

**IN THE COURT OF APPEALS OF IOWA**

No. 0-287 / 09-1412  
Filed June 16, 2010

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

**vs.**

**ANOUHAK ANNA KEUTLA,**  
Defendant-Appellant.

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Appeal from the Iowa District Court for Polk County, Robert Blink, Judge.

Anouhak Anna Keutla appeals the sentence imposed following revocation of her deferred judgment for manufacturing a controlled substance (marijuana) and seeks a writ of certiorari challenging a contempt adjudication and disposition.

**WRIT SUSTAINED AND CASE REMANDED.**

Mark C. Smith, State Appellate Defender, and Nan Jennisch, Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Kyle Hanson, Assistant Attorney General, and Christina Gonzales, County Attorney, for appellee.

Considered by Vogel, P.J., and Potterfield and Danilson, JJ. Tabor, J., takes no part.

**DANILSON, J.**

Following a guilty plea to manufacturing of a controlled substance, the Polk County District Court deferred judgment and placed Anouhak Anna Keutla on probation for two years. About five months later, Keutla pled guilty to an identical drug charge in Warren County and was again granted a deferred judgment in that county. Keutla was placed at the Women's Residential Correctional Facility (WRCF), where she received at least twenty serious rule violations, prompting her probation officer to file a report of violations in the instant proceeding. Keutla entered a written stipulation that she violated the terms of her probation. At the adjudication of guilt and sentencing hearing, the Polk County court revoked Keutla's deferred judgment probation, sentenced her to an indeterminate five-year term, suspended the sentence and continued probation that had been ordered when judgment was deferred, imposed a fine, and gave Keutla six months in jail for contempt as punishment.<sup>1</sup>

On appeal, Keutla contends the court was not authorized under Iowa Code section 908.11 (2009) to punish her for contempt after revoking her deferred judgment probation. Keutla asks that her "appeal" on this issue be treated as a petition for writ of certiorari.<sup>2</sup> Keutla also appeals the sentencing

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<sup>1</sup> The imposition of a jail sentence as a contempt disposition is punishment, not a sentence. *State v. Mott*, 731 N.W.2d 392, 395 (Iowa 2007).

<sup>2</sup> The filing of an appeal rather than petitioning for a writ of certiorari is not necessarily fatal to our review. *Giles v. State*, 511 N.W.2d 622, 624-25 (Iowa 1994). Iowa Rule of Appellate Procedure 6.108 provides:

If any case is brought by appeal, certiorari, or discretionary review, and the appellate court is of the opinion that another of these remedies was the proper one, the case shall not be dismissed, but shall proceed as though the proper form of review had been sought. Any one of the foregoing remedies may under this rule be treated by the appellate court as the one it deems appropriate.

order, contending the court erred in failing to reduce the fine imposed by an amount equal to civil penalty imposed as a part of her deferred judgment.

We review issues of statutory interpretation and application for errors of law. Iowa R. App. P. 6.907; *State Pub. Defender v. Iowa Dist. Ct.*, 744 N.W.2d 321, 321 (Iowa 2008). “The primary purpose of statutory construction is to determine legislative intent.” *State v. McCoy*, 618 N.W.2d 324, 325 (Iowa 2000).

### **Contempt**

Keutla was before the Polk County District Court on September 2, 2009, for adjudication of guilt and sentencing based on her written stipulation to violations of the probation that was a condition of her deferred judgment.<sup>3</sup> Keutla received a deferred judgment in January 2008 under Iowa Code section 907.3(1). Both the adjudication of guilt and imposition of sentence were deferred to a later date. See Iowa Code § 907.1(1). Her deferred judgment required her to cooperate with a two-year “program of probation” that was a condition of her opportunity to avoid entry of judgment. See *id.* § 907.3(1). If she failed to cooperate, as she did, the court could “withdraw the defendant from the program, pronounce judgment, and impose any sentence authorized by law.” *Id.* Upon her violations of the conditions of probation, the court was authorized to “proceed as provided in chapter 908.” *Id.*

We believe the reference to chapter 908 refers to the procedural requirements for a violation of probation in Iowa Code section 908.11(1)-(3).

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Iowa R. App. P. 6.108; see *Backstrom v. Iowa Dist. Court*, 508 N.W.2d 705, 707 (Iowa 1993); *Scott v. State*, 517 N.W.2d 718, 721-22 (Iowa Ct. App. 1994).

<sup>3</sup> Although the court and the parties discussed the proceedings in terms of dispositional hearing on probation revocation, it is undisputed that the proceeding was for revocation of a deferred judgment, adjudication of guilt, and sentencing.

Subsection (4) of section 908.11 applies to violations of probation ordered as part of a suspended sentence or deferred sentence—not as part of a deferred judgment.

Keutla violated the terms of her deferred judgment probation and appeared in court on those violations after having completed about eighteen of the twenty-four months of that original period of probation. The court revoked her deferred judgment, entered judgment of conviction, and sentenced her to the five-year indeterminate term and imposed a fine as provided for class “D” felonies in Iowa Code section 902.9(5).

The sentencing court stated:

The deferred judgment is set aside. The defendant is now convicted in this case of the crime of manufacturing a controlled substance in violation of Iowa Code Section 124.401(1)(d) and she will be sentenced to serve a term not to exceed five years in prison. The minimum fine is imposed. The question now is do we suspend that sentence and simply leave her on probation for six months or do we take some other remedy.

Because Keutla refused to consent to an extension of probation, the court believed it was bound to continue the probation rather than to order a new probationary term as part of the suspension of the five-year indeterminate term.<sup>4</sup>

The court stated:

The Court will suspend your prison term, keep you on probation, find you in contempt, and sentence you to serve six months in the Polk County Jail. If you—and I can't do anything beyond that, I believe, because of your obstinance with regard to

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<sup>4</sup> During the hearing, a discussion occurred regarding the impact of an unpublished opinion that determined a term of probation cannot be extended without the defendant's consent notwithstanding a violation of probation. The unpublished opinion related to revocation proceedings of a suspended sentence. These circumstances are different, and a distinction exists, where the defendant is withdrawn from the deferred judgment program and judgment and sentence are imposed.

the extension of your probation. That is your right. I respect that right.

In its written sentencing order, captioned “Order Revoking Deferred Judgment and Continuing Probation,” the district court stated with regard to suspension of the five-year sentence: “IT IS FURTHER ORDERED that such sentence is suspended and Defendant is placed on probation for a period of 2 YEARS . . . . The defendant’s probation shall expire on 1-21-10 [about five months after sentencing].”<sup>5</sup>

Section 907.3 required the district court to impose “any sentence authorized by law” after adjudicating Keutla guilty of the felony offense for which judgment and sentence previously was deferred. The only sentence authorized for a class “D” felony is a five-year indeterminate term and a fine. Iowa Code § 902.9(5). The court was not authorized to adjudicate Keutla in contempt and impose a contempt disposition.<sup>6</sup>

The writ of certiorari is sustained, because the court was not authorized to include a contempt adjudication and punishment under section 902.9(5).<sup>7</sup>

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<sup>5</sup> Neither party raised the issue of the legality of the court’s sentence, which suspended the five-year indeterminate term but gave less than a two-year probation for a felony. See Iowa Code § 907.7.

<sup>6</sup> Even if Keutla has now completed her contempt punishment, this fact does not impair the court’s action in withdrawing Keutla from the deferred judgment program or give authority to restore her deferred judgment.

<sup>7</sup> Keutla’s challenge under Iowa Code section 908.11(4) would fail if she had violated a suspended sentence probation and section 908.11(4) applied. That section provides three alternative permissible sanctions for probation violation when the court “continues” probation as the court did here. One of those alternatives includes the imposition of a contempt sentence in addition to the continuation of probation.

**The Fine**

Keutla further contends the court erred in failing to reduce the fine portion of her sentence by the amount previously assessed against her as a civil penalty pursuant to section 907.14. The State concedes the fine portion of Keutla's sentence should have been reduced by an amount equal to the civil penalty previously imposed. See *id.* at § 908.11(5) ("Notwithstanding any other provision of law to the contrary, if the court revokes the probation of a defendant who received a deferred judgment and imposes a fine, the court shall reduce the amount of the fine by an amount equal to the amount of the civil penalty previously assessed against the defendant pursuant to section 907.14."). However, the State notes that the court should enforce the thirty-two percent surcharge on the amount of Keutla's civil penalty. See *id.* at §§ 908.11(5); 911.1(1). We agree.

Accordingly, in respect to the sentence imposed, we remand with instructions for the court to reduce her fine by the amount of the civil penalty assessment and to impose the thirty-two percent surcharge on the amount of the fine prior to reduction.

**WRIT SUSTAINED AND CASE REMANDED.**