IN THE SUPREME COURT OF IOWA
Supreme Court No. 24–0085
Scott County No. PCCE136818

BRANDON DANIEL RUIZ,
Applicant-Appellant,

vs.

STATE OF IOWA,
Respondent-Appellee.

APPEAL FROM THE IOWA DISTRICT COURT
FOR SCOTT COUNTY
THE HONORABLE TAMRA J. ROBERTS, JUDGE

APPELLEE'S BRIEF

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STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

I. Did the PCR court err in granting the State's motion to dismiss this second PCR action, filed more than three years after procedendo issued on his direct appeal?

II. Did Ruiz establish that PCR counsel was ineffective in this untimely and cumulative PCR action?

ROUTING STATEMENT

This case can be resolved through application of settled legal principles and established law, and transfer to the Iowa Court of Appeals would be appropriate. *See* Iowa R. App. P. 6.1101(3)(a).

NATURE OF THE CASE

This is an appeal from a ruling that granted a motion to dismiss a second PCR action. The applicant, Brandon Daniel Ruiz, was convicted of second-degree sexual abuse in 2018. His conviction was affirmed on direct appeal. *See State v. Ruiz*, No. 18–1260, 2019 WL 3729562 (Iowa Ct. App. Aug. 7, 2019). Procedendo issued on December 12, 2019.

Ruiz filed a first PCR action. After a hearing on the merits, the PCR court rejected his ineffective-assistance-of-counsel claims and denied relief. That ruling was affirmed on appeal. *See Ruiz v. State*, No. 22–0913, 2023 WL 4529424 (Iowa Ct. App. July 13, 2023).

Then, Ruiz filed this second PCR action. He alleged that his first PCR counsel was ineffective. He also raised an actual-innocence claim. *See* D0001, PCR Application at 2 (9/5/23). But he did not allege the existence of any new ground of law/fact that mattered to his claims.

The State moved to dismiss the PCR action as untimely, since it was filed more than three years after procedendo on direct appeal. *See*

D0005, Motion to Dismiss (9/14/23). After an unreported hearing on the motion, the PCR court granted it and dismissed the PCR action as time-barred by section 822.3. *See* D0012, PCR Order (1/3/24).

Ruiz appeals. He argues: **(1)** the PCR court's ruling was wrong because it did not adopt equitable tolling, which he did not argue for; and **(2)** his second PCR counsel was ineffective because she did not file any written submissions on his behalf.

Statement of Facts

In this second PCR action, Ruiz alleged no facts in support of his claims other than those already in the public record (and in the opinions of the Iowa Court of Appeals in his previous appeals), and his own knowledge that he "is actually innocent." *See* D0001 at 2–3.

The State's motion to dismiss explained that the 2019 version of section 822.3 sets out that ineffective assistance of PCR counsel is not a "new ground of fact" that can extend the three-year window for PCR. *See* D0005 at 2–3.

Ruiz had appointed PCR counsel. *See* D0002, Order Appointing (9/13/23); D0007, Appearance (10/5/23). There was an unreported hearing on the motion to dismiss. *See* D0009, Order Setting Hearing (10/12/23); D0010, Order for Videoconferencing (10/30/23). At the

hearing, the parties apparently requested time to file additional briefs on the motion to dismiss. But neither party actually did so. *See* D0012 at 1.

The PCR court's ruling addressed and rejected the claim that Ruiz's second PCR action was timely because he was alleging that his first PCR counsel was ineffective:

> In *Brooks v. State*, [975 N.W.2d 444, 445 (Iowa Ct. App. 2022)], the Court stated that the language added to Iowa Code § 822.3 abolished the relation-back doctrine for ineffective-assistance claims in second PCR proceedings. The relation-back doctrine . . . stated that the timing of a second PCR petition alleging ineffective assistance of postconviction counsel relates back to the timing of an original PCR petition alleging ineffective assistance of trial counsel, for statute of limitations purposes. Now a second PCR petition must be filed within the three year statute of limitations laid out in Iowa Code § 822.3.
>
> The statute of limitations for Ruiz's PCR expired December 10, 2022—three years after procedendo issued following his direct appeal. His first PCR was timely, but unsuccessful. The amended version of Iowa Code § 822.3 was in effect when Ruiz filed his second PCR action on September 5, 2023. Therefore, since his second PCR action fell outside the three-year statute of limitations laid out in Iowa Code § 822.3, it is time barred and the Court must dismiss it.

D0012 at 2–3.

Additional facts will be discussed when relevant.

ARGUMENT

I. The PCR court did not err in determining that this second PCR action was time-barred by section 822.3.

Preservation of Error

Ruiz concedes that error was not preserved for his argument that equitable tolling should apply to save this PCR action. *See* App's Br. at 10. That is correct. The PCR court ruled upon no such claim. *See* D0012. That means error is not preserved. *See, e.g.*, *Lamasters v. State*, 821 N.W.2d 856, 864 (Iowa 2012).

Ruiz argues this Court should consider his unpreserved claim, because "it would make little sense to require a party to argue existing law should be overturned before a court without the authority to do so." *See* App's Br. at 10 (quoting *State v. Williams*, 895 N.W.2d 856, 859 n.2 (Iowa 2017)). But at a minimum, that only pertains to an *appellee*. *See State v. Nicholson*, No. 20–0320, 2021 WL 2135017, at *2 (explaining "[t]hat footnote [in *Williams*] addressed the appellee-State's decision to argue in the supreme court for reversal of existing case law when it did not do so in the district court," and it "does not allow" appellants to make new claims for new remedies "for the first time on appeal"). It is a basic rule of error preservation that a party cannot complain of an *error* in the district court's ruling, on grounds

that were not argued and ruled upon below. And the Iowa Supreme Court has not read *Williams* to allow appellants to raise unpreserved challenges simply by styling them as calls to overturn controlling precedent. *See, e.g.*, *State v. Montgomery*, 966 N.W.2d 641, 649–50 (Iowa 2021) (noting that appellant was arguing that *State v. Pearson* should be overruled, but applying ordinary rule that required appellant to preserve error by raising the issue and obtaining a ruling from the district court).

The Iowa Court of Appeals recently rejected an identical claim because it was unpreserved, in *Teah v. State*:

> Teah argues that this court should adopt and apply equitable tolling to save his application. . . . [W]e determine Teah failed to preserve error on this issue and do not reach the merits of his claim.
>
> "It is a fundamental doctrine of appellate review that issues must ordinarily be both raised and decided by the district court before we will decide them on appeal." *Meier v. Senecaut*, 641 N.W.2d 532, 537 (Iowa 2002). Teah did not raise the issue of equitable tolling with the district court. . . . Absent from both his resistance and the district court's order is any mention of equitable tolling. Because Teah did not raise his claim of equitable tolling with the district court, we cannot address it now.

Teah v. State, No. 23–0660, 2024 WL 470355, at *1 (Iowa Ct. App. Feb. 7, 2024). Ruiz raises the same claim; it is similarly unpreserved.

And in *Sandoval v. State*, the Iowa Supreme Court declined to reach various unpreserved constitutional challenges to section 822.3:

> Sandoval further contends constitutional principles of equal protection and due process require that he be allowed to pursue his untimely fourth application for postconviction relief notwithstanding the statute of limitations. Sandoval failed to raise these issues in the district court, and the district court did not rule on these constitutional challenges. These challenges are thus not preserved for appellate review, and we will not consider them for the first time on appeal. *See Meier v. Senecaut*, 641 N.W.2d 532, 537 (Iowa 2002) ("When a district court fails to rule on an issue properly raised by a party, the party who raised the issue must file a motion requesting a ruling in order to preserve error for appeal."); *State v. Webb*, 516 N.W.2d 824, 828 (Iowa 1994) ("We may not consider an issue that is raised for the first time on appeal, 'even if it is of constitutional dimension.' " (quoting *Patchette v. State*, 374 N.W.2d 397, 401 (Iowa 1985)))

Sandoval v. State, 975 N.W.2d 434, 437 (Iowa 2022). And note that *Sandoval* was decided after *Williams*. So if there were any exception to error preservation requirements for appellants who are challenging Iowa precedent that holds that statutes of limitations for PCR actions are constitutional and enforceable (even one arising after *Williams*), *Sandoval* would have applied it. But *Sandoval* did not do so, because no such exception exists.

Ruiz did not argue that equitable tolling should apply here, and the PCR court did not rule on any such claim. So "the equitable-tolling

argument has not been preserved." *See Smith v. State*, No. 19–0384, 2020 WL 110398, at *1 (Iowa Ct. App. Jan. 9, 2020).

Standard of Review

Review of a ruling that grants dismissal of a PCR action is for correction of errors at law. *See Thongvanh v. State*, 938 N.W.2d 2, 8 (Iowa 2020). Iowa appellate courts "affirm if the [PCR] court's findings of fact are supported by substantial evidence and the law was correctly applied." *See Harrington v. State*, 659 N.W.2d 509, 520 (Iowa 2003).

Merits

Ruiz's brief does not identify any alleged error in the PCR court's application of section 822.3. He does not disagree that his PCR action was filed more than three years after procedendo on his direct appeal. *See* App's Br. at 10–16. The PCR court's ruling was correct, and Ruiz has not established otherwise. There is nothing to do but affirm.

Ruiz's unpreserved argument is that the 2019 amendment to section 822.3 (which abrogated the exception that *Allison v. State* created in 2018) has now deprived PCR claimants of "the reasonable opportunity to be heard where the original PCR outlasts the statute of limitations." *See* App's Br. at 12–16. Not so. Those claimants had the reasonable opportunity to be heard *during that original PCR action*.

If Ruiz believed his PCR counsel was not effectively representing him, he could move for new counsel or ask to represent himself. He had an opportunity to litigate any PCR claim that could establish an error or infirmity in the proceeding that led to his conviction. Now, he wants to litigate whether there were errors in his *prior PCR proceeding*. But it is logically impossible for him to show that he might not have been convicted at trial if not for an error in his post-conviction proceedings. *Accord Dible v. State*, 557 N.W.2d 881, 883–86 (Iowa 1996).

Ruiz argues that abrogating *Allison* is unconstitutional because it has cut off all opportunities for him to challenge his conviction. *See* App's Br. at 12–16. But the new-ground-of-fact exception ensures that Ruiz always has a three-year window to raise any challenges that bear upon the validity of his underlying conviction. *See* Iowa Code § 822.3. This still allows a PCR applicant to raise a truly new claim. But it does that while also requiring them to raise claims in a timely manner, and in the first PCR action where those claims *could* have been raised. *See* Iowa Code §§ 822.3, 822.8. Abrogating *Allison* promotes "finality of judgments" by refusing to permit an untimely successive PCR action "when the [new] issue does not bear directly on guilt or innocence." *See Thongvanh*, 938 N.W.2d at 15–16.

Ruiz argues that equitable tolling would be good policy. *See* App's Br. at 15. But arguments about whether statutes of limitation are good policy are the province of the legislature. This Court cannot supplant that judgment with its own to create new exceptions where the legislature has specifically declined to do so (much less where it has already acted to abrogate *Allison* and eliminate its new exception to the existing three-year statute of limitations for PCR actions).

And even if it could, it shouldn't. Ruiz says equitable tolling is appropriate for "the rare event that PCR counsel is ineffective." *See* App's Br. at 15. But courts that experienced the aftermath of *Allison* know that *every* PCR claimant will assert that theirs is the rare case where PCR counsel in each and every prior action were all ineffective. Under Ruiz's approach, equitable tolling would effectively replace the statute of limitations in PCR actions, leaving nothing of the rule that "ensures the criminal process 'end[s] within reasonable time limits.'" *See Williams v. State*, No. 19–1939, 2021 WL 1400336, at *3 (Iowa Ct. App. Apr. 14, 2021) (quoting *Davis v. State*, 443 N.W.2d 707, 710 (Iowa 1989)). Judicial resources are too scarce to waste on untimely successive PCR actions that do not allege a new ground of law or fact. And victims of crime deserve a system where criminal convictions can

someday become *final* in some meaningful way. *See Allison v. State*, 914 N.W.2d 866, 898 (Iowa 2017) (Waterman, J., dissenting).

Iowa courts have "repeatedly declined to adopt and apply equitable tolling to the statute of limitations in section 822.3." *See Ung v. State*, No. 21–0299, 2022 WL 108473, at *2 (Iowa Ct. App. Jan. 12, 2022) (collecting cases). Ruiz's unpreserved challenge is unable to overcome the legislature's deliberate choice to abrogate *Allison*. This successive PCR action was filed more than three years after procedendo on direct appeal, so it is untimely. The fact that Ruiz alleged that his prior PCR counsel was ineffective does not change that, nor should it. So Ruiz cannot establish that the PCR court erred when it dismissed this action, and his challenge fails.

II. Ruiz cannot prove his unpreserved claim that his PCR counsel was ineffective in this PCR action.

Preservation of Error

Error was not preserved. This claim was never ruled upon by the PCR court. *See* D0012. Nor did either party develop a record that would enable this Court to resolve the claim as raised for the first time in this appeal.

On rare occasions, Iowa appellate courts choose to address ineffective-assistance-of-PCR-counsel claims on direct appeal from

PCR proceedings, but only "when the appellate record is adequate." *See Goode v. State*, 920 N.W.2d 520, 526 (Iowa 2018). Here, it is not. There is no factual record about what kind of investigation was done by Ruiz's second PCR counsel, or whether additional claims and/or arguments were considered and rejected by second PCR counsel, or what kind of arguments *were actually made* by second PCR counsel at the unreported hearing on the State's motion to dismiss. This Court should not reach this unpreserved claim on this inadequate record. *See, e.g.*, *Brown v. State*, No. 22–0459, 2023 WL 3335384, at *4 (Iowa Ct. App. May 10, 2023) (citing *Goode*, 920 N.W.2d at 526) ("Like Goode, Brown would need more evidence to support his claim that he received ineffective assistance of PCR counsel. So we cannot decide his claim in this appeal.").

Standard of Review

There is no ruling to review. If there were, then it would be on a claim that is couched in a statutory right to counsel in PCR actions. Any ruling would be reviewed de novo. *See, e.g.*, *Lado v. State*, 804 N.W.2d 248, 250 (Iowa 2011) (citing *Dunbar v. State*, 515 N.W.2d 12, 16 (Iowa 1994)). The PCR court's findings on witness credibility would receive substantial deference on appeal. *See, e.g.*, *Ledezma v. State*,

626 N.W.2d 134, 141 (Iowa 2001). But because this claim was never raised or adjudicated below, that is impossible.

Merits

Even in appeals from rulings on PCR applications, "issues must ordinarily be both raised and decided by the district court before we will decide them on appeal." *See Lamasters*, 821 N.W.2d at 862–64; *accord, e.g.*, *Harris v. State*, No. 21–0380, 2022 WL 1486184, at *4 (Iowa Ct. App. May 11, 2022) ("Because Harris neither raised the issue below nor received a ruling on the issue, we need not address it here."); *Lajeunesse v. State*, No. 19–1715, 2022 WL 469408, at *4 n.5 (Iowa Ct. App. Feb. 16, 2022) ("Lajeunesse raises a myriad of claims that were not presented before the PCR court. . . . [T]hose claims are not preserved for our review."); *Wolf v. State*, No. 19–1606, 2021 WL 1906399, at *1 (Iowa Ct. App. May 12, 2021) ("Because Wolf never raised this argument below and the PCR court never ruled on it, we decline to address it on appeal.").

When an appellant claims ineffective assistance of PCR counsel during the same PCR action from which the appeal is taken, the same error preservation requirement still applies (and it is usually not met). There is a narrow exception that can allow an appellate court to reach

the merits of an unpreserved claim on appeal if the existing record is already sufficiently developed to enable consideration and resolution. The Iowa Supreme Court discussed this exception in *Goode v. State*:

> In this appeal, the issue raised by Goode was not an issue raised and decided in the district court. It was a new issue alleging ineffective assistance of postconviction counsel. Goode claims his postconviction counsel was ineffective for failing to support his claim of ineffective assistance of trial counsel at the postconviction hearing in district court with physical evidence of the posts he made on Facebook that would corroborate his alibi. Without this evidence, and more, the parties acknowledge the record on appeal is inadequate to address the new claim of ineffective assistance of postconviction counsel. . . . Thus, the exception we have made to our general rule, that otherwise limits appellate review to issues raised and decided in the district court, does not apply.

Goode, 920 N.W.2d at 526–27. In other words, when a PCR appellant raises a new claim, and the existing PCR record available on appeal is incomplete or underdeveloped with regards to that new claim, the appellate court should not reach the merits of that new claim. *See id.*

That is the case here. Ruiz's argument is that PCR counsel was ineffective because she did not file anything that would raise a new ground of law or fact to support Ruiz's claims and because she did not allege and prove structural error in Ruiz's first PCR action. *See* App's Br. at 17–20. But it is just as likely that PCR counsel was diligent in investigating and researching potential challenges that she could raise

in an amended PCR application—and found none that had any merit. *See Tooson v. State*, No. 15–0555, 2016 WL 4543531, at *4 (Iowa Ct. App. Aug. 31, 2016) (rejecting a similar claim because "[t]here is no duty of an attorney to advance claims for a client that the lawyer does not believe are well-grounded in fact and warranted by existing law"). The existing record does not contain any facts that could displace the initial presumption that second PCR counsel performed competently and investigated the possibility of raising those kinds of claims, but found no facts or law to support them (which aligns with presuming that Ruiz's first PCR counsel performed competently, and that diligent investigation by second PCR counsel would find facts to that effect).

Even if Ruiz could establish breach by identifying something that his PCR counsel should have done and did not do, he would need to establish prejudice—a reasonable probability of a different result, if second PCR counsel had raised and argued that mystery claim. Ruiz cannot do that, on this record. There is no proof of what relevant facts would have been found in any specific investigation that PCR counsel allegedly skipped. The burden of establishing *Strickland* prejudice is on the PCR applicant; it is not enough to allege that effective counsel would have developed a record that would have contained *something*

that would have entitled Ruiz to a new trial. Rather, Ruiz must *prove* that effective PCR counsel would have been able to develop a record that would support some claim to relief. Because he can't do that, his claim fails on its face. *See Goode*, 920 N.W.2d at 526–27; *accord, e.g.*, *Pendleton v. State*, No. 11–1786, 2012 WL 3027143, at *1–2 (Iowa Ct. App. July 25, 2012) (holding that Pendleton had "failed to show he was prejudiced by [PCR] counsel's conduct" because he did not prove that better investigation or advocacy could have prevailed); *Gear v. State*, No. 08–1150, 2009 WL 1886839, at *3 (Iowa Ct. App. July 2, 2009) (rejecting failure-to-investigate claim because "Gear has presented no evidence—expert or otherwise—in support of his assertion" that an investigation would have found favorable evidence); *Jessop v. State*, No. 01–1333, 2002 WL 31761711, at *2–3 (Iowa Ct. App. Dec. 11, 2002) ("[W]e find the record lacking in any substantial evidence of what would have been discovered or what the witnesses' testimony would have been had there been no breach. Jessop has thus failed to prove that but for counsel's breach the outcome of the trial would probably have been different."); *West v. State*, No. 21–1074, 2022 WL 1488555, at *2 (Iowa Ct. App. May 11, 2022) (collecting cases). So

even if this unpreserved claim could be reached, it would fail on both breach and prejudice—this record does not prove either.

Ruiz forswears any need to prove prejudice—he argues that he was effectively without counsel during this second PCR, and so this Court should treat this as structural error. *See* App's Br. at 21–23. But Ruiz was not without counsel. He had appointed counsel. While Ruiz complains that his counsel did nothing, he does not have a record that can prove that. It is just as likely that his counsel investigated whether there were any potentially meritorious claims that could be raised as a defense to the statute of limitations—and found none. Indeed, Ruiz has done no better. His brief in this appeal argues that second PCR counsel should have pointed to the box he checked on his PCR application that said that he had new evidence. *See* App's Br. at 18–19. But just below that, in the same filing, Ruiz said that the only facts in his knowledge that supported the PCR application were his own asserted belief in his actual innocence and the facts already in the record in his prior action. None of that can possibly count as a new ground of fact or law. *See, e.g.*, *Quinn v. State*, 954 N.W.2d 75, 77 (Iowa Ct. App. 2020). Ruiz also says that second PCR counsel should have alleged that his first PCR counsel was ineffective, perhaps to the point of structural error. *See* App's Br.

at 19–20. But the PCR court's ruling (correctly) rejected the claim that ineffectiveness of prior PCR counsel saves an untimely successive PCR. *See* D0012. Second PCR counsel may even have made *that very argument* at the unreported hearing. But it would not matter if she didn't, because Ruiz cannot establish that the PCR court might not have dismissed this action if she had done so—everything it said in its ruling would still apply and this PCR would still be dismissed. *See Neitzel v. State*, No. 20–1622, 2021 WL 5475592, at *2 n.1 (Iowa Ct. App. Nov. 23, 2021) ("Neitzel's claim that all prior [PCR] counsel were ineffective in failing to search for evidence of actual innocence is foreclosed by section 822.3.").

One final thing: Ruiz asserts that remand is appropriate even if he failed to prove that his second PCR counsel was ineffective. Ruiz recognizes that *Goode* foreclosed that result. *See* App's Br. at 22–23 (citing *Goode*, 920 N.W.2d at 526). But Ruiz asserts this is different because "*Goode* was decided before the legislature abrogated *Allison*'s relation-back doctrine." *See* App's Br. at 22–23. That may be true, but it works against Ruiz: there is now *even less* of a good reason to order a PCR court to litigate the issue of whether PCR counsel was effective, since the legislature has clarified that ineffectiveness of PCR counsel

is *not* a relevant ground of fact in a claim for postconviction relief. In any event, just like in *Brown*, Ruiz's claim is too speculative to save:

> We need not decide whether a remand would ever be proper to resolve a claim of ineffective assistance of PCR counsel. It is enough to decide that it is unnecessary here. We only "preserve" claims of ineffective assistance of PCR counsel for future proceedings when they meet the same standard of "stat[ing] the specific ways in which counsel's performance was inadequate and identify[ing] how competent representation would have changed the outcome." *Dunbar*, 515 N.W.2d at 15. Brown fails the *Dunbar* test. In this appeal, Brown complains about two aspects of Nieman's performance: (1) he requested three continuances, without ever amending the pro se application, and (2) he called no witnesses other than Brown. But Brown offers no suggestion as to how Nieman should have amended the application or what witnesses he should have lined up. Without more facts, we cannot tell that Nieman had a material duty to amend the PCR application or to call additional witnesses. As in *Dunbar*, Brown's claims are "too general in nature" to allow us to preserve them for a second PCR proceeding. *Id.* (finding "[f]or example, Dunbar does not propose what an investigation would have revealed or how anything discovered would have affected the result obtained below"). In the end, we can neither address nor preserve the claim that PCR counsel was ineffective.

Brown, 2023 WL 3335384, at *4; *accord Spellman v. State*, No. 22–0499, 2024 WL 1551158, at *3–4 (Iowa Ct. App. Apr. 10, 2024). And both of those decisions came after *Sandoval*, so there is no reason to think that *Sandoval* undermined the validity of that approach.

The PCR court got it right. This successive PCR is time-barred. Ruiz cannot establish any error in that ruling, nor can he prove that dismissal was anything but inevitable. As such, his challenges fail.

CONCLUSION

The State respectfully requests this Court affirm the ruling that granted the motion to dismiss this untimely successive PCR action.

REQUEST FOR NONORAL SUBMISSION

This case should be set for nonoral submission. In the event argument is scheduled, the State asks to be heard.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

This brief complies with the typeface requirements and type-volume limitation of Iowa Rs. App. P. 6.903(1)(d) and 6.903(1)(g)(1) or (2) because:

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Dated: April 29, 2024

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