

IN THE SUPREME COURT OF IOWA

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SUPREME COURT NO. 20-0396  
POLK COUNTY NO. PCCE084726

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FERNANDO SANDOVAL,  
Applicant / Appellant

vs.

STATE OF IOWA,  
Respondent / Appellee

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APPEAL FROM HARDIN COUNTY DISTRICT COURT

THE HONORABLE JOSEPH SEIDLIN, JUDGE

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**APPELLANT'S REPLY BRIEF**

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## CERTIFICATE OF SERVICE AND FILING

I, Jessica Maffitt, hereby certify that on the 15<sup>th</sup> day of January, 2021, I served the attached Appellant's Reply Brief on the Court and each other party by electronic service or through mailing one copy thereof to the following party:

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## STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

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#### c. The Fact that Sandoval Received Ineffective Assistance From a Series of Counsel Demonstrates the Need for His Claim to Be Given a Thorough Investigation and a Full Evidentiary Hearing

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**d. The Risk to Sandoval of Losing Any Opportunity to Assert His Ineffective Assistance of Counsel Claims Outweighs Any Concern About “Opening the Floodgates” to Further PCR Actions**

*Allison v. State*, 914 N.W.2d 866, 891 (Iowa 2018)

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## ARGUMENT

### I. THE COURT ERRED IN DISMISSING SANDOVAL'S APPLICATION AS UNTIMELY

#### a. An Exception to the Standard Error Preservation Requirement Applies in Sandoval's Case

The State argues Sandoval did not preserve error on his constitutional claims that the court's summary dismissal of his claim violated his rights to due process and equal protection under the Iowa and federal Constitutions. Appellee's Br. at 10-12. To the degree counsel inadequately raised the issue, counsel was ineffective. Counsel clearly raised the issue at the hearing on the State's motion to dismiss because he deemed it meritorious and in Sandoval's best interest to address. Tr. at 7. Accordingly, counsel was required to raise the issue effectively.

When a claim of ineffective assistance of counsel is made, [Iowa courts] have allowed an exception to the general rule of error preservation" "[b]ecause these claims (realistically) are not made by attorneys against their own actions". See e.g. *State v. Lucas*, 323 N.W.2d 228, 232 (Iowa 1982) (citing *State v. Kellogg*, 263 N.W.2d 539, 543 (Iowa 1978)). Therefore, Sandoval's claim that "the failure of his trial counsel to raise the constitutional issue amounts to ineffective assistance of counsel" is not

“subject to traditional preservation of error or waiver constraints.” *See e.g. State v. Bruegger*, 773 N.W.2d 862, 870 (Iowa 2009); *State v. Ondayog*, 722 N.W.2d 778, 784 (Iowa 2006).

Moreover, as the Iowa Supreme Court has recognized, resolving this issue on appeal is in the interests of judicial economy: “because this is a postconviction relief proceeding, finding that counsel below failed to preserve error by filing a motion would simply pave the way for another application for postconviction relief, alleging ineffective assistance by postconviction relief counsel.” *Lamasters v. State*, 821 N.W.2d 856, 865 (Iowa 2012).

The cases cited by the State are not germane because they do not address ineffective assistance of counsel. Appellee’s Br. at 11-12 (citing *State v. Hernandez-Lopez*, 639 N.W.2d 226, 234 (Iowa 2002); *Taft v. Iowa Dist. Court ex rel. Linn Cty.*, 828 N.W.2d 309, 322 (Iowa 2013); *Meier v. Senecaut*, 641 N.W.2d 532, 538 (Iowa 2002)).

If the record is sufficient to address the claim, it can be addressed on appeal because “[i]neffective-assistance-of-counsel claims are an exception to the traditional error-preservation rules.” *State v. Fountain*, 786 N.W.2d 260, 263 (Iowa 2010). To the degree the record is insufficient for the appellate court to address this issue, this case should be remanded to the

district court to develop the record regarding Sandoval’s constitutional rights to present his postconviction relief claims under the due process and equal protection clauses of the Iowa and federal Constitutions. *See e.g. Bruegger*, 773 N.W.2d at 886.

**b. Sandoval Timely Filed His Application for Postconviction Relief**

Sandoval’s postconviction relief application was filed approximately one year after the Iowa Supreme Court decided *Allison v. State*. 914 N.W.2d 866, 891 (Iowa 2018). The Iowa Supreme Court has found three years to be a reasonable time period in which to file an application for postconviction relief following a change in law. *Phuoc Thanh Nguyen v. State*, 829 N.W.2d 183, 186, 188 (Iowa 2013) (finding 822.3 does not bar an applicant’s claims where the application was filed “more than three years after procedendo had issued on his original direct appeal, but less than three years after *Heemstra*.”); *Nguyen v. State*, 878 N.W.2d 744, 749–50 (Iowa 2016) (holding “Since Nguyen had filed his application for postconviction relief within three years [of the change in law], his claims as to retroactivity were not time-barred.”); *Penticoff v. State*, No. 19-0975, 2020 WL 5229186, at \*3 (Iowa Ct. App. Sept. 2, 2020) (publication decision pending). The State argues Sandoval did not timely file his application for postconviction relief

at issue in this appeal. Appellee's Br. at 17. In support of this assertion, the State cites only unpublished decisions: *Id* (citing *Polk v. State*, No. 18-0309, 2019 WL 3945964 (Iowa Ct. App. Aug. 21, 2019); *State v. Harlston*, No. 19-0627, 2020 WL 4200859 (Iowa Ct. App. July 22, 2020); *Kelly v. State*, No. 17-0382, 2018 WL 3650287 (Iowa Ct. App. Aug. 1, 2018)). However, the State did not provide any precedential authority for its assertion that an application cannot be considered timely filed more than six months after a change in the law. Under Iowa law, "[u]npublished opinions or decisions shall not constitute controlling legal authority." *Franklin v. State*, 905 N.W.2d 170, 172 (Iowa 2017); Iowa R. App. P. 6.904(2)(c).

Moreover, not only are the State's cases not precedential, their bright line reasoning is not the most appropriate analysis for determining the timeliness of a postconviction relief application. Consideration of the totality of the circumstances is a more appropriate test for determining whether an application has been timely filed. In this case, Sandoval faces several barriers which made his filing approximately one year after the *Allison* decision reasonable under the circumstances. Sandoval filed his application pro se, which is a difficult accomplishment by itself. Moreover, Sandoval is not a native English speaker. He needed an interpreter throughout his criminal proceedings and trial. (Docket Entries) (Non-confidential App. at

35). In fact, Sandoval immigrated to the United States mere days prior to his arrest, and has spent almost his entire adult life incarcerated, which has limited his access to formal education. Moreover, Sandoval was 19 years old when he was arrested, further limiting his access to formal higher education. Considering all of the barriers Sandoval faced to filing this application for postconviction relief, Sandoval's filing should be found timely under the totality of the circumstances.

**c. The Fact that Sandoval Received Ineffective Assistance From a Series of Counsel Demonstrates the Need for His Claim to Be Given a Thorough Investigation and a Full Evidentiary Hearing**

The State argues “postconviction applicants must show continuity in the successive petitions alleging ineffective presentation of a particular claim against trial counsel.” Appellee’s Br. at 19. The State alleges “[b]ecause there was a break in the chain of ineffective assistance claims, his current allegations do not relate back to his first postconviction application.” *Id* at 20. This reasoning misapprehends Sandoval’s argument. Sandoval received ineffective assistance from each of three prior postconviction relief counsel. Each one was ineffective in failing to adequately investigate potential claims and raise meritorious claims, such as Sandoval’s illegal sentence claim.

Accordingly, it is the continuity in the failure to adequately investigate and present these claims – not the continuity of the claims counsel did bring – which connects Sandoval’s successive ineffective counsel and allow his claim to relate back to the filing of his first postconviction relief action.

Where a defendant has “an ineffective lawyer at trial and then an ineffective lawyer in a timely PCR proceeding [, t]he end result is that a potentially meritorious claim may not be raised within the three-year statute of limitations because of bungling lawyers.” *Allison*, 914 N.W.2d at 889. Due process cannot allow this error to be compounded by a series of postconviction counsel who have failed to provide effective assistance in an applicant’s case. Otherwise, “the underlying constitutional entitlement to effective assistance of counsel at trial will be a nullity and lie unenforced.” *Id* at 890.

The fact that Sandoval received ineffective assistance from a series of attorneys demonstrates why it is so important for Sandoval’s case to be remanded for full investigation and presentation of all of his meritorious claims before the postconviction trial court.

**d. The Risk to Sandoval of Losing Any Opportunity to Assert His Ineffective Assistance of Counsel Claims Outweighs Any Concern About “Opening the Floodgates” to Further PCR Actions**

The State argues that allowing a postconviction relief applicant to bring a claim after having been denied effective counsel by a series of ineffective counsel would open the floodgates to “stale PCR actions”. Appellee’s Br. at 20 (citing *Allison*, 914 N.W.2d at 898 (Waterman, J., dissenting)).

However, the risk of deprivation of a fair trial to an individual who has been denied effective representation by a series of attorneys is far greater than the burden upon the court of being overwhelmed by more cases being filed, especially give Iowa courts’ efficient procedures for handling such claims. Moreover, the *Allison* court already considered the risk of “opening the floodgates” and found it insufficient to overcome the rights of postconviction relief applicants to finally have a fair hearing for their claims. 914 N.W.2d 866, 891 (Iowa 2018). “While there may be more claims under this approach, we do not fear the deluge.” *Id.* Specifically, the Iowa Supreme Court found the floodgates argument unpersuasive because “our court system is fully capable of quickly disposing of claims that have no basis in law or fact.” *Id.*

II. SANDOVAL IS SUBJECT TO AN ILLEGAL SENTENCE BECAUSE HIS SENTENCE IS GROSSLY DISPROPORTIONAL, CONSIDERING THE INDIVIDUAL CIRCUMSTANCES OF THIS CASE

**a. An Exception to the Standard Error Preservation**

**Requirement Applies in Sandoval's Case**

The State erroneously argues that the long-standing precedent that illegal-sentence claims “may be brought at any time,” only applies to cases involving timely direct appeals. Appellee’s Br. at 24. However, the State provides no authority to support this proposition. Moreover, this interpretation disregards more than a decade of Iowa Supreme Court rulings that “the time restrictions that apply in ordinary postconviction relief actions do not apply in illegal sentence challenges.” *Veal v. State*, 779 N.W.2d 63, 65 (Iowa 2010) (citations omitted). The Iowa Supreme Court has held that “[a] claim that a sentence is illegal goes to the underlying power of the court to impose a sentence, not simply to its legal validity.” *Id.* Accordingly, it is not subject to the limitations under Iowa Code §822.3 and can be brought at any time. *See e.g. id; Bruegger*, 773 N.W.2d at 872; *State v. Parker*, 747 N.W.2d 196, 212 (Iowa 2008); *State v. Lyle*, 854 N.W.2d 378, 382 (Iowa 2014), *as amended* (Sept. 30, 2014); Iowa R. Crim. P. 2.24.



This case is very similar to *Veal*, where the applicant brought a postconviction relief action based on an illegal sentence outside the three year statute of limitations under § 822.3. In *Veal*, “the district court's order dismissing *Veal*'s challenge to her sentence on cruel-and-unusual-punishment grounds must be reversed and the case remanded to the district court. Although not labeled as such, the district court on remand should treat her application for postconviction relief as a challenge to an illegal sentence that is not subject to the three-year statute of limitations in Iowa Code section 822.3.” *Veal*, 779 N.W.2d at 65.

Likewise, in this case, remand to the district court to consider Sandoval’s illegal sentence claim after Sandoval is given a full opportunity to develop it is appropriate. *Id*, *Lyle*, 854 N.W.2d at 383.

**b. Sandoval’s Sentence is Disproportional Under the Totality of the Circumstances**

The State proposes a hypertechnical analysis of Sandoval’s illegal sentence claims. Appellee’s Br. at 25-26. The State relies heavily on Sandoval having reached the age of majority in arguing his claim should categorically fail. *Id*. However, there is no basis for only allowing minors to bring proportionality challenges under the cruel and unusual punishment

clauses. For instance, the defendant in *Bruegger* was also a legal adult at the time of his offense. 773 N.W.2d at 866. However, the *Bruegger* court recognized in such cases the totality of the circumstances must be considered in determining whether a sentence is so disproportional as to constitute cruel and unusual punishment. *Id.* Likewise, in *State v. Oliver*, the court held that “[U]nder both the State and Federal Constitutions, a defendant is allowed to challenge his sentence by ‘emphasizing the specific facts of the case.’ ” 812 N.W.2d 636, 648–49 (Iowa 2012).

Here, Sandoval is challenging his sentence as disproportional in light of multiple factors specific to his personal situation and the facts underlying his conviction. First, Sandoval was 19 years old at the time of the offense, an age at which “the regions of the brain and systems associated with impulse control, the calibration of risk and reward, and the regulation of emotions undergo maturation.” *State v. Null*, 836 N.W.2d 41, 55 (Iowa 2013). Sandoval’s youth and stage of brain development both decrease his “moral culpability” and increase the likelihood of rehabilitation as his neurological development occurs. *Miller v. Alabama*, 567 U.S. 460 (2012). Both of these factors weigh heavily in favor of finding Sandoval’s sentence is disproportionate.

Moreover, Sandoval was charged with aiding and abetting murders committed by his brother. This is a critical factor because courts recognize “a defendant’s intention-and therefore his moral guilt-to be critical to ‘the degree of [his] criminal culpability’ ”. *Enmund v. Fla.*, 458 U.S. 782, 800 (1982). Likewise, under Iowa law, “the culpability of the offender, including his intent or motive in committing a crime, may be considered in determining the proportionality of the penalty to the offense.” *Bruegger*, 773 N.W.2d at 875 (citing *Solem v. Helm*, 463 U.S. 277, 293 (1983)). As an aider and abetter, Sandoval did not have the intent to commit murder, which increases the disproportionality of his sentence in this case.

The cases the State cites addressing teenagers over the age of majority are all unpublished decisions. Appellee’s Br. at 26 (citing *Smith v. State*, No. 16-1711, 2017 WL 3283311, at \*2 (Iowa Ct. App. Aug. 2, 2017); *Lukinich v. State*, No. 18-0322, 2019 WL 3330457, at \*7 (Iowa Ct. App. July 24, 2019); *Schultz v. State*, No. 16-0626, 2017 WL 1400874, at \*1 (Iowa Ct. App. Apr. 19, 2017)). The State has not provided any precedential authority for its assertion that Sandoval’s incomplete brain development cannot be considered in assessing the proportionality of his sentence because Sandoval was a teenager over the age of majority at the time of his offense. Under Iowa law, “[u]npublished opinions or decisions shall not constitute

controlling legal authority.” *Franklin v. State*, 905 N.W.2d 170, 172 (Iowa 2017); Iowa R. App. P. 6.904(2)(c).

Sandoval is challenging the legality of his sentence for the charge of murder in the first degree on the basis that it violates the prohibition against cruel and unusual punishment found in Article I, § 17 of the Iowa Constitution and the 8th Amendment of the U.S. Constitution. Under the particular facts of this case, Sandoval’s sentence is disproportional to his offense and must be vacated and his case must be remanded for resentencing.

## **CONCLUSION**

The Court should reverse the trial court’s decision and remand for a new postconviction trial.

Alternatively, the Court should vacate the sentence imposed by the criminal trial court for Sandoval’s conviction. This Court should remand this case for resentencing and order that the sentencing court consider the *Miller* mitigating factors in resentencing Sandoval.

Alternatively, the Court should remand to the postconviction trial court to allow further development of the record and a new postconviction trial or a full hearing on motion to correct illegal sentence.

## **ATTORNEY'S COST CERTIFICATE**

I hereby certify that the cost incurred by Benzoni Law Office, P.L.C., for printing the attached Appellant's Brief was \$2.20.

## **ATTORNEY'S CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMITATION, TYPEFACE REQUIREMENTS, AND TYPE-STYLE REQUIREMENTS**

1. This brief complies with the type-volume limitation of Iowa R. App. P. 6.903(1)(g)(1) or (2) because it contains 2,454 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).
2. 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 it has been prepared in a proportionally spaced typeface using WordPerfect X3 in Times New Roman 14 point font.

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