
**IN THE SUPREME COURT FOR THE STATE OF IOWA
NO. 18-1911**

**ADNAN SAHINOVIC,
Applicant-Appellant**

vs.

**STATE OF IOWA,
Respondent-Appellee.**

**APPEAL FROM THE IOWA DISTRICT COURT
FOR POLK COUNTY,
HONORABLE SSAMANTHA GRONEWALD**

**APPLICANT-APPELLANT'S FINAL BRIEF AND REQUEST FOR
ORAL ARGUMENT**

Alexander Smith
Benjamin D. Bergmann
Parrish Kruidenier Dunn
Boles Gribble Gentry
Brown & Bergmann L.L.P.
2910 Grand Avenue
Des Moines, Iowa 50312
Telephone: (515) 284-5737
Facsimile: (515) 284-1704
Email: bbergmann@parrishlaw.com
asmith@parrishlaw.com
ATTORNEYS FOR APPELLANT

Thomas Miller
Office of Attorney General
Criminal Appeals Division
Hoover State Office Building,
2nd Floor
Des Moines, Iowa 50319
Telephone: (515) 281-3648
Facsimile: (515) 281-8894
Email: tmiller@ag.state.ia.us
ATTORNEY FOR APPELLEE

CERTIFICATE OF FILING AND SERVICE

I hereby certify that I e-filed the Applicant-Appellant's Final Brief with the Electronic Document Management System with the Appellate Court on the 3rd day of June 2019.

The following counsel will be served by Electronic Document Management System.

Thomas Miller
OFFICE OF ATTORNEY GENERAL
Hoover State Office Building, 2nd Floor
Des Moines, Iowa 50319
Telephone: (515) 281-3648
Facsimile: (515) 281-8894
Email: tmiller@ag.state.ia.us
ATTORNEY FOR APPELLEE

I hereby certify that on the 3rd day of June 2019, I did serve the Applicant-Appellant's Final Brief on Appellant, listed below, by mailing one copy thereof to the following Plaintiff-Appellant:

Adnan Sahinovic
Applicant-Appellant

/s/ Veronica Mora _____

**PARRISH KRUIDENIER DUNN BOLES GRIBBLE
GENTRY BROWN & BERGMANN, L.L.P.**

By: */s/ Alexander Smith* _____

Alexander Smith AT0011363
Benjamin D. Bergmann AT0009469
2910 Grand Avenue
Des Moines, Iowa 50312
Telephone: (515) 284-5737
Facsimile: (515) 284-1704
Email: bbergmann@parrishlaw.com
asmith@parrishlaw.com
ATTORNEYS FOR APPELLANT

TABLE OF CONTENTS

	PAGE
CERTIFICATE OF SERVICE AND FILING	2
TABLE OF CONTENTS.....	3
TABLE OF AUTHORITIES	3
STATEMENT OF ISSUES	4
ROUTING STATEMENT.....	4
CASE STATEMENT	4
FACTUAL BACKGROUND and COURSE OF PROCEEDINGS	5
ARGUMENT	7
I. MR. SAHINOVIC WAS WITHIN THE THREE-YEAR TIME LIMITATION.....	7
A. Error Preservation	7
B. Standard of Review	7
C. Argument.....	8
CONCLUSION.....	13
ORAL ARGUMENT NOTICE	13
CERTIFICATE OF COMPLIANCE	14

TABLE OF AUTHORITIES

<u>Castro v. State</u> , 795 N.W.3d 789 (Iowa 2011)	7
<u>Daughenbaugh v. State</u> , 805 N.W.2d 591 (Iowa 2011)	<i>passim</i>

Kurtz v. State, 854 N.W.2d 474 (Iowa Ct. App. 2014) 11

Lamasters v. State, 821 N.W.2d 856 (Iowa 2012)7

Meier v. Senecaut, 641 N.W.2d 532 (Iowa 2002)7

State v. Propps, 897 N.W.2d 91 (Iowa 2017) 9-10

State v. Kobrock, 213 N.W.2d 481 (Iowa 1973) 11

OTHER AUTHORITIES

Model Code of Criminal Procedure § 360 (1930) 11

STATEMENT OF THE ISSUES

I. MR. SAHINOVIC WAS WITHIN THE THREE-YEAR TIME LIMITATION.....7

Daughenbaugh v. State, 805 N.W.2d 591 (Iowa 2011)..... 9-11

State v. Propps, 897 N.W.2d 91 (Iowa 2017)..... 9-10

ROUTING STATEMENT

This appeal should be transferred to the Iowa Court of Appeals because it is a case presenting the application of existing legal principles in accordance with Iowa R. App. P. 6.1101(3)(a).

CASE STATEMENT

Mr. Sahinovic’s application for postconviction relief was timely filed because his sentence was not final until his illegal sentence was corrected.

FACTUAL BACKGROUND AND COURSE OF PROCEEDINGS

Mr. Sahinovic originally pleaded guilty and was sentenced on July 5, 2011 in Polk County Case No. FECR244269. (App. 5).

Mr. Sahinovic filed a pro se Motion to Correct Illegal Sentence in Polk County Case No. FECR244269 on January 29, 2014. (App. 8).

In December of 2014, the district court denied Sahinovic's motion to recast his motion to correct illegal sentence in Polk County Case No. FECR244269 as a postconviction relief application, but did not prohibit any future PCR filing, if warranted. (App. 49).

On April 27, 2015, the district court held a resentencing hearing on Sahinovic's motion to correct an illegal sentence in Polk County Case No. FECR244269. After considering the factors in State v. Lyle, the court removed the mandatory minimum sentence requirement from Sahinovic's sentence. 854 N.W.2d 378, 400 (Iowa 2014). (App. 49; App. 28).

At the April 27, 2015 resentencing hearing in Polk County Case No. FECR244269, the court again refused to consider Sahinovic's challenge to his guilty plea but noted the claim could be pursued in a later PCR action. (App. 49; App. 28).

Mr. Sahinovic timely filed a notice of appeal from the court's grant of his motion to correct illegal sentence and resentencing in Polk County Case

No. FECR244269, and the Iowa appellate courts took the case in Iowa Supreme Court No. 15-0737. (App. 49).

Mr. Sahinovic filed his postconviction relief application in the above-captioned case, Polk County Case No. PCCE078744, on August 12, 2015. (App. 33).

The State filed a motion to stay the postconviction relief proceedings in Polk County Case No. PCCE078744 on November 4, 2015, stating that Mr. Sahinovic has filed an appeal based upon his applicant's conviction in Polk County Criminal case FECR244269 and that it would be in the interest of judicial economy to stay these proceedings until procedendo was issued. (App. 42). The district court granted the State's motion to stay proceedings in Polk County Case No. PCCE078744 on November 17, 2015. (App. 44).

Eventually, Mr. Sahinovic's appeal of his conviction in Polk County Case No. FECR244269 was denied and procedendo issued on the appeal on June 22, 2016. (App. 53). The Iowa Court of Appeal's decision was that it would not address Mr. Sahinovic's claim of a defective plea under the plain error rule because Iowa courts do not allow the plain error rule. (App. 49). The Iowa Court of Appeals did not address the claim that the court should have granted his motion to extend or considered his defective plea claim at the resentencing hearing, deeming that these were waived. (App. 49).

The State filed a Motion for Summary Judgment, claiming that Mr. Sahinovic was outside of the statute of limitations, which the court granted. (10.05.2018 Ruling on State’s Motion for Summary Judgment). Mr. Sahinovic timely appealed. (App. 101).

ARGUMENT

I. MR. SAHINOVIC WAS WITHIN THE THREE-YEAR TIME LIMITATION

A. Error Preservation

Mr. Sahinovic argued that his application for postconviction relief was timely filed in the district court. (App. 94; App. 86). The court considered the issue when granting the State’s Motion for Summary Judgment. (App. 96). “If the court's ruling indicates that the court considered the issue and necessarily ruled on it, even if the court's reasoning is ‘incomplete or sparse,’ the issue has been preserved.” Lamasters v. State, 821 N.W.2d 856, 864 (Iowa 2012) (citing Meier v. Senecaut, 641 N.W.2d 532, 540 (Iowa 2002)).

B. Standard of Review

The court reviews postconviction proceedings, including summary dismissals of applications for postconviction relief, for errors at law. Castro v. State, 795 N.W.3d 789, 792 (Iowa 2011).

C. Argument

Though colloquially referred to as the time bar, the statute of limitations comes from a very specific part of Iowa Code Chapter 822. Iowa Code 822.3 states that “[a]ll other applications must be filed within three years from the date the conviction or decision is final or, in the event of an appeal, from the date the writ of procedendo is issued.”

Now in the normal case, without any post-conviction motions or appeals, the State would be correct. Mr. Sahinovic was sentenced on July 5, 2011, and that would normally make his statute of limitations run until July 5, 2014.

However, Mr. Sahinovic also was resentenced when the court corrected his illegal sentence. He filed his postconviction relief application on August 12, 2015, only a few months after his resentencing date of April 27, 2015. The PCR was already on file when the appeal was denied and procedendo issued on the appeal on June 22, 2016.

The question then becomes “When did Mr. Sahinovic’s conviction become final?” Luckily, the Iowa Supreme Court has copious caselaw on what constitutes a conviction in Iowa Code Chapter 822 and when a Motion to Correct Illegal Sentence is a final judgment and constitutes a conviction.

First, “conviction” in Iowa Code Chapter 822 has a specific meaning in that statute. The Iowa Supreme Court has held that “the statute uses the term ‘conviction’ in its technical sense, namely, to require adjudication and the entry of judgment.” Daughenbaugh v. State, 805 N.W.2d 591, 599 (Iowa 2011). That entry of judgment is the April 27, 2015 resentencing.

The court’s caselaw regarding when a Petition for Writ of Certiorari is necessary after a Motion to Correct Illegal Sentence and when a Notice of Appeal is necessary is also instructive. In State v. Propps, 897 N.W.2d 91, 95-96 (Iowa 2017), after the district court denied a Motion to Correct Illegal Sentence, the State argued that the Iowa Supreme did not have jurisdiction to hear the appeal because it was not a “final judgment of sentence” under Iowa Code section 814.6(1). The court concluded that this was true, as it was consistent with the general rule that the “[f]inal judgment in a criminal case means sentence.” Id. at 96. However, the court also ruled that the denial of the motion to correct the illegal sentence could be challenged as a petition for writ of certiorari. Id.

This case is different, in that the Motion to Correct Illegal Sentence was granted, and Mr. Sahinovic was resentenced. (App. 28). As the court stated, final judgment in a criminal case means sentence. State v. Propps, 897 N.W.2d 91, 96 (Iowa 2017) (citing Daughenbaugh v. State, 805 N.W.2d 591, 595

(Iowa 2011)). Mr. Sahinovic's final judgment was thus when he was resentenced on April 27, 2015.

State v. Propps, 897 N.W.2d 91 (Iowa 2017) also explains when the court's decision on a Motion to Correct Illegal Sentence becomes a final judgment. The conviction was not final until the sentence was corrected. That is why a defendant can appeal from a granted motion to correct illegal sentence (it is a final judgment) but must file a Writ of Certiorari to challenge the denial of a motion to correct illegal sentence (it is not a final judgment, so you must challenge the illegal action of the district court). The Iowa Supreme Court's definition of "conviction" in Daughenbaugh, that the conviction is final after sentencing, supports this interpretation. That is why Mr. Sahinovic's postconviction relief application is timely.

The State and the district court essentially make the same mistake, in thinking that there is some separation from the "original" plea and sentencing so that there can be no challenge to Mr. Sahinovic's guilty plea and sentence that he made in 2011, and he can only challenge any abnormalities to his resentencing in 2015. The statute makes no such separation. The clock starts running when the conviction becomes final, and the entire case can be challenged as long as the application is filed within three years of when the conviction is final.

The district court erred in using the popular or colloquial definition of the term “conviction” in ruling on the Motion for Summary Judgment. The court specifically stated that “The court’s acceptance of Applicant’s plea constituted a conviction of the highest order and authorized the court to sentence the defendant as though the fact finder returned a guilty verdict. See State v. Kobrock, 213 N.W.2d 481, 483 (Iowa 1973). The court’s Order on Resentencing did not vacate or set aside Applicant’s adjudication of guilt (i.e., the judgment of conviction). See Kurtz v. State, 854 N.W.2d 474, 479 (Iowa Ct.App.2014).”

While these citations are true in context, the postconviction relief context changes things dramatically. The term “‘conviction’ has an ‘equivocal meaning’ that depends upon the context in which it is used.” Daughenbaugh v. State, 805 N.W.2d 591, 597 (Iowa 2011). The Uniform Post-Conviction Procedure Act is substantially different from the Model Code of Criminal Procedure, which would broadly define “conviction” as “the final acceptance of a plea of guilty or the finding by the jury or by the court that the defendant is guilty.” Id. at 596-97 (citing Model Code of Criminal Procedure § 360 (1930)). In stark contrast, the technical legal definition of “conviction” means “a formal adjudication by the court and the formal entry of a judgment of conviction.” Id. at 597. The Iowa Supreme Court has varied on the

interpretation of the term “conviction” depending on the statutory context. *Id.* at 598.

The postconviction relief statute uses the term “conviction” in the technical legal sense, requiring not just a guilty plea, but also the entry of judgment. *Id.* at 598. Ultimately, the Iowa Supreme Court has held that the pleading requirements, requiring the “date of the entry of the judgment,” led to the conclusion that there must be an entry of judgment, and a “conviction” under the postconviction relief statute requires both adjudication and judgment. *Id.* at 599.

In this case, the date of the entry of judgment on the application for postconviction relief was not his sentence on July 5, 2011, but the April 27, 2015 judgment. (App. 78). Because Mr. Sahinovic filed his application for postconviction relief well within three years of April 27, 2015, just a few months later on August 12, 2015, he was well within the three-year statute of limitations. (App. 33).

CONCLUSION

Mr. Sahinovic did not have a “conviction” within the meaning of the postconviction relief statute until a final order was issued on his motion granting his correction of illegal sentence. Mr. Sahinovic requests the court reverse the decision of the district judge granting summary dismissal of his application for postconviction relief and remand the case back to the district court for trial on the merits.

ORAL ARGUMENT NOTICE

Counsel requests oral argument.

**PARRISH KRUIDENIER DUNN BOLES GRIBBLE
GENTRY BROWN & BERGMANN L.L.P.**

BY: */s/ Alexander Smith*

Alexander Smith AT0011363

Benjamin D. Bergmann AT0009469

2910 Grand Avenue

Des Moines, Iowa 50312

Telephone: (515) 284-5737

Facsimile: (515) 284-1704

Email: bbergmann@parrishlaw.com

Email: asmith@parrishlaw.com

**ATTORNEYS FOR PETITIONER -
APPELLANT**

**CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME
LIMITATION, TYPEFACE REQUIREMENTS, AND TYPE STYLE
REQUIREMENTS**

This brief complies with the type-volume limitation of Iowa R. App. P. 6.903(1)(g)(1) (no more than 14,000 words) because this brief contains 1,790 words, excluding the parts of the brief exempted by Rule 6.903(1)(g)(1), which are the table of contents, table of authorities, statement of the issues, and certificates.

This brief complies with the typeface requirements of Iowa R. App. P. 6.903(1)(e) and the type-style requirements of Iowa R. App. P. 6.903(1)(f) because this brief has been prepared in a proportionally spaced typeface using Microsoft Office Word 2010 in font size 14, Times New Roman.

 /s/ Alexander Smith

Dated: June 3, 2019
Alexander Smith