The underlying facts are not relevant to the issues before the court but are set out in the State's final brief.

ARGUMENT

I. The district court had subject matter jurisdiction to assess court costs even after it dismissed the all of the charges.

Preservation of Error

The State does not contest error preservation because subject matter jurisdiction can be raised at any time. *In Re Estate of Falck*, 672 N.W.2d 785, 789 (Iowa 2003) (citing *In re Estate of Dull*, 303 N.W.2d 402, 406 (Iowa 1981)).

Standard of Review

An appellate court reviews lower court rulings on questions of subject matter jurisdiction for correction of errors at law. *State v. Stanton*, 833 N.W.2d 244, 247 (Iowa 2019) (citing *State v. Lasley*, 705 N.W.2d 481, 485 (Iowa 2005)).

Merits

The district court had subject matter jurisdiction to enter an order dismissing the charge in this case and to order the costs of the prosecution be assessed against Mathes. The district court acted in

accordance with the Iowa Constitution and Iowa Code section 602.6202. As such, the district court's order must be affirmed.

Subject matter jurisdiction is the power “ ‘of a court to hear and determine cases of the general class to which the proceedings in question belong, not merely the particular case then occupying the court's attention.’ ” *Christie v. Rolscreen Co.*, 448 N.W.2d 447, 450 (Iowa 1989) (quoting *Wederath v. Brant*, 287 N.W.2d 591, 594 (Iowa 1980)). Subject matter jurisdiction is conferred by constitutional or statutory power. *In re Estate of Falck*, 672 N.W.2d 785, 789 (Iowa 2003) (citing *Hutcheson v. Iowa Dist. Ct.*, 480 N.W.2d 260, 263 (Iowa 1992)).

The parties themselves cannot confer subject matter jurisdiction on a court by an act or procedure. *Id.* (citing *In re Estate of Dull*, 303 N.W.2d 402, 406 (Iowa 1981)). Unlike personal jurisdiction, a party cannot waive or vest by consent subject matter jurisdiction. *Id.* (citing *In re Estate of Dull*, 303 N.W.2d at 406). If a court enters a judgment without jurisdiction over the subject matter, the judgment is void and subject to collateral attack. *In re Estate of Falck*, 672 N.W.2d at 789 (citations omitted); see, e.g., *Rosenberg v. Jackson*, 247 N.W.2d 216,

218 (Iowa 1976) (setting aside a four-year-old default judgment because the court lacked “jurisdiction”).

The Iowa Constitution confers jurisdiction on the district court concerning criminal matters. *See* Iowa Const. art. V, § 6 (district courts shall “have jurisdiction in civil and criminal matters arising in their respective districts, in such a manner as shall be prescribed by law”); *see also State v. Yodprasit*, 564 N.W.2d 383, 385-86 (Iowa 1997). Iowa Code chapter 602 also confers jurisdiction over this matter to the district court. Iowa Code section 602.6101 establishes Iowa’s unified trial court and is supplemented by section 602.6104, which provides that the jurisdiction of the court “shall be exercised by district judges, district associate judges, and magistrates.” Iowa Code §§ 602.6101 and 602.6104; *Tyrrell v. Iowa Dist. Court*, 413 N.W.2d 674, 674-75 (Iowa 1987). District judges have the full power of the district court. Iowa Code § 602.6202.

Both the Iowa Constitution and Iowa Code section 602.6202 conferred jurisdiction over this case to the district court. The State charged Mathes with a criminal offense punishable as a class D felony. Trial Information (2/3/16); App. 11. The constitution confers jurisdiction over criminal matters and section 602.6202 provides the

court with the “full power of the district court.” Iowa Const. art V, § 6, Iowa Code § 602.6202.

If the district court also had jurisdiction over the case, it could also dismiss the case. On October 20, 2017, the State filed a motion seeking an order from the court dismissing the case. Mot. To Dismiss (10/20/17); App. 65. The motion states:

The State of Iowa, through the undersigned Prosecuting Attorney, moves that the Court dismiss the above-captioned matter(s) for the following reason(s):

-Upon agreement of the parties.

The State therefore asks that the above-captioned matter(s) be dismissed.

Mot. To Dismiss (10/20/17); App. 65. Two days later, on October 22, 2017, the court entered an order dismissing the case. Dismissal Order (10/22/17); App. 66. In addition to dismissing the case, the order also provided that the costs and attorney fees were taxed to the defendant. Dismissal Order (10/22/17); App. 66. The fact that the dismissal preceded the imposition of costs and fees in the order is of no consequence because the order must be read as a whole, much like reading a statute. *In re Estate of Sampson*, 838 N.W.2d 663 (Iowa 2013) (we interpret statutes by considering them as a whole, not by looking at isolated parts of the statute). The court dismissed the case,

at the parties' request, and did so in accordance with the jurisdiction conferred by the Iowa Constitution and Iowa Code sections 602.6202.

The district court must be affirmed.

II. Even if the charges are dismissed, the court still has authority to enter an order assessing costs.

Preservation of Error

The State does not contest error preservation. *In re Estate of Falck*, 672 N.W.2d at 789-90 (Iowa 2003) (citing *Christie v. Rolscreen Co.*, 448 N.W.2d 447, 450 (Iowa 1989)).

Standard of Review

An appellate court reviews the authority of a district court to hear a case for correction of errors at law. *Ghost Player, LLC. v. State*, 860 N.W.2d 323, 326 (Iowa 2015).

Merits

The district court also had authority to order Mathes to pay court costs even though the charges were dismissed. As such, the court's order must be affirmed.

In *Christie v. Rolscreen Co.*, this court distinguished subject matter jurisdiction from the court's "lack of authority to hear a particular case," also referred to as "lack of jurisdiction of the case." 448 N.W.2d 447, 450 (Iowa 1989). As set forth above,

“subject matter jurisdiction” refers to the power of a court to deal with a class of cases to which a particular case belongs. *Id.* Although a court may have subject matter jurisdiction, it may lack the authority to hear a particular case for one reason or another. *Christie*, 448 N.W.2d at 450.

The court's authority to hear a particular case was further articulated in *State v. Mandicino*, 509 N.W.2d 481, 482–83 (Iowa 1993). There, we held “where subject matter jurisdiction exists, an impediment to a court's *authority* can be obviated by consent, waiver, or estoppel.” *Mandicino*, 509 N.W.2d at 483 (emphasis in original). Later, we interpreted the *Mandicino* decision as meaning that “a court's lack of authority is not conclusively fatal to the validity of an order.” *See In re Marriage of Seyler*, 559 N.W.2d 7, 10 n. 3 (Iowa 1997). Thus if a party waives the court's authority to hear a particular case, the judgment becomes final and is not subject to collateral attack. *See Morris Plan Co. of Iowa v. Bruner*, 458 N.W.2d 853, 855–56 (Iowa Ct.App.1990).

In this case, the district court had the authority to dismiss the charges and order restitution. Iowa Code section 910.2(1) directs a sentencing court to order restitution:

In all criminal cases in which there is a plea of guilty, verdict of guilty, or special verdict upon which a judgment of conviction is rendered, the sentencing court shall order that restitution be made by each offender to the victims of the offender's criminal activities. . .

Iowa Code § 910.2(1). This statute suggests that a plea of guilty or verdict upon which a judgment of conviction is rendered is necessary prerequisite to ordering restitution. That interpretation is inconsistent with the case law which allows a court to give effect to the parties' agreement. Rather, the focus should be the agreement of the parties.

The notable case of *State v. Petrie*, 478 N.W.2d 620, 621-22 (Iowa 1991) dealt with restitution for the assessment of costs on dismissed counts. In *Petrie*, the State charged the defendant with three separate counts. *Id.* at 621. *Petrie* filed a motion to suppress which was successful. *Id.* After the district court entered a ruling on the motion to suppress, the parties entered into an agreement whereby *Petrie* agreed to plead guilty to one of the charged offenses and the other charges were dismissed. *Id.* The plea agreement made no provision for the payment of court costs and attorney fees. *Id.* When the court sentenced *Petrie*, it ordered him to pay all the court costs and attorney fees in the case. *Id.*

On appeal, Petrie challenged the restitution order and argued that he should not be required to pay the entire amount of attorney fees and court costs. *Id.* Before deciding whether all the costs and fees should be paid, this court considered the language of Iowa Code section 910.2(1) and the definition “criminal activities” found in Iowa Code section 910.1(1), which provides:

. . . *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.* However, “criminal activities” does not include simple misdemeanors under chapter 321.

Petrie, 478 N.W.2d at 621-22 (emphasis added). The *Petrie* court held that “where 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.” *Id.* at 622.

Petrie remained that law in Iowa for decades. In *State v. McMurry*, 925 N.W.2d 592, 601 (Iowa 2019) and *State v. Ruth*, 925 N.W.2d 589, 591 (Iowa 2019), the court revisited the rule of apportionment set out in *Petrie*. In *McMurry*, the court found that: “*Petrie* took a misstep when it apportioned fees and costs not clearly attributable to any single count.” The *McMurry* court modified the

Petrie rule and “disavow[ed] the language that fees and costs not associated with any one charge should be assessed proportionally between the counts dismissed and the counts of conviction.” *Id.* at 601. Notably, the *McMurry* court reiterated the “observation in *Petrie* that the parties are free to agree to the apportionment of fees and costs in a plea agreement.” *Id.*; accord *State v. Ruth*, 925 N.W.2d 589, 591 (Iowa 2019) (importantly, there was no agreement between the parties for Ruth to pay these costs).

This case differs slightly from *Petrie*, *McMurry*, and *Ruth* in that those cases involved multiple counts which resulted in dismissal of some counts but convictions on other counts and this case involves the dismissal of the only count charged which dismissed the entire prosecution. *Petrie*, 478 N.W.2d at 621; *McMurry*, 925 N.W.2d at 594; *Ruth*, 925 N.W.2d at 590. This case also differs from *Petrie*, *McMurry*, and *Ruth* because in this case there was an agreement between the parties regarding the costs and fees. Mot. To Dismiss (10/20/17); App. 65.

The district court, following the law set forth in *Petrie*, *McMurry*, and *Ruth*, gave effect to the parties’ agreement. In its dismissal order, the court stated:

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 (emphasis added). Mathes even acknowledged the agreement in her subsequent letter to the court. Letter (11/16/17); App. 68-72. When the case law allows for the parties to separately reach an agreement on the costs and fees associated with a prosecution, and the district court gives effect to that agreement, the court committed no error. Rather, the district court followed the law.

Even if this court finds that the court lacked the authority to dismiss the charges and impose the costs and fees, the lack of authority is not conclusively fatal to the validity of an order.” *See In re Marriage of Seyler*, 559 N.W.2d 7, 10 n. 3 (Iowa 1997). Thus, if a party waives the court's authority to hear a particular case, the judgment becomes final and is not subject to collateral attack. *See Morris Plan Co. of Iowa v. Bruner*, 458 N.W.2d 853, 855–56 (Iowa Ct.App.1990).

This case is remarkably similar to what occurred in *State v. Mandicino*, 509 N.W.2d 481, 483 (Iowa 1993). In *Mandicino*, the defendant applied to have his probation extended. *Id.* at 481. The motion was granted and during the extended probation, his probation was revoked. *Id.* Mandicino later challenged the revocation on the ground that the court lacked jurisdiction to extend his probation. *Id.* This court rejected Mandicino’s claim and found that the court had subject matter jurisdiction, “an impediment to the court’s *authority* can be obviated by consent, waiver, or estoppel.” *Id.* at 483 (original emphasis). The *Mandicino* court further found that Mandicino “remedied any defect in that authority by requesting the extension.” *Id.* The same is true in this case. Even if the district court lacked authority to order costs and fees, Mathes consented to the lack of authority by agreeing to pay the costs and fees associated with the case to obtain a dismissal of the class D felony. *Mandicino* dictates the same result. The district court must be affirmed.

Illegal sentence

The court’s order also does not constitute an illegal sentence because it is not a judgment of sentence. The court dismissed the prosecution and no judgment of sentence was ever imposed.

Dismissal (10/22/17); App. 66. It stands to reason that if no sentence was imposed, the court's order cannot be an illegal sentence.

In *State v. Richardson*, 890 N.W.2d 609, 616 (Iowa 2017), the court considered whether a judgment of sentence includes restitution. The court found that Iowa Code section 901.5, which codifies the measures for pronouncing judgment and sentence, does not include restitution. *Id.* The court determined that “restitution under chapter 910 is mandatory, may be imposed later, and operates independently from section 901.5 sentencing options available to a court.” *Id.* The dismissal order that imposes the costs and fees is what would normally be imposed as restitution, but it in no way amounts to a “sentence” as that term is defined in Iowa Code chapter 901.5. If no sentence was imposed, the district court's order cannot constitute an illegal sentence. Moreover, the court could not have imposed an illegal sentence if the court had authority to dismiss the case and no sentence of confinement or probation was entered. *State v. Bruegger*, 773 N.W.2d 862, 871 (Iowa 2009) (illegal sentence challenges include claims that the court lacked the power to impose the sentence or that the sentence itself is somehow inherently legally flawed.)

Finally, even if the court finds that the dismissal order is a sentence, it is not illegal. The order for costs may not be authorized by statute, but they are also not *precluded* by the statute. That is, under *Petrie*, *McMurry*, and *Ruth* all stand for the proposition that the parties may separately agree to the payment of costs and fees. *Petrie*, 478 N.W.2d at 622; *McMurry*, 925 N.W.2d 592, 601; *State v. Ruth*, 925 N.W.2d at 591. The agreement between the State and Mathes was akin to a contract. *See generally Boge v. State*, 309 N.W.2d 428, 430 (Iowa 1981); *see also State v. Ceretti*, 871 N.W.2d 88, 97 (Iowa 2015) (noting other jurisdictions “apply principles of contract law” when fashioning the appropriate disposition following the vacation of an entire plea agreement); *State v. Smith*, 753 N.W.2d 562, 563 (Iowa 2008) (noting district court invalidated an entire plea agreement because the agreement was “akin to a contract”); *State v. Horness*, 600 N.W.2d 294, 298 (Iowa 1999) (discussing breach of plea agreement). Mathes entered into a favorable agreement whereby she agreed to pay the costs and fees associated with the case to obtain dismissal of a class D felony. Dismissal (10/22/17); App. 66. On appeal, she seeks to benefit from her breach of the agreement by securing a dismissal of the charge without having to pay any costs and

fees. *See generally State v. Ceretti*, 871 N.W.2d 88, 91 (Iowa 2015) (after the defendant assented to the plea deal, he attempts “to transform what was a favorable plea bargain in the district court to an even better deal on appeal.”) This should not be allowed. The district court must be affirmed.

CONCLUSION

The district court’s order dismissing the case and ordering the defendant to pay the costs and fees associated with the prosecution 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:

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