

**IN THE COURT OF APPEALS OF IOWA**

No. 18-0586  
Filed December 18, 2019

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

**vs.**

**DMARITHE CULBREATH,**  
Defendant-Appellant.

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Appeal from the Iowa District Court for Scott County, Joel W. Barrows,  
Judge.

Dmarithe Culbreath appeals the sentences imposed following his guilty  
pleas in two criminal cases and his stipulation to probation violations in two other  
criminal cases. **AFFIRMED.**

Mark C. Smith, State Appellate Defender (until withdrawal), and Bradley M.  
Bender, Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, and Linda J. Hines, Assistant Attorney  
General, for appellee.

Considered by Tabor, P.J., and Mullins and May, JJ.

**MULLINS, Judge.**

Dmarithe Culbreath appeals the sentences imposed following his guilty pleas in two criminal cases and his stipulation to probation violations in two other criminal cases. He contends the sentencing court's consideration of the Iowa Risk Revised assessment (IRR) contained in the presentence-investigation report (PSI) amounted to an abuse of discretion or violated his due process rights. He also argues the district court's consideration of the recommendation contained in the PSI was improper because the judicial district department of correctional services is not statutorily authorized to provide a sentencing recommendation. He alternatively argues his counsel rendered ineffective assistance in failing to raise such arguments below.

We conclude the sentencing court did not abuse its discretion in considering the IRR on its face as contained in the PSI. *See State v. Headley*, 926 N.W.2d 545, 551 (Iowa 2019). As to the due process claims, we find Culbreath failed to preserve error and the record is inadequate for us to consider the claims under an ineffective-assistance-of-counsel rubric on direct appeal; we therefore preserve the claims, which Culbreath may raise in a postconviction-relief action if he so chooses. *See id.* at 551–52. We find no abuse of discretion in the court's consideration of the sentencing recommendation contained in the PSI. *See id.* at 552. We affirm without further opinion pursuant to Iowa Court Rule 21.26(1)(c) and (e).

**AFFIRMED.**