IN THE SUPREME COURT FOR THE STATE OF IOWA
NO. 18–0825

STATE OF IOWA,
Plaintiff–Appellee,

vs.

BENJAMIN G. TRANE,
Defendant–Appellant.

APPEAL FROM THE IOWA DISTRICT COURT
FOR LEE COUNTY (SOUTH),
HONORABLE MARK KRUSE

DEFENDANT/APPELLANT'S SUPPLEMENTAL REPLY BRIEF PURSUANT TO IOWA SUPREME COURT'S JUNE 18, 2019 ORDER

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CERTIFICATE OF FILING AND SERVICE

I hereby certify e-filing of the Defendant/Appellant's Supplemental Reply Brief with the Court via EDMS on July 30, 2019, with the following counsel being electronically served:

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I hereby certify the Defendant/Appellant, Benjamin Trane, was served by mail with this Supplemental Reply Brief on July 30, 2019.

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REPLY ARGUMENTS

I. Whether Iowa Code §814.7 Applies to This Case is Not Determined by Whether It Is a Direct Appeal

The State spends inordinate amount of time arguing this is a direct appeal. Trane concedes this appeal is a direct appeal. However, this is not Trane's argument. Rather, his argument is because he is "appealing claims of ineffective assistance raised through Iowa R. Crim. P. 2.24(2)(b)(9) in his Motion for New Trial, and not raising the claims for the first time on direct appeal, the prohibitions of Iowa Code §814.7 on ineffective assistance of counsel claims do not apply." (Def.'s Supp. Brief at 17.) The recently revised Iowa Code §814.7 reads as follows:

> An ineffective assistance of counsel claim in a criminal case shall be determined by filing an application for postconviction relief pursuant to chapter 822. The claim need not be raised on direct appeal from the criminal proceedings in order to preserve the claim for postconviction relief purposes, and the claim shall not be decided on direct appeal from the criminal proceedings.

Iowa Code §814.7 (2019). The issue is not whether this appeal is a direct appeal, but whether Trane's Motion for New Trial, which included several arguments he should have a new trial because he

received ineffective assistance of counsel, is an ineffective assistance of counsel claim.

The State argues there is no need to resort to statutory construction because the language is clear. (State's Supp. Br. at 15.) Trane agrees. The language is clear that it is claims for ineffective assistance which should not be decided on appeal. Motions for New Trial raising ineffective assistance arguments are distinct from freestanding claims of ineffective assistance.

The legislature is aware it is possible to bring a freestanding claim of ineffective assistance, not bundled into a Motion for a New Trial, on appeal. It was not so long ago the State was arguing petitioners *had* to bring ineffective assistance claims on appeal to preserve them for postconviction relief and the Court agreed. *Rinehart v. State*, 234 N.W.2d 649, 657 (Iowa 1975). It was only more recently the legislature changed this so ineffective assistance claims could be brought for the first time on postconviction relief. *State v. Johnson*, 784 N.W.2d 192, 197 (Iowa 2010). The legislative history and the caselaw reveal that when the legislature referred to "[a]n ineffective assistance of counsel claim" it was referring to the

common practice of bringing freestanding ineffective assistance claims on direct appeal, which would be decided if the record was found adequate. *See State v. Gaskins*, 866 NW 2d 1, 5 (Iowa 2015); *State v. Oetken*, 613 N.W.2d 679, 683 (Iowa 2000). The Court would decide these claims if the record was adequate, because addressing ineffective assistance on direct appeal was a more efficient use of judicial time and resources than preserving them for postconviction relief. *See State v. Truesdell*, 679 N.W.2d 611, 616 (Iowa 2004). That is distinct from appealing the denial of a Motion for New Trial asserting ineffective assistance occurred.

The State claims the legislature did not contemplate the practice of raising ineffective assistance claims in a new trial motion. This "argument from legislative ignorance" ignores the words the legislature chose to use. Even if an outcome is not the actual intent of the legislature, if it is the intent expressed by the words the legislature chose to use, the court must follow the statute. *Noll v. Iowa Dist. Ct. for Muscatine Cty.*, 919 N.W.2d 232, 236 (Iowa 2018). The language in Iowa R. Crim. P. 2.24(2)(b)(9)'s text that a new trial can be had from "*any other cause* the defendant

has not received a fair and impartial trial" reveals the legislature's intent on this issue. Iowa R. Crim. P. 2.24(2)(b)(9) (emphasis added). The court determines legislative intent from what the legislature said, rather than what it should or might have said. *Iowa Dept. of Revenue v. Iowa Merit Employment Commission*, 243 N.W.2d 610, 614 (Iowa 1976).

The State claims the purpose of the legislation would be better served under their interpretation, because chapter 822 structures including discovery are in place, and it is better than a makeshift trial. But discovery exists in criminal proceedings. The State seemingly has no comment regarding the fact that the trial court is often in the best position to judge whether the violation of a duty by trial counsel affected the underlying proceeding because they are already familiar with the evidence, the jury, and the performance of the attorneys, and the memory of any needed witnesses will be fresher. Allowing the trial court to adjudicate prejudice and the attorney's performance is much more judicially efficient than waiting, sometimes years, for a different trial judge in a

postconviction court to reconstruct critical credibility issues and relearn all of the evidence in the case.

II. The Iowa Supreme Court Retains Jurisdiction

Whether there is a right of appeal is unnecessary to decide under this case, as the right of appeal is distinct from whether the court has jurisdiction. As a side note, to the best of the undersigned's research, the Iowa Supreme Court has never had to reach the issue of whether there is an Iowa Constitution right to appeal a criminal conviction. That issue is best saved for another day, because Trane has the right to a direct appeal of his conviction.

The State makes several mistakes in its arguments and in the cases it cites, but they can be lumped into two broad categories. First, the State is confusing the right of appeal with jurisdiction. The actual quote from *State v. Hinners*, 471 N.W.2d 841 (Iowa 1991) is "In Iowa the right of appeal is statutory and not constitutional." *Id.* at 843. The State has mistakenly attributed the quote as "appellate jurisdiction in Iowa is 'statutory and not constitutional.'" (State's Supp. Br. at 22.) Various other cases the State cites say much the same about the right of appeal being statutory (but not

explicitly ruling there is no Iowa Constitutional right to appeal). *See State v. Olsen*, 162 N.W. 781, 782 (Iowa 1917); *James v. State*, 479 N.W.2d 287, 290 (Iowa 1991).

The second mistake the State makes is confusing the Court's refusal to exercise judicial review over administrative tribunals with the court's jurisdiction to exercise appellate review over the courts of Iowa. *See Iowa Dept. of Revenue*, 243 N.W.2d at 614; *James*, 479 N.W.2d at 290; *State v. Ford*, 142 N.W. 984, 985 (Iowa 1913); *Western Intern. v. Kirkpatrick*, 396 N.W.2d 359, 363 (Iowa 1986) (refusing to consider administrative tribunals such as a police courts, the Iowa Merit Employment Commission, the Iowa Industrial Commissioner, and the prison disciplinary board as courts the Iowa Supreme Court has supervisory authority over).

The State makes the wild claim, without authority, that "the legislative branch in Iowa possesses nearly unbounded authority to regulate the taking of appeals at law." (State's Supp. Br. at 24.) This is nowhere near the holdings of the cases it has cited. Rather, the Iowa Supreme Court:

> …has inherent power to protect its own jurisdiction on appeal, and it undoubtedly has

> supervisory control over all inferior tribunals. But this control is not arbitrary in character. Of necessity, it must be exercised according to and under approved forms of law.

Home Savings & Trust Co. v. District Court of Polk County, 95 N.W. 522, 524 (Iowa 1903).

The Iowa Constitution does not grant the legislative branch the ability to strip all power of the judicial branch as it deems fit. Rather, the Iowa Constitution "establishes three separate, but equal, branches of government and delineates the limited roles and powers of each branch." *Varnum v. Brien*, 763 N.W.2d 862, 875 (Iowa 2009). The Iowa Supreme Court "must, under all circumstances, protect the supremacy of the constitution as a means of protecting our republican form of government and our freedoms." *Id.*

The confusion seemingly arises because the State has not quoted the entirety of the relevant Iowa Constitutional provision, as amended in 1962, making older cases less relevant. Iowa Const. Art. V, §4 reads in full:

> The supreme court shall have appellate jurisdiction only in cases in chancery, and shall constitute a court for the correction of errors at

> law, under such restrictions as the general assembly may, by law, prescribe; and shall have power to issue all writs and process necessary to secure justice to parties, and shall exercise a supervisory and administrative control over all inferior judicial tribunals throughout the state.

The Court has had opportunity to interpret "and shall have power to issue all writs and process necessary to secure justice to parties, and shall exercise a supervisory and administrative control over all inferior judicial tribunals throughout the state" a few times.

Iowa Const. Art. V, §4, protects the distinct power of the Iowa Supreme Court to issue a writ of certiorari. *Iowa Indus. Com'r v. Davis*, 286 N.W.2d 658, 661 (Iowa 1979). It "also protects this court's power to exercise a supervisory and administrative control over other judicial tribunals[.]" *Id.* The court has stated that the legislature has a "limited role in our appellate process" and to "set terms and conditions for appeal" including the time to file an appeal. *Root v. Toney*, 841 N.W.2d 83, 87 (Iowa 2013). But the separation of powers between the three coequal branches of government expressly empowers the Iowa Supreme Court to exercise "supervisory and administrative control over all inferior judicial tribunals throughout the state." *Id.*

It is not the legislature which has nearly unbridled authority to take away the Iowa Supreme Court's jurisdiction, but rather, the Iowa Supreme Court that has almost unbridled power to supervise inferior judicial tribunals:

> The superintending control is hampered by no specific rules or means for its exercise. It is so general and comprehensive that its complete and full extent and use have practically hitherto not been fully and completely known and exemplified. It is unlimited, being bounded only by the exigencies which call for its exercise. As new instances of these occur it will be found able to cope with them.

Welty v. McMahon, 316 N.W.2d 836, 838 (Iowa 1982) (*quoting Hutchins v. City of Des Moines*, 57 N.W. 881, 889 (1916)).

The court has explicitly used its constitutional powers to issue writs to and exercise supervisory and administrative control over other judicial tribunals to grant the State's application for discretionary review of a sentencing decision. *State v. Davis*, 493 N.W.2d 820, 822 (Iowa 1992). The court rejected an argument that rules of procedure could limit the court's "constitutional power to grant discretionary review of decisions rendered by other judicial tribunals." *Id.* The supervisory power is a "guaranty of a means of

review when without it substantial justice could not be had." *Hohl v. Board of Education of Poweshiek County*, 94 N.W.2d 787, 791 (Iowa 1959). The court will review on writs if no other means of review are available. *State v. Davis*, 493 N.W.2d 820, 822 (Iowa 1992).

CONCLUSION

As previously stated, the Court's question need not be answered to resolve Trane's appeal, as it is procedurally distinct as it seeks review not from a freestanding claim for ineffective assistance, but from error in how his claims were addressed in his Motion for New Trial.

Should the Court disagree on that point, it must still address the merits of the ineffective assistance claims, as the amendment of Iowa Code §814.7 does not deprive the Court of jurisdiction.

For these reasons, and those set out in Trane's initial supplemental briefing, this Court must consider his claims of ineffective assistance on their merits, and grant him a new trial.

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CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMITATION, TYPEFACE REQUIREMENTS, AND TYPE STYLE REQUIREMENTS

This brief complies with the type-volume limitation of Iowa R. App. P. 6.903(1)(g)(1) as it contains 1,973 words, excluding those parts exempted by Rule 6.903(1)(g)(1).

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/s/ *Lori Yardley* Date: July 30, 2019
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