

IN THE SUPREME COURT OF IOWA

No. 24-1078

Muscatine County No. FECR027417

ORDER

DAVID LEE HERING,
Plaintiff,

vs.

IOWA DISTRICT COURT FOR
MUSCATINE COUNTY,
Defendant.

This matter comes before the court upon plaintiff's petition for writ of certiorari and motion for waiver of the filing fee. The motion was accompanied by a 2018 order in a different district court case appointing counsel to represent plaintiff, and a December 2022 order of this court waiving the fee for further review regarding a different district court case.

Upon consideration, the petition for writ of certiorari is denied. The motion to waive the filing fee is denied. *See* Iowa R. App. P. 6.703(2)(a)(3).

Copies to:

David Lee Hering
#6345575
Anamosa State Penitentiary
406 N. High St.
Anamosa, IA 52205

Iowa Attorney General's Office
Criminal Appeals Division
Hoover Building, Second Floor
1305 E. Walnut
Des Moines, IA 50319

Clerk of District Court, Muscatine County

Appendix A, p. 15



IOWA AFFILIATE COURTS

State of Iowa Courts

Case Number
24-1078

Case Title
Hering v. District Court

So Ordered

Bruce B. Zager

Bruce B. Zager, Senior Judge

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App. A, p. 16

CLERK OF SUPREME COURT

OCT 02, 2024

ELECTRONICALLY FILED

IN THE SUPREME COURT OF IOWA

No. 24-1078

Muscatine County No. FECR027417

ORDER

DAVID LEE HERING,
Plaintiff,

vs.

IOWA DISTRICT COURT FOR
MUSCATINE COUNTY,
Defendant.

This matter comes before the court, McDonald, Oxley, and May, JJ., upon plaintiff's motion for review of a single-judge order filed on August 27, 2024. Iowa R. App. P. 6.1002(5)(b).

Upon consideration, the August 27, 2024 order denying plaintiff's petition for writ of certiorari and denying his motion to waive the filing fee is confirmed as the order of the court.

Copies to:

David Lee Hering
#6345575
Anamosa State Penitentiary
406 N. High St.
Anamosa, IA 52205

Iowa Attorney General's Office
Criminal Appeals Division
Hoover Building, Second Floor
1305 E. Walnut
Des Moines, IA 50319

Appendix B, p. 17



IOWA AFFILIATE COURTS

State of Iowa Courts

Case Number
24-1078

Case Title
Hering v. District Court

So Ordered

Dana L. Oxley

Dana L. Oxley, Justice

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App. B, p. 18

IN THE IOWA DISTRICT COURT FOR MUSCATINE COUNTY

STATE OF IOWA

Plaintiff,

vs.

DAVID LEE HERING #6345575

Defendant.

Case No: 07701 FECR027417

ORDER

This Defendant was sentenced on 7/9/2004 on two counts after conviction by a jury. Count 1, Murder in the 1st Degree, and Counts 2, Attempt to Commit Murder. He was sentenced pursuant to statute. His motion to "Vacate Void Judgement and for Imposition of Valid Final Judgement" is without legal merit and is DENIED.

His Motion for New Trial is not timely and is not supported by law and is DENIED.

His Motion for Mistrial and New Trial is also without legal merit and is DENIED.

ALL ABOVE IS ORDERED this 30th day of May, 2024.

Clerk to notify all self-represented litigants and attorneys of record.

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Appendix C, p. 19

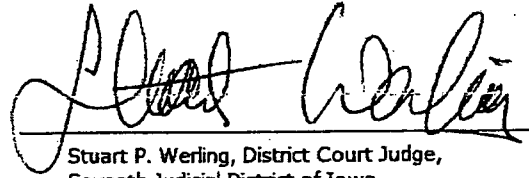


State of Iowa Courts

Case Number
FECR027417
Type:

Case Title
ST VS HERING DAVID
OTHER ORDER

So Ordered



Stuart P. Werling, District Court Judge,
Seventh Judicial District of Iowa

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App. C, p. 20

IN THE IOWA DISTRICT COURT FOR MUSCATINE COUNTY

STATE OF IOWA

Plaintiff,

vs.

DAVID LEE HERING

Defendant.

Case No: 07701 FECR027417

ORDER

Defendant Hering objects to this Court's ruling on his 5/30/2024 motion. To the extent that he objects to the Court's ruling on his motion for new trial or to vacate judgment, that motion is GRANTED and the Court's ruling denying said motion is vacated but the judgment remains fully in force.

The balance of the Defendant's motion to reconsider is DENIED.

ALL ABOVE IS ORDERED this 17th day of June, 2024.

Clerk to notify all self-represented litigants and attorneys of record.

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Appendix D, p. 21

E-FILED

FECR027417 - 2024 JUN 17 07:47 AM
CLERK OF DISTRICT COURT

MUSCATINE
Page 2 of 2

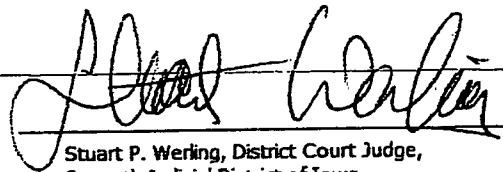


State of Iowa Courts

Case Number
FECR027417
Type:

Case Title
ST VS HERING DAVID
OTHER ORDER

So Ordered



Stuart P. Werling, District Court Judge,
Seventh Judicial District of Iowa

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App.D, p.22

IN THE SUPREME COURT OF IOWA

Supreme Court No. Pending
Muscatine County No. FECR 027417

David Lee Hering

Petitioner

vs.

The Iowa District Court For

Muscatine County

Respondent

On Petition For a Writ of Certiorari to
The Iowa District Court For Muscatine County
Hon. Judge Stuart Werling

Petition For Writ of Certiorari

David Lee Hering 6345575
405 North High Street
P.O. Box 10
Anamosa, Iowa 52205

Appendix E, p. 23

Question Presented For Review

Where the Iowa District Court For Muscatine County rendered a judgement against David Lee Hering that does not conform with the legislatively mandated punishment that it was required by law to impose upon him for the crimes he was found guilty of committing. Did the court exceed it's authority and act illegally by refusing to properly apply the law when it denied Hering's motion to vacate void judgement and for imposition of a valid final judgement?

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Footnote:

In some instances when referring to a particular point within an authority the specific page No. cannot be cited in this Petition as the LEXIS NEXIS system that is available to Hering, at this Prison, does not always provide the page No.'s within a case.

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IN THE SUPREME COURT OF IOWA

Petition For Writ of Certiorari

Petitioner respectfully prays that a Writ of Certiorari issue to review the judgement below.

Jurisdiction

The date on which the Iowa District court For Muscatine County (hereinafter the Court) denied Hering's motion to vacate void judgement and for imposition of a valid final judgement was May 30, 2024. A copy of the order appears at attached Exhibit A p. 14)

A timely motion to reconsider, enlarge, or amend was thereafter denied on June 17 ,2024. A copy of the order appears at attached Exhibit B p. 16)

The jurisdiction of this court is invoked under Iowa Rule of Appellate Procedure 6.107(1)(a).

Statement of the Case

David Lee Hering was arrested on August 6,2003 on the grounds of suspicion that he may have committed a crime. He was thereafter charged with one count of murder in the first degree in violation of Iowa Code § 707.1 and 707.2(1) and with two counts of attempt to commit murder in violation of Iowa Code § 707.11.

On May 24,2004 Hering's criminal trial, to the above cited charges, started and on June 4,2004 the jury returned a verdict of guilty to each charge. Then on July 9,2004 a judgement was rendered against him by the trial court Judge Patrick Madden. The judgement departed from the legislatively mandated punishment that he was required by law to impose upon Hering.

App. E, p. 28

On May 23, 2024 Hering mailed to the clerk of the Court a motion to vacate void judgement and for imposition of a valid final judgement attached Exhibit C p. 18) Contemporaneously therewith he sent a motion for leave to amend and an amendment to his motion for new trial. The State did not resist Hering's motion's and request for a valid final judgement to be imposed upon him.

On May 30, 2024 Judge Stuart Werling, of the Court, issued an order denying Hering's motion to vacate based on a finding that he was sentenced pursuant to statute.(Ex.A p. 14)

Reasons For Granting The Petition

Certiorari is appropriate when a lower court or tribunal has exceeded it's authority or otherwise acted illegally. Howsare v. Iowa Dist. Ct. 986 N.W.2d 114,116 (Iowa 2023) Illegality exists when the court has not properly applied the law. Id.

Since the jury returned it's guilty verdict on June 4, 2004 a valid final judgement has not been imposed upon Hering by the Court. In refusing to vacate the judgement that was rendered against Hering on July 9, 2004 and then imposing a valid final judgement upon him the Court has acted illegally because it is required to impose a judgement upon him that complies with Iowa Statutes and legal precedents. The Courts refusal to correct the error has created a miscarriage of justice that calls for an exercise of this courts supervisory power.

The following argument establishes that the judgement rendered against Hering does not conform with statute it is therefore void and a valid final judgement has to be imposed upon him.

App. E, p. 29

On July 9, 2004 a written judgement was handed down by the Hon. Judge Patrick Madden who departed from the legislatively mandated punishment when he rendered the following judgement against Hering.

For Count I murder in the first degree in violation of Iowa Code § 707.1 and 707.2(1) Hering was committed to the custody of the director of the department of corrections for the rest of his natural life. For Count II attempt to commit murder in violation of Iowa Code § 707.11 Hering was committed to the custody of the director of the department of corrections for a term not to exceed 25 years and for Count III attempt to commit murder in violation of Iowa Code § 707.11 Hering was committed to the custody of the director of the department of corrections for a term not to exceed 25 years. The judgements under Counts II and III were run consecutively and concurrent with the judgement in Count I. They were imposed as an interconnected package by Judge Madden. (Ex.C, p. 24)

Only the record in judgement docket is proof that a judgement is entered and is the enforceable judgement. State v. Everts 2004 Iowa App. LEXIS 1321 This is because the oral sentence pronounced by the court is not the judgement of the court; only the record in the judgement docket is proof that a judgement is entered and is the enforceable judgement. Id.

Judge Madden also orally pronounced a judgement against Hering that mirrors the written judgement. The written and oral judgements both departed from the legislatively mandated punishment that the court was required to impose.

App. E, p. 30

The legislatively mandated punishment that the court was required to impose upon Hering are as follows:

For Count I murder in the first degree in violation of Iowa Code § 707.1 and 707.2(1) Hering was to be committed to the custody of the director of the department of corrections for the rest of his life and he shall not be released on parole unless the governor commutes the sentence to a term of years. Iowa Code § 902.1 and for Counts II and III attempt to commit murder in violation of Iowa Code § 707.11 Hering was to be committed to the custody of the director of the department of corrections for a term not to exceed 25 years on each count. Iowa Code § 902.9(2). Iowa Law at the time required him to be sentenced to serve a mandatory minimum of seventy percent of the 25 year sentence before being parole eligible. Iowa Code § 902.12, 902.12(2), 903A.2. The Court was also required to inform Hering of the mandatory minimum sentence. Iowa Code § 901.5(7) and to incorporate into the sentence a statement of the days Hering was to be credited pursuant to Iowa Code § 903A.5. Iowa Code § 901.6 (County Jail Time)

The reason the judgement that was rendered against Hering is void is because under Count I the judgement that Judge Madden rendered against him failed to articulate that he shall not be released on parole unless the governor commutes the sentence to a term of years and he failed to cite Iowa Code § 902.1 within the judgement. Under Counts II and III Judge Madden erroneously imposed two indeterminate 25 year judgements upon Hering when he was legislatively mandated to impose a 25 year judgement upon him for each count Iowa Code § 902.9(2) with a mandatory minimum of seventy

App. E, p. 31

percent on each 25 year judgement to be served before he would be eligible for parole pursuant to Iowa Code § 902.12, 902.12(2), 901.5(7). The court obviously failed to inform Hering of the mandatory minimum judgement.

Where a statute requires a sentence to a term of years and an indeterminate sentence is given, it is to indefinite to be valid. State v. Wiese 201 N.W.2d 734,738 (Iowa 1972)

Judge Madden's judgement failed to articulate all of the particular sections of the Code under which the judgement that was rendered against Hering is based. Iowa R.Crim.P. 2.23(3)(d) requires that in every case in which judgement is entered. The Court shall include in the judgement entry the number of the particular section of the Code under which the defendant is sentenced. State v. Fagan 2011 Iowa App. LEXIS 189 In this case Iowa Code § 902.1, 902.9(2), 902.12, 902.12(2), and 901.5(7) should have been included in the judgement entry.

Judge Madden also failed to state why he imposed consecutive 25 year judgements upon Hering. A trial court must give reasons for it's decision to impose consecutive sentences. State v. Underwood 845 N.W.2d 719, (Iowa 2014) and he failed to grant Hering credit for the days he spent in the County Jail awaiting trial on these charges as is required by Iowa Code § 901.6.

Final judgement in a criminal case means sentence. State v. T.J.W. 2 N.W.3d 853, (Iowa 2023) and a sentence not permitted by statute is void. Wiese 201 N.W.2d at 737 A conviction or sentence imposed in violation of a substantive rule is not just erroneous but contrary to law and as a result void. Montgomery v. Louisiana

App. E, p. 32

136 S.Ct. 718,731 (2016) A judgement is void where it is rendered in violation of due process of law. Johnson v. Mitchell 489 N.W.2d 411,414 (Iowa App. 1989) citing Felhaber v. Felhaber 681 F.2d 1015, 1027 (5th Cir. 1982)

The due process clause of the 5th and 14th amendments of the United States Constitution and Article 1, Sec.9 of the Iowa Constitution provide that no person shall be deprived of life, liberty, or property without due process of law.

Hering is being deprived of his liberty without due process of law because the judgement that was imposed upon him was not permitted by statute, it violated substantive rules of law and it was rendered in violation of due process of law it is therefore void.

A void judgement is no judgement at all, and no rights are acquired by virtue of it's entry of record. Johnson 489 N.W.2d at 414. Where judgements are void as was the judgement originally rendered by the trial court here, any subsequent proceedings based upon the void judgement are themselves void. Valley Vista Development Corp. v. City of Broken Arrow 766 P.2d 344,348 (Okla. 1998) American Jurisprudence, Second Edition 46 Am. Jur.2d Judgements § 29

The Attorney General had both the authority and the duty to move the district court for a correction of defendant's(Hering's) sentence. State v. Ohnmacht 342 N.W.2d 838,841 (Iowa 1983) Because, when the sentencing Judge departed from the legislatively mandated sentence, the pronouncement became a nullity. Id. at 842. It is well established that imposition of a sentence at variance with the statutory requirements is a void act. State v. Wieneke 954 N.W.2d

App. E, p. 33

50, (Iowa 2021) When a sentencing court departs upward or downward from the legislatively authorized sentence for a given offence, the pronounced sentence is a nullity. State v. Cowan 808 N.W.2d 756, (Iowa 2011) A nullity is nothing; an act or proceeding in a cause which the opposite party may treat as though it had not taken place, or which has absolutely no legal force or effect. Kilgore v. Lumbard 838 N.W.2d 681, (Iowa 2013)

A void judgement means "one which has no legal force or effect" the invalidity of which may be asserted by any person whose rights are affected at any-time and at any-place directly or collaterally. State v. McCright 569 N.W.2d 605,608 (Iowa 1997)

Contrary to the courts findings (Ex.A p.¹⁴) The aforementioned law and facts establish that the judgement that Judge Madden rendered against Hering on July 9,2004 (Ex.C p. 24) does not conform with statute it is void and invalid. The proceeding is a complete nullity that has absolutely no legal binding force or effect. It and all subsequent proceedings must be treated as if they had not taken place. Consequently since the jury returned it's verdict on June 4, 2004 no "valid final judgement" has been imposed upon Hering. So the Court acted illegally in refusing to impose a valid final judgemet upon him.

Conclusion

The Petition for Writ of Certiorari should be Granted.

The lower court should be ordered to vacate the void judgement and to impose a vaild final judgement upon David Lee Hering.

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Certificate of Compliance

This Petition complies with the content and form requirements of Iowa Rules of Appellate Procedure, Rule 6.1002(1) and 6.1007.

David Hering

Cost Certificate

I hereby certify that the actual cost of printing this Petition was the sum of \$

David Hering

Certificate of Filing

I the undersigned hereby certify that the attached Petition For Writ of Certiorari was filed on the 26th day of June 2024 in accordance with Iowa R.Elec.P. 16.315(3)(a) by mailing one(1) copy thereof through prison mail with sufficient postage affixed to: Clerk of the Supreme Court of Iowa, Iowa Judicial Branch Building, 1111 East Court Avenue, Des Moines, Iowa 50319.

David Hering

By: David Hering 6345575
406 North High Street
P.O. Box 10
Anamosa, Iowa 52205

I certify under penalty of perjury and pursuant to the laws of the State of Iowa that the preceding is true and correct.

David Hering

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IN THE IOWA DISTRICT COURT FOR MUSCATINE COUNTY

STATE OF IOWA

Plaintiff,

vs.

DAVID LEE HERING #6345575

Defendant.

Case No: 07701 FECR027417

ORDER

This Defendant was sentenced on 7/9/2004 on two counts after conviction by a jury. Count 1, Murder in the 1st Degree, and Counts 2, Attempt to Commit Murder. He was sentenced pursuant to statute. His motion to "Vacate Void Judgement and for Imposition of Valid Final Judgement" is without legal merit and is DENIED.

His Motion for New Trial is not timely and is not supported by law and is DENIED.

His Motion for Mistrial and New Trial is also without legal merit and is DENIED.

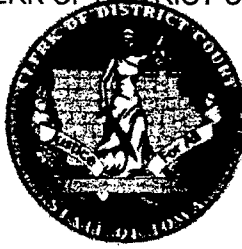
ALL ABOVE IS ORDERED this 30th day of May, 2024.

Clerk to notify all self-represented litigants and attorneys of record.

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App. E, p. 36

Pet. 14

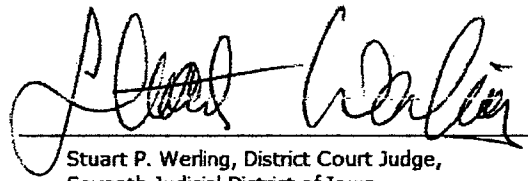


State of Iowa Courts

Case Number
FECR027417
Type:

Case Title
ST VS HERING DAVID
OTHER ORDER

So Ordered


Stuart P. Werling, District Court Judge,
Seventh Judicial District of Iowa

Electronically signed on 2024-05-30 11:29:35

App. E, p. 37 Pet. 15

IN THE IOWA DISTRICT COURT FOR MUSCATINE COUNTY

STATE OF IOWA

Plaintiff,

vs.

DAVID LEE HERING

Defendant.

Case No: 07701 FECR027417

ORDER

Defendant Hering objects to this Court's ruling on his 5/30/2024 motion. To the extent that he objects to the Court's ruling on his motion for new trial or to vacate judgment, that motion is GRANTED and the Court's ruling denying said motion is vacated but the judgment remains fully in force.

The balance of the Defendant's motion to reconsider is DENIED.

ALL ABOVE IS ORDERED this 17th day of June, 2024.

Clerk to notify all self-represented litigants and attorneys of record.

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App. E, p. 38

Pet. 16

E-FILED

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CLERK OF DISTRICT COURT

MUSCATINE
Page 2 of 2

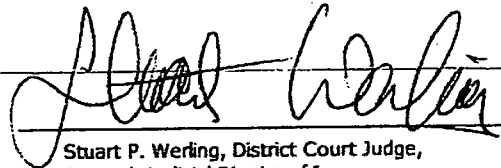


State of Iowa Courts

Case Number
FECR027417
Type:

Case Title
ST VS HERING DAVID
OTHER ORDER

So Ordered



Stuart P. Werling, District Court Judge,
Seventh Judicial District of Iowa

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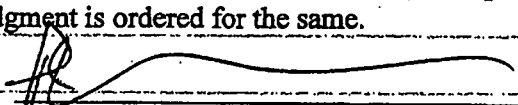
Pet. 17.

David Wring

ECRO 27417

7/9/04 JS State of Iowa appeared by Assistant County Attorney Alan Ostergren; Defendant appeared with Attorney J. E. Tobey III and Attorney David Treimer. Pursuant to jury verdict finding Defendant guilty of the crime of Murder in the First Degree under Count I, in violation of Iowa Code Section 707.1 and 707.2(1), it is the judgment and sentence of the Court that he be committed to the custody of the Director of the Department of Corrections for the rest of his natural life. Pursuant to jury verdict finding Defendant guilty of the crime of Attempt to Commit Murder under Count II, in violation of Iowa Code Section 707.11, it is the judgment and sentence of the Court that he be committed to the custody of the Director of the Department of Corrections for a term not to exceed 25 years. Pursuant to jury verdict finding Defendant guilty of the crime of Attempt to Commit Murder under Count III, in violation of Iowa Code Section 707.11, it is the judgment and sentence of the Court that he be committed to the custody of the Director of the Department of Corrections for a term not to exceed 25 years. The sentences under Counts II and III shall run consecutively, but concurrently with the sentence under Count I. The Sheriff is directed to deliver Defendant to the Iowa Medical and Classification Center at Oakdale. Mittimus shall issue. Defendant is ordered to pay court costs, restitution to the Estate of Lisa Hering in the amount of \$150,000, and to the Iowa Crime Victim Assistance Division in the amount of \$27,409.84. Appearance bond is exonerated. Appeal bond is denied. Defendant is advised of rights to appeal. If Defendant was represented by court-appointed counsel, the defendant must pay restitution for attorney fees pursuant to Section 815.9 for any costs incurred, and judgment is ordered for the same.

OH ✓
JT/OTV ✓
CA ✓
JTA ✓
Jmcc ✓
Bofp ✓
7/9/04


Patrick J. Madden, Judge

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Pet. 18

IN THE IOWA DISTRICT COURT FOR MUSCATINE COUNTY

State of Iowa
Plaintiff

Case No. FECR 027417

v.

David Lee Hering
Defendant

Motion to Vacate Void Judgement
and For Imposition of a Valid
Final Judgement

Hering, acting pro-se, moves this court to vacate the void judgement that was rendered against him and to impose a valid final judgement upon him in support thereof he states the following:

1. On August 6, 2003 Hering was illegally seized on the grounds of suspicion that he may have committed a crime. He was thereafter charged with one count of murder in the first degree in violation of Iowa Code sec. 707.1 and 707.2(1) and with two counts of attempt to commit murder in violation of Iowa Code sec. 707.11 (2003).
2. On May 24, 2004 Hering's criminal trial, to the above cited charges, started and on June 4, 2004 the jury returned a verdict of guilty to each charge.
3. On July 9, 2004 a proceeding took place in the Iowa District Court For Muscatine County where the Hon. Judge Patrick Madden orally pronounced a judgement upon Hering that departed from the legislatively mandated punishment that was to be imposed.
4. On July 9, 2004 a written judgement was also handed down by the Hon. Judge Patrick Madden who departed from the legislatively mandated punishment when he imposed the following judgement upon Hering. For Count I murder in the first degree in violation of Iowa Code sec. 707.1 and 707.2(1) Hering was committed to the custody of the director

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Ex. C, p. 18

of the department of corrections for the rest of his natural life. For Count II attempt to commit murder in violation of Iowa Code sec. 707.11 Hering was committed to the custody of the director of the department of corrections for a term not to exceed 25 years and for Count III attempt to commit murder in violation of Iowa Code sec. 707.11 Hering was committed to the custody of the director of the department of corrections for a term not to exceed 25 years. The judgements under Counts II and III were run consecutively and concurrent with the judgement in Count I. (See Attached Exhibit A)

5. Only the record in judgement docket is proof that a judgement is entered and is the enforceable judgement. State v. Everts 2004 Iowa App. LEXIS 1321. This is because the oral sentence pronounced by the court is not the judgement of the court; only the record in judgement docket is proof that a judgement is entered and is the enforceable judgement. Id.
6. The legislatively mandated judgement that the district court was required to impose upon Hering are for Count I murder in the first degree in violation of Iowa Code sec. 707.1 and 707.2(1) Hering was to be committed to the custody of the director of the department of corrections for the rest of his life and he shall not be released on parole unless the governor commutes the sentence to a term of years. See Iowa Code sec. 902.1 and for Counts II and III attempt to commit murder in violation of Iowa Code sec. 707.11 Hering was to be committed to the custody of the director of the department of corrections for a term not to exceed 25 years on each count. See Iowa Code sec. 902.9(2)(2003). Iowa law at the time required him to

App. E, p. 42

be sentenced to serve a mandatory minimum of seventy percent of the 25 year sentences. See Iowa Code sec.'s 902.12, 902.12(2), 903A.2 (2003) The Court was also required to inform Hering of the mandatory minimum sentence. See Iowa Code sec. 901.5(7) and to incorporate into the sentence a statement of the days Hering was to be credited pursuant to Iowa Code sec. 903A.5. See Iowa Code sec. 901.6 (County Jail Time)

7. Under Count I the judgement that Judge Madden imposed upon Hering failed to articulate that Hering shall not be released on parole unless the governor commutes the sentence to a term of years and he failed to cite Iowa Code sec. 902.1 within the judgement. Under Counts II and III Judge Madden erroneously imposed two indeterminate 25 year judgements upon Hering. When he was legislatively mandated to impose two 25 year judgements upon Hering pursuant with Iowa Code sec. 902.9(2) with a mandatory minimum of seventy percent on each 25 year judgement pursuant with Iowa Code sec.'s 902.12, 902.12(2), 903A.5(7) (2003) Where a statute requires sentence to a term of years and an indeterminate sentence is given, it is to indefinate to be valid. State v. Wiese 201 N.W.2d 734,738 (Iowa 1972) Judge Madden also failed to state why he imposed consecutive 25 year judgements upon Hering. A trial court must give reasons for it's decision to impose consecutive sentences. State v. Underwood 845 N.W.2d 719, (Iowa 2014) and he failed to grant Hering credit for the days he spent in the Muscatine County Jail. See Iowa Code sec. 901.6

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3

8. Judge Madden's judgement failed to articulate the numbers of the particular sections of the Codes under which the judgement that was imposed upon Hering is based. Iowa R.Crim.P. 2.23(3)(d) requires that in every case in which judgement is entered," the court shall include in the judgement entry the number of the particular section of the Code under which the defendant is sentenced. State v. Fagan 2011 Iowa App. LEXIS 189.
9. A conviction or sentence imposed in violation of a substantive rule is not just erroneous but contrary to law and as a result void. Montgomery v. Louisiana 136 S.Ct. 718,731 (2016) A judgement is void where it is rendered in violation of due process of law. Johnson v. Mitchell 489 N.W.2d 411,414 (Iowa App. 1989) citing Felhaber v. Felhaber 681 F.2d 1015,1027 (5th Cir. 1982) The July 9,2004 judgement that Judge Madden imposed upon Hering is in violation of substantive rules of law and was rendered in violation of due process of law it is therefore void.
10. A void judgement is no judgement at all, and no rights are acquired by virtue of it's entry of record. Johnson 489 N.W.2d at 414 Where judgements are void as was the judgement originally rendered by the trial court here, any subsequent proceedings based upon the void judgement are themselves void. Valley Vista Development Corp. v. City of Broken Arrow 766 P.2d 344,348 (1998) American Jurisprudence, Second Edition 46 Am. Jur.2d Judgements sec. 29.
11. The Attorney General had both the authority and the duty to move the district court for a correction of defendant's(Hering's) sentence State v. Ohnmacht 342 N.W.2d 838,841 (Iowa 1983) Because, when the

sentencing Judge departed from the legislatively mandated sentence, the pronouncement became a nullity. Id. at 842 When a sentencing court departs upward or downward from the legislatively authorized sentence for a given offense, the pronounced sentence is a nullity. State v. Cowan 808 N.W.2d 756, (Iowa 2011) It is well established that imposition of a sentence at variance with the statutory requirements is a void act. State v. Wieneke 954 N.W.2d 50, (Iowa 2021) The sentence as originally imposed was void and invalid in it's entirety. We have held several times a sentence and judgement thereon in excess of that permitted by law is a nullity. State v. Hopp 190 N.W.2d 836,837 (Iowa 1971) A nullity is nothing; no proceeding; an act or proceeding in a cause which the opposite party may treat as though it had not taken place, or which has absolutely no legal force or effect. Kilgore v. Lumbard 838 N.W.2d 681, (Iowa 2013)

12. A void judgement means "one which has no legal force or effect" the invalidity of which may be asserted by any person whose rights are affected at any-time and at any-place directly or collaterally. State v. McCright 569 N.W.2d 605,608 (Iowa 1997)

13. Pursuant to the law and facts that have been presented the judgement that Judge Madden imposed upon Hering on July 9,2004 is void and invalid. The proceeding is a complete nullity that has absolutely no legal binding force or affect. It and all subsequent proceedings must be treated as though they had not taken place. Consequently since the jury returned it's verdict on June 4,2004, no valid final judgemnt has been imposed upon Hering.

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Wherefore Hering prays that this court will vacate the void judgement that has been rendered against him and set a date and a time to render a valid final judgement upon him.

Submitted By

David Hering

David Hering 6345575
406 North High Street
P.O. Box 10
Anamosa, Iowa 52205

I certify under the penalty of perjury and pursuant to the laws of the State of Iowa that the preceding is true and correct.

David Hering

Certificate of Service

I the undersigned certify that on the 23rd day of May 2024 I did send a copy of this motion through prison mail with sufficient postage affixed to: Clerk of the District Court, 401 East Third St., Muscatine, Iowa 52761.

Sent By

David Hering

David wing

FCRO 27417

7/9/04

JS

State of Iowa appeared by Assistant County Attorney Alan Ostergren; Defendant appeared with Attorney J. E. Tobey III and Attorney David Treimer. Pursuant to jury verdict finding Defendant guilty of the crime of Murder in the First Degree under Count I, in violation of Iowa Code Section 707.1 and 707.2(1), it is the judgment and sentence of the Court that he be committed to the custody of the Director of the Department of Corrections for the rest of his natural life. Pursuant to jury verdict finding Defendant guilty of the crime of Attempt to Commit Murder under Count II, in violation of Iowa Code Section 707.11, it is the judgment and sentence of the Court that he be committed to the custody of the Director of the Department of Corrections for a term not to exceed 25 years. Pursuant to jury verdict finding Defendant guilty of the crime of Attempt to Commit Murder under Count III, in violation of Iowa Code Section 707.11, it is the judgment and sentence of the Court that he be committed to the custody of the Director of the Department of Corrections for a term not to exceed 25 years. The sentences under Counts II and III shall run consecutively, but concurrently with the sentence under Count I. The Sheriff is directed to deliver Defendant to the Iowa Medical and Classification Center at Oakdale. Mittimus shall issue. Defendant is ordered to pay court costs, restitution to the Estate of Lisa Hering in the amount of \$150,000, and to the Iowa Crime Victim Assistance Division in the amount of \$27,409.84. Appearance bond is exonerated. Appeal bond is denied. Defendant is advised of rights to appeal. If Defendant was represented by court-appointed counsel, the defendant must pay restitution for attorney fees pursuant to Section 815.9 for any costs incurred, and judgment is ordered for the same.


Patrick J. Madden, Judge

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ch 156, §2; 90 Acts, ch 1251, §62; 94 Acts, ch 1099, §1; 99 Acts, ch 12, §12; 2000 Acts, ch 1122, §2

901.3 Presentence investigation report.

If a presentence investigation is ordered by the court, the investigator shall promptly inquire into all of the following:

1. The defendant's characteristics, family and financial circumstances, needs, and potentialities, including the presence of any previously diagnosed mental disorder.
2. The defendant's criminal record and social history.
3. The circumstances of the offense.
4. The time the defendant has been in detention.
5. The harm to the victim, the victim's immediate family, and the community. Additionally, the presentence investigator shall provide a victim impact statement form to each victim, if one has not already been provided, and shall file the completed statement or statements with the presentence investigation report.
6. The defendant's potential as a candidate for the community service sentence program established pursuant to section 907.13.
7. Any mitigating circumstances relating to the offense and the defendant's potential as a candidate for deferred judgment, deferred sentencing, a suspended sentence, or probation, if the defendant is charged with or convicted of assisting suicide pursuant to section 707A.2.

All local and state mental and correctional institutions, courts, and police agencies shall furnish to the investigator on request the defendant's criminal record and other relevant information. With the approval of the court, a physical examination or psychiatric evaluation of the defendant may be ordered, or the defendant may be committed to an inpatient or outpatient psychiatric facility for an evaluation of the defendant's personality and mental health. The results of any such examination or evaluation shall be included in the report of the investigator.

[C75, 77, §789A.4; C79, 81, §901.3; 82 Acts, ch 1069, §1]

86 Acts, ch 1178, §2; 90 Acts, ch 1251, §63; 91 Acts, ch 219, §23; 96 Acts, ch 1002, §4

901.4 Presentence investigation report confidential — distribution.

The presentence investigation report is confidential and the court shall provide safeguards to ensure its confidentiality, including but not limited to sealing the report, which may be opened only by further court order. At least three days prior to the date set for sentencing, the court shall serve all of the presentence investigation report upon the defendant's attorney and the attorney for the state, and the report shall remain confidential except upon court order. However, the court may

conceal the identity of the person who provided confidential information. The report of a medical examination or psychological or psychiatric evaluation shall be made available to the attorney for the state and to the defendant upon request. The reports are part of the record but shall be sealed and opened only on order of the court. If the defendant is committed to the custody of the Iowa department of corrections and is not a class "A" felon, a copy of the presentence investigation report shall be forwarded to the director with the order of commitment by the clerk of the district court and to the board of parole at the time of commitment. The presentence investigation report may also be released by the department of corrections or a judicial district department of correctional services pursuant to section 904.602 to another jurisdiction for the purpose of providing interstate probation and parole compact services or evaluations. The defendant or the defendant's attorney may file with the presentence investigation report, a denial or refutation of the allegations, or both, contained in the report. The denial or refutation shall be included in the report. If the person is sentenced for an offense which requires registration under chapter 692A, the court shall release the report to the department which is responsible under section 692A.13A for performing the assessment of risk.

[C75, 77, §789A.5; C79, 81, §901.4]

83 Acts, ch 38, §3; 83 Acts, ch 96, §124, 159, 160; 89 Acts, ch 279, §7; 98 Acts, ch 1095, §1; 98 Acts, ch 1169, §17; 99 Acts, ch 112, §20

901.4A Substance abuse evaluation.

Upon a plea of guilty, a verdict of guilty, or a special verdict upon which a judgment of conviction may be rendered, the court may order the defendant to submit to and complete a substance abuse evaluation, if the court determines that there is reason to believe that the defendant regularly abuses alcohol or other controlled substances and may be in need of treatment. An order made pursuant to this section may be made in addition to any other sentence or order of the court.

90 Acts, ch 1251, §64

901.5 Pronouncing judgment and sentence.

After receiving and examining all pertinent information, including the presentence investigation report and victim impact statements, if any, the court shall consider the following sentencing options. The court shall determine which of them is authorized by law for the offense, and of the authorized sentences, which of them or which combination of them, in the discretion of the court, 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.

At the time fixed by the court for pronounce-

ment of judgment and sentence, the court shall act accordingly:

1. If authorized by section 907.3, the court may defer judgment and sentence for an indefinite period in accordance with chapter 907.

2. If the defendant is not an habitual offender as defined by section 902.8, the court may pronounce judgment and impose a fine.

3. The court may pronounce judgment and impose a fine or sentence the defendant to confinement, or both, and suspend the execution of the sentence or any part of it as provided in chapter 907.

4. The court may pronounce judgment and impose a fine or sentence the defendant to confinement, or both.

5. If authorized by section 907.3, the court may defer the sentence and assign the defendant to the judicial district department of correctional services.

6. The court may pronounce judgment and sentence the defendant to confinement and then reconsider the sentence as provided by section 902.4 or 903.2.

7. The court shall inform the defendant of the mandatory minimum sentence, if one is applicable.

8. The court may order the defendant to complete any treatment indicated by a substance abuse evaluation ordered pursuant to section 901.4A or any other section.

8A. a. The court shall order DNA profiling of a defendant convicted of an offense that requires profiling under section 13.10.

b. Notwithstanding section 13.10, the court may order the defendant to provide a physical specimen to be submitted for DNA profiling if appropriate. In determining the appropriateness of ordering DNA profiling, the court shall consider the deterrent effect of DNA profiling, the likelihood of repeated offenses by the defendant, and the seriousness of the offense.

9. If the defendant is being sentenced for an aggravated misdemeanor or a felony, the court shall publicly announce the following:

a. That the defendant's term of incarceration may be reduced from the maximum sentence because of statutory earned time, work credits, and program credits.

b. That the defendant may be eligible for parole before the sentence is discharged.

c. In the case of multiple sentences, whether the sentences shall be served consecutively or concurrently.

10. In addition to any sentence imposed pursuant to chapter 902 or 903, the court shall order the state department of transportation to revoke the defendant's driver's license or motor vehicle operating privilege for a period of one hundred eighty days, or to delay the issuance of a driver's license for one hundred eighty days after the person is first eligible if the defendant has not been is-

sued a driver's license, and shall send a copy of the order in addition to the notice of conviction required under section 124.412, 126.26, or 453B.16, to the state department of transportation, if the defendant is being sentenced for any of the following offenses:

a. A controlled substance offense under section 124.401, 124.401A, 124.402, or 124.403.

b. A drug or drug-related offense under section 126.3.

c. A controlled substance tax offense under chapter 453B.

If the person's operating privileges are suspended or revoked at the time of sentencing, the order shall provide that the one hundred eighty-day revocation period shall not begin until all other suspensions or revocations have terminated. Any order under this section shall also provide that the department shall not issue a temporary restricted license to the defendant during the revocation period, without further order by the court.

11. In addition to any sentence or other penalty imposed against the defendant for an offense under chapter 124, the court shall consider the provisions of 21 U.S.C. § 862, regarding the denial of federal benefits to drug traffickers and possessors convicted under state or federal law, and may enter an order specifying the range and scope of benefits to be denied to the defendant, according to the provisions of 21 U.S.C. § 862. For the purposes of this subsection, "*federal benefit*" means the issuance of any grant, contract, loan, professional license, or commercial license provided by an agency of the United States or through the appropriation of funds of the United States, but does not include any retirement, welfare, social security, health, disability, veterans, public housing, or similar benefit for which payments or services are required for eligibility. The supreme court may adopt rules establishing sentencing guidelines consistent with this subsection and 21 U.S.C. § 862. The clerk of the district court shall send a copy of any order issued pursuant to this subsection to the denial of federal benefits program of the United States department of justice, along with any other forms and information required by the department.

12. In addition to any sentence or other penalty imposed against the defendant for an offense under chapter 124, the court shall consider the denial of state benefits to the defendant, and may enter an order specifying the range and scope of benefits to be denied to the defendant, comparable to the federal benefits denied under subsection 11. For the purposes of this subsection, "*state benefit*" means the issuance of any grant, contract, loan, professional license, or commercial license provided by a state agency, department, program, or otherwise through the appropriation of funds of the state, but does not include any retirement, welfare, health, disability, veterans, public hous-

ing, or similar benefit. The supreme court may adopt rules establishing sentencing guidelines consistent with this subsection and comparable to the guidelines for denial of federal benefits in 21 U.S.C. § 862. The clerk of the district court shall send a copy of any order issued pursuant to this subsection to each state agency, department, or program required to deny benefits pursuant to such an order.

13. In addition to any sentence or other penalty imposed against the defendant, the court shall sentence the defendant to an additional indeterminate term of years if required under section 902.3A, subsection 2.

[C79, 81, §901.5]

84 Acts, ch 1063, §1; 86 Acts, ch 1178, §3; 90 Acts, ch 1251, §65; 92 Acts, ch 1023, §1; 96 Acts, ch 1218, §68; 98 Acts, ch 1073, §9; 98 Acts, ch 1138, §26; 2000 Acts, ch 1122, §3; 2000 Acts, ch 1173, §2, 10; 2001 Acts, ch 165, §3

Surcharge on penalty, chapter 911

For future amendment to subsection 8A effective upon appropriation or receipt of funds, see 2002 Acts, ch 1080, §2, 6

901.5A Reopening of a sentence.

1. A defendant sentenced by the court to the custody of the director of the department of corrections for an offense punishable under section 902.9, subsection 1, may have the judgment and sentence entered under section 901.5 reopened for resentencing if the following apply:

a. The county attorney from the county which prosecuted the defendant files a motion to reopen the sentence of the defendant based upon the defendant's cooperation in the prosecution of other persons.

b. The court finds the defendant cooperated in the prosecution of other persons.

2. Upon a finding by the court that the defendant cooperated in the prosecution of other persons, the court may reduce the maximum sentence imposed under the original sentencing order.

3. For purposes of calculating earned time under section 903A.2, the sentencing date for a defendant whose sentence has been reopened under this section shall be the date of the original sentencing order.

4. The filing of a motion or the reopening of a sentence under this section shall not constitute grounds to stay any other court proceedings, or to toll or restart the time for filing of any post-trial motion or any appeal.

5. The defendant may request appointment of counsel, if eligible under section 815.10, prior to and during any negotiations and proceedings pursuant to this section.

99 Acts, ch 12, §13; 2000 Acts, ch 1173, §3, 10

901.6 Judgment entered.

If judgment is not deferred, and no sufficient cause is shown why judgment should not be pro-

nounced and none appears to the court upon the record, judgment shall be pronounced and entered. In every case in which judgment is entered, the court shall include in the judgment entry the number of the particular section of the Code and the name of the offense under which the defendant is sentenced and a statement of the days credited pursuant to section 903A.5 shall be incorporated into the sentence.

[C51, §3066; R60, §4873, 4874; C73, §4506, 4507; C97, §5438; C24, §13958; C27, 31, 35, §13958-a1; C39, §13958.2; C46, 50, 54, 58, 62, 66, §789.11; C71, 73, 75, 77, §789.11, 791.8; C79, 81, §901.6]

83 Acts, ch 38, §4; 83 Acts, ch 147, §11, 14

901.7 Commitment to custody.

In imposing a sentence of confinement for more than one year, the court shall commit the defendant to the custody of the director of the Iowa department of corrections. Upon entry of judgment and sentence, the clerk of the district court immediately shall notify the director of the commitment. The court shall make an order as appropriate for the temporary custody of the defendant pending the defendant's transfer to the custody of the director. The court shall order the county where a person was convicted to pay the cost of temporarily confining the person and of transporting the person to the state institution where the person is to be confined in execution of the judgment. The order shall require that a person transported to a state institution pursuant to this section shall be accompanied by a person of the same sex.

[C79, 81, §901.7]

83 Acts, ch 96, §125, 159; 85 Acts, ch 21, §49

901.8 Consecutive sentences.

If a person is sentenced for two or more separate offenses, the sentencing judge may order the second or further sentence to begin at the expiration of the first or succeeding sentence. If a person is sentenced for escape under section 719.4 or for a crime committed while confined in a detention facility or penal institution, the sentencing judge shall order the sentence to begin at the expiration of any existing sentence. If the person is presently in the custody of the director of the Iowa department of corrections, the sentence shall be served at the facility or institution in which the person is already confined unless the person is transferred by the director. Except as otherwise provided in section 903A.7, if consecutive sentences are specified in the order of commitment, the several terms shall be construed as one continuous term of imprisonment.

[S13, §5718-a13; C24, 27, 31, 35, 39, §13961; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §789.14; C79, 81, §901.8]

83 Acts, ch 96, §126, 159; 97 Acts, ch 131, §1, 4

as necessary and appropriate during the period the individual is assigned to the district department. However, nothing in this section shall limit the district department's ability to seek a revoca-

tion of the individual's probation pursuant to section 908.11.

96 Acts, ch 1193, §15; 2000 Acts, ch 1201, §14; 2001 Acts, ch 184, §10, 11

CHAPTER 902

FELONIES

- 902.1 Class "A" felony.
- 902.2 Commutation procedure for class "A" felons.
- 902.3 Indeterminate sentence.
- 902.3A Determinate sentencing and additional term of years for class "D" felons.
- 902.4 Reconsideration of felon's sentence.
- 902.5 Place of confinement.
- 902.6 Release.
- 902.7 Minimum sentence — use of a dangerous weapon.
- 902.8 Minimum sentence — habitual offender.

- 902.8A Minimum sentence for conspiring to manufacture, or delivery of, amphetamine or methamphetamine to a minor.
- 902.9 Maximum sentence for felons.
- 902.10 Application for involuntary hospitalization.
- 902.11 Minimum sentence — eligibility of prior forcible felon for parole or work release.
- 902.12 Minimum sentence for certain felonies — eligibility for parole or work release.
- 902.13 Reserved.

902.1 Class "A" felony.

Upon a plea of guilty, a verdict of guilty, or a special verdict upon which a judgment of conviction of a class "A" felony may be rendered, the court shall enter a judgment of conviction and shall commit the defendant into the custody of the director of the Iowa department of corrections for the rest of the defendant's life. Nothing in the Iowa corrections code pertaining to deferred judgment, deferred sentence, suspended sentence, or reconsideration of sentence applies to a class "A" felony, and a person convicted of a class "A" felony shall not be released on parole unless the governor commutes the sentence to a term of years.

[C79, §1, §902.1]

83 Acts, ch 96, §127, 159

902.2 Commutation procedure for class "A" felons.

A person who has been sentenced to life imprisonment under section 902.1 may, no more frequently than once every ten years, make an application to the governor requesting that the person's sentence be commuted to a term of years. The director of the Iowa department of corrections may make a request to the governor that a person's sentence be commuted to a term of years at any time. Upon receipt of a request for commutation, the governor shall send a copy of the request to the Iowa board of parole for investigation and recommendations as to whether the person should be considered for commutation. The board shall conduct an interview of the class "A" felon and shall make a report of its findings and recommendations to the governor.

[S13, §5718-a18; C24, 27, 31, 35, 39, §3786; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §247.5; C79, 81, §902.2]

95 Acts, ch 128, §1

902.3 Indeterminate sentence.

When a judgment of conviction of a felony other than a class "A" felony is entered against a person, the court, in imposing a sentence of confinement, shall commit the person into the custody of the director of the Iowa department of corrections for an indeterminate term, the maximum length of which shall not exceed the limits as fixed by section 902.9, unless otherwise prescribed by statute, nor shall the term be less than the minimum term imposed by law, if a minimum sentence is provided. However, if the court suspends a person's sentence under section 321J.2, subsection 2, paragraph "c", the court shall order the offender to serve time in the county jail as provided in section 321J.2, subsection 2, paragraph "c", notwithstanding any provision to the contrary in section 903.4.

[S13, §5718-a13; C24, 27, 31, 35, 39, §13960; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §789.13; C79, 81, §902.3; 82 Acts, ch 1239, §3]

83 Acts, ch 96, §128, 159; 86 Acts, ch 1220, §43; 99 Acts, ch 12, §15; 2002 Acts, ch 1042, §2

Section amended

902.3A Determinate sentencing and additional term of years for class "D" felons.

1. Notwithstanding section 902.3, when a conviction for a class "D" felony is entered against a person, the court, at its discretion, in imposing a sentence of confinement pursuant to section

peal, a judgment of conviction of a felony is a final judgment when pronounced.

[C79, 81, §902.4]

83 Acts, ch 96, §129, 159; 84 Acts, ch 1139, §1; 84 Acts, ch 1149, §1; 97 Acts, ch 189, §1; 2001 Acts, ch 165, §5

902.5 Place of confinement.

The director of the Iowa department of corrections shall determine the appropriate place of confinement of any person committed to the director's custody, in any institution administered by the director, and may transfer the person from one institution to another during the person's period of confinement.

[S13, §5718-a5; C24, 27, 31, 35, 39, §13963; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §789.16; C79, 81, §902.5]

83 Acts, ch 96, §130, 159

902.6 Release.

A person who has been committed to the custody of the director of the Iowa department of corrections shall remain in custody until released by the order of the board of parole, in accordance with the law governing paroles, or by order of the judge after reconsideration of a felon's sentence pursuant to section 902.4 or until the maximum term of the person's confinement, as fixed by law, has been completed.

[S13, §5718-a18; C24, 27, 31, 35, 39, §3786; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §247.5; C79, 81, §902.6]

83 Acts, ch 96, §131, 159

902.7 Minimum sentence — use of a dangerous weapon.

At the trial of a person charged with participating in a forcible felony, if the trier of fact finds beyond a reasonable doubt that the person is guilty of a forcible felony and that the person represented that the person was in the immediate possession and control of a dangerous weapon, displayed a dangerous weapon in a threatening manner, or was armed with a dangerous weapon while participating in the forcible felony the convicted person shall serve a minimum of five years of the sentence imposed by law. A person sentenced pursuant to this section shall not be eligible for parole until the person has served the minimum sentence of confinement imposed by this section.

[C79, 81, §902.7]

95 Acts, ch 126, §1

Definition of forcible felony, §702.11

902.8 Minimum sentence — habitual offender.

An habitual offender is any person convicted of

a class "C" or a class "D" felony, who has twice before been convicted of any felony in a court of this or any other state, or of the United States. An offense is a felony if, by the law under which the person is convicted, it is so classified at the time of the person's conviction. A person sentenced as an habitual offender shall not be eligible for parole until the person has served the minimum sentence of confinement of three years.

[S13, §4871-a, 5091-a; C24, 27, 31, 35, 39, §13396, 13400; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §747.1, 747.5; C79, 81, §902.8]

See §901.5(7)

902.8A Minimum sentence for conspiring to manufacture, or delivery of, amphetamine or methamphetamine to a minor.

A person who has been convicted for a first violation under section 124.401D shall not be eligible for parole until the person has served a minimum term of confinement of ten years.

99 Acts, ch 12, §16

902.9 Maximum sentence for felons.

The maximum sentence for any person convicted of a felony shall be that prescribed by statute or, if not prescribed by statute, if other than a class "A" felony shall be determined as follows:

1. A felon sentenced for a first conviction for a violation of section 124.401D, shall be confined for no more than ninety-nine years.

2. A class "B" felon shall be confined for no more than twenty-five years.

3. An habitual offender shall be confined for no more than fifteen years.

4. A class "C" felon, not an habitual offender, shall be confined for no more than ten years, and in addition shall be sentenced to a fine of at least one thousand dollars but not more than ten thousand dollars.

5. A class "D" felon, not an habitual offender, shall be confined for no more than five years, and in addition shall be sentenced to a fine of at least seven hundred fifty dollars but not more than seven thousand five hundred dollars.

The criminal penalty surcharge required by sections 911.2 and 911.3 shall be added to a fine imposed on a class "C" or class "D" felon, as provided by those sections, and is not a part of or subject to the maximums set in this section.

[C79, 81, §902.9]

84 Acts, ch 1134, §1; 84 Acts, ch 1219, §38; 86 Acts, ch 1220, §44; 92 Acts, ch 1163, §121; 93 Acts, ch 110, §9; 99 Acts, ch 12, §17; 99 Acts, ch 65, §6, 7; 2001 Acts, ch 168, §4; 2002 Acts, ch 1042, §3; 2002 Acts, ch 1050, §55

Enhanced penalties in weapons free zones, see §724.4A

Habitual offender, §902.8

Surcharge on penalty, chapter 911

Subsection 5 amended

Unnumbered paragraph 2 amended

902.10 Application for involuntary hospitalization.

For the purposes of chapter 229, the director of the Iowa department of corrections is an interested person and all applicable provisions of chapter 229, relating to involuntary hospitalization, apply to persons who have been committed to the custody of the Iowa department of corrections as a result of a conviction of a public offense.

[C79, 81, §902.10]

83 Acts, ch 96, §132, 159

902.11 Minimum sentence — eligibility of prior forcible felon for parole or work release.

A person serving a sentence for conviction of a felony, other than a forcible felony under section 902.12, who has a criminal record of one or more prior convictions for a forcible felony or a crime of a similar gravity in this or any other state, shall be denied parole or work release unless the person has served at least one-half of the maximum term of the defendant's sentence. However, the mandatory sentence provided for by this section does not apply if either of the following apply:

1. The sentences for the prior forcible felonies expired at least five years before the date of conviction for the present felony.

2. The sentence being served is on a conviction for operating a motor vehicle while under the influence of alcohol or a drug under chapter 321J.

88 Acts, ch 1091, §2; 96 Acts, ch 1151, §1, 2

902.12 Minimum sentence for certain felonies — eligibility for parole or work release.

Except as otherwise provided in section 903A.2, a person serving a sentence for conviction of the following forcible felonies shall serve one hundred percent of the maximum term of the person's sentence and shall not be released on parole or work release:

1. Murder in the second degree in violation of section 707.3.

2. Attempted murder in violation of section 707.11.

3. Sexual abuse in the second degree in violation of section 709.3.

4. Kidnapping in the second degree in violation of section 710.3.

5. Robbery in the first or second degree in violation of section 711.2 or 711.3.

Except as otherwise provided in section 903A.2, a person serving a sentence for conviction under section 707.6A, subsection 1 or 2, shall serve one hundred percent of the maximum term of the person's sentence and shall not be released on parole or work release if the person was also convicted under section 321.261, subsection 3, based on the same facts or event that resulted in the conviction under section 707.6A, subsection 1 or 2.

96 Acts, ch 1151, §3; 98 Acts, ch 1007, §1, 2; 98 Acts, ch 1088, §3

902.13 Reserved.

For future text of this section effective upon appropriation or receipt of funds, see 2002 Acts, ch 1080, §§, 6

CHAPTER 903**MISDEMEANORS**

903.1 Maximum sentence for misdemeanants.
903.2 Reconsideration of misdemeanor's sentence.
903.3 Work release.

903.4 Providing place of confinement.
903.5 Local facilities preferred for misdemeanants.
903.6 Segregation of prisoners.

903.1 Maximum sentence for misdemeanants.

1. If a person eighteen years of age or older is convicted of a simple or serious misdemeanor and a specific penalty is not provided for or if a person under eighteen years of age has been waived to adult court pursuant to section 232.45 on a felony charge and is subsequently convicted of a simple, serious, or aggravated misdemeanor, the court shall determine the sentence, and shall fix the period of confinement or the amount of fine, which fine shall not be suspended by the court, within the following limits:

a. For a simple misdemeanor, there shall be a fine of at least fifty dollars but not to exceed five

hundred dollars. The court may order imprisonment not to exceed thirty days in lieu of a fine or in addition to a fine.

b. For a serious misdemeanor, there shall be a fine of at least two hundred fifty dollars but not to exceed one thousand five hundred dollars. In addition, the court may also order imprisonment not to exceed one year.

2. When a person is convicted of an aggravated misdemeanor, and a specific penalty is not provided for, the maximum penalty shall be imprisonment not to exceed two years. There shall be a fine of at least five hundred dollars but not to exceed five thousand dollars. When a judgment of conviction of an aggravated misdemeanor is entered

903A.1 Conduct review.

The director of the Iowa department of corrections shall appoint independent administrative law judges whose duties shall include but are not limited to review, as provided in section 903A.3, of the conduct of inmates in institutions under the department. Sections 10A.801 and 17A.11 do not apply to administrative law judges appointed pursuant to this section.

83 Acts, ch 147, §2, 14, 15; 88 Acts, ch 1109, §31; 98 Acts, ch 1202, §44, 46

903A.2 Earned time.

1. Each inmate committed to the custody of the director of the department of corrections is eligible to earn a reduction of sentence in the manner provided in this section. For purposes of calculating the amount of time by which an inmate's sentence may be reduced, inmates shall be grouped into the following two sentencing categories:

a. Category "A" sentences are those sentences which are not subject to a maximum accumulation of earned time of fifteen percent of the total sentence of confinement under section 902.12. To the extent provided in subsection 5, category "A" sentences also include life sentences imposed under section 902.1. An inmate of an institution under the control of the department of corrections who is serving a category "A" sentence is eligible for a reduction of sentence equal to one and two-tenths days for each day the inmate demonstrates good conduct and satisfactorily participates in any program or placement status identified by the director to earn the reduction. The programs include but are not limited to the following:

- (1) Employment in the institution.
- (2) Iowa state industries.
- (3) An employment program established by the director.
- (4) A treatment program established by the director.
- (5) An inmate educational program approved by the director.

b. Category "B" sentences are those sentences which are subject to a maximum accumulation of earned time of fifteen percent of the total sentence of confinement under section 902.12. An inmate of an institution under the control of the department of corrections who is serving a category "B" sentence is eligible for a reduction of sentence equal to fifteen eighty-fifths of a day for each day of good conduct by the inmate.

2. Earned time accrued pursuant to this section may be forfeited in the manner prescribed in section 903A.3.

3. Time served in a jail or another facility prior to actual placement in an institution under the control of the department of corrections and credited against the sentence by the court shall accrue for the purpose of reduction of sentence under this section. Time which elapses during an escape

shall not accrue for purposes of reduction of sentence under this section.

4. Time which elapses between the date on which a person is incarcerated, based upon a determination of the board of parole that a violation of parole has occurred, and the date on which the violation of parole was committed shall not accrue for purposes of reduction of sentence under this section.

5. Earned time accrued by inmates serving life sentences imposed under section 902.1 shall not reduce the life sentence, but shall be credited against the inmate's sentence if the life sentence is commuted to a term of years under section 902.2.

83 Acts, ch 147, §3, 14, 15; 90 Acts, ch 1251, §67; 96 Acts, ch 1151, §4; 97 Acts, ch 131, §2, 4; 98 Acts, ch 1100, §88; 2000 Acts, ch 1173, §4, 10

Conversion of good conduct time to earned time effective January 1, 2001; 2000 Acts, ch 1173, §9, 10

903A.3 Loss or forfeiture of earned time.

1. Upon finding that an inmate has violated an institutional rule, or has had an action or appeal dismissed under section 610A.2, the independent administrative law judge may order forfeiture of any or all earned time accrued and not forfeited up to the date of the violation by the inmate and may order forfeiture of any or all earned time accrued and not forfeited up to the date the action or appeal is dismissed, unless the court entered such an order under section 610A.3. The independent administrative law judge has discretion within the guidelines established pursuant to section 903A.4, to determine the amount of time that should be forfeited based upon the severity of the violation. Prior violations by the inmate may be considered by the administrative law judge in the decision.

2. The orders of the administrative law judge are subject to appeal to the superintendent or warden of the institution, or the superintendent's or warden's designee, who may either affirm, modify, remand for correction of procedural errors, or reverse an order. However, sanctions shall not be increased on appeal. A decision of the superintendent, warden, or designee is subject to review by the director of the Iowa department of corrections who may either affirm, modify, remand for correction of procedural errors, or reverse the decision. However, sanctions shall not be increased on review.

3. The director of the Iowa department of corrections or the director's designee may restore all or any portion of previously forfeited earned time for acts of heroism or for meritorious actions. The director shall establish by rule the requirements as to which activities may warrant the restoration of earned time and the amount of earned time to be restored.

4. The inmate disciplinary procedure, including but not limited to the method of awarding or

forfeiting time pursuant to this chapter, is not a contested case subject to chapter 17A.

83 Acts, ch 147, §4, 14, 15; 84 Acts, ch 1244, §3; 88 Acts, ch 1109, §32; 95 Acts, ch 167, §5; 2000 Acts, ch 1173, §5, 10

903A.4 Policies and procedures.

The director of the Iowa department of corrections shall develop policy and procedural rules to implement sections 903A.1 through 903A.3. The rules may specify disciplinary offenses which may result in the loss of earned time, and the amount of earned time which may be lost as a result of each disciplinary offense. The director shall establish rules as to what constitutes "*satisfactory participation*" for purposes of a reduction of sentence under section 903A.2, for programs that are available or unavailable. The rules shall specify that earned time shall be calculated on a monthly basis as it accrues. The department shall generate an earned time report for each inmate which shall include the amount of actual time served, the number of earned time credits which have not been lost or forfeited, and the amount of time remaining on an inmate's sentence.

83 Acts, ch 147, §5, 14, 15; 2000 Acts, ch 1173, §6, 10

903A.5 Time to be served — credit.

An inmate shall not be discharged from the custody of the director of the Iowa department of corrections until the inmate has served the full term for which the inmate was sentenced, less earned time and other credits earned and not forfeited, unless the inmate is pardoned or otherwise legally released. Earned time accrued and not forfeited shall apply to reduce a mandatory minimum sentence being served pursuant to section 124.406, 124.413, 902.7, 902.8, 902.8A, or 902.11. An inmate shall be deemed to be serving the sentence from the day on which the inmate is received into the institution. If an inmate was confined to a county jail or other correctional or mental facility at any time prior to sentencing, or after sentencing but prior to the case having been decided on appeal, because of failure to furnish bail or because of being charged with a nonbailable offense, the inmate shall be given credit for the days already served upon the term of the sentence. However, if a person commits any offense while confined in a county jail or other correctional or mental health facility, the person shall not be granted jail credit for that offense. Unless the inmate was confined

in a correctional facility, the sheriff of the county in which the inmate was confined shall certify to the clerk of the district court from which the inmate was sentenced and to the department of corrections' records administrator at the Iowa medical and classification center the number of days so served. The department of corrections' records administrator, or the administrator's designee, shall apply jail credit as ordered by the court of proper jurisdiction or as authorized by this section and section 907.3, subsection 3, and shall forward a copy of the number of days served to the clerk of the district court from which the inmate was sentenced.

An inmate shall not receive credit upon the inmate's sentence for time spent in custody in another state resisting return to Iowa following an escape. However, an inmate may receive credit upon the inmate's sentence while incarcerated in an institution or jail of another jurisdiction during any period of time the person is receiving credit upon a sentence of that other jurisdiction.

83 Acts, ch 147, §6, 14, 15; 90 Acts, ch 1168, §61; 95 Acts, ch 91, §8; 99 Acts, ch 12, §18; 99 Acts, ch 182, §4; 2000 Acts, ch 1173, §7, 10; 2000 Acts, ch 1204, §1

903A.6 Good and honor time application.

Sections 246.38, 246.39, 246.41, 246.42, 246.43, and 246.45, as the sections appear in the 1983 Code, remain in effect for inmates sentenced for offenses committed prior to July 1, 1983.

83 Acts, ch 147, §7, 13, 14

903A.7 Separate sentences.

Consecutive multiple sentences that are within the same category under section 903A.2 shall be construed as one continuous sentence for purposes of calculating reductions of sentence for earned time. If a person is sentenced to serve sentences of both categories, category "B" sentences shall be served before category "A" sentences are served, and earned time accrued against the category "B" sentences shall not be used to reduce the category "A" sentences. If an inmate serving a category "A" sentence is sentenced to serve a category "B" sentence, the category "A" sentence shall be interrupted, and no further earned time shall accrue against that sentence until the category "B" sentence is completed.

83 Acts, ch 147, §8, 14; 97 Acts, ch 131, §3, 4; 98 Acts, ch 1100, §89; 2000 Acts, ch 1173, §8, 10

CHAPTER 903B

HORMONAL INTERVENTION THERAPY FOR SEX OFFENDERS

903B.1 Hormonal intervention therapy — certain sex offenses.

Appendix L, p. 55

d. Return for hearing. Upon filing the report required by this rule or the filing of any subsequent report regarding the defendant's mental condition, the chief medical officer shall give notice to the sheriff and county attorney of the county from which the defendant was committed and the sheriff shall receive and hold the defendant for hearing. However, if the chief medical officer believes continued custody of the defendant at the facility is necessary to ensure the defendant's safety or the safety of others and states that finding in the report, the court shall make arrangements for the hearing to be conducted as soon as practicable at a suitable place within the facility to which the defendant was committed.

e. Hearing; release or retention in custody. If, upon hearing, the court finds that the defendant is not mentally ill and no longer dangerous to the defendant's self or to others, the court shall order the defendant released. If, however, the court finds that the defendant is mentally ill and dangerous to the defendant's self or to others, the court shall order the defendant committed to a state mental health institute or to the Iowa security and medical facility and retained in custody until the court finds that the defendant is no longer mentally ill and dangerous to the defendant's self or to others. The court shall give due consideration to the chief medical officer's findings and opinion along with any other relevant evidence that may be submitted.

No more than 30 days after entry of an order for continued custody, and thereafter at intervals of not more than 60 days as long as the defendant is in custody, the chief medical officer of the facility to which the defendant is committed shall report to the court which entered the order. Each periodic report shall describe the defendant's condition and state the chief medical officer's prognosis if the defendant's condition has remained unchanged or has deteriorated. The court shall forward a copy of each report to the defendant's attorney and to the attorney for the state.

If the chief medical officer reports at any time that the defendant is no longer mentally ill and is no longer dangerous to the defendant's self or to others, the court shall, upon hearing, order the release of the defendant unless the court finds that continued custody and treatment are necessary to protect the safety of the defendant's self or others in which case the court shall order the defendant committed to the Iowa security and medical facility for further evaluation, treatment, and custody.

2.22(9) Proof necessary to sustain verdict of guilty.

a. Reasonable doubt. Where there is a reasonable doubt of the defendant being proven to be guilty, the defendant is entitled to an acquittal.

b. Reasonable doubt as to degree. Where there is a reasonable doubt of the degree of the offense of which the defendant is proved to be guilty, the defendant shall only be convicted of the degree as to which there is no reasonable doubt. [66GA, ch 1245(2), §1301; 67GA, ch 153, §64, 65; amendment 1980; amendment 1982; 1984 Iowa

Acts, ch 1323, §5; amendment 1999; Report November 9, 2001, effective February 15, 2002]

Rule 2.23 Judgment.

2.23(1) Entry of judgment of acquittal or conviction. Upon a verdict of not guilty for the defendant, or special verdict upon which a judgment of acquittal must be given, the court must render judgment of acquittal immediately. Upon a plea of guilty, verdict of guilty, or a special verdict upon which a judgment of conviction may be rendered, the court must fix a date for pronouncing judgment, which must be within a reasonable time but not less than 15 days after the plea is entered or the verdict is rendered, unless defendant consents to a shorter time.

2.23(2) Forfeiture of bail; warrant of arrest. If the defendant has been released on bail, or has deposited money instead thereof, and does not appear for judgment when the defendant's personal appearance is necessary, the court, in addition to the forfeiture of the undertaking of bail or money deposited, may make an order directing the clerk, on the application of the county attorney at any time thereafter, to issue a warrant that substantially complies with the form that accompanies these rules into one or more counties for the defendant's arrest. The warrant may be served in any county in the state. The officer must arrest the defendant and bring the defendant before the court, or commit the defendant to the officer mentioned in the warrant.

2.23(3) Imposition of sentence.

a. Informing the defendant. When the defendant appears for judgment, the defendant must be informed by the court or the clerk under its direction, of the nature of the indictment, the defendant's plea, and the verdict, if any thereon, and be asked whether the defendant has any legal cause to show why judgment should not be pronounced against the defendant.

b. What may be shown for cause. The defendant may show for cause against the entry of judgment any sufficient ground for a new trial or in arrest of judgment.

c. Incompetency. If it reasonably appears to the court that the defendant is suffering from a mental disorder which prevents the defendant from appreciating or understanding the nature of the proceedings or effectively assisting defendant's counsel, judgment shall not be immediately entered and the defendant's mental competency shall be determined according to the procedures described in Iowa Code sections 812.3 through 812.5.

d. Judgment entered. If no sufficient cause is shown why judgment should not be pronounced, and none appears to the court upon the record, judgment shall be rendered. Prior to such rendition, counsel for the defendant, and the defendant personally, shall be allowed to address the court where either wishes to make a statement in mitigation of punishment. In every case the court shall include in the judgment entry the number of the particular section of the Code under which the defendant is sentenced. The court shall state on the record its reason for selecting the particular sentence.