

IN THE COURT OF APPEALS OF IOWA

No. 2-808 / 12-0316
Filed October 3, 2012

STATE OF IOWA,
Plaintiff-Appellee,

vs.

RAVEN SIMONE THOMAS,
Defendant-Appellant.

Appeal from the Iowa District Court for Black Hawk County, Todd A. Geer,
Judge.

Raven Thomas appeals from revocation of deferred judgment and
punishment for contempt in the same proceeding. **REVERSED AND
REMANDED.**

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

Thomas J. Miller, Attorney General, Kevin Cmelik, Assistant Attorney
General, Mary Triick, Legal Intern, Thomas J. Ferguson, County Attorney, and
Kimberly Griffith, Brad Walz, and Linda Fangman, Assistant County Attorneys,
for appellee.

Considered by Vogel, P.J., and Danilson and Mullins, JJ.

DANILSON, J.

Raven Thomas appeals from the district court's revocation of deferred judgment and punishment for contempt in the same proceeding. Thomas contends, and the State concedes, the district court erred in revoking the defendant's deferred judgment and suspending the prison sentence on the criminal charge, as well as imposing a jail sentence for contempt. See *State v. Keutla*, 798 N.W.2d 731, 734 (Iowa 2011).

Thomas argues the appropriate remedy is to reverse the revocation of the deferred judgment and remand to the district court for resentencing, as was done in *Keutla*. See *id.* at 735. The State, however, argues that the proper remedy is to uphold the suspended sentence and vacate the contempt charge, which it contends is severable.

In *Keutla*, the court noted:

Generally, in criminal cases, where an improper or illegal sentence is severable from the valid portion of the sentence, we may vacate the invalid part without disturbing the rest of the sentence. *State v. Krivolavy*, 258 N.W.2d 157, 158 (Iowa 1977). We are not, however, required to do so and may remand for resentencing. *Id.* Further, if it is not possible to sever the illegal portion of a sentence, we should remand for resentencing. *State v. Matlock*, 289 N.W.2d 625, 630 (Iowa 1980). In this instance, we conclude the district court's decision to revoke the deferred judgment and suspend the prison sentence on the criminal charge was closely interconnected with the jail sentence for contempt.

Id. The court thus reversed the revocation and remanded for resentencing. *Id.*

As was the case in *Keutla*, we conclude the district court's decision to revoke the deferred judgment and suspend the prison sentence here was closely

interconnected with the jail sentence for contempt.¹ See *id.* We cannot say the district court would have chosen to revoke the deferred judgment, impose judgment, but suspend Thomas's sentence on the criminal charge if the court had known it had no authority to impose a jail term for contempt. We therefore vacate the contempt adjudication and disposition, and reverse the revocation of the deferred judgment and a remand to the district court for resentencing.

REVERSED AND REMANDED.

¹ The district court stated, "Well, Ms. Thomas, we're going to give you one final chance to see whether you can keep yourself out of prison. But you need some additional jail time, so I assume that if you don't go to prison, you would agree to a contempt charge with a jail sentence for contempt?"