

No. 21-8077

ORIGINAL

Supreme Court, U.S.  
FILED

JUN 01 2022

OFFICE OF THE CLERK

IN THE  
SUPREME COURT OF THE UNITED STATES

DUANE YATES -- PETITIONER

VS.

IOWA SUPREME COURT, THE WOODBURY COUNTY DISTRICT COURT,  
THE WOODBURY COUNTY PROSECUTOR AND THE IOWA ATTORNEY GENERAL,  
-- RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO  
THE ADVERSE RULINGS AND DECISIONS OF THE IOWA SUPREME  
COURT ON AN ILLEGAL SENTENCE RESULTING FROM AN EX POST FACTO VIOLATION  
AND WRONGFUL APPLICATION  
OF THE RESTITUTION LAWS IN IOWA

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PETITION FOR WRIT OF CERTIORARI

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Duane Yates  
P.O. Box 218  
Newton, IA. 50208

## **QUESTION(S) PRESENTED**

1. Whether the Iowa Courts have unlawfully determined the restitution that Duane Yates was ordered to pay under Iowa Code 910 at the time of his conviction and again upon the new Executive Order that was done by the Governor of Iowa's Office in August 2020, which corrected the Iowa Courts and allowed for additional review of the indigent status of Duane Yates at all times in this conviction?
2. Whether the Iowa Courts have wrongfully decided the issue of the Iowa Department of Corrections (IDOC), adding an additional sentencing enhancements to Duane Yates' sentence beyond that imposed by the courts on October 9, 2002 in resentencing on 11/27/12 then again on October 22, 2014 on when he corrected his first illegal sentence which was a violation of the Ex Post Facto Clause under the United States Constitution's Art. 1 § 9, Cl. 3 when the IDOC added additional sentencing enhancements that were not law when Yates was sentenced and the IDOC not being a court of law?
3. Whether the IDOC added an illegal sentence under Iowa Code 905.11 enacted in 2005 by the Iowa Legislation is an illegal sentence under the Ex Post Facto Clause of United States Constitution's Art. 1 § 9, Cl. 3 as this statute of the Iowa Code did not become law until after the original conviction became final in 2002 from a crime that was committed in 2001?

## **LIST OF PARTIES**

[ XXX ] All parties appear in the caption of the case on the cover page.

[ ] All parties do not appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

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IN THE  
SUPREME COURT OF THE UNITED STATES  
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

**OPINIONS BELOW**

[ ] For case from federal courts:

The opinion of the United States court of appeals appears at Appendix \_\_\_\_\_ to the petition and is

[ ] reported at \_\_\_\_\_; or,  
[ ] has been designated for publication but is not yet reported; or,  
[ ] is unpublished.

The opinion of the United States district court appears at Appendix \_\_\_\_\_ to the petition and is

[ ] reported at \_\_\_\_\_; or,  
[ ] has been designated for publication but is not yet reported; or,  
[ ] is unpublished.

[ XXX ] For cases from state courts:

The opinion of the highest state court to review the merits appears at Appendix A to the petition and is

[ ] reported at \_\_\_\_\_; or,  
[ ] has been designated for publication but is not yet reported; or,  
[ XXX ] is unpublished.

## JURISDICTION

[ ] For cases from federal courts:

The date on which the United States Court of Appeals decided my case was

\_\_\_\_\_.

[ ] No petition for rehearing was timely filed in my case.

[ ] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: \_\_\_\_\_, and a copy of the order denying rehearing appears at Appendix \_\_\_\_\_.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including \_\_\_\_\_ (date) on \_\_\_\_\_ (date) in Application No. \_\_\_\_\_.

\_\_\_\_\_.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

[ XXX ] For cases from state courts:

The date on which the highest state court decided my case was May 5, 2022. A copy of that decision appears at Appendix A.

[ ] A timely petition for rehearing was thereafter denied on the following date: \_\_\_\_\_, and a copy of the order denying rehearing appears at Appendix \_\_\_\_\_.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including \_\_\_\_\_ (date) on \_\_\_\_\_ (date) in Application No. \_\_\_\_\_.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

## **CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**

The Due Process of Law as it applies to Iowa Codes 611-624A, 709.3, 813, 815, 901A.2(8), 905.11, 910, 910.2, and 910.7 given to the States by the Fourteenth Amendment to the United States Constitution.

The issues of Cruel and Unusual Punishment under the Eighth Amendment to the United States Constitution as the IDOC wants to alter Yates' prison sentence to add additional sentencing statutes that the IDOC does not have the authority or jurisdiction to impose without a court's order.

The Fourteenth Amendment denial of a fair hearing and the following of Iowa Code 910 on the correct application of law as the Petitioner was indigent at the time of the proceedings.

The Fourteenth Amendment of the ongoing denial of Iowa Code 910 on restitution after an Executive Order by the Governor of Iowa was handed down to correct all restitution on inmates currently incarcerated upon a new request for review under this Executive Order.

The Fourteenth Amendment denial of Due Process of Law to the right to an attorney for criminal proceedings under Iowa Code 813 and to be present in the court room for sentencing issues as this code section pertains to the Iowa Rules of Criminal Procedure and is on issues pertaining to the unlawful actions of the Iowa Courts allowing the IDOC to act as a court of law.

The Sixth Amendment right to counsel as the conviction in this case is a felony under Iowa law 709.3 and the Iowa R. Crim. P. 2.28 as codified under Iowa code 813 and is codified under Iowa Code 815.9 that the court is to appoint counsel if indigent.

The right to be present at sentencing per Iowa R. Crim. P. 2.27 as with adding additional sentencing enhancements after the conviction was years' prior, the Iowa Courts have established that the defendant must be present when enhancing a sentence after the initial sentencing was entered by a court of law.

The Ex Post Facto clause under the United States Constitution's Art. I § 9, Cl. 3 as it applies to state laws that are passed after a conviction is final is not able to be applied retroactively to cases that are finalized years before the law was enacted.

The Iowa Rules on Original Writ of Certiorari 6.301 – 6.304 as governed by Iowa Code 814 has no way to file for a further review in these rules.

The United States Constitution Fifth Amendment as it applies to the Due Process of Law and as given to the States through the Fourteenth Amendment.

The Iowa Rule Appellate Procedure 6.1 and 6.5 as it pertains to timely filing an appeal with the Iowa Supreme Court from an adverse decision from a district court proceeding.

## STATEMENT OF THE CASE

The Petitioner, Duane Yates filed for a new restitution hearing pursuant to an administrative order set forth by the Iowa Governor's Office (App. B) and also for a correction of an illegal sentence that was imposed by the IDOC without any court proceedings to change, alter or extend the Petitioner's sentence beyond that already imposed by court orders as seen in (APP. F). This history of the events are as follows;

Yates filed for a restitution hearing on 9/24/20.

The court granted a hearing on 10/8/20.

A hearing was held by phone on 11/10/20 at 3:30 p.m.

The court denied relief by order dated 2/2/22.

Yates filed for contempt proceedings on the IDOC on 11/8/21.

The court entered an order on the contempt proceedings on 3/10/22.

A timely Notice of Appeal was filed by Yates and is dated 1/12/22 pursuant to Iowa Rule Appellate Procedure 6.1 and 6.5. The Iowa Supreme Court changed it to a Writ of Certiorari under Iowa Rules on Original Writ of Certiorari 6.301 – 6.304 of which there is no way to file for any further review.

A timely motion to appoint counsel was filed for the appeal on 1/2/22.

The Iowa Supreme Court after being contacted about the Woodbury County Court for not responding to Yates' motions for appeals was answered by a simple order dated 5/2/22 denying relief (App. A).

On January 3, 2020, Yates received a notice from the IDOC time computation office that they had applied Iowa Code 905.11 to his case in 2014, (App. E).

Yates took action through the administrative process like the district court ruled on December 28 2021) in the order at (App. E).

The IDOC returned their decision to Yates on January 3, 2022 (App. E).

## REASONS FOR GRANTING THE PETITION

### THE RESTITUTION ISSUES

The issues surrounding the restitution in this case is that the court at the original sentence entered on 10/9/02 and at all the resentencing dates (App. F), did not address any of the costs as applied to the restitution and Yates never had an opportunity to review the charges and billings submitted to the court for the costs involved as none of them were given to the court within the 30-day time frame by Iowa 910.7, **State v. Jordan** 873 N.W.2d 775 (Iowa App. 2015) nor was there an extension requested by either party at the sentencing as or ordered by Iowa Code 910.2, says;

In all criminal cases in which there is a . . . verdict of guilty . . . the sentencing court shall order that restitution be made by each offender,

Cited from, **State v. Wolcott** 817 N.W.2d 32 (Iowa App. 2012).

None of this was adhered to as the dates on all the documents in (App. D) reflect that they were all submitted either weeks after the initial sentencing was done on 10/9/02 up to and including months after the initial sentencing order was done. Even after Yates was resentenced he had a right to address his restitution as in **State v. Davis** it was said by the court that; "no restitution is enforceable until the court files a final order of restitution" **State v. Davis** 944 N.W.2d 641, 642 (Iowa 2020). With Yates' case there was never any notice for restitution at the hearing nor was there a 30-day continuance requested to add any restitution. Yates beat 5 of the 6 charges from the indictment, corrected an illegal sentence in his conviction and has yet to have a proper restitution hearing that comports to the findings in **State v. Alspach** 554 N.W.2d 882, 884 (Iowa 1996). Where the Alspach court found that once a defendant gives back charges, corrects a sentence or other matters where the State lost, those charges are dismissed against the defendant. Yates as the Defendant has never had his restitution corrected for all of these sentencing errors and wrongful acts by the State and asks that this be addressed by this Court for the unconstitutional actions of the Iowa courts in not adhering to the laws of Iowa.

Yates' restitution order came to him through the prison notifying him months after his sentence was imposed, (App. D) which supports that Yates's restitution is in need of being reviewed for

the costs involved but also for the fact that he has never had the opportunity for review of his reasonable ability to pay which comes from his income status and not on how much he has already paid over a 20 year time span and all this violates the 30 days to file for restitution as Iowa Code 910.7, supports Yates in having a full hearing with counsel and is found in **State v. Gilleland** 834 N.W.2d 82 (Iowa 2013) and on having counsel at the trial stage to review this at the sentencing, **State v. Alspach** 554 N.W.2d 882, 884 (Iowa 1996).

Since the reasonable ability to pay was addressed by the courts in **Mahers v. Halford** 76 F.3d 951 (8<sup>th</sup> Cir. 1995) citing **State v. Haines** 360 N.W.2d 791, 795 (Iowa 1985) on the court's reasonable ability to pay restitution under Iowa Code 910.2. Yates has been denied due process of law and has not had a proper review of this matter as he was indigent at the time of trial and had to use court appointed counsel. After 20 plus years in prison and according to the amount of restitution ordered to be paid was done in a supplemental sentencing order, without Yates present and done without a hearing on January 28, 2003 (App. B), the court has not made a reasonable ability to pay restitution but decided the merits of the petition for review by the amount collected in this 20 plus, time span. Yates' restitution that was ordered to be paid by a court order dated 2/19/03 is file stamped over 4 months after the sentencing showing an amount of \$4,286.72 versus the amount the IDOC has for Yates to pay of \$4,712.97, (App. D). This amount is in question and the court does not want to address this matter of the significant difference of \$426.25. This difference has never been addressed or corrected by the courts at any time even at a new sentencing order was done. (App. F).

With this current ruling that Yates is to do a Writ of Certiorari to the Iowa Supreme Court (Order App C), this was not properly adjudicated as this same court said; "states the restitution court an inmate on review and discovered in the proceeding has invalidated the proceeding of writ of certiorari and cited **Giles v. State** 511 N.W.2d 622 (Iowa App 1994). The writ of certiorari is out, and an appeal is the way to go on more than one subject, and is now the new language and grants access to the courts through appeal not a writ of certiorari, citing **Tabor v. State** 519 N.W.2d 378 (Iowa 1994). This shows a ruling contrary to the Iowa Supreme Court's prior *stare decisis* application of case law precedents on this matter of filing an appeal on the issues with the district court's rulings for further redress with the Iowa Supreme Court.

Due to the errors throughout Iowa's court system, Iowa's governor Kim Reynolds entered an Executive Order (App. B) in August 2020 that all inmates within the Iowa Department of Corrections, (IDOC) could file and have their restitution corrected to comply with Iowa Code 910. This Executive order was followed up by an Order from the Iowa Supreme Court dated 7/7/20. At the onset of this new information almost all inmates began to file for restitution review and one of the problems that Yates had with the Woodbury County Court was that they would not appoint him counsel as this was one of the things that was allowed the incarcerated person and was being adhered to by all the other judicial districts in Iowa except the 3<sup>rd</sup> Judicial District which includes Woodbury County. As will be explained and as can be seen by the documents on the restitution in Yates' criminal case in (App. C), the court did not follow Iowa Code 910 at the time of the sentencing and as the court and the State had only 30 days to do the total restitution in the amounts submitted from the court appointed attorney and the investigators that he claimed were used were done weeks after the sentence was imposed on 10/9/02 and the court's order was not done until February 2003. This is over 4 months later, and done without a hearing which by Iowa Code 910 is supposed to be done so Yates has an opportunity to attack the charges if he feels there is an error in the billing.

When the hearing was finally held under the new Executive Order (App. B) and application (App. C) the State of Iowa through the Woodbury County Attorney's Office did not respond in a timely manner as directed under Iowa R. Civ. P. 1.303(1) and by rule which the Iowa Rules of Civil Procedure are governed by Iowa Code 611 through 624A, are rules invoking the Due Process of Law of which the State's resistance being untimely violated this Due Process of Law as it applies to Yates. Because it was filed months later and about 1 ½ hours prior to the hearing of which Yates was not made aware of this untimely response until Judge Steve Andreasen let it slip that the State had filed a resistance to this restitution motion. One of the important issues with this hearing was that the prosecutor filed a resistance to the action months later and Iowa R. Crim. P. 1.441(1) c. Then with no reply for months, the court set a hearing date of 11/10/20. Yates' Request for relief clearly states that there is a 20-day time frame to reply in. Reasonable Ability to Pay Category B Restitution and his accompanying Financial Affidavit and Request for Reasonable Ability to Pay Determination for Category B Restitution were all filed on 9/24/20.

(App. C). The court entered an order for hearing on 10/8/20. This was past the time for the prosecutor to file any resistance, rebuttal or whatever needed to be filed by him under Iowa R. Civ. P. 1.441(1). Upon setting a court date for a hearing on 10/8/20 the prosecutor then filed an untimely reply at about 1:30 p.m. in that afternoon. About 2 hours prior to the hearing and Yates has never seen copy of this reply as the court abused its discretion when Yates made a timely objection to this filing, cited Rule 1.441 and the court said it was going to accept this response even though it was untimely and Yates had no copy of it to respond too. The prosecutor was ordered to serve Yates a copy as he was not allowed counsel for this proceeding as the court and the prosecutor claim that this is a civil matter, yet it is handled by the criminal court at sentencing if it is done at all. In which with Yates' case it was never done. As of this writing Yates has never seen or been served a copy of this response filed by the prosecutor and the court went ahead and entered judgment even after Yates filed for contempt proceedings on this ruling to the prosecution. The court has denied this motion as well to Yates which again supports Yates' arguments of how the district court abuses its discretion at all times in Yates' case.

This can be attested to by the transcripts of this proceeding and the language following up to it. In Iowa an abuse of discretion takes place on the admission of evidence, and an erroneous application of law, **State v. Price** 692 N.W.2d 1 (Iowa 2005). An abuse discretion takes place when it is exercised on grounds or for reasons clearly untenable or to an extent clearly unreasonable, **State v. August** 589 N.W.2d 740 (Iowa 1999) see also **Schwartz v. Meyer** 500 N.W.2d 87, 88 (Iowa App. 1993) and **Rowen v. LeMars Mutual Ins. Co.** 357 N.W.2d 579, 583 (Iowa 1984). Yates argues that if an inmate files something untimely with the court, the first thing that happens is that the State moves to have it dismissed for untimeliness. As examples Yates relates this issue in regards to these facts, as the motion for summary judgment was untimely filed and dismissed by the court in the allotted time frame, **Drahaus v. State** 584 N.W.2d 270 (Iowa 1998). The district court on summary judgment as it was untimely filed by law and the rule on summary judgement is 1.981(3) Motion and Proceedings thereon. The motion shall be filed not less than 60 days prior to the date the case is set for trial, unless otherwise ordered by the court, **Estate of Kelly Forrester** 671 N.W.2d 463 (Iowa 2003). The State's attorneys are fully aware of the time frames

to file a response in and for not being prompt and timely the court in this case prejudiced Yates' case and curried favor to the State's attorney for their own negligence.

The court by abusing its discretion allowed a very untimely response to be admitted into the record and the other abuse of discretion issue that arises from this act by the court is it was never served upon Yates as the Pro Se' litigant as ordered by the court at the day of the hearing. Upon many attempts to have this untimely response sent to him by notice to the court, it has never been received by Yates at this writing and the court has not held the State's attorney in contempt of court as he has requested for not serving him this untimely notice after the court ordered State's Attorney, Loren Hensley and denied Yates any relief on his ability to pay restitution under Iowa Code 910. Under Iowa R. Civ. P. 1.441(2) the prosecutor had to serve Yates a copy of their resistance which was not done by the rules of court within 20 days.

Yates did not get to address the court on any of his issues as they pertain to his ability to pay any restitution pursuant to Iowa Code 910. He was questioned about his ability to pay, the court denied him any opportunity to talk with the court or question any of the parameters that he was being questioned on and a review of the transcript of this proceeding will reflect that the court abused its discretion, favored the state prosecutor's position by his rulings and subsequently manipulated the hearing for the prosecutor to obtain the desired relief that the court wanted it to have.

Yates has been in prison for over 20 straight years. He has relied on his prison job and gift money from his family and friends to survive and buy the needed hygiene items and pay for the needed copies, postage and filing fees for his court cases which were also done on the 20% of all money per month being assessed and taken for these court fees.

To worsen the position of Yates, the court refused to follow the case law precedents of **State v. Hiatt** 939 N.W.2d 648 (Iowa App. 2019) of which non-wager assets in a prisoner's account are accorded a pre-deprivation hearing due to process protections; protections above and beyond what the Iowa Code provides in regard to prison wages. Any funds seized without a pre-deprivation hearing must be returned. The IDOC is to follow these steps; 1. The prisoner is to be notified of the proposed amendment to their restitution plan including deductions from prison wages and where appropriate-assessments against "outside sources" of non-wage assets, 2.

Time must be permitted for the inmates' objection to the proposed amendment and, 3. The IDOC is to consider the objections in formulating an individualized plan for the future **Hiatt** 939 N.W.2d 648 at Ft. Nt. 2 on signing a waiver under threats and duress the Iowa Supreme Court said they found no case law to support this act so they could not verify the right to this action. Yates has never had any pre-deprivation hearing and now to allow for the IDOC to backtrack and do a pre-deprivation hearing just to say one was done is not consistent with the Due Process of Law under the Fourteenth Amendment. Noting that there never has been any type of pre-deprivation hearing done with Yates at the prison. As the taking of any restitution money from outside sources as stated in IDOC policies AD-CR-03 and AD-FM-06 and the notices are AD-CR-03, F-1 and AD-FM-06, F-1 (App. G) are being done unlawfully. The denial of a pre-deprivation hearing on Yates' restitution from when he first entered the IDOC in October 2002 to the present day is a violation of Iowa law and warrants judicial review by this Court? The Iowa Courts have not properly adjudicated this issue either when they allowed Yates a hearing and then ruled that just because he has paid money for 20 years is not an adequate review of the laws and policies on restitution. This restitution matter was also addressed by the court in the new sentencing order dated 10/22/14 and Yates did plead the facts of the overcharging and other issues which the court denied to have a hearing on as Iowa Code 910.7 as the order states. With the new sentence and ruling Yates argues that a restitution hearing is not frivolous but the court again abuses its discretion on having a proper hearing and denies Yates relief, **Alspach** 554 N.W.2d at 884. To adjudicate the issues, the court has to have a hearing and hear arguments and facts to properly adjudicate the matters of the costs and issues surrounding the restitution and not just claim that a motion for a hearing is adequate enough to render a decision on without hearing the facts of matter first.

This was never done with Yates' prison inmate account and is reviewable by this court in **Simpson v. United States** said that even where the statutory language regarding the scope of a court's authority to even order restitution ambiguous, long standing principles of legality which demand resolution of ambiguous in environment, and states is in favor of the defendant, **Simpson v. United States** 435 U.S. 6, 14-15, 98 S.Ct. 905 (1978) The actions of the IDOC and the Iowa courts in this matter are of an ambiguous manner and needs resolved by the constitutional guarantees

afforded Yates even while in prison. As the Iowa courts have said an inmate's money in prison accounts is protected property under the Fourteenth Amendment of the U.S. Constitution. In **Walters v. Grossheim** the court said; "to have a post-deprivation hearing is a defacto act and cannot be approved by the Iowa Supreme Court," **Walters v. Grossheim** 554 N.W.2d 531 (Iowa 1886). Yates never had this hearing to make this lawful determination that his money nor his outside sources of money could be attached and his constitutional right of law under the Fourteenth Amendment was violated in this hearing. Per the order in (App. B, p-5) there is only Category B restitution being entered other than the \$200.00 for other which is unspecified and should be by this form.

This is a well-established fact in several other circuits and the Iowa Courts have also already decided this to be the correct review. The ruling against Yates is contrary to all the rational standards of the application to collect restitution in his case. An inmate's money in prison accounts is protected property under the Fourteenth Amendment of the U.S. Constitution. The law in regard is well settled, **Artway v. Scheidemantel** 671 F.Supp. 300, 337 (D. NJ. 1987), **Gillihan v. Schillinger** 872 F.2d 935, 938-40 (10<sup>th</sup> Cir. 1989), **Jones v. Clark** 607 F.Supp. 251 256 (E.D. PA. 1984), **Longmire v. Guste** 921 F.2d 620, 623-24 (5<sup>th</sup> Cir. 1991), **State v. O'Connor** 85 P.2d 480, 484-85 (Ariz. 1992), **Mahers v. Halford** 76 F.3d 951 (8<sup>th</sup> Cir. 1995), **Quick v. Jones** 754 F.2d 1521, 1523 (9<sup>th</sup> Cir. 1985), **Riley v. Nevada Bd. Of Prisons** 628 F.Supp. 108, 112 (D. Nev. 1986) An inmate's money in prison accounts is protected property under the Fourteenth Amendment of the U.S. Constitution. The law in regard is well settled.

Nowhere does the record reflect that the court or the prosecutor made any hint or even tried to discuss with Yates at this restitution hearing the amounts to pay Iowa Code 910, **Bader v. State** 559 N.W.2d 1 (Iowa 1997). This hearing was transcribed but Yates was denied a copy of the transcript to support his appeal and this Writ of Certiorari to this Court.

The other issues with this restitution hearing is that Yates never gets to address some overcharging by his court appointed attorney as he was on cruise with his wife right after the trial and this is why the sentencing date was pushed back to 10/9/02. Yet, he bills for days while he was gone. The billing is also full of errors on the time that said attorney claims he had talked with Yates as Yates would appear at his office on the times he was scheduled to be there, only to be

told by the secretary that he was in court, or out doing some other thing and never made his appointments. Yates' phone calls lasted between 2-5 minutes as his court appointed counsel was always on his way into court or had to go to do something else. Yates can prove this with his cell phone records to and from this attorney.

The matter of the Iowa courts not following the Iowa Codes and Statutes on applying restitution to Yates along with the ongoing neglect to correct this after the Governor of Iowa made an Executive Order (App. B) allowing for this correction is being denied and the Due Process of Law applicable under the Iowa law has been denied Yates allowing this court to correct this constitutional right of law.

#### THE ILLEGAL SENTENCE ISSUES

Yates invokes the issue of Res Judicata as he has previously argued and won this same issue on the IDOC adding enhancements to his sentence in **State v. Yates** 852 N.W.2d 522 (Iowa App. 2014). In this case the IDOC tried to add an additional 2-year work release statute under Iowa Code 901A.2(8) after this was done with nunc-pro-tunc orders adding this 2-year work release that was added by the IDOC prior to the year 2014. (App. E). This same sentencing order (App. F), addresses the illegal sentencing factors of the 2-year work release which was added by nunc-pro-tunc orders and was removed by a court order after the county attorney filed his motion and brief stating that this 2-year work release was an ex post facto violation after an appeal in **State v. Yates** 852 N.W.2d 522.

This illegal sentencing issue under the United States Constitution's Ex Post Facto Clause Art. 1 § 9, Cl. 3 was used by the prosecutor in his brief to the court that by adding this 2-year work release under Iowa Code 901A.2(8) was a violation of the ex post facto clause as it was a new statute enacted in 2005, over 4 years after Yates had allegedly committed his crime in 2001 as now sentenced to and needed to be removed. This shows that the prosecutor already has shown the court that the IDOC is not acting in concert with the laws of Iowa and is altering sentences illegally by changing the time computation and sentence with their own version or rendition of what the IDOC wants and not what the court has ordered. (App. E). As you can see by the sentencing orders in (App. F). Yates had to later file a Motion for Contempt of Court on the sentencing factors on

this 2-year work release issue as the IDOC would not correct the Iowa Appellate Court's directive from **State v. Yates** 852 N.W.2d 522.

Judge Hoffmeyer entered an order according to then appointed counsel Matthew Metzgar which removed the enhancement of 901A.2(8). This is when the IDOC acting without court order placed in Yates' time computation and sentencing with the prison adding the 905.11 after the removal of the illegal application of 901A.2(8) which the IDOC had added to Yates' sentence on the same day according to the statement of the treatment director at the Newton Correctional Facility in Newton, Iowa where Yates is presently being incarcerated at. Iowa code 905.11 was also enacted years after Yates' conviction became final and cannot be added by anyone other than the state through a motion to the sentencing court and then Yates has to be present by Iowa R. Crim. P. 2.27 and this was not done nor can the IDOC act as a court of law and change a sentence just because the laws changed. Then again this same issue arising from the unlawful conduct of the IDOC when the time computation department of the IDOC adds another 2-year sentence under another Iowa statute of 905.11 to Yates' case without a court order which enhances the sentence without him being in the court for sentencing or having an attorney to represent him on this enhancement. Yates has a constitutional right to counsel under the Sixth Amendment especially during the sentencing phase, **Lafler v. Cooper** 566 U.S. 156, 132 S.Ct. (2012) as this Court has reiterated the Sixth Amendment right to counsel during the sentencing phase of a criminal trial. See also, **Glover v. United States** 531 U.S. 198, 121 S.Ct. 696, (2001) and **Mempa v. Rhay** 389 U.S. 128, 88 S.Ct. 254, (1967). As Yates has constitutional right to be present at all critical stages of the proceedings, **Montejo v. Louisiana** 556 U.S. 778, 786, 129 S.Ct. 2079 (2009), **United States v. Wade** 388 U.S. 218, 227-28, 87 S.Ct. 1926, 18 L.Ed.2d 1149 (1967), **Wiggins v. Smith** 539 U.S. 510, 538, 123 S.Ct. \_\_\_\_\_ (2003). The right to be present at any stage of criminal proceedings that is critical to the outcome if his presence would contribute to the fairness of the process, Fifth Amendment, and is also part of due process in the criminal proceeding, **United States v. Saenz** 429 F.Supp.2d 1109, 1113 (N.D. Iowa 2006).

To allow the IDOC to impose additional sentencing enhancements and codes upon Yates' conviction after it has become final and by doing so violates the Ex Post Facto provision with new laws not in the Iowa Code in 2001 when Yates was to have committed the crime he is sentenced

too. This new enhancement law of 905.11 was never in any of the sentencing orders (App. F). This makes all of these actions by the IDOC not only inherently illegal, but also violates the Ex Post Facto Clause and imposes a harsher sentence without the court's order which invokes the cruel and unusual punishment of the Eighth Amendment of the federal constitution. The 2-year work release was later removed by a Motion for Contempt of Court filed by Yates in his criminal case of FECR050208 and was ordered by Judge Duane Hoffmeyer to the IDOC to correct the time computation by removing this illegal sanction. At this same date the IDOC maliciously and with willful and wonton disrespect and neglect for the law, the court and Yates' rights as already shown, changed the sentencing code in his case to the 905.11 in 2014 the same day the IDOC was ordered to remove the 2-year work release code of 901A.2(8). Yates argues that no matter what the IDOC does, their actions are unlawful and illegal. The IDOC is not a judicial body and does not have the power to change or enter sentencing codes without an Iowa court's order. Then and only then can this be done after a hearing is had with Yates and his attorney present in the court room to address this matter with the court and be able to make timely objections and motions to the added sentencing enhancement of which none of these things took place.

Then with reading the orders and especially the Iowa Appellate Court ruling in **State v. Yates** 852 N.W.2d 522, to enhance a sentence after conviction Yates has to be present in the court room with counsel present as this is felony conviction under Iowa code 709.3 and the Sixth Amendment of the United States Constitution dictates that counsel must be present for this reason alone. Iowa Code 815.9 and Iowa R. Crim. P. 2.28 provide for all of this as well. As with Yates being present for the sentence to be enhanced under Iowa Code 905.11, the Iowa R. Crim. P. 2.27 provides that he be present in the court room or by a closed circuit video-audio system. Yates makes notice to this Court that none of these things ever happened and he was denied his Due Process of Law under the Fourteenth Amendment as it applies to the Iowa laws and the Iowa Rules of Criminal Procedure. Noting that the Iowa Rules of Criminal Procedure are under Iowa Code 813 which invokes the Due Process of law.

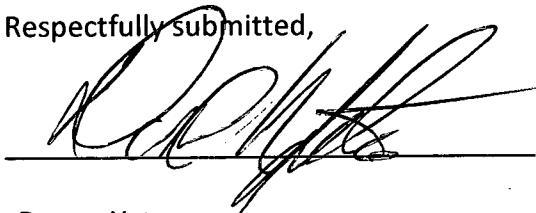
With the Due Process of Law being denied Yates, the district court abused its discretion by not having a hearing on this matter or by not correcting the illegal sentence by motion at the district court level in **Tindell v. State** 629 N.W.2d 357, 359 (Iowa 2001).

The court has again abused its discretion when it failed to correct this illegal sentence as "an abuse of discretion takes place on the admission of evidence, and an erroneous application of law," **State v. Price** 692 N.W.2d 1 (Iowa 2005). An abuse discretion takes place when it is exercised on grounds or for reasons clearly untenable or to an extent clearly unreasonable, **State v. August** 589 N.W.2d 740 (Iowa 1999) see also **Schwartz v. Meyer** 500 N.W.2d 87, 88 (Iowa App. 1993). For the court to claim otherwise by one case which is unpublished and of which has no controlling factors over all the other cases Yates can show where an illegal sentence can be corrected at any time under Iowa R. Crim. P. 2.24(5), and done at the district court level through a motion **Tindell v. State** 629 N.W.2d at 359, as an illegal sentence is not subject to the usual concepts of waiver, whether from a failure to seek review or other omissions of error preservation, citing **State v. Ohnmacht** 342 N.W.2d 838, 843 (Iowa 1983). In **State v. Wiese** 201 N.W.2d 734, 737 (Iowa 1972) it was ruled that the district court does not lose jurisdiction over a case until a valid legal sentence is entered as cited in **State v. Ohnmacht** 342 N.W.2d 838. In reading the ruling in Ohnmacht, it was the State prosecutor that made a motion to the district court to correct an illegal sentence under Iowa R. Crim. P. 2.24(5) which in Ohnmacht is cited as an older rule as the Iowa Rules of Court were renumbered in 2003. The district court graciously corrected the sentence imposed. Yet, with Yates' case the district court fails to follow the rules of court and violates Yates' constitutional rights on the correcting of his sentence. The sentence as it now stands with the IDOC's unlawful interference allows Yates to ask that this Court to correct this matter and grant him the relief he is deserving of by the laws of Iowa.

#### CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Duane Yates

Date: May 26, 2022