

IN THE SUPREME COURT OF IOWA
Supreme Court No. 19-1139

STATE OF IOWA,
Plaintiff-Appellee,

vs.

MERCEDES DAMME,
Defendant-Appellant.

APPEAL FROM THE IOWA DISTRICT COURT
FOR GRUNDY COUNTY
THE HONORABLE JEFFREY L. HARRIS, JUDGE

APPELLEE'S BRIEF

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STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

I. This Court Lacks Jurisdiction Over this Guilty-Plea Appeal. If the Court Finds It Has Jurisdiction, the District Court Did Not Abuse Its Discretion.

Authorities

Horner v. State Bd. of Eng'g Examiners, 110 N.W.2d 371 (Iowa 1961)

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Iowa Code § 814.6(1)(a)(3)

Iowa Code § 907.5(1)(d)

Iowa R. Crim. P. 2.24(5)(a)

SF589, §§ 28–29, 31 (88th Gen. Assem.)

II. The Defendant's Complaint About the Motion-in-Arrest Advisory Does Not Warrant Relief.

Authorities

State v. Fisher, 877 N.W.2d 676 (Iowa 2016)

State v. Worley, 297 N.W.2d 368 (Iowa 1980)

III. This Court Lacks Jurisdiction to Decide Ineffective-Assistance Claims.

Authorities

Strickland v. Washington, 466 U.S. 688 (1984)

State v. Macke, 933 N.W.2d 226 (Iowa 2019)

State v. Trane, 934 N.W.2d 447 (Iowa 2019)

State v. Wills, 696 N.W.2d 20 (Iowa 2005)

Iowa Code § 814.7

ROUTING STATEMENT

This case can be decided based on existing legal principles. Transfer to the Court of Appeals would be appropriate. Iowa R. App. P. 6.1101(3).

STATEMENT OF THE CASE

Nature of the Case

The defendant, Mercedes JoJean Damme, appeals her conviction and sentence for two counts of theft in the third degree, aggravated misdemeanors in violation of Iowa Code section 714.2(3) (2017). The defendant pled guilty in the Grundy County District Court, the Hon. Jeffrey L. Harris presiding.

Course of Proceedings

The State generally accepts the defendant's course of proceedings as adequate and essentially correct. Iowa R. App. P. 6.903(3).

Facts

In 2018, the defendant committed two separate thefts. She stole a laptop and lockbox from the Conway residence. *See* AGCR015098 Written Plea of Guilty, ¶13; App. 11. And she stole a

wallet from another individual. *See* AGCRO15099 Written Plea of Guilty, ¶13; App. 18.

ARGUMENT

I. **This Court Lacks Jurisdiction Over this Guilty-Plea Appeal. If the Court Finds It Has Jurisdiction, the District Court Did Not Abuse Its Discretion.**

Jurisdiction/Motion to Dismiss

The General Assembly has stripped this Court of jurisdiction to hear this appeal. During the 2019 session, the General Assembly enacted Senate File 589, which stripped the appellate courts of jurisdiction to hear most guilty-plea appeals, granting the authority to review guilty pleas only after a showing of good cause. *See State v. Macke*, 933 N.W.2d 226, 227 (Iowa 2019) (summarizing amendments to Iowa Code section 814.6). In considering the application of SF589 to pending cases, the Supreme Court unanimously held that the amendments “do not apply to a direct appeal from a judgment and sentence entered before July 1, 2019.” *Id.* at 228. The judgment here was entered on July 1, 2019—not before. *See* Orders of Disposition; App. 26–30; App. 31–34. As a result, the amendments to section 814.6 apply. *See State v. Trane*, 934 N.W.2d 447, 464 (Iowa 2019) (summarizing *Macke*, noting that SF589 does not apply “if the appeal was already pending on July 1, 2019,” but does apply to later appeals).

This guilty-plea appeal should be dismissed unless the defendant can show “good cause.” *See* Iowa Code § 814.6(1)(a)(3) (effective July 1, 2019).

The defendant has not shown good cause. Although the term is not defined in the statute, the purpose of SF589 was to restrict direct appellate review of most guilty-plea challenges and shift all ineffective-assistance challenges to postconviction relief. *See* SF589, §§ 28–29, 31 (88th Gen. Assem.). This Court must consider the overall purpose of the legislation when interpreting its terms. *See Horner v. State Bd. of Eng’g Examiners*, 110 N.W.2d 371, 374 (Iowa 1961) (“[I]n determining the meaning of a statute all provisions of the act of which it is a part, and other pertinent statutes, must be considered.”). Given this background, “good cause” is limited to extraordinary legal challenges which cannot be heard elsewhere. The defendant has come nowhere close to that showing here: her challenges are routine and she has not argued, let alone proven, that she cannot obtain relief elsewhere. *See generally* Defendant’s Proof Br.

Finally, while the defendant notes the holding of *Macke* in her brief, she mischaracterizes it. *See* Defendant’s Proof Br. at 13–14.

Although *Macke* holds that SF589 does not apply to appellate cases “pending on July 1, 2019,” this provides the defendant no relief. *Macke*, 933 N.W.2d at 235. The notices of appeal here were filed on July 8, 2019. *See* Notices of Appeal; App. 36–37; App. 38–39. Senate File 589 applies. *See Trane*, 934 N.W.2d 447, 464 (Iowa 2019) (citing *Macke*). This appellate case was not pending on July 1, 2019, and Senate File 589 applies deprives this Court of jurisdiction.

The appeal should be dismissed.

Preservation of Error

Because the defendant asserts the district court abused its discretion at sentencing, the State is unable to challenge error preservation. *See* Iowa R. Crim. P. 2.24(5)(a).

Standard of Review

“[T]he decision of the district court to impose a particular sentence within the statutory limits is cloaked with a strong presumption in its favor, and will only be overturned for an abuse of discretion or the consideration of inappropriate matters.” *State v. Formaro*, 638 N.W.2d 720, 724 (Iowa 2002) (citation omitted). To show an abuse of discretion, a defendant bears the burden to

affirmatively show that the district court relied on improper factors. *State v. Sailer*, 587 N.W.2d 756, 762 (Iowa 1998).

Merits

The defendant's first challenge relates to sentencing. She essentially argues that the district court abused its discretion in considering her family circumstances. Defendant's Proof Br. at 15–18. This complaint does not warrant relief.

As a preliminary matter, the defendant did not object to the PSI, which contained all of the information relied upon by the district court. *See* sent. tr. p. 2, lines 19–21. A sentencing court may always consider matters in the PSI that the defendant does not object to. *State v. Townsend*, 238 N.W.2d 351, 358 (Iowa 1976); *see also State v. Witham*, 583 N.W.2d 677, 678 (Iowa 1998). This can end the inquiry.

If this Court looks at the substance of the district court's reasoning, it should be affirmed. The district court judge gave a detailed five-page recitation of his reasons for sentencing the defendant to prison. *See* sent. tr. pp. 8–12. The court expressed its sorrow at the tough upbringing the defendant had experienced, including the defendant's problems with family and substance abuse.

See sent. tr. p. 8, lines 10–25. The court noted that the defendant herself had been the victim of crimes and that she lacked positive role models at home. Sent. tr. p. 9, lines 1–23. However, the court ultimately found that the defendant’s conduct in this case, her extensive criminal history, and her failure to rehabilitate after numerous interventions outweighed the mitigating factors and warranted a prison sentence. Sent. tr. p. 9, line 24 — p. 12, line 25. The district court did not make this decision lightly, noting that it “spent an extensive period of time reviewing the case files and the presentence investigation” before sentencing. Sent. tr. p. 12, lines 8–18. There is no abuse of discretion here.

In her brief, the defendant asserts that “[t]he court is punishing [her] for the criminal activity of her family members.” Defendant’s Proof Br. at 16. Yet the defendant did not object to all of this information being contained in the PSI. Moreover, the Code expressly requires the court to consider “[t]he defendant’s family circumstances” when fashioning an appropriate sentence. Iowa Code § 907.5(1)(d). This consideration includes both mitigating factors (like a strong, law-abiding support system at home) or aggravating

factors (like the lack of strong supports here). The defendant's improper-factor challenge is without merit.

Finally, to the extent the defendant complains that the district court emphasized some facts about her family over others, *see* Defendant's Proof Br. at 17, that is the proper role of the district court. Given the detailed recitation of reasons for sentence, and the explanation of the court's detailed review of the case file (including the PSI), there is no reason to think the court overlooked these facts. Instead, the court found them outweighed by other aggravating factors. This is an exercise of, rather than abuse of, discretion.

II. The Defendant's Complaint About the Motion-in-Arrest Advisory Does Not Warrant Relief.

Preservation of Error

The State does not agree error was preserved. No objection was made to the allegedly improper advisory below.

Standard of Review

Given the odd nature of the claim, discussed below, the State is unsure of the appropriate standard of review. If the question were whether the motion-in-arrest advisory given substantially complied with the rules, review would be for substantial compliance. *E.g.*,

State v. Worley, 297 N.W.2d 368, 370 (Iowa 1980). But that does not appear to be the issue raised by the defendant.

Merits

The defendant's next argument is odd. She argues that her guilty plea should be vacated because she was not informed of the need to file a motion in arrest of judgment. Defendant's Proof Br. at 18–19. But she was so informed. Both written guilty pleas informed the defendant that she must file a motion in arrest of judgment to challenge the plea. *See* AGCRO15099 Written Plea of Guilty, ¶24; App. 13; AGCRO15098 Written Plea of Guilty, ¶24; App. 20. And even if the defendant had not been informed of the need to file a motion in arrest, this merely obviates the requirement that she preserve error to raise certain defects with the plea—it does not warrant vacating the plea on its own. *See State v. Fisher*, 877 N.W.2d 676, 681–82 (Iowa 2016) (summarizing case law).

Whatever this argument by the defendant may be, it does not warrant relief.

III. This Court Lacks Jurisdiction to Decide Ineffective-Assistance Claims.

Jurisdiction/Motion to Dismiss

In addition to the amendments regulating the direct appeal of guilty pleas, Senate File 589 also stripped the appellate courts of jurisdiction to decide ineffective-assistance claims on direct appeal. *See State v. Macke*, 933 N.W.2d 226, 227 (Iowa 2019) (summarizing amendments to Iowa Code section 814.7). Although this amendment does not apply “if the appeal was already pending on July 1, 2019,” the notices of appeal were not filed here until July 8, 2019. *See State v. Trane*, 934 N.W.2d 447, 464 (Iowa 2019). This Court lacks jurisdiction over the ineffective-assistance claims. *See Iowa Code* § 814.7 (effective July 1, 2019).

Preservation of Error

The State does not contest error preservation.

Standard of Review

Review is de novo. *See State v. Wills*, 696 N.W.2d 20, 22 (Iowa 2005).

Merits

If this Court decides it has jurisdiction, the defendant still is not entitled to relief because her ineffective-assistance complaints (which solely concern sentencing) are meritless.

She first complains that trial counsel should have objected to the use of improper factors at sentencing. Defendant's Proof Br. at 21. This argument is meritless because counsel is not required to object to the use of improper factors to preserve error and the factors were proper, pursuant to statute. *See* Division I.

Next, the defendant complains that counsel should have filed a motion to reconsider the defendant's sentence. Defendant's Proof Br. at 21. The defendant does not identify any basis to believe such a motion would prevail and the district court's lengthy explanation of its reasons for sentence weighs against any reasonable probability of relief. *See* sent. tr. pp. 8–12. Moreover, such a reconsideration is purely within the discretion of the district court and immune to review. Iowa Code § 903.2 (2017). The defendant cannot show breach of essential duty or the reasonable probability of a different outcome for this claim. *See Strickland v. Washington*, 466 U.S. 688, 689 (1984).

CONCLUSION

This Court should dismiss the appeal or, in the alternative, affirm the defendant's convictions and sentence.

REQUEST FOR NONORAL SUBMISSION

This case can be decided on the briefs.

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:

- This brief has been prepared in a proportionally spaced typeface using Georgia in size 14 and contains **1,820** words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).

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