IN THE SUPREME COURT OF IOWA

STATE OF IOWA, Plaintiff-Appellee, v. IRVING JOHNSON, JR., Defendant-Appellant.	)))))))))	S.CT. NO.19-0109

APPEAL FROM THE IOWA DISTRICT COURT
FOR BLACK HAWK COUNTY
HONORABLE DAVID STAUDT, JUDGE

APPELLANT'S REPLY BRIEF AND ARGUMENT

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CERTIFICATE OF SERVICE

On the 9th day of July, 2019, the undersigned certifies that a true copy of the foregoing instrument was served upon Defendant-Appellant by placing one copy thereof in the United States mail, proper postage attached, addressed to Irvin Johnson Jr., No. 6512064, North Central Correctional Facility 313 Lanedale, Rockwell City, IA 50579.

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SLK/sm/7/19

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https://www.legis.iowa.gov/docs/publications/iactc/88.1/CH0140.pdf

A. Senate File 589 applies prospectively and may not be applied to Johnson's direct appeal.

Iowa Code § 4.5 (2017)

Iowa Const. art. III § 26

Iowa Beta Chapter of Phi Delta Theta Fraternity v. State, 763 N.W.2d 250, 266 (Iowa 2009)

Baldwin v. City of Waterloo, 372 N.W.2d 486, 491 (Iowa 1985)

Iowa Code § 4.13 (2017)

Iowa Code § 814.6 (2017)

B. Even if Senate File 589 applies to Johnson's direct appeal, it should be invalidated for improperly restricting the role and jurisdiction of Iowa's appellate courts.

Klouda v. Sixth Judicial Dist. Dept. of Correctional Services, 642 N.W.2d 255, 260 (Iowa 2002)

State v. Phillips, 610 N.W.2d 840, 842 (Iowa 2000)

Planned Parenthood of the Heartland v. Reynolds ex rel. State, 915 N.W.2d 206, 212 (Iowa 2018)

Iowa Const. art. V § 1

Franklin v. Bonner, 201 Iowa 516, ___, 207 N.W. 778, 779 (1926)

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C. Senate File 589 violates equal protection.

U.S. Const. amend. XIV

Iowa Const. art. I § 6

Varnum v. Brien, 763 N.W.2d 862, 878 (Iowa 2009)

State v. Doe, 927 N.W.2d 656, 661 (Iowa 2019)

City of Cleburne, Tex. v. Cleburne Living Center, 473 U.S. 432, 439-41, 105 S.Ct. 3249, 3254-55 (1985)

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D. Senate File 589 denies Johnson due process.

U.S. Const. amend XIV

Iowa Const. art. I § 9

Medina v. California, 505 U.S. 437, 112 S.Ct. 2572 (1992)

Evitts v. Lucey, 469 U.S. 387, 405, 105 S.Ct. 830, 841 (1985)

Douglas v. People of State of Cal., 372 U.S. 353, 83 S.Ct. 814 (1963)

Griffin v. Illinois, 351 U.S. 12, 76 S.Ct. 585 (1956)

STATEMENT OF THE CASE

Nature of the Case: This is an appeal by the Defendant-Appellant, Irving Johnson, Jr., from the judgment and sentence following appellant's pleas of guilty to these offenses in three different cases: felony eluding, while possessing marijuana, in violation of Iowa Code section 321.279(3) (2017) (count 1), driving while barred in violation of sections 321.561 and 321.555 (2017) (count 2), and possession of marijuana, first offense, in violation of 124.401(5) (2017) (count 3) (FECR219587); possession of marijuana (accommodation offense) in violation of 124.410 (2017) (FECR223080); and felony eluding, while possessing marijuana, in violation of Iowa Code section 321.279(3) (as amended 2017) and (count 1) and possession of marijuana, first offense, in violation of 124.401(5) (as amended 2017) (count 3) (FECR223777). The Honorable David F. Staudt presided at the plea proceeding and over sentencing in Black Hawk County District Court.

ARGUMENT

I. NEWLY ENACTED SENATE FILE 589 IS NOT RETROACTIVE AND DOES NOT PRECLUDE THIS COURT FROM CONSIDERING JOHNSON'S CHALLENGE TO HIS SENTENCING FOLLOWING HIS GUILTY PLEA.

The State contends this court is precluded from considering Johnson's challenge to his sentence following his guilty plea because of recent changes to Iowa Code section 814.6 that took effect July 1, 2019. State's Brief pp. 10-13. At the time Johnson wrote his initial brief, Senate File 589 had not passed the legislature. It was eventually passed and signed by the Governor on May 16, 2019. S.F. 589 available at https://www.legis.iowa.gov/legislation/BillBook?ga=88&ba=sf589 (last visited May 20, 2019). As of July 1, 2019, the law governing a defendant's right to appeal reads as follows:

> Sec. 28. Section 814.6, subsection 1, paragraph a, Code 2019, is amended to read as follows:
>
> [1. Right of appeal is granted to defendants from:]
>
> *a.* A final judgment of sentence, except in the following cases:
>
> (1) A simple misdemeanor conviction.

(2) An ordinance violation.

(3) A conviction where the defendant has pled guilty. This subparagraph does not apply to a guilty plea for a class "A" felony or in a case where the defendant establishes good cause.

S.F. 589 Div. V § 28, available at https://www.legis.iowa.gov/docs/publications/iactc/88.1/CH0140.pdf (last visited July 1, 2019) (struck language removed).

The new law should not apply to Johnson's pending appeal because it is prospective only, it improperly invades the jurisdiction and authority of the court, and it violates equal protection, and due process.

A. Senate File 589 applies prospectively and may not be applied to Johnson's direct appeal.

Under the Iowa Code, all statutes are presumed to be prospective in operation unless expressly made retrospective. Iowa Code § 4.5 (2017). All newly-enacted statutes take effect on July 1 following enactment unless the legislature has provided for an earlier effective date. Iowa Const. art. III § 26. Senate File 589 does not provide a specific effective date. S.F. 589 available at

https://www.legis.iowa.gov/docs/publications/iactc/88.1/CH0140.pdf (last visited July 1, 2019).

The courts look to legislative intent to determine whether a statute applies retrospectively or prospectively. Iowa Beta Chapter of Phi Delta Theta Fraternity v. State, 763 N.W.2d 250, 266 (Iowa 2009). The courts recognize the rule that statutes are presumed to apply prospectively, but also recognize that a remedial or procedural rule can be applied both prospectively and retrospectively. Id. A statute that impacts substantive rights, however, will be applied prospectively only. Id.

The first step is to determine if the legislature expressly stated its intention on how the statute should be applied. Id. As noted above, Senate File 589 did not provide for a specific effective date.

Because the legislature did not expressly provide for retrospective application, this Court must then consider whether the statute is procedural, remedial or substantive:

> ... Substantive law creates, defines and regulates rights. Procedural law, on the other hand, "is the practice, method, procedure, or legal machinery by

> which the substantive law is enforced or made effective." Finally, a remedial statute is one that intends to afford a private remedy to a person injured by a wrongful act. It is generally designed to correct an existing law or redress an existing grievance.

Baldwin v. City of Waterloo, 372 N.W.2d 486, 491 (Iowa 1985)(citations omitted).

Senate File 589 is a substantive law that deprives Johnson of his current ability to challenge his guilty plea sentence. Because the matter involves a challenge to his sentence, the State would have Johnson return to district court pursuant to rule 2.24(5)(a). Such would be a waste of judicial resources when it can be resolved now. Especially since any adverse ruling would likely be appealed.

Even if the statute could be characterized as procedural in nature, the courts have "refused to apply a statute retrospectively when the statute eliminates or limits a remedy." Iowa Beta Chapter of Phi Delta Theta Fraternity v. State, 763 N.W.2d 250, 267 (Iowa 2009). Senate File 589 deprives criminal defendants of their ability to have their claims of an illegal sentence addressed on their merits on direct appeal. If

the district courts rule adversely to defendants, they will not have a right to direct appeal after July 1st because the legislation deprives defendants of a remedy that was previously available. Defendants will likely have to request discretionary review of the lower courts' adverse rulings and argue good cause for review.

Finally, at the time Johnson filed his initial brief, Senate File 589 had not even passed the legislature, yet alone become effective. As a result, he contends the Iowa Code's general savings provision renders the amendment to Iowa Code section 814.7 inapplicable to his case:

> 4.13 General savings provision.
>
> 1. The reenactment, revision, amendment, or repeal of a statute does not affect any of the following:
>
> a. The prior operation of the statute or any prior action taken under the statute.
>
> b. Any validation, cure, right, privilege, obligation, or liability previously acquired, accrued, accorded, or incurred under the statute.
> c. Any violation of the statute or penalty, forfeiture, or punishment incurred in respect to the statute, prior to the amendment or repeal.

> d. Any investigation, proceeding, or remedy in respect of any privilege, obligation, liability, penalty, forfeiture, or punishment; and the investigation, proceeding, or remedy may be instituted, continued, or enforced, and the penalty, forfeiture, or punishment imposed, as if the statute had not been repealed or amended.

Iowa Code § 4.13 (2017). Johnson had, under the pre-amended version of Iowa Code section 814.6, a right to challenge his sentence following a guilty plea. Id. § 814.6 (2017).

Because Senate File 589 would change Johnson's ability to seek a remedy on direct appeal from an illegal sentence following a guilty plea, this court need not apply Senate File 589 to his case. Johnson asks that this court rule directly on the merits of his claim.

B. Even if Senate File 589 applies to Johnson's direct appeal, it should be invalidated for improperly restricting the role and jurisdiction of Iowa's appellate courts.

Issues of retrospective and prospective application aside, Johnson contends Senate File 589 improperly interferes with the separation of powers, with this court's jurisdiction, and with the court's role in addressing constitutional violations.

"The separation-of-powers doctrine is violated 'if one branch of government purports to use powers that are clearly forbidden, or attempts to use powers granted by the constitution to another branch.'" Klouda v. Sixth Judicial Dist. Dept. of Correctional Services, 642 N.W.2d 255, 260 (Iowa 2002)(quoting State v. Phillips, 610 N.W.2d 840, 842 (Iowa 2000)). The doctrine means that one branch of government may not impair another branch in "the performance of its constitutional duties." Id.

> The Iowa Constitution, like its federal counterpart, establishes three separate, yet equal, branches of government. Iowa Const. art. III, § 1. Our constitution tasks the legislature with making laws, the executive with enforcing the laws, and the judiciary with construing and applying the laws to cases brought before the courts.
>
> Our framers believed "the judiciary is the guardian of the lives and property of every person in the State." 1 The Debates of the Constitutional Convention of the State of Iowa 229 (W. Blair Lord rep., 1857) [hereinafter The Debates], http://www.statelibraryofiowa.org/services/collections/law-library/iaconst. Every citizen of Iowa depends upon the courts "for the maintenance of [her] dearest and most precious rights." Id. The framers believed those who undervalue the role of the judiciary "lose sight of a still greater blessing, when [the legislature] den[ies] to the humblest individual

> the protection which the judiciary may throw as a shield around [her]." Id.

Planned Parenthood of the Heartland v. Reynolds ex rel. State, 915 N.W.2d 206, 212 (Iowa 2018).

All judicial power in Iowa is vested in the Iowa Supreme Court and its inferior courts. Iowa Const. art. V § 1. "Courts constitute the agency by which judicial authority is made operative. The element of sovereignty known as judicial is vested, under our system of government, in an independent department, and the power of a court and the various subjects over which each court shall have jurisdiction are prescribed by law." Franklin v. Bonner, 201 Iowa 516, ___, 207 N.W. 778, 779 (1926).

With respect to the jurisdiction of the courts, the Iowa Constitution provides:

> Sec. 4. Jurisdiction of supreme court. 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.

Iowa Const. art. V § 4.

> Sec. 6. Jurisdiction of district court. The district court shall be a court of law and equity, which shall be distinct and separate jurisdictions, and have jurisdiction in civil and criminal matters arising in their respective districts, in such manner as shall be prescribed by law.

Iowa Const. art. V § 6.

It should not go unnoticed that the Iowa Constitution mentions that limitations on the manner of the court's jurisdiction can be prescribed by the legislature. Iowa Const. art. V § 4. The Iowa Supreme Court has previously recognized statutory limitations placed on the right to appeal, for example. See In re Durant Comm. Sch. Dist., 252 Iowa 237, 245, 106 N.W.2d 670, 676 (1960)("We have repeatedly held the right of appeal is a creature of statute. It was unknown at common law. It is not an inherent or constitutional right and the legislature may grant or deny it at pleasure.").

But the ability of the legislature to "prescribe" the "manner" of jurisdiction should not be confused with an ability to remove jurisdiction from the court. Subject matter jurisdiction is conferred upon Iowa's courts by the Iowa Constitution. Matter of Guardianship of Matejski, 419 N.W.2d 576, 577 (Iowa 1988). They have general jurisdiction over all matters brought before them and the legislature can only prescribe the manner of its exercise; the legislature cannot deprive the courts of their jurisdiction. Id. (referring to Laird Brothers v. Dickerson, 40 Iowa 665, 670 (1875)); Schrier v. State, 573 N.W.2d 242, 244-45 (Iowa 1997).

"Once the right to appeal has been granted, however, it must apply equally to all. It may not be extended to some and denied to others." Waldon v. District Court of Lee County, 256 Iowa 1311, 1316, 130 N.W.2d 728, 731 (1964). Although Iowa Code section 602.4102 contemplates the Iowa Supreme Court handling criminal appeals, Senate File 589 would make challenges to guilty pleas unreviewable on direct appeal except for a class "A" or where defendant establishes good cause –

whatever that means. Iowa Code § 602.4102(2) (2017); see Iowa Code § 814.6(1)(a)(3)(as amended 2019). This is particularly problematic for the court's inherent jurisdiction.

By removing consideration of guilty plea challenges - except for class As and where good cause is established - from the realm direct appeal, the legislature is intruding on Iowa appellate courts' independent role in interpreting the constitution and protecting Iowans' constitutional rights. The legislature has violated the separation of powers and impermissibly interfered with the inherent jurisdiction of this court. The provision of Senate File 589 that prohibits the court from ruling upon challenges to guilty pleas should be invalidated.

C. Senate File 589 violates equal protection.

Johnson contends Senate File 589 denies him equal protection under the law because it deprives him of his ability to challenge his sentence on direct appeal just because he pled guilty.

Both the federal and state constitutions provide for equal protection of citizens under the law. U.S. Const. amend. XIV; Iowa Const. art. I § 6. "Like the Federal Equal Protection Clause found in the Fourteenth Amendment to the United States Constitution, Iowa's constitutional promise of equal protection is essentially a direction that all persons similarly situated should be treated alike." Varnum v. Brien, 763 N.W.2d 862, 878 (Iowa 2009)(internal quotation marks omitted). Accord State v. Doe, 927 N.W.2d 656, 661 (Iowa 2019).

There are three classes of review for an equal protection claim based upon the underlying classification or right involved. Classifications based on race, alienage, or national origin and classifications impacting fundamental rights are evaluated according to strict scrutiny. Varnum v. Brien, 763 N.W.2d at 879. Such classifications are "presumptively invalid and must be narrowly tailored to serve a compelling governmental interest." Id. Intermediate or heightened scrutiny is applied to "quasi-suspect groups. Id. To survive intermediate

scrutiny, the law must not only further an important governmental interest and be substantially related to that interest, but the justification for the classification must be genuine and must not depend on broad generalizations. Id. All other classifications are evaluated using rational basis review, in which a complainant has the "heavy burden of showing the statute is unconstitutional and must negate every reasonable basis upon which a classification may be sustained." Id. See City of Cleburne, Tex. v. Cleburne Living Center, 473 U.S. 432, 439-41, 105 S.Ct. 3249, 3254-55 (1985)(discussing different levels of scrutiny under federal equal protection analysis).

The first step in analyzing an equal protection claim is to determine if the legislation is treating similarly situated persons differently. State v. Doe, 927 N.W.2d 656, 662 (Iowa 2019). "[T]o truly ensure equality before the law, the equal protection guarantee requires that laws treat all those who are similarly situated with respect to the purposes of the law alike." Varnum v. Brien, 763 N.W.2d at 883.

Johnson asserts there is a group of criminal defendants who have been convicted following a guilty plea made in the district court. Within this group, Senate File 589 has singled out those wrongly-sentenced defendants. Whereas defendants who went to trial can obtain relief on direct appeal of his criminal conviction, a defendant who pled guilty may not get relief on direct appeal. The legislature has treated Johnson and defendants like him differently based upon his decision to plead guilty.

By depriving Johnson of his right to direct review of his sentence following a guilty plea, Senate File 589 deprives him of a fundamental right to due process and equal protection. Strict scrutiny should apply to his claim on appeal. Varnum v. Brien, 763 N.W.2d 862, 879 (Iowa 2009); See City of Cleburne, Tex. v. Cleburne Living Center, 473 U.S. 432, 440, 105 S.Ct. 3249, 3254 (1985)(discussing different levels of scrutiny under federal equal protection analysis).

Regardless of whether this court considers Johnson's claim under strict scrutiny or rational scrutiny, however,

Senate File 589 cannot stand. Video from the legislature's discussions regarding the bill indicates it was designed to reduce "waste" caused by "frivolous appeals" in the criminal justice system. Senate Video 2019-03-28 at 1:49:10-1:49:20[1], statements of Senator Dawson, available at https://www.legis.iowa.gov/dashboard?view=video&chamber=S&clip=s20190328125735925&dt=2019-03-28&offset=3054&bill=SF%20589&status=i.

To the extent Senate File 589 prevents appellate courts from ruling upon challenges to sentencing following a guilty plea, the bill is neither narrowly tailored nor rationally related to its legislative purpose. Senate File 589 is not only not narrowly tailored or rationally related to the government's professed purpose, but directly contravenes it.

Senate File 589 denies Johnson equal protection under the law and should not be applied to his appeal.

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1. Times listed on video links are approximate.

D. Senate File 589 denies Johnson due process.

Both the Iowa Constitution and the United States Constitution ensure criminal defendants are accorded due process of law. U.S. Const. amend XIV; Iowa Const. art. I § 9. In the realm of criminal law, however, the Due Process Clause has limited operation beyond the rights guaranteed in the Bill of Rights. Medina v. California, 505 U.S. 437, 112 S.Ct. 2572 (1992).

Johnson contends Senate File 589 violates his right to due process, by interfering with the appellate court's ability to review guilty pleas. Where a state provides an appeal as of right but refuses to allow a defendant a fair opportunity to obtain an adjudication on the merits of his appeal, the "right" to appeal does not comport with due process. Evitts v. Lucey, 469 U.S. at 405, 105 S.Ct. at 841 (citing Douglas v. People of State of Cal., 372 U.S. 353, 83 S.Ct. 814 (1963); Griffin v. Illinois, 351 U.S. 12, 76 S.Ct. 585 (1956)).

Accordingly, Senate File 589 denies Johnson due process and should not be applied to his appeal.

CONCLUSION

For the reasons stated above, the defendant respectfully requests this court to vacate his sentence and remand for resentencing.

ATTORNEY'S COST CERTIFICATE

The undersigned, hereby certifies that the true cost of producing the necessary copies of the foregoing Brief and Argument was $ 2.37, and that amount has been paid in full by the Office of the Appellate Defender.

CERTIFICATE OF COMPLIANCE WITH TYPEFACE REQUIREMENTS AND TYPE-VOLUME LIMITATION FOR BRIEFS

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) because:

[X] this brief has been prepared in a proportionally spaced typeface Bookman Old Style, font 14 point and contains 2,873 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).

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