

IN THE SUPREME COURT OF IOWA

Supreme Court No. 19-1413

STATE OF IOWA,
Plaintiff-Appellee

v.

JANE DOE,
Defendant-Appellant

APPEAL FROM THE IOWA DISTRICT COURT
FOR POLK COUNTY
THE HON. KEVIN PARKER, DISTRICT ASSOCIATE JUDGE

APPELLANT'S FINAL REPLY BRIEF

Robert J. Poggenklass, AT0012980

Iowa Legal Aid

1111 9th Street, Suite 230

Des Moines, IA 50314

(515) 243-1193

Fax: (515) 244-4618

rpoggenklass@iowalaw.org

ATTORNEY FOR DEFENDANT/APPELLANT

TABLE OF CONTENTS

TABLE OF AUTHORITIES 3

ISSUE PRESENTED FOR REVIEW 4

ARGUMENT 5

I. The court has jurisdiction to hear this civil appeal of a final order, or in the alternative may treat this appeal as a petition for certiorari. 5

II. Doe properly preserved error. 7

III. Doe correctly interpreted ambiguous statutory language..... 7

CONCLUSION..... 11

CERTIFICATE OF COST..... 12

CERTIFICATE OF COMPLIANCE..... 12

CERTIFICATE OF SERVICE 13

TABLE OF AUTHORITIES

Cases

<i>Berman v. United States</i> , 302 U.S. 211 (1937).....	5
<i>Burton v. Stewart</i> , 549 U.S. 147 (2007)	5
<i>Sorci v. Iowa Dist. Court for Polk County</i> , 671 N.W.2d 482 (Iowa 2003) 6, 7	
<i>State v. Anderson</i> , 246 N.W.2d 277 (Iowa 1976).....	5
<i>State v. Doe</i> , 2018 WL 2727824 (Iowa Ct. App. June 6, 2018).....	6, 9
<i>State v. Doe</i> , 903 N.W.2d 347 (Iowa 2017)	6, 9
<i>State v. Doe</i> , 927 N.W.2d 656 (Iowa 2019)	6, 9, 11
<i>State v. Dudley</i> , 766 N.W.2d 606 (Iowa 2009).....	6
<i>State v. Hutton</i> , 796 N.W.2d 898 (Iowa 2011).....	8
<i>State v. Olsen</i> , 794 N.W.2d 285 (Iowa 2011).....	6
<i>Thomas v. State</i> , 44 N.W.2d 410 (Iowa 1950)	11

Statutes

Iowa Code § 814.6	5
Iowa Code § 815.9	10
Iowa Code § 901C.2	passim
Iowa Code § 901C.3	9, 10
Iowa Code § 907.9	9
Iowa Code § 910.2	10

Rules

Iowa R. App. P. 6.101.....	5
Iowa R. App. P. 6.107.....	6

ISSUE PRESENTED FOR REVIEW

- I. Does section 901C.2(1)(a)(2) allow expungement when all costs and fees associated with that criminal case have been paid, or does it require payment of all costs ordered by the court and imposed by the clerk in the county in which expungement is sought?**

Authorities

Berman v. United States, 302 U.S. 211 (1937)
Burton v. Stewart, 549 U.S. 147 (2007)
Sorci v. Iowa Dist. Court for Polk County, 671 N.W.2d 482 (Iowa 2003)
State v. Anderson, 246 N.W.2d 277 (Iowa 1976)
State v. Doe, 2018 WL 2727824 (Iowa Ct. App. June 6, 2018)
State v. Doe, 903 N.W.2d 347 (Iowa 2017)
State v. Doe, 927 N.W.2d 656 (Iowa 2019)
State v. Dudley, 766 N.W.2d 606 (Iowa 2009)
State v. Hutton, 796 N.W.2d 898 (Iowa 2011)
State v. Olsen, 794 N.W.2d 285 (Iowa 2011)
Thomas v. State, 44 N.W.2d 410 (Iowa 1950)
Iowa Code § 814.6
Iowa Code § 815.9
Iowa Code § 901C.2
Iowa Code § 901C.3
Iowa Code § 907.9
Iowa Code § 910.2
Iowa R. App. P. 6.101
Iowa R. App. P. 6.107

ARGUMENT

I. The court has jurisdiction to hear this civil appeal of a final order, or in the alternative may treat this appeal as a petition for certiorari.

The State cites Iowa Code § 814.6(1), the law applicable to appeals in criminal cases, for the proposition that there is no right of appeal from an order denying expungement. In filing a notice of appeal in this case, Doe seeks to treat the associate district court judge's order denying expungement as a final order in a civil matter. Iowa R. App. P. 6.101(1)(b).

One good reason to do so in this case is that Doe was not convicted of any crime. A “[f]inal judgment in a criminal case means sentence ... the sentence is the judgment.” *Burton v. Stewart*, 549 U.S. 147, 156 (2007) (quoting *Berman v. United States*, 302 U.S. 211, 212 (1937)); see also *State v. Anderson*, 246 N.W.2d 277 (Iowa 1976) (dismissing an appeal from a deferred judgment). An order denying expungement in a dismissed case is not a post-judgment motion in the criminal sense because final judgment in a criminal case means a sentence was imposed. An application for expungement in a dismissed case, though filed in the criminal case, is more like a civil case than a criminal one.

Moreover, this court has historically reviewed appeals from orders that followed a dismissal or acquittal in a criminal case. When a district court filed

a post-judgment order setting a payment plan for an acquitted defendant to reimburse the State for his court-appointed lawyer or be held in contempt, both Iowa appellate courts reviewed his appeal. *State v. Dudley*, 766 N.W.2d 606 (Iowa 2009). When a district court issued post-judgment orders imposing attorney fees following a defendant’s acquittal in a criminal case, this court reviewed the appeal. *State v. Olsen*, 794 N.W.2d 285, 289 n.2 (Iowa 2011) (“This case involves an appeal in a civil matter.”). More recently, Iowa appellate courts reviewed appeals from denials of expungement in three criminal cases under Iowa Code § 901C.2, the statute at issue in this case. *State v. Doe*, 903 N.W.2d 347 (Iowa 2017); *State v. Doe*, 927 N.W.2d 656 (Iowa 2019); *State v. Doe*, 2018 WL 2727824 (Iowa Ct. App. June 6, 2018).

The State asks this court to treat Doe’s appeal as a petition for certiorari. Appellee’s Br. at 10–11. Assuming this court treats the appeal as a petition for writ of certiorari, Iowa R. App. P. 6.107(1)(a), the State requests dismissal of the writ because, the State claims, Doe presents an issue to this court that was never properly presented to the court below. Appellee’s Br. at 10–11. The State cites *Sorci v. Iowa Dist. Court for Polk County* for the proposition that fairness means “this court is not ordinarily a clearinghouse for claims which were not raised in the district court.” *Sorci*, 671 N.W.2d 482, 489 (Iowa 2003). In that case, the Youth Law Center litigated its issues with several

administrative orders before a district associate judge, then raised constitutional claims for the first time in its petition for certiorari.

Here, a pro se defendant filed a signed application for expungement, prepared by Iowa Legal Aid, which includes the statement, “I have paid all my court debt *in this case*” (emphasis added). The district associate judge’s orders denied expungement because of the defendant’s “[m]onies owed *in other matters*” (emphasis added). The boundaries of the disagreement between the parties are clear from the difference, emphasized here, between these two documents. Unlike the plaintiffs in *Sorci*, Doe asserts no claim on appeal that she did not raise in the lower court.

II. Doe properly preserved error.

Although the State seems to challenge preservation of error in its brief, the State also concedes that the record is “minimally sufficient to preserve error.” Appellee’s Br. at 13. Doe concurs with the State, without the qualifier, as explained in her initial brief.

III. Doe correctly interpreted ambiguous statutory language.

Iowa’s dismissal-acquittal expungement law allows an individual to expunge a criminal case when “[a]ll court costs, fees, and other financial obligations ordered by the court or assessed by the clerk of the district court have been paid.” Iowa Code § 901C.2(1)(a)(2). Each of the other four

prerequisites for this type of expungement “focus on the specific case to be expunged.” Appellee’s Br. at 16. The cost provision of the statute, read in concert with the other requirements, demands that an individual must pay all costs, fees, and financial obligations in that case if she intends to expunge it.

In its brief, the State claims that an individual may expunge a criminal case only when that individual has paid all court costs, fees, and financial obligations ordered by the district court or assessed by the clerk in that county, including any outstanding debts in all cases, civil and criminal. Unlike Doe, the State asserts the statute is unambiguous and accordingly, “no further analysis is necessary.” Appellee’s Br. at 20. But a “statute is ambiguous if reasonable minds could disagree as to its meaning.” *State v. Hutton*, 796 N.W.2d 898, 904 (Iowa 2011).

To be fair, Doe’s interpretation of § 901C.2(1)(a)(2) would be unambiguous if the legislature had phrased the cost provision this way: “All court costs, fees, and other financial obligations ordered by the court or assessed by the clerk of the district court *in this case* have been paid.” Likewise, the State’s interpretation would be unambiguous if the provision read as follows: “All court costs, fees, and other financial obligations ordered by the court or assessed by the clerk of the district court *in the county where expungement is sought* have been paid.”

Each year since Iowa Code § 901C.2 took effect, Iowa’s appellate courts have been asked to interpret its meaning. Perhaps this is because the “statute is not a model of precise drafting.” *State v. Doe*, 903 N.W.2d 347, 351 (Iowa 2017); *see also State v. Doe*, 927 N.W.2d 656 (Iowa 2019); *State v. Doe*, 2018 WL 2727824 (Iowa Ct. App. June 6, 2018). Doe concurs with the Iowa Supreme Court’s view that this particular law leaves ample ambiguity for reasonable minds to differ in their interpretation.

The State looks to one other expungement law, the deferred judgment statute, to clarify whether § 901C.2(1)(a)(2) requires payment of all costs owed in that case or in that county. Appellee’s Br. at 19; *see* Iowa Code § 907.9(4)(b) (requiring payment of costs in the case that includes the deferred judgment). A third and more recently enacted expungement law, however, contains a slightly different cost provision: “The defendant has paid all court costs, fees, fines, restitution, and any other financial obligations ordered by the court or assessed by the clerk of the district court.” Iowa Code § 901C.3(1)(d). This builds on § 901C.2’s cost provision, but adds the words “fines, restitution, and any.”

Presumably, the legislature added these specific words because § 901C.3 applies only to misdemeanor convictions. A court would expect to find fines and restitution assessed in a criminal case that resulted in a

conviction, but not in a case that resulted in a dismissal or acquittal. *See* Iowa Code § 910.2.

The State argues that the presence of a provision in a statute where such a provision is omitted in another statute on the same subject is evidence to show a different intention existed. Appellee’s Br. at 19. The State has not explained why the legislature omitted fines and restitution from the cost provision in § 901C.2, while including fines and restitution in the cost provision of § 901C.3. One plausible explanation for such an omission is that the legislature, in enacting § 901C.2, did not contemplate that an individual would have to pay fines or restitution to obtain expungement because fines and restitution are not imposed in dismissed cases or acquittals. *Compare* Iowa Code § 910.2(2) (providing for the types of fees that may be assessed in connection with a conviction), *with* Iowa Code § 815.9(6) (providing that indigent defense reimbursement may be assessed in acquittals).

The State claims the omission of the words “in the case that includes the deferred judgment” from the cost provision of § 901C.2 is deliberate. Appellee’s Br. at 19. By the same logic, the legislature’s addition of the words “fines” and “restitution” to the cost provision of § 901C.3 is also deliberate, and so too is their omission from § 901C.2. These differences between two expungement laws, both contained in Chapter 901C, suggest the legislature

intended the costs imposed in that case to bar expungement, rather than all costs ordered by the court or assessed by the clerk in the county where expungement is sought.

Courts should interpret laws with charitable purposes liberally and give them the benefit of any reasonable presumption. *Thomas v. State*, 44 N.W.2d 410, 412 (Iowa 1950). Here, the charity extends to the individual seeking criminal record clearance. “Expungement is a matter of legislative grace.” *Doe*, 927 N.W.2d at 660 (Iowa 2019). When reasonable minds can differ about the interpretation of a statute, the benefit should extend to the individual, not the State.

CONCLUSION

This court should reverse the lower court’s denial of expungement.

Respectfully submitted,

/s/ Robert Poggenklass

Robert J. Poggenklass, AT0012980

Iowa Legal Aid

1111 9th Street, Suite 230

Des Moines, IA 50314

(515) 243-1193

Fax: (515) 244-4618

rpoggenklass@iowalaw.org

ATTORNEY FOR

DEFENDANT/APPELLANT

CERTIFICATE OF COST

Pursuant to Iowa R. App. P. 6.903(2)(j) the amount paid for reproducing the necessary copies of this document was \$0.

/S/
Robert J. Poggenklass,
ATTORNEY FOR APPELLANT

CERTIFICATE OF COMPLIANCE

This brief complies with the typeface and type-volume requirements of Iowa Rs. App. P. 6.903(1)(e) and 6.903(1)(g) because:

- This brief has been prepared in a proportionally spaced typeface using Times New Roman and contains **1,556** words, excluding the parts exempted by Iowa R. App. P. 6.903(1)(g)(1).

/s/ Robert J. Poggenklass
Signature

January 8, 2020
Date

CERTIFICATE OF SERVICE

I certify that this document was served upon the following party pursuant to Iowa R. Elec. P. 16.316, on January 8, 2020:

Jane Doe by U.S. Mail.

/S/

**Robert J. Poggenklass,
ATTORNEY FOR APPELLANT**