

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

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**ADNAN SAHINOVIC,  
Applicant-Appellant**

**vs.**

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

---

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

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**APPLICANT-APPELLANT'S APPLICATION FOR FURTHER  
REVIEW OF THE DECISION OF THE IOWA COURT OF APPEALS  
FILED SEPTEMBER 25, 2019 PURSUANT TO IOWA R. APP. P.  
6.205(2)**

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**CERTIFICATE OF FILING AND SERVICE**

I hereby certify that I e-filed the Applicant-Appellant's Application for Further Review with the Electronic Document Management System with the Appellate Court on the 14th day of October 2019.

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I hereby certify that on the 14th day of October 2019, I did serve the Applicant-Appellant's Application for Further Review on Appellant, listed below, by mailing one copy thereof to the following Applicant-Appellant:

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## **QUESTIONS PRESENTED FOR REVIEW**

- I: Is a resentencing a new “conviction” for the purposes of Iowa Code § 822’s statute of limitations?

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**STATEMENT SUPPORTING FURTHER REVIEW**

**COMES NOW**, the Appellant, Adnan Sahinovic, and hereby applies for further review of this case before the Iowa Supreme Court. In support of his application, Appellant respectfully states:

1. This matter was timely appealed and the case transferred to the Iowa Court of Appeals by this Court.

2. On September 25, 2019, the Iowa Court of Appeals entered its decision and opinion affirming the decision of the District Court, Hon. Samantha Gronewald. A true and correct copy of the Iowa Court of Appeals decision is attached hereto.

3. Pursuant to Iowa R. App. P. 6.205(2), Appellant applies for further review.

4. Mr. Sahinovic argued that his resentencing was a final judgment of conviction, making his postconviction relief application within the statute of limitations. The Iowa Court of Appeals disagreed, citing to a definition of “conviction” that the postconviction relief statute does not use. Further review is appropriate in this case as the Iowa Court of Appeals issued an opinion in this matter in conflict with the decisions of the Iowa Supreme Court on an important matter. Iowa R. App. P. 6.1103(1)(b)(1). First, it is in conflict with the Iowa Supreme Court’s precedent in Daughenbaugh v. State, 805 N.W.2d 591, 599 (Iowa 2011) that the postconviction relief “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). The Iowa Court of Appeals has gravely erred in its reading of Daughenbaugh, instead ruling that “[i]n summary, a conviction is ‘the establishment of guilt independent of judgment and sentence.’” Daughenbaugh, 805 N.W.2d at 597.” Sahinovic v. State, 2019 WL 4678199, at \*4 (Iowa Ct. App. 2019)

The Iowa Court of Appeals cited Daughenbaugh in such a way that it actually

conflicts with the court's holding in Daughenbaugh. In Daughenbaugh, the Iowa Supreme Court was discussing how to interpret the term "conviction" used in Iowa Code 822. 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). This was important, because the defendant had received a deferred judgment and "[i]n order to be entitled to relief under chapter 822, a petitioner must show that he was "convicted of, or sentenced for, a public offense." Iowa Code § 822.2(1)." Daughenbaugh v. State, 805 N.W.2d 591, 594 (Iowa 2011). Additionally, Iowa Code § 822.4 provides that the applicant must allege "the date of the entry of the judgment of conviction or sentence complained of." Id.

The Daughenbaugh court identified two different possible definitions of the term conviction. Id. at 597. One was the definition that the Iowa Court of Appeals cited in the instant case, which is when the word "conviction" is used in its general and popular sense, and "conviction means "the establishment of guilt independent of judgment and sentence." Id. The other definition of "conviction" is when the term is used in its technical legal sense, which requires a "formal adjudication by the court and the formal entry of a judgment of conviction." Id. The court has interpreted multiple statutes using both of the two different definitions of "conviction", depending on the context. Id.

The Iowa Supreme Court ultimately concluded that the postconviction relief

statute does not use the term “conviction” in the general and popular sense that only requires establishment of guilty independent of judgment and sentence. Id. at 598-99. Rather, the Iowa Supreme Court held that 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. That is why the Iowa Supreme Court ultimately denied the appeal in Daughenbaugh. Id. at 599. The appellant had received a deferred judgment, and so there was no entry of judgment, and thus, no conviction. Id.

The Court of Appeals’ interpretation of Daughenbaugh is contrary to the actual holding of that opinion. This error affected the Iowa Court of Appeals’ entire reasoning, making further review necessary.

5. The Iowa Court of Appeals’ error was compounded by further holdings of law in conflict with the decisions of the Iowa Supreme Court on an important matter. Iowa R. App. P. 6.1103(1)(b)(1). It conflicts with the Iowa Supreme Court’s decision in State v. Propps, 897 N.W.2d 91 (Iowa 2017) about when a corrected illegal sentence becomes a final judgment. The Iowa Court of Appeals is under the impression that there is only one possible date for this, dismissing Mr. Sahinovic’s argument that a conviction is finalized by sentence. See Sahinovic v. State, 2019 WL 4678199, at \*2 (Iowa Ct. App. 2019) (dismissing Sahinovic’s argument that conviction means the date of sentencing).

The Iowa Supreme Court must correct the Iowa Court of Appeals because when there is a corrected illegal sentence, there are actually two different final judgments of conviction. When there is a new sentencing hearing, there is a new final date of judgment and conviction. The Iowa Supreme Court has explained that a denial of a motion to correct illegal sentence should be brought as a writ of certiorari, while the grant of a motion to correct illegal sentence results in a new final judgment, and can be reviewed through a notice of appeal. See State v. Propps, 897 N.W.2d 91, 97 (Iowa 2017). When the district court does not grant the motion to correct illegal sentence, there is no new final judgment of sentence. Id. at 96. Therefore, the proper avenue of review is through an application for discretionary review or for a petition for writ of certiorari. Id. at 97. However, if the court disturbs the underlying sentence or enters a new judgment of sentence, there is a final judgment of sentence. See id. at 96. The court has previously extended this logic to other cases and found that there is a right to direct appeal from a resentencing because it is a final judgment of sentence. See State v. Noble, Iowa Supreme Court No. 19-0072, (July 9, 2019 Order of the Iowa Supreme Court) (“A review of the district court docket reveals the appellant filed a notice of appeal from the district court’s December 12, 2018, resentencing order. Pursuant to Iowa Code section 814.6(1)(a), an appellant has an appeal as of right from a final judgment of sentence. Therefore, the appellant’s appeal may proceed.”).

7. The Iowa Supreme Court should take this case because there is an important question of changing legal principles. Iowa R. App. P. 6.1103(1)(b)(3). These issues require clarification by the Iowa Supreme Court to both the bench and the bar. Good attorneys continue to make mistakes about when a petition for writ of certiorari is appropriate and when a notice of appeal is appropriate, requiring Iowa Supreme Court correction. See Noll v. Iowa District Court for Muscatine County, 919 N.W.2d 232, 233 (Iowa 2018) (the attorney brought the denial of a motion to correct illegal sentence with a notice of appeal, when he should have file a writ of certiorari, so the Iowa Supreme Court decided to interpret the notice as a writ of certiorari to save the action and conduct a review). Appeal as a matter of right and the proper way to reach the jurisdiction of the Iowa Supreme Court are changing drastically and will continue to be litigated. See S.F. 589, 88th GA, § 31 (2019); Iowa Code § 814.6 (changing which cases can be taken with an appeal as a matter of right and which require discretionary review). The Iowa Court of Appeals as well as the legal profession are in need of guidance regarding these matters. Because of this need for guidance, it is an issue of broad public importance that the Iowa Supreme Court should ultimately determine. Iowa R. App. P. 6.1103(1)(b)(4).

8. This is a matter of first impression that has not been, but should be, decided by the Iowa Supreme Court. Iowa R. App. P. 6.1101(2)(c). Mr. Sahinovic thought that this case had an obvious answer using the holdings and legal principles

from the Iowa Supreme Court cases State v. Propps, 897 N.W.2d 91 (Iowa 2017) and Daughenbaugh v. State, 805 N.W.2d 591, 599 (Iowa 2011). It appears from the Iowa Court of Appeals' ruling and the parties' briefing that either the parties or the Iowa Court of Appeals are substantially off about what are well-settled legal principles of the law regarding when a conviction is final and what the postconviction relief statute views as a final conviction. Despite the reliance on the legal principles of these two cases, neither party nor the court could find a definitive case that answered the question of whether a resentencing is a new "conviction" for the purposes of Iowa Code § 822's statute of limitations.

**WHEREFORE**, Appellant respectfully requests this Court grant further review, vacate the decision of the Court of Appeals and grant the requested relief in the conclusion of this application.

### **STATEMENT OF THE CASE**

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 instant case 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).

**I. MR. SAHINOVIC HAD AN ADDITIONAL FINAL CONVICTION DUE TO HIS RESENTENCING, PLACING HIS FILING OF HIS ACTION FOR POSTCONVICTION WITHIN THE STATUTE OF LIMITATIONS**

**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.”

In the normal case, without any post-conviction motions or appeals, the Iowa Court of Appeals would be correct. Mr. Sahinovic was sentenced on July 5, 2011, and that would normally make his statute of limitations 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 § 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 Iowa Court of Appeals summarizes Mr. Sahinovic argument as "the time period for filing rests on what the term 'conviction' means in Iowa Code § 822.3. To extend the statutory time for filing, Sahinovic asserts this language means the date of *sentencing*." Sahinovic v. State, 2019 WL 4678199, at \*2 (Iowa Ct. App. 2019). Of course Mr. Sahinovic asserts this, because this is the holding of the Iowa

Supreme Court. 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). “[F]inal judgment in a criminal case means sentence. The sentence is the judgment.” Id. at 595. A new resentencing hearing is a new judgment, which is why a party can directly appeal it. See State v. Propps, 897 N.W.2d 91, 96 (Iowa 2017); State v. Noble, Iowa Supreme Court No. 19-0072, (July 9, 2019 Order of the Iowa Supreme Court). That entry of judgment is the April 27, 2015 resentencing making his application for postconviction relief timely.

The Iowa Court of Appeals’ reliance on Kurtz v. State, 854 N.W.2d 474, 479 (Iowa Ct. App. 2014) and Custis v. United States, 511 U.S. 485, 497 (1994) is misplaced. First, citing these cases for the principle that “that during an appeal or challenge to a conviction or sentence, the judgment of conviction is not made unenforceable” is irrelevant. Sahinovic v. State, 2019 WL 4678199, at \*2 (Iowa Ct. App. 2019). Mr. Sahinovic is not arguing that his prior judgment of conviction was unenforceable. He is arguing that a resentencing creates a new final judgment of conviction, and that the postconviction relief’s statute of limitation thus runs from his new final judgment of conviction. See Iowa Code § 822.3 (stating that “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”). Mr. Sahinovic’s first sentencing produced a final judgment, from which he could take a direct appeal. His second sentencing also produced a final judgment, from which he could also take (and did take) a direct appeal. If the second judgment was final for the purposes of taking a second direct appeal, there is no reason it would not be final for the purposes of postconviction relief.

The other holding of Kurtz, that a motion to correct illegal sentence is not the proper method for challenging ineffective assistance of counsel claims, is correct, but the court is misunderstanding how that holding of the Iowa Supreme Court functions. A motion to correct illegal sentence “claims that the court lacked the power to impose the sentence or that the sentence itself is somehow inherently legally flawed, including claims that the sentence is outside the statutory bounds or that the sentence itself is unconstitutional.” State v. Bruegger, 773 N.W.2d 862, 871 (Iowa 2009). Most claims regarding illegal searches and seizures and ineffective assistance of counsel “ordinarily do not involve the inherent power of the court to impose a particular sentence.” Id. This is why the defendant in Kurtz v. State, 854 N.W.2d 474, 479 (Iowa Ct. App. 2014) could not use an illegal sentence claim: he was arguing that he did not have a proper factual basis for his conviction, and was also trying to challenge old convictions from completely different cases that were used in his sentencing enhancement for prior convictions. Kurtz v. State, 854 N.W.2d 474, 478 (Iowa Ct. App. 2014). The defendant in Kurtz always should have

challenge his prior convictions in PCR for those specific cases and should have challenged his lack of factual basis as a claim of ineffective assistance of counsel. See State v. Ortiz, 789 N.W.2d 761, 764 (Iowa 2010) (stating lack of factual basis for a guilty plea is brought as an ineffective assistance of counsel claim).

The court's citation of Custis v. United States, 511 U.S. 485 (1994) as standing for the proposition that "without a successful constitutional challenge to the validity of the conviction, a reversal or vacation of an illegal sentence cannot support a collateral attack on the underlying conviction" is incredibly odd and misplaced. First, the Iowa postconviction relief statute is not the federal habeas corpus statute and both have different circumstances and methods for challenging convictions with completely different statutory language. Second, that is not what Custis is about. The defendant in Custis was trying to use the federal sentencing process to challenge his state convictions. Custis v. United States, 511 U.S. 485, 497 (1994). The Supreme Court said that the proper method for challenging these convictions was through state postconviction review or federal habeas corpus review of state convictions. Id. If he was successful in attacking the convictions, he would then be allowed to reopen his federal case to correct any enhancements caused by these illegal prior convictions. Id. This has barely any relation to Mr. Sahinovic's case other than both cases involve challenges to a conviction after sentencing. He does not have any prior convictions enhancing his sentence. He was trying to challenge the guilty plea in the

same case where his sentence was corrected.

This is where the Iowa Court of Appeals approaches, but never answers, the question truly posed by the parties. The Iowa Court of Appeals says that “To be clear, Sahinovic was *convicted* of the charges at the time of his 2011 guilty plea and sentencing.” Sahinovic v. State, 2019 WL 4678199, at \*2 (Iowa Ct. App. 2019). That is obviously clear. Both parties agree that he was convicted for the purposes of the statute after his 2011 sentencing. What is not clear is whether his resentencing produced a new final judgment and conviction and whether the “*new* final judgment that may be the target of PCR actions” can be used to “restart the clock for any claims that could target the original conviction or sentence, especially if those claims have already lapsed into finality. “ State’s Br. at 20.

The Iowa Court of Appeals ruling leaves open many questions. What if Mr. Sahinovic had received ineffective assistance of counsel in his resentencing hearing? Would he be allowed to file a postconviction relief action to challenge the sentence he received? What if the court used improper factors to resentence him? Would he be allowed to bring an appeal from the final judgment? No matter what the Iowa Supreme Court decides, the bar and the judiciary would at least have some idea of where to go for answers to these questions if the court took this matter up on further review. As it is, the parties are substantially more confused after the court’s decision.

Mr. Sahinovic’s argument has always been that the resentencing hearing

produced a new final judgment. That new final judgment means he has a new date of conviction, which the PCR statute allows him to attack anything in his underlying proceeding. That is why he was able to file a direct appeal. That is why the defendant in State v. Noble, Iowa Supreme Court No. 19-0072, (July 9, 2019 Order of the Iowa Supreme Court) was able to file a direct appeal. Mr. Sahinovic maintains that this is the proper date to use for the statute of limitations. If it is not, it should be because of the court's analysis of the meaning of Iowa Code § 822.3, and not because of the Iowa Court of Appeals' numerous statements that directly conflict with Iowa Supreme Court precedent.

### **CONCLUSION**

This is a case where the parties, including counsel for the State, are arguing about substantially different issues than the Iowa Court of Appeals is ruling on. Either the parties are way off-base or the Iowa Court of Appeals is. Either situation is untenable and undesirable. Either the criminal bar needs further guidance from the Iowa Supreme Court or the Iowa Court of Appeals does.

### **ORAL ARGUMENT NOTICE**

Counsel requests oral argument.

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**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. 6.1103(4) (no more than 5,600 words) because this brief contains 4,049 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: October 14, 2019

Alexander Smith