

Criminal Law: Appellate Update

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Senate File 589

- *General Verdicts -§814.28*
- *Guilty Pleas --§ 814.6*
- *Pro Se Filings - -§814.6A*
- *Ineffective Assistance of Counsel -§814.7*

General Verdicts -§814.28

Prior to July 1, 2019:

When multiple alternatives are submitted to the jury, if one is flawed or unsupported by the evidence, a general verdict or guilty requires reversal for a new trial (*State v. Heemstra*, 721 N.W.2d 549 (Iowa 2006); *State v. Pilcher*, 242 N.W.2d 348 (Iowa 1976)).

After July 1, 2019:

“If the jury returns a general verdict, an appellate court shall not set aside or reverse such a verdict on the basis of defective or insufficient theory, if one or more of the theories presented & described in the complaint, information, indictment, or jury instruction is sufficient to sustain the verdict on a at least one court.”

Questions to Ask

- Can the legislature attempt to limit a new trial remedy for error in the trial process?
- When is it up to the courts to determine what relief/remedy is available for trial courts?
- *See State v. Dahl, 874 N.W.2d 348 (2016) – Court may use supervisory authority to protect the rights of criminal defendants*

Pending Arguments

Due Process

- Federal Due Process Clause – The federal due process clause draws a distinction between whether the flawed alternative is legally or factually flawed – Griffin v. U.S., 502 U.S. 46 (1991).
- Iowa Supreme Court – The Court rejected the Griffin rule in State v. Tyler, 873 N.W.s 2d 741 (Iowa 2016)
- ***Pending case in Iowa Supreme Court: State v. Warren (19-0267)***

Separation of Power

- The legislature cannot absolutely bar appellate courts from inherent power to exercise its discretion regarding appeals. “The General Assembly has power to enact laws governing practice only where they do not unduly infringe upon the inherent powers of the judiciary.” Agran v. Checker Taxi Co., 105 N.E.2d 713, 715 (Ill. 1952),
- The separation of powers doctrine means that one branch of government may not impair another branch in the performance of its constitutional duties. Klouda v. Sixth Judicial Dist. Dept. of Correctional Services, 642 N.W.2d 255, 260 (Iowa 2002).

Guilty Pleas -§814.6

After July 1, 2019:

- **Right of Appeal is granted to the defendant from:**
 1. Final judgment of sentence except in the following cases:
 - a. Simple misdemeanor conviction
 - b. Ordinance violation
 - c. A conviction where the defendant pled guilty (not applied to felony class “A” conviction or in cases where the defendant established good causes

Questions to Ask

- What constitutes good cause?
 1. *Black's Law definition: "a legally sufficient reason."*
- Who decides good cause?
- What guilty plea issue does not fit under good cause?
 1. *Three cases pending before the Iowa Supreme Court*
State v. Tucker (19-2082); State v. Treptow (19-1276)m, State v. Boldon (19-1159); State v. Hawk (19-1814)

Due Process

- Is there a constitutional right to appeal?

1. **Federal case:** Jones v. Barnes, 463 U.S. 745, 751 (1983) “There is, of course, no constitutional right to an appeal...”

1. **Iowa Case:** State v. Doe, 927 N.W. 2d 656 (Iowa 2019)

“It is true that the right of appeals is purely statutory, not constitutional, and may be granted or denied by the legislature as it determines. But once a right of appeals is provided [it] may not be extended to some and denied to others.”

Guilty Pleas: Burden of Proof §814.29

New Section as of July 1, 2019

*If a defendant challenged a guilty plea based on an alleged defect in the plea proceedings, the plea shall not be vacated unless the defendant demonstrates that the **defendant more likely than not would not have pled guilty if the defendant has not occurred**. The burden applies whether the challenge is made through a motion in arrest of judgement or on appeal. Any provision in the Iowa rules of criminal procedure that are inconsistent with this section shall have no legal effect.*

Pending Argument:

Voluntariness/Due Process

“If a defendant’s guilty plea is not equally voluntary and knowing, it has been obtained in violation of constitutional guarantees of due process and is therefore void.” State v. Boone, 298 N.W.335, 337 (Iowa 1980).

“The defendant must have a full understanding of the consequences of a plea before constitutional rights can be waived knowingly and intelligently.” Id. (citing Boykin v. Alabama, 395 U.S. 238, 243-44 (1969)).

“[A] defendant must be aware of not only of the constitutional protections that he gives up by pleading guilty, but he must also be conscious of ‘the nature of the crime with which he is charged’ and the potential penalties. [Iowa Rule of Criminal Procedure] 2.8(2)(b) codifies the due process mandate.” State v. Loye, 670 N.W.2d 141, 1541 (Iowa 2003).

Pro Se Filings-§814.6A

New Section as of July 1, 2019

- 1. A defendant who is currently represented by counsel shall not file any pro se document, including a brief, reply brief, or motion, in any Iowa court. The court shall not consider, and opposing counsel shall not respond to, such pro se filings.*
- 2. This section does not prohibit a defendant from proceeding without the assistance of counsel.*
- 3. A defendant currently represented by counsel may file a pro se motion seeking disqualification of the counsel, which a court may grant upon a showing of good cause.*

Pending Arguments

Separation of Power

- **More research cases:**
 1. Planned Parenthood of the Heartland v. Reynolds ex rel. State, 915 N.W. 2d 206 (Iowa 2018)
 2. Franklin v. Bonner, 201 Iowa 216, 207 N.W. 778 (1926)
- **Pending case in Iowa Supreme Court: State v. Thompson (19-1259)**

***Ineffective Assistance of
Counsel -§814.7***

After July 1, 2019

Essentially prohibits the appellate courts from deciding ineffective assistance of counsel claims on direct appeal.

Pending Arguments

Plain Error

- The Iowa courts have never adopted it. State v. Rutledge, 600 N.W.2d 324 (1999); State v. McCright, 569 N.W.2d 605 (1997), State v. Hutchison, 341 N.W.2d 33 (1983).
- But Justice Mansfield says we have essentially been using IAC as a substitute for plain error. State v. Rhoades, 848 N.W.2d 22 (2014).

Pending Arguments

Separation of Power

Is the legislature taking away the Court's jurisdiction to rule on constitutional issues?

- More research cases:
 1. Varnum v. Brien, 763 N.W.2d 862 (Iowa 2009).
 2. Matter of Guardianship of Matejski, 419 N.W. 2d 576 (Iowa 1988).
 3. State v. Ambrose, 861 N.W. 2d 550 (Iowa 2015)
- Pending case in Iowa Supreme Court: State v. Thompson (19-1259)

Due Process

If the statute prohibits counsel from raising valid IAC claim that could be decided on the available appellate record, does that statute unduly interfere with the right to effective assistance of counsel?

- A first appeal as of right therefore is not adjudicated in accord with due process of law if the appellant does not have effective assistance of an attorney
- The attorney must play the role of an active advocate and not simply a friend of the court in assisting with a detached evaluation of the claim. *Id.*

Resolved cases:

State v. Macke (18-0839) – Iowa Court found the guilty plea and ineffective assistance of counsel provisions are NOT retroactive. Those sections do NOT apply to appeals where judgment and sentence were entered prior to July 1, 2019.

Other Recent Changes to Appellate Practice

- **Mandatory Minimums - §902.11 (2A)**
- **Restitution - Senate File 457**