

IN THE SUPREME COURT OF IOWA

STATE OF IOWA,

Plaintiff-Appellee,

v.

CHRISTOPHER JOSEPH
HIDLEBAUGH,

Defendant-Appellant.

Dallas County No.
FECR047017

SUPREME COURT NO.
23-2016

APPEAL FROM THE IOWA DISTRICT COURT
FOR DALLAS COUNTY
HONORABLE BRAD MCCALL, JUDGE

APPELLANT'S BRIEF AND ARGUMENT

MARTHA J. LUCEY
State Appellate Defender

ASHLEY STEWART
Assistant Appellate Defender
astewart@spd.state.ia.us
appellatedefender@state.ia.us

STATE APPELLATE DEFENDER'S OFFICE
6200 Park Ave
Des Moines, Iowa 50321
(515) 281-8841
ATTORNEYS FOR DEFENDANT-APPELLANT

TABLE OF CONTENTS

	<u>Page</u>
Table of Authorities	3
Statement of the Issue Presented for Review.....	5
Routing Statement	6
Nature of the Case.....	6
Statement of the Facts	7
Statement of Jurisdiction	9
Argument	
I. The sentencing court violated Hidlebaugh's constitutional rights against discrimination when it denied him a suspended sentence because he was financially unable to purchase a house. The sentencing court abused its discretion when it considered that Hidlebaugh could not afford to purchase a home to sentence him to prison	11
Conclusion.....	19
Request for Nonoral Argument	19
Certificate of Compliance.....	20

TABLE OF AUTHORITIES

<u>Cases:</u>	<u>Page:</u>
In re Det. of Williams, 628 N.W.2d 447 (Iowa 2001).....	13
State v. Ashley, 462 N.W.2d 279 (Iowa 1990).....	17-18
State v. Bruegger, 773 N.W.2d 862 (Iowa 2009).....	11
State v. Carrillo, 597 N.W.2d 497 (Iowa 1999)	12
State v. Damme, 944 N.W.2d 98 (Iowa 2020).....	10
State v. Dunn, 826 N.W.2d 516 (Iowa Ct. App. 2012)	15
State v. Fink, 320 N.W.2d 632 (Iowa Ct. App. 1982)	16-17
State v. Formaro, 638 N.W.2d 720 (Iowa 2002).....	12, 18
State v. Gonzalez, 582 N.W.2d 515 (Iowa 1998).....	17
State v. Hilderbrand, 280 N.W.2d 393 (Iowa 1979)	17
State v. Johnson, 513 N.W.2d 717 (Iowa 1994)	16
State v. Jose, 636 N.W.2d 38 (Iowa 2001).....	18
State v. Laffey, 600 N.W.2d 57 (Iowa 1999).....	12
State v. Lovell, 857 N.W.2d 241 (Iowa 2014)	17-18
State v. Neary, 470 N.W.2d 27 (Iowa 1991).....	16
State v. Ragland, 836 N.W.2d 107 (Iowa 2013)	12

State v. Rutherford, 997 N.W.2d 142 (Iowa 2023)	9
State v. Snyder, 203 N.W.2d 280 (Iowa 1972)	14
State v. Thomas, 520 N.W.2d 311 (Iowa Ct. App. 1994) ...	11-12
State v. Treptow, 960 N.W.2d 98 (Iowa 2021)	9
State v. Wilbourn, 974 N.W.2d 58 (Iowa 2022)	9
State v. Young, 292 N.W.2d 432 (Iowa 1980)	11
Varnum v. Brien, 763 N.W.2.d 862 (Iowa 2009)	13

Statutes and Court Rules:

Iowa Code § 814.6(1)(a)(3) (2024)	9
Iowa Code § 815.10 (2024)	15
Iowa Code § 901.5 (2024)	18
Iowa Code § 907.5 (2024)	18
Iowa R. Crim. P. 2.24(5)(a) (2024)	11

Constitutional Provisions:

U.S. Const, amend. XIV, §1	13
Iowa Const., art. I, § 6	13

STATEMENT OF THE ISSUE PRESENTED FOR REVIEW

- I. The sentencing court violated Hidlebaugh's constitutional rights against discrimination when it denied him a suspended sentence because he was financially unable to purchase a house. The sentencing court also abused its discretion when it considered that Hidlebaugh could not afford to purchase a home to sentence him to prison.

ROUTING STATEMENT

This case should be transferred to the Court of Appeals because the issues raised involve applying existing legal principles. Iowa R. App. P. 6.903(2)(a)(4) and 6.1101(3)(a) (2024).

NATURE OF THE CASE

Defendant-Appellant Christopher Hidlebaugh appeals following his guilty plea and sentence to violating the Sex Offender Registration, 2nd Offense, in violation of Iowa Code §§ 692A.103, 692A.104, 629A.111, and 902.8 (2024). (D0029, Order of Disposition, 12/08/23). Hidlebaugh was sentenced to an indeterminate prison term of 15 years with a three-year mandatory minimum. (D0029, Order of Disposition, 12/08/23; D0040, 12/08/23 Sentencing p. 6, L17-p. 7, L8). Hidlebaugh challenges whether the sentencing court considered an improper factor and violated his constitutional rights as prescribed by the Fourteenth Amendment of U.S. Constitution and article I, section 6 of the Iowa Constitution by imposing a prison term because he did not have the financial ability to purchase a home.

STATEMENT OF THE FACTS

Hidlebaugh informed the court of the following factual basis for his guilty plea: between the dates of March 25 and April 14, 2023, he was not living at the residence in which he was registered. (D0040, Plea, p. 11, L22-p. 12, L6). During the plea hearing, the State informed the district court about the details of the plea agreement between the parties:

...the State has agreed that if he [Hildebaugh] has proof of a mortgage or proof of a real estate contract at the time of the sentencing, the State will recommend a suspended sentence with probation in this matter. And it's my understanding that if he has not reached that point in the purchase of a home, or a formal residence, that the State will be recommending prison, and he is in agreement with that recommendation.

(D0040, Plea, p. 5, L4-21). Two and a half months after the plea hearing, the sentencing hearing occurred. The State informed the court that Hidlebaugh was unable to secure stable housing and did not buy a home. (D0043, 12/8/23 Sentencing p. 6, L5-16). Hidlebaugh explained to the court why he could not secure a mortgage.

“I do have a stable place to live. My cousin owns her house and she has offered me a place to live until I can financially be able to purchase on my own. ...I did not know it [buying a home] was going to be so financial... the bank wants 10 percent because my credit is low. Like, I said my credit has – is rising, and I have been saving money so it’s not like I’m not doing it. ...I even asked Ms. O’Hollern [defense attorney] today if I could possibly get a continuance to give me more time to save more money so that I could buy my own house... and she said she did not feel that it was appropriate just because we had a plea agreement. I understand we have a plea agreement, but I do have a very good-paying job and I go to work every day...”

(D0043, Sentencing p. 8, L18- p.10, L1). Hidlebaugh continued to clarify his financial situation to the court and his desire to not be punished because he could not afford a home.

I would want the State to see that a person is trying and that this person is continuously working to try to meet his end of the bargain. It’s just I don’t have the financial stability right now to have a down payment on a house.

(D0043, Sentencing p. 12, L9-14). The sentencing court declined to impose probation for Hidlebaugh based Hidlebaugh unable to provide proof of a purchase and Hidlebaugh’s criminal history.

(D0043, Sentencing p. 14, L22-p. 15, L3). Other relevant facts will be mentioned below.

STATEMENT OF JURISDICTION

Iowa Code section 814.6(1)(a)(3) requires an appellant who has pled guilty to establish “good cause” to appeal. Iowa Code § 814.6(1)(a)(3) (2024). “An appellate court either has jurisdiction over a criminal appeal or it does not.” State v. Wilbourn, 974 N.W.2d 58, 66 (Iowa 2022). If good cause is lacking, the court has no jurisdiction, and the appeal must be dismissed. See State v. Treptow, 960 N.W.2d 98, 110 (Iowa 2021) (holding the defendant failed to establish good cause to appeal from his guilty plea because “[h]is failure to file a motion in arrest of judgment preclude[d] appellate relief” under our criminal rules of procedure). “[O]nce a defendant crosses the good-cause threshold as to one ground for appeal, the court has jurisdiction over the entire appeal. State v. Wilbourn, 974 N.W.2d 58, 66 (Iowa 2022). See also State v. Rutherford, 997 N.W.2d 142 (Iowa 2023) (Thus, when the Court of Appeals properly found good cause to address Rutherford’s appeal of his discretionary sentence it had jurisdiction over the entire appeal). In this case, Hidlebaugh can establish good cause to

appeal because he challenges his sentence. State v. Damme, 944 N.W.2d 98, 105 (Iowa 2020). (“[G]ood cause exists to appeal from a conviction following a guilty plea when the defendant challenges his or her sentence rather than the guilty plea.”). In this case, although there was a plea agreement between the parties, the district court was not bound by the agreement and it had discretion to impose any sentence that was statutorily appropriate including probation. (D0043, 09/29/23, Plea, p. 7, L12-17). During the sentencing hearing, Hidlebaugh requested that the district court reject the terms of the plea agreement and sentence him to probation as recommended by the Pre-Sentence Investigation Report. (D0026, PSI, p. 13, 11/29/23, D0043, 12/08/23, Sentencing, p. 7, L25-p. 8, L11; p. 8, L14-p. 10, L1; p. 10, L8-p. 11, L5; p. 11, L8-p. 12, L4). Because the district court was not bound by the plea agreement, had discretion to impose probation instead of prison, as requested by Hidlebaugh good cause has been established in this case.

ARGUMENT

- I. **The sentencing court violated Hidlebaugh's constitutional rights against discrimination when it denied him a suspended sentence because he was financially unable to purchase a house. The sentencing court also abused its discretion when it considered that Hidlebaugh could not afford to purchase a home to sentence him to prison.**

Preservation of Error: An unconstitutional sentence is an illegal sentence. See State v. Bruegger, 773 N.W.2d 862, 872 (Iowa 2009). Consequently, an unconstitutional sentence may be corrected at any time. Id.; see also Iowa R. Crim. P. 2.24(5)(a) (2024). When considering whether the court considered improper factor, the Court may review a defendant's argument that the district court considered improper factors and abused its discretion during his sentencing on direct appeal, even in the absence of an objection in the district court. State v. Thomas, 520 N.W.2d 311, 313 (Iowa Ct. App. 1994); State v. Young, 292 N.W.2d 432, 434-35 (Iowa 1980) (reviewing improper factor claim despite the fact that no objection was made at the sentencing hearing).

Standard of Review: Although challenges to illegal sentences are ordinarily reviewed for correction of legal errors, review for an

alleged unconstitutional sentence is de novo. State v. Ragland, 836 N.W.2d 107, 113 (Iowa 2013). In regards to Hidlebaugh's improper factor claim, typically, appellate courts recognize a strong presumption in favor of a district court's sentencing decision if it is within the statutory limits. State v. Formaro, 638 N.W.2d 720, 724 (Iowa 2002). The court will overturn sentencing determinations only for abuse of discretion or consideration of improper factors. Id. Abuse of discretion occurs when a court uses clearly untenable or unreasonable grounds or reasons as part of its sentencing analysis. State v. Laffey, 600 N.W.2d 57, 62 (Iowa 1999). Our "focus is whether an improper sentencing factor crept into the proceedings." State v. Thomas, 520 N.W.2d 311, 314 (Iowa Ct. App. 1994). If a court considers an improper factor, "we may not speculate about the influence of that factor in the sentencing determination." State v. Carrillo, 597 N.W.2d 497, 501 (Iowa 1999).

Discussion:

A. Hidlebaugh's constitutional rights were violated when he was sent to prison because he could not afford to purchase a home.

The United States and Iowa Constitution both guarantee the equal protection of the law to all persons. The Fourteenth Amendment to the United States Constitution provides, “No State shall ... deny to any person within its jurisdiction the equal protection of the laws.” U.S. Const, amend. XIV, §1. The Iowa Constitution provides, “All laws of a general nature shall have a uniform operation; the general assembly shall not grant to any citizen, or class of citizens, privileges or immunities, which, upon the same terms shall not equally belong to all citizens.” Iowa Const., art. I, § 6. Iowa appellate courts have interpreted this provision of the Iowa Constitution to mean “similarly situated persons [should] be treated alike under the law.” In re Det. of Williams, 628 N.W.2d 447, 452 (Iowa 2001) (en banc). At its core, the federal and state’s “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.2.d 862, 883 (Iowa 2009).

“Distinctions in the administration of criminal justice between the rich and poor are generally not likely to bear up under constitutional scrutiny. Such economic discrimination falls squarely within the protection of [the Fourteenth] Amendment.” State v. Snyder, 203 N.W.2d 280, 287 (Iowa 1972) (finding violation of the Equal Protection Clause in imprisoning a defendant based on the inability to pay fine). In this case, though there was a plea agreement between the parties, as soon as Hidlebaugh informed the court he could not purchase a home due to financial limitations, the plea agreement and the court’s reliance on the plea agreement became improper, discriminatory, and unconstitutional. (D0043, Sentencing p. 12, L9-14). Thus, the issue in this case is whether Hidlebaugh was discriminated against because he was not a rich or wealthier defendant in a position to afford a down payment on a home. The Fourteenth Amendment and article I, section 6 protect against discrimination due to the economic status of a defendant thus a defendant’s inability to purchase a home due to his financial situation is not a permissible reason to deny a suspended sentence

and probation. Proper sentencing factors are the defendant's character, propensities, and change for reform and rehabilitation. See State v. Dunn, 826 N.W.2d 516 (Iowa Ct. App. 2012) (finding a defendant's receipt of government food stamps assistance was an impermissible reason to deny a deferred judgment). Here, the sentencing court did discriminate against Hidlebaugh because the sentencing decision relied upon whether Hidlebaugh, an indigent client¹, had enough money to secure a mortgage on a home or enter into a real estate contract to avoid prison. (D0040, Plea, p. 5, L4-21; D0043 Sentencing p. 14, L22-p. 15, L3). If Hidlebaugh had enough money to purchase a home the court would have imposed a suspended sentence and probation. Explained simply, had Hidlebaugh been richer and able to buy a home, he would have not been sentenced to prison and the court's unconstitutional sentencing of Hidlebaugh's finances establishes a violation of

¹ In this case Hidlebaugh was determined to be indigent after completing a financial affidavit and application for appointed counsel. (D0005, App for Counsel/Financial Statement, 05/04/23). Hidlebaugh was appointed counsel from the State Public Defender's Office. See also Iowa Code § 815.10 (2024).

Hidlebaugh's constitutional rights under the federal and state constitution. Although the sentencing court stated it considered additional factors that court also relied upon the fact that Hidlebaugh was unable to purchase and secure a home as a reason to deny him probation. This court should find the imposition of a prison term based whether he had the money and ability to secure a home should be vacated and Hidlebaugh's case should be remanded for a new sentencing without the consideration of whether Hidlebaugh purchased a home.

B. The court used improper factors when it considered Hidlebaugh could not purchase a home because he was not financially capable.

Sentencing decisions of the district court are cloaked with a strong presumption in their favor and a sentence will be disturbed by a reviewing court only upon a showing that the district court abused its discretion. State v. Johnson, 513 N.W.2d 717, 719 (Iowa 1994)(citing State v. Neary, 470 N.W.2d 27, 29 (Iowa 1991)). When imposing a criminal sentence, the court owes a duty to both the defendant and the public. State v. Fink, 320 N.W.2d 632, 634

(Iowa Ct. App. 1982). After considering all pertinent sentencing factors, the court must select the pertinent sentencing option that would best accomplish justice for both society and the individual defendant. Id. The punishment selected by the court should fit both the crime and the individual. State v. Hilderbrand, 280 N.W.2d 393, 396 (Iowa 1979). To constitute reversible error, there must be some showing that the sentencing judge was not “merely aware” of the improper factor but also “impermissibly considered” or “relied on it” in rendering a sentence. State v. Ashley, 462 N.W.2d 279, 282 (Iowa 1990). Where such a showing is made, however, the reviewing court cannot speculate about the weight a sentencing court assigned to [the] improper consideration and the defendant’s sentence must be vacated and the case remanded for resentencing. State v. Gonzalez, 582 N.W.2d 515, 517 (Iowa 1998). This is even so if the impermissible factor was merely a secondary consideration. State v. Lovell, 857 N.W.2d 241, 243 (Iowa 2014) (internal quotations omitted). Additionally, “[i]n order to protect the integrity of our judicial system from the appearance of impropriety,”

resentencing must be “before a different judge.” Id. at 243. “Where the sentencing court...makes no specific reference to the impermissible factor an ‘affirmative showing’ is made that the court considered that factor.” State v. Jose, 636 N.W.2d 38, 43 (Iowa 2001). When choosing a sentence, courts must consider all pertinent matters, including the nature of the offense; the attending circumstances; defendant's age, character, and propensities; and chances for reform. State v. Formaro, 638 N.W.2d 725, 724 (Iowa 2002). “After receiving and examining all pertinent information,” a court should determine which sentence “will provide maximum opportunity for the rehabilitation of the defendant, and for the protection of the community from further offenses by the defendant and others.” Iowa Code § 901.5 (2024). In addition, before deferring judgment or suspending sentence, courts should also consider the defendant's prior record of convictions or deferred judgments, employment circumstances, family situation, mental health, and substance abuse history. Iowa Code § 907.5 (2024).

Here, the sentencing court’s consideration that Hidlebaugh

could not afford to place a down payment on a home because he was hampered by low credit and did not have enough money to secure a mortgage therefore not adhering to the plea agreement was improper because a defendant's financial status is not pertinent to whether prison or probation should be imposed. The district court based its punishment decision on an improper factor and the sentence should be vacated and the case remanded.

CONCLUSION

For the reasons stated above, the defendant respectfully requests this court vacate his sentence and remand for a new sentencing hearing before a different judge.

NONORAL SUBMISSION

Counsel requests not to be heard in oral argument.

**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)(g)(1) and 6.903(1)(i)(1) because:

[X] this brief has been prepared in a proportionally spaced typeface Bookman Old Style, font 14 point and contains 2,514 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(i)(1).

/s/ Ashley Stewart

Dated: 04/16/24

Ashley Stewart
Assistant Appellate Defender
Appellate Defender Office
6200 Park Ave
Des Moines, IA 50321
(515) 281-8841
astewart@spd.state.ia.us
appellatedefender@spd.state.ia.us

AS/lS/04/24

Filed: 04/23/24