

IN THE SUPREME COURT OF IOWA
Supreme Court No. 24-0353
Polk County Nos. AGCR369554, AGCR375425, AGCR374090,
SMAC409228

STATE OF IOWA,
Plaintiff–Appellee,

vs.
RONALD RICHARD PAGLIAI,
Defendant–Appellant.

APPEAL FROM THE IOWA DISTRICT COURT
FOR POLK COUNTY
THE HONORABLE TABITHA TURNER, JUDGE

AMENDED BRIEF FOR APPELLEE

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STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

- I. By agreeing to pay the costs for dismissed charges under a plea agreement, Pagliai waived his challenge to the district court's authority.**
- II. The district court's order, requiring Pagliai to pay the costs of dismissed charges, as he agreed to do as part of the plea bargain, does not violate his rights to counsel or due process.**
- III. The district court's order for Pagliai to pay the costs of dismissed charges is not an illegal sentence.**

ROUTING STATEMENT

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

NATURE OF THE CASE

The Supreme Court granted discretionary review of the district court's order requiring the defendant, Robert Pagliai, to pay costs for dismissed charges as provided in a guilty plea agreement. Pagliai argues: (1) the district court lacked authority to order him to pay Category "B" restitution for dismissed charges; (2) his rights to due process and to counsel were violated by the district court's order requiring him to pay Category "B" restitution for dismissed charges; and (3) his sentence was illegal.

The State agrees that the district court lacked statutory authority to order him to pay costs for dismissed charges. But the district court had authority under caselaw to order him to pay costs of dismissed charges because he agreed to do so under a plea agreement. *See State v. Petrie*, 478 N.W.2d 620, 622 (Iowa 1991), holding modified by *State v. McMurry*, 925 N.W.2d 592 (Iowa 2019) ("where the plea agreement is silent regarding the payment of fees and costs, that only such fees and costs attributable to the charge on which a criminal defendant is convicted should be recoverable

under a restitution plan”). Alternatively, Pagliai waived his challenge to the district court’s authority by agreeing to pay the costs of dismissed charges under the plea bargain.

Further, the order requiring Pagliai to pay costs for dismissed charges did not violate his rights to due process or to assistance of counsel. Finally, because the order for Pagliai to pay costs for dismissed charges was not a sentence, it is not an illegal sentence requiring correction.

STATEMENT OF THE FACTS

In the summer and fall of 2023, Pagliai was charged in three cases with third-degree theft, enhanced, and in one case with interference with official acts. D0010, Trial Information (7/5/2023) (ACCR369554), D0001 (SMAC409228), Criminal Complaint (10/30/2023), D0009 (AGCR37490), Trial Information (11/2/2023), D0019 (AGCR375425), Trial Information (12/21/2023).

On February 15, 2024, Pagliai entered *Alford* guilty pleas¹ to third-degree theft, enhanced, in AGCR275425 and in AGCR369554 under a global plea agreement with the State whereby in exchange for these pleas, it

¹ See *North Carolina v. Alford*, 400 U.S. 25, 37 (1970) (holding accused may “consent to the imposition of a prison sentence even if he is unwilling or unable to admit his participation in the acts constituting the crime”).

agreed to dismiss cases AGCR374090 and SMAC409228. As part of the agreement Pagliai agreed to pay the costs of the dismissed charges. D0052, (AGCR369554) Waiver of Rights and Plea of Guilty (2/15/2024), D0025 (AGCR375425) Waiver of Rights and Plea of Guilty (2/15/2024), D0031 (AGCR374090), Written Waiver of Rights and Plea of Guilty (2/15/2024), D0013 (SMAC409228).

The district court accepted Pagliai's guilty pleas in AGCR369554 and AGCR375425. D0024, Sentencing Order (2/15/2024), D0051, Sentencing Order (2/15/2024). It sentenced Pagliai to 41 days of incarceration with credit for 41 days served. Consistent with the plea agreement, the district court ordered Pagliai to pay costs and any victim restitution associated with the dismissed charges in AGCR374090 and SMAC409228. D0051 (AGCR369554), Sentencing Order (2/14/2024) D0024 (AGCR375425), Sentencing Order (2/15/2024), D0029 (AGCR474090), Sentencing Order (2/15/2023), D0013, Sentencing Order (SMAC409228) (2/15/2024). According to Courts Online, Pagliai owes \$429.85 in costs in AGCR474090 and \$60 in costs in SMAC409228. *See Iowa Court Online.*

Pagliai filed notices of appeals in all four cases. D0054 (AGCR369554), Notice of Appeal (2/26/2024), D0029 (AGCR375425), Notice of Appeal (2/15/2023), D0033 (AGCR374090), Notice of Appeal

(2/26/2022), D0016 (SMAC409228), Notice of Appeal (2/26/2022). On March 11, 2024, the Court, on its own motion, noted that a “defendant generally does not have a right to appeal cases in which the criminal charges are dismissed.” Order (3/11/2024). It requested both parties to file a jurisdictional statement. Order (3/11/2024).

Pagliai’s court appointed attorney filed a personal statement agreeing that the Court did not have jurisdiction over the dismissed cases. Personal Statement (5/28/2024). On June 13, 2024, the Court issued an order explaining that it would treat Pagliai’s notice of appeal as a request for discretionary review and granted it. Order (6/13/2024).

The Court noted that in *State v. Brown*, 905 N.W.2d 846, 857 (Iowa 2018), it had held “a district court could not assess costs against a criminal defendant in a dismissed case, and to do so was an illegal sentence.” Order (6/13/2024). It noted that “a question remains regarding the district court’s authority to enter such an order when the parties agree, because this court, being evenly divided, affirmed by operation of law in *State v. Mathes*, No. 17-1909, Order (Iowa May 8, 2020) (McDermott, J., taking no part).” Order (6/13/2024). The Court ordered the parties brief this issue, “along with any other preserved assignments of error[.]” Order (6/13/2024).

JURISDICTIONAL STATEMENT

Because the Supreme Court granted discretionary review of this case, the State does not contest jurisdiction.

ARGUMENT

- I. By agreeing to pay the costs for dismissed charges under a plea agreement, Pagliai waived his challenge to the district court's authority.**

Preservation of Error

A “[w]ant of subject matter jurisdiction can be raised at any time.” *State v. Mandicino*, 509 N.W.2d 481, 482 (Iowa 1993). “But where subject matter jurisdiction exists, an impediment to a courts authority can be obviated by consent, waiver or estoppel.” *Id.* Because Pagliai waived his challenge to the district court’s authority by agreeing to pay the costs of the dismissed charges, he cannot challenge the district court’s authority to do so on appeal. *See 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.”).

Standard of Review

“Questions of jurisdiction, authority, and venue of the district court are legal issues to be reviewed for correction of errors at law.” *State v. Clark*, 608 N.W.2d 5, 7 (Iowa 2000).

Merits

“Subject matter jurisdiction refers to the power of the court to hear and determine cases of the general class to which the proceeding in question belongs, not merely the particular case occupying the court’s attention.” *Smith v. Smith*, 646 N.W.2d 412, 414 (Iowa 2002). “It is conferred by the Iowa Constitution and by statute. Iowa Const. art. V, § 6 (conferring jurisdiction upon the district court over civil and criminal matters as prescribed by law); Iowa Code § 602.6101 (2003) (conferring upon the district court all powers of a court of general jurisdiction)[.]” *State v. Erdman*, 727 N.W.2d 123, 125 (Iowa 2007).

While the State maintains the district court had jurisdiction over Pagliai’s criminal cases, it agrees that it did not have statutory authority to order Pagalia to pay costs for dismissed charges. *See See* Iowa Code § 910.2 (in “*all criminal cases in which there is a plea of guilty, verdict of guilty, or special verdict upon which a judgment of conviction is rendered, the sentencing court shall order that pecuniary damages be paid by each offender to the victims of the offender’s criminal activities, and that all other restitution be paid to the clerk of court . . .*”) and § 815.9(5) (providing for payment of costs and fees for legal assistance where a defendant is *convicted*) and (6) (providing for payment of costs and fees for legal

assistance where a person is *acquitted or is a party in a noncriminal case*) (emphasis added)).

In *State v. Petrie*, 478 N.W.2d 620, 622 (Iowa 1991), the Court found that “the provisions of Iowa Code section 815.13 and section 910.2 clearly require, *where the plea agreement is silent regarding the payment of fees and costs*, that only such fees and costs attributable to the charge on which a criminal defendant is convicted should be recoverable under a restitution plan.” (Emphasis added.) Indeed, in *State v. McMurry*, 925 N.W.2d 592, 599 (Iowa 2019), the Court explained that in *Petrie*, it “supplemented the silence in the statute with a rule that permitted the court to apportion costs and fees or to *direct the costs to be paid based on an agreement between the parties for the payment of fees and costs associated with the dismissed counts.*” (Emphasis added.)

The Court continues to accept the principle that a defendant can agree to the payment of fees and costs under a plea agreement. *See State v. Johnson*, 887 N.W.2d 178, 181 (Iowa Ct. App. 2016) (“Unless a plea agreement provides for the recovery of costs associated with dismissed charges, only those costs associated with the charges on which a conviction is obtained may be recoverable; where the plea agreement is silent on costs, no costs are recoverable for dismissed charges.”); *State v. Patrick*, 888

N.W.2d 680 (Iowa Ct. App. 2016) (“To the extent the challenge pertains to court costs and attorneys’ fees as a claim of the imposition of an illegal sentence, in both of the written petitions to plead guilty, Patrick agreed to ‘pay full restitution for all charged offenses including any counts or cases dismissed.’”)(quoting *Petrie*, 478 N.W.2d at 622); *State v. Jenkins-Wells*, No. 14-0432, 2015 WL 3623642, at *2 (Iowa Ct. App. June 10, 2015) (“Jenkins–Wells expressly agreed to pay court costs for the dismissed cases and did not misunderstand the terms of the plea agreement.”); *State v. Bruhn*, No. 00-0436, 2001 WL 246364, at *2 (Iowa Ct. App. Mar. 14, 2001) (“The clear terms of the parties’ plea agreement require Bruhn to pay the costs associated with the dismissed charge of interference with official acts causing injury.”)

Alternatively, Pagliai waived any objection to the district court’s authority to impose costs for dismissed charges when he agreed to do so under a plea bargain. *See Mandicino*, 509 N.W.2d at 482 (“where subject matter jurisdiction exists, an impediment to a courts authority can be obviated by consent, waiver or estoppel”); *State v. Emery*, 636 N.W.2d 116, 123 (Iowa 2001) (“Any deficiency in the district court’s authority was waived when the defendant failed to object to the district court’s adjudication of his case.”); *Morris Plan Co. of Iowa v. Bruner*, 458 N.W.2d

853, 855-56 (Iowa Ct. App. 1990) (“Thus, if a party waives the court’s authority to hear a particular case, the judgment becomes final and is not subject to collateral attack.”).

Pagliai entered into a voluntary, intelligent, and knowing plea agreement; he does not claim otherwise. “A plea bargain also may be regarded as a contract where both sides ordinarily obtain a benefit.” *Rhoades v. State*, 880 N.W.2d 431, 449 (Iowa 2016). “[I]t is a basic precept of contract law that one side is not free to unilaterally withdraw and go back to the beginning just because it wants to do so.” *State v. Beres*, 943 N.W.2d 575, 585 (Iowa 2020). By now complaining about the district court’s authority, Pagliai should not be able to “transform what was a favorable plea bargain in the district court to an even better deal on appeal.” *State v. Walker*, 610 N.W.2d 524, 526 (Iowa 2000).

The district court had authority, under caselaw, to order Pagliai to pay court costs under his plea agreement. If this Court finds the district court did not have such authority, it should find Pagliai waived his objection to the court’s authority by agreeing to pay costs of dismissed charges under a plea bargain.

II. The district court’s order, requiring Pagliai to pay the costs of dismissed charges, as he agreed to do as part of the plea bargain, does not violate his rights to counsel or due process.

Preservation of Error

“It is well established that a defendant’s guilty plea waives all defenses and objections which are not intrinsic to the plea.” *State v. Carroll*, 767 N.W.2d 638, 641 (Iowa 2009). Pagliai does not claim that his plea was involuntary, unintelligent or unknowing. When he agreed to pay costs of dismissed charges under his valid plea agreement, he waived any constitutional challenge to the imposition of these costs.

Standard of Review

When there is “an alleged violation of a constitutional right,” the appellate court’s review is de novo. *State v. Tague*, 676 N.W.2d 197, 201 (Iowa 2004).

Merits

Pagliai contends the district court’s order for him to pay costs of dismissed charges violates his right to counsel and due process under the United States Constitution’s Fifth, Sixth, and Fourteenth Amendments as well as Article I, sections 1 and 10 of the Iowa Constitution. Appellant’s Br. at 21.

Pagliai cites *State v. Dudley*, 766 N.W.2d 606 (Iowa 2009), in support of his assertion that the district court’s order violated his right to counsel. In *Dudley*, the Court found Iowa Code section 815.9, as applied to acquitted defendants, infringed on their federal and state right to counsel because at the time, the statute² did not include a “requirement for a preliminary determination that a defendant has the financial means to reimburse the State.” *Dudley*, 766 N.W.2d at 614. Here, the order to pay costs was the product of a plea agreement, not statute. By agreeing to pay the costs of dismissed charges, Pagliai waived his claim that the order infringed on his right to counsel.

Pagliai relies on *Nelson v. Colorado*, 581 U.S. 128, 135 (2017), in support of his claim that the district court’s order violated his right to due process. In *Nelson*, the Supreme Court examined whether a Colorado’s statute that required a defendant to “prove her innocence by clear and convincing evidence to obtain the refund of costs, fees, and restitution paid pursuant to an invalid conviction[.]” comported with due process. The Court

² The legislature amended Iowa Code section 815.9 in 2012 to provide that an acquitted person shall be ordered to pay “all or a portion of the total costs and fees incurred for legal assistance, to the extent the person is reasonably able to pay, after an inquiry which includes notice and reasonable opportunity to be heard require a finding of a reasonable ability to pay.” See 2012 Iowa Acts, ch. 1063, § 9.

applied the *Mathews v. Eldridge*, 424 U.S. 319 (1976) balancing test and determined the statute “fail[ed] due process measurement because defendants’ interest in regaining their funds is high, the risk of erroneous deprivation of those funds under the [statute] is unacceptable, and the State has shown no countervailing interests in retaining the amounts in question” *Nelson*, 581 U.S. at 134, 139.

Nelson is inapplicable here because Pagliai’s convictions were not invalidated and he agreed to pay the costs for dismissed charges.

Similarly, *Giaccio v. State of Pa.*, 382 U.S. 399 (1966), cited by Pagliai, is inapplicable. That case also involved an acquitted defendant. The Supreme Court found that a statute providing that the jury could find an acquitted defendant should pay costs of the prosecution violated the “Due Process Clause because of vagueness and the absence of any standards sufficient to enable defendants to protect themselves against arbitrary and discriminatory impositions of costs.” *Giaccio*, 382 U.S. at 402.

Pagliai waived his constitutional challenges to the district court’s order for him to pay the costs of dismissed charges when he agreed to do so under his plea agreement with the State.

III. The district court’s order for Pagliai to pay the costs of dismissed charges is not an illegal sentence.

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

“[R]eview of challenges to the legality of a sentence is for errors at law.” *State v. Sisk*, 577 N.W.2d 414, 416 (Iowa 1998).

Merits

Pagliai argues that the sentence imposed by the district court was illegal because it was not authorized by statute. *See State v. Woody*, 613 N.W.2d 215, 217 (Iowa 2000) (“An illegal sentence is one that is not permitted by statute.”). “Neither party may rely on a plea agreement to uphold an illegal sentence.” *Id.* at 218; *see also State v. Rasmussen*, 7 N.W.3d 357, 365 (Iowa 2024) (“it is well established that an illegal sentence cannot be affirmed on the basis of contract, waiver, estoppel, or detrimental reliance”).

The State maintains that the district court’s order for Pagliai to pay for the costs of dismissed charges, although contained in a sentencing order, was not part of his sentence. “A sentence is ‘[t]he judgment formally

pronounced by the court or judge upon the defendant after his conviction in a criminal prosecution, imposing the punishment to be inflicted....” *Klouda v. Sixth Jud. Dist. Dep't of Corr. Servs.*, 642 N.W.2d 255, 261 (Iowa 2002) (quoting Black’s Law Dictionary 1362 (6th ed.1990)). Pagliai was not convicted of any crimes in AGCR374090 and SMAC409228 and the charges were dismissed.

In *State v. Hursey*, No. 16-0187, 2016 WL 6270000, at *3-4 (Iowa Ct. App. Oct. 26, 2016), the Court of Appeals considered and rejected the defendant’s claim that the district court “enter[ed] an illegal sentence by ordering Hursey to pay restitution on a dismissed charge.” Citing *Petrie*, the Court concluded, “[w]e know of no authority—nor has the defendant provided any—providing it is illegal to require a defendant to pay restitution for a dismissed count if the defendant has agreed to pay it as a part of a plea agreement, or that we must find a factual basis for the dismissed charge.” *Hursey*, 16-0187, 2016 WL 6270000, at *4.

In the event this Court finds the district court’s order for Pagliai to pay costs of dismissed charges is an illegal sentence, the State agrees with Pagliai’s proposed remedy. *See* Appellant’s Br. at 26-27. That is, the remedy is for the Court to vacate Pagliai’s convictions and return the parties to their original positions. *See State v. Ceretti*, 871 N.W.2d 88, 98 (Iowa

2015) (finding that because the “plea agreement contravenes this principle [the one-homicide rule], we vacate the agreement and the resulting convictions.”).

CONCLUSION

For all the reasons set forth above, the State requests that this Court affirm the district court’s order requiring him to pay the costs of dismissed charges.

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,

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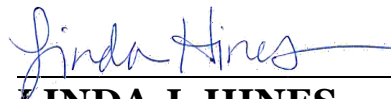
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CERTIFICATE OF COMPLIANCE

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:

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