

**IN THE COURT OF APPEALS OF IOWA**

No. 3-683 / 12-2178  
Filed July 24, 2013

**STATE OF IOWA,**  
Plaintiff-Appellee,

**vs.**

**TIMOTHY LAWAYNE WILLIAMS JR.,**  
Defendant-Appellant.

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Appeal from the Iowa District Court for Scott County, Joel W. Barrows,  
Judge.

Timothy Williams Jr. appeals the sentence and fine imposed following  
revocation of his deferred judgment for burglary in the third degree. **AFFIRMED  
IN PART, REVERSED IN PART, AND REMANDED WITH DIRECTIONS.**

Mark C. Smith, State Appellate Defender, and Nan Jennisch, Assistant  
Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Martha E. Trout, Assistant Attorney  
General, Michael J. Walton, County Attorney, and Kimberly Shepherd, Assistant  
County Attorney, for appellee.

Considered by Eisenhauer, C.J., and Vaitheswaran and Doyle, JJ.

**DOYLE, J.**

Timothy Williams Jr. appeals the sentence and fine imposed following revocation of his deferred judgment for burglary in the third degree. We affirm in part and reverse in part and remand with directions.

***I. Background Facts and Proceedings.***

In December 2011, the State filed a trial information charging Williams with the crimes of third-degree burglary and possession of a controlled substance (marijuana). Williams entered guilty pleas to both charges pursuant to a plea agreement. Under the agreement, Williams would request a deferred judgment and the State agreed to recommend against incarceration.

Williams was sentenced in May 2012. On the charge of third-degree burglary, the district court granted Williams request for a deferred judgment. A \$750 civil penalty was imposed. Williams was placed on supervised probation for three years and a number of specific conditions of probation were included.

Less than a week after his sentencing, and then again in October 2012, the State reported Williams had violated the conditions of his probation. Williams admitted to the reported violations. As a result of Williams's second violation, the court on November 30, 2012, entered its ruling revoking Williams's deferred judgment status and probation. The court's order, set forth via a court calendar entry, stated:

It is ordered that deferred judgment heretofore granted is set aside. Pursuant to [Williams's] plea of guilty to the charge . . . of burglary in the third degree . . . , it is the judgment and sentence of the court that [Williams] is committed . . . for a term not to exceed five years, with credit on said sentence for time spent in custody to date. [Williams] is further sentenced to pay a fine of \$750. The fine is suspended.

Williams now appeals. He contends the district court erred in failing to reduce the fine imposed by an amount equal to civil penalty imposed as a part of his deferred judgment. A claim that the district court exceeded its jurisdiction or otherwise acted illegally by incorrectly applying the law and imposing a sentence not allowed by law is reviewed for correction of errors at law. *State v. Keutla*, 798 N.W.2d 731, 732 (Iowa 2011). We also review issues of statutory interpretation and application for errors of law. Iowa R. App. P. 6.907. “When we interpret statutes, our primary goal is to ascertain the legislature’s intent.” *Keutla*, 798 N.W.2d at 734.

### ***III. Discussion.***

Iowa Code chapter 908 (2011) “addresses probation and parole violations, and section 908.11 specifically speaks to probation violations.” *Id.* at 733. Relevant here, section 908.11(5) provides:

Notwithstanding any other provision of law to the contrary, if the court revokes the probation of a defendant who received a deferred judgment *and imposes a fine, the court shall reduce the amount of the fine by an amount equal to the amount of the civil penalty previously assessed against the defendant pursuant to section 907.14.* However, the court shall assess any required surcharge, court cost, or fee upon the total amount of the fine prior to reduction pursuant to this subsection.

(Emphasis added.)

Williams argues the district court’s failure to expressly reduce the amount of his criminal fine by the amount of his \$750 civil penalty previously imposed against him violated section 908.11(5). He asserts the proper remedy for the error is to vacate the entire sentence and remand the case for resentencing.

The State contends that because the court “suspended” Williams’s fine, no fine was imposed, and, consequently, a civil-penalty credit was unnecessary. However, the State concedes the district court’s use of the word “suspend” as it relates to Williams’s fine is “imprecise.” Nevertheless, it advocates interpreting the word “suspend” to mean “waived,” again, as its argument goes, resulting in no fine imposed against Williams and rendering a civil-penalty credit unnecessary. Finally, it argues that if we find the fine was imposed, the district court’s use of the word “suspended” was “the functional equivalent of the credit that is required under section 908.11(5).”

Upon our review, we agree with Williams that the district court was required to expressly reduce the amount of his criminal fine by the amount of his civil fine pursuant to section 908.11(5). Although that appears to be the court’s ultimate intent, its language is not crystal clear. Accordingly, we must find the court’s failure to expressly follow section 908.11(5) resulted in imposing a sentence not allowed by law.

However, we disagree with Williams’s argument that this error by the court requires this court to vacate his entire sentence and remand for resentencing. “Generally, in criminal cases, where an improper or illegal sentence is severable from the valid portion of the sentence, we may vacate the invalid part without disturbing the rest of the sentence.” *Keutla*, 798 N.W.2d at 735. In this instance, we conclude the district court’s language with regard to the fine is easily severable from the remainder of his sentence. Consequently, we only vacate that portion of Williams’s sentence relating to the \$750 fine, and we remand that

matter to the district court for resentencing for conformance with the provisions of section 908.11(5). We affirm his sentence in all other respects.

**AFFIRMED IN PART, REVERSED IN PART, AND REMANDED WITH DIRECTIONS.**