IN THE SUPREME COURT OF IOWA
Supreme Court No. 23-2016
Dallas County FECR047017

STATE OF IOWA,
Plaintiff–Appellee,

vs.

CHRISTOPHER JOSEPH HIDLEBAUGH,
Defendant–Appellant.

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

BRIEF FOR APPELLEE

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STATEMENT OF THE ISSUE PRESENTED FOR REVIEW

I. The district court did not violate Hidlebaugh's constitutional rights in sentencing him to prison.

ROUTING STATEMENT

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

NATURE OF THE CASE

The defendant, Christopher Hidelbaugh, appeals the sentence imposed on his conviction, following a guilty plea, for violating the sex offender registry requirements, second offense, as a habitual offender in violation of Iowa Code sections 692A.104, 692.111, and 902.8. He argues his constitutional rights to equal protection were violated by the district court when it sentenced him to prison because he was financially unable to buy a house as provided in his plea agreement.

STATEMENT OF THE FACTS

On May 5, 2023, the State filed a trial information charging Hidlebaugh with a sex offender registry violation, second offense, as a habitual offender. D0010, Trial Information (5/5/2023). On September 29, 2023, Hidlebaugh pleaded guilty to the charge. D0043, Guilty Plea Tr. (9/29/2023).

The plea agreement provided that the State would recommend Hidlebaugh be given a suspended sentence with probation so long as he had "proof of a mortgage or proof of a real estate contract at the time of sentencing[.]" D0043 at 5:4–16. Hidlebaugh agreed that "if he has not

reached that point in the purchase of a home, of a formal residence, that the State will be recommending prison[.]" D0043 at 5:17–25.

When presented with the terms of the plea agreement, the district court inquired if Hidlebaugh considered the possibility that "through no fault of his own, a purchase falls through[?]" Hidlebaugh's counsel replied:

> We've talked a lot about the purchase of a home, and it's a lot. There's a lot of factors that go into it, finding a home, getting approved for the loan, finding one on the market.
>
> The good thing about this particular situation is that Mr. Hidlebaugh doesn't have any restrictions on where he can live; he just has to have a stable residence. So that at least opens up more options of places to purchase.
>
> This wasn't decided today. This has been in the works. And so Mr. Hidlebaugh came today with his homework done, and he has his plan and his loan meeting and some houses, but nobody can, you know, predict. Lots of things happen, we've discussed that, in purchasing a home. I've told him to call me if something happens, just call me, but it is sort of a risk.

D0043 at 6:17–7:10. Hidlebaugh asserted that he understood the plea agreement and that it was not binding on the district court. D0043 at 7:12–17.

The district court accepted Hidlebaugh's guilty plea, set the case for sentencing on December 8, 2023, and ordered the preparation of a presentence investigation report (PSI). D0023, Order Accepting Plea,

Setting Sentencing and Ordering Pre-Sentence Investigation (9/29/2023). The PSI preparer recommended Hidlebaugh receive a suspended sentence with probation. D0026, PSI (11/29/2023) at 12.

At the December 8 sentencing hearing, the State told the district court that Hidlebaugh had not found stable housing as provided in the plea agreement and recommended he be sentenced to a term of imprisonment not to exceed fifteen years in prison. D0040 at 6:5–7:8.

Hidlebaugh told the district court that he was "not financially able to purchase a house right now. I do have a stable place to live." D0040 at 7:25–8:11. He noted that the PSI preparer recommended he receive a suspended sentence. D0040 at 8:10–9:24.

Later, Hidlebaugh acknowledged that he had been living with a friend in an apartment complex, but the friend was moving and "the apartment complex will not accept me." D0040 at 11:8—14. He explained he wanted to stay close to Perry,

> but it seems like every time I come to Perry, there's always trouble behind it, and it's not because I'm going out and victimizing or getting in trouble with the police. It's because I don't have a stable place in Perry because renters will not rent to me.

D0040 at 11:19–12:1.

The district court sentenced Hidlebaugh to a fifteen-year indeterminate sentence for his conviction of violating the sex offender registry requirements as a habitual offender. D0029, Judgment and Sentence (12-08-2023).

JURISDICTIONAL STATEMENT

Because Hidlebaugh is challenging his sentence only, he has shown good cause for this appeal under Iowa Code section 814.6(1)(a)(3). *See State v. Damme*, 944 N.W.2d 98, 105 (Iowa 2020) ("good cause exists to appeal from a conviction following a guilty plea when the defendant challenges his or her sentence rather than the guilty plea").

ARGUMENT

I. The district court did not violate Hidlebaugh's constitutional rights in sentencing him to prison.

Preservation of Error

"[E]rrors in sentencing may be challenged on direct appeal even in the absence of an objection in the district court." *State v. Lathrop*, 781 N.W.2d 288, 293 (Iowa 2010).

Standard of Review

The appellate court reviews the district court's sentencing decision for an abuse of discretion. *State v. Adams*, 554 N.W.2d 686, 692 (Iowa 1996). "To show an abuse of discretion, the defendant must demonstrate that the

court's sentencing decision was based on clearly untenable grounds or reasons, or that the court exercised its discretion to an extent clearly unreasonable." *Id.* "Sentencing decisions are cloaked with a strong presumption in their favor." *State v. Thomas*, 547 N.W.2d 223, 224 (Iowa 1996).

The appellate court reviews constitutional challenges de novo. *State v. McCalley*, 972 N.W.2d 672, 676 (Iowa 2022)

Merits

Hidlebaugh argues the district court violated his constitutional rights to equal protection under the United States and Iowa Constitutions[1] when it sentenced him to prison because he could not buy a home as contemplated in the plea agreement. He also contends the district court considered an impermissible factor, his financial inability to buy a home, in imposing sentence.

[1] U.S. Const. amend XIV, § 1 ("No State shall . . . deny to any person within its jurisdiction equal protection of the laws.") and Iowa Const. art. I, § 6 ("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.").

The district court did not order Hidlebaugh to be imprisoned because he could not afford to buy a house. The district court provided the following, permissible reasons for its sentencing decision.

> In reviewing the presentence investigation, you had a Sex Offender Registry Violation in 2011, a Sex Offender Registration Violation—2nd Offense or Subsequent in 2015, a Sex Offender Registration Violation in 2016, a Sex Offender Registration Violation in 2020, and now the current charge from April of this year.
>
> You've told me about your employment circumstances, and I reviewed the presentence investigation. You've told me about your family circumstances, and the Court must consider that, also, along with the presentence investigation, the nature of these offenses, and – this offense and the steps that you've taken. I must also consider the plea agreement you entered into, plus – also, the presentence investigation in this matter. I must consider the – what the sentence to impose for the protection of the community from further offenses by you, and also deter you and others from committing similar offense, and what sentences will provide you with the maximum opportunity for rehabilitation, including any need for treatment.
>
> [. . .]
>
> The Court has considered Mr. Hidlebaugh's request that the Court not follow the plea agreement in this matter and has considered the presentence investigation. In light of his prior criminal history and in light of the plea agreement, the Court declines to suspend the sentence.

D0040 at 13:6–14:3, 22–15:3.

While the district court mentioned the plea agreement and Hidlebaugh's failure to satisfy its requirements, it did not refer to Hidlebaugh's financial inability to buy a home. In fact, although the plea transcript suggests Hidlebaugh needed to buy a home, it appears, based on the State's comments at sentencing, that the State only required that he obtain stable housing *somewhere*.[2]

Hidlebaugh's insistence on living in Perry manufactured an ownership issue. Hidlebaugh agreed to the district court's consideration of his ownership of a home to improve his sentencing prospects. He cannot complain when the gambit does not pay off. *See State v. Jones*, No. 22-2057, 2024 WL 1296261 *3 (Iowa Ct. App. Mar. 27, 2024) ("he complains the district court did the very thing he asked it to do."). *C.f., e.g., Jasper v. State*, 477 N.W.2d 852, 856 (Iowa 1991) ("Applicant cannot deliberately act so as to invite error and then object because the court has accepted the invitation.").

Because Hidlebaugh did not do what he agreed to do, the State did not recommend a suspended sentence. The district court was not bound by the plea agreement. It was free to consider Hidlebaugh's lack of stable

[2] The State interprets the plea transcript and sentencing transcript to mean that stable housing in Perry, Iowa was possible only if Hidlebaugh owned or contracted to own a home.

housing, as well as his criminal history, family circumstances, need for rehabilitation, and the protection of the community to determine prison was the appropriate sentence.

"[P]overty does not immunize an individual from punishment, and nothing "'precludes a judge from imposing on an indigent, as on any defendant, the maximum penalty prescribed by law"' if the judge has considered "'the wide range of factors underlying the exercise of [their] sentencing function."' *McCalley*, 972 N.W.2d at 679 (quoting *Bearden v. Georgia*, 461 U.S. 660, 670 (1983) (quoting *Williams v. Illinois*, 399 U.S. 235, 243 (1970))). The district court did not violate Hidlebaugh's constitutional rights to equal protection, and it did not consider his financial inability to buy a house; it did not abuse its discretion in imposing sentence.

CONCLUSION

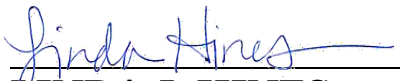
For all the reasons set forth above, the State requests that this Court affirm Hidlebaugh's sentence.

REQUEST FOR NONORAL SUBMISSION

The State believes that this case can be resolved by reference to the briefs without further elaboration at oral argument.

Respectfully submitted,

BRENNA BIRD
Attorney General of Iowa



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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)(g) and 6.903(1)(i)(1) or (2) because:

- This brief has been prepared in a proportionally spaced typeface using Georgia in size 14 and contains **1,659** words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(i)(1).

Dated: June 28, 2024

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