IN THE SUPREME COURT OF IOWA
Supreme Court No. 20-0768

JAMES FARNSWORTH,
Applicant-Appellant,

vs.

STATE OF IOWA,
Respondent-Appellee.

APPEAL FROM THE IOWA DISTRICT COURT
FOR CERRO GORDO COUNTY
THE HONORABLE CHRISTOPHER C. FOY, JUDGE

APPLICATION FOR FURTHER REVIEW

Iowa Court of Appeals Decision: November 3, 2021

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QUESTIONS PRESENTED FOR REVIEW

After the applicant's sentencing in 2013, the district court forfeited $50,000 cash bond and applied the sum against the applicant's $150,000 restitution obligation owed to the murder victim's child. The applicant did not object within the time allowed, and instead he first raised the complaint as an ineffective assistance claim in a postconviction relief action.

The questions presented are:

1. Whether the postconviction statute permits a challenge to post-sentencing bond forfeiture, which is a collateral civil matter and not a "conviction or sentence."

2. Whether the constitutional right to effective assistance extends to a purely financial complaint about post-sentencing bond forfeiture that does not impact the legitimacy of the conviction or sentence.

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STATEMENT SUPPORTING FURTHER REVIEW

This case threatens an extreme outcome. The Court of Appeals found ineffective assistance and ordered the district court clerk to return $50,000 cash bond to applicant James Farnsworth. But Farnsworth is a convicted murderer who was ordered to pay $150,000 restitution to the victim's minor son, and the forfeited $50,000 has already been disbursed toward that restitution obligation. The prospect of clawing back $50,000 from the child to repay the man who murdered his father is not a just result.

In ordering this unjust remedy, the Court of Appeals significantly expanded the scope of both the PCR statute and the constitutional right to counsel. Both were substantial issues of first impression that extend beyond established law and should have been reserved for this Court. *See* Iowa R. App. P. 6.1103(b)(1) ("The court of appeals has entered a decision in conflict with a decision of this court or the court of appeals on an important matter."), 6.1103(b)(2) ("The court of appeals has decided a substantial question of constitutional law or an important question of law that has not been, but should be, settled by the supreme court.").

First, the PCR statute did not cover Farnsworth's complaint. Postconviction relief is available to challenge the legality of a "conviction or sentence." Iowa Code § 822.2(1). But bond forfeiture is normally a collateral civil matter, and it only becomes a "sentence" when forfeiture is ordered as a term of sentencing. *State v. Letscher*, 888 N.W.2d 880, 883 (Iowa 2016). Farnsworth's bond forfeiture was ordered after his sentencing and after he filed his notice of appeal, so it was not a "sentence" reviewable in a PCR action. Likewise, a refund—potentially extracted from a victim who is lawfully entitled to restitution—is not a remedy afforded by the PCR statute.

Second, the constitutional right to effective assistance does not encompass collateral civil matters. Trial counsel was found ineffective for failing to object to bond forfeiture, even though it occurred outside of sentencing and even though the controlling rule was not announced until three years later in *Letscher*. But more fundamentally, any prejudice flowing from the post-sentencing bond forfeiture was collateral, civil, and purely financial—it did not affect the legitimacy of Farnsworth's conviction or punishment. This Court has refused to extend an accused's right to counsel to collateral civil matters that might arise in a criminal case. *See Ruiz v. State*, 912

N.W.2d 435 (Iowa 2018) (immigration-law advice that led to a criminal charge); *State v. Alspach*, 554 N.W.2d 882, 884 (Iowa 1996) (post-sentencing restitution challenges). Additionally, the effective-assistance remedy was not designed to require a refund of money paid toward a valid restitution obligation.

This Court should grant further review to answer these two important issues of first impression. Section IV, subsection H of the Court of Appeals' ruling should be vacated, and this Court should conclude Farnsworth was not entitled to challenge his post-sentencing bond forfeiture as an ineffective assistance claim in a PCR action. The remainder of the Court of Appeals' decision appropriately applied existing standards to Farnsworth's routine ineffective assistance claims, so further review is not warranted on those issues. *See* Iowa R. App. P. 6.1103(d) (discussing the Court's discretion limit the issues considered on further review).

STATEMENT OF THE CASE

Nature of the Case

The State seeks further review of section IV, subsection H of the Court of Appeals opinion (pp. 13–15), which found trial counsel ineffective for mishandling the bail money and ordered the clerk to refund $50,000.

Course of Proceedings & Facts

Applicant Farnsworth fatally stabbed Ian Decker on April 13, 2012. *Farnsworth*, 2012 WL 2884732, at *1.

When Farnsworth was arrested for first-degree murder, the magistrate set bond at $100,000 cash only. Initial Appearance (4/16/2012); App. 7. Following a contested bond review hearing, the district court modified bond to $200,000 cash only, but it permitted all but $50,000 to be posted by surety. Bond Order (4/27/2012); App. 8.

In 2013, Farnsworth was convicted and sentenced for second-degree murder. Judgment (3/8/2013); App. 11. The court imposed $150,000 in victim restitution as required by Iowa Code section 910.3B. *Id.* at 2; App. 12. Although the judgment mentioned bond forfeiture, *id.*, it was not the final ruling on that topic.

In a subsequent order—filed after Farnsworth's notice of appeal—the district court exonerated the $150,000 bond posted by a bond company. Bond Order (3/20/2013); App. 13. It also stated its intent to apply the $50,000 posted in Farnsworth's name toward victim restitution, and it gave the parties about two weeks to file any objection. *Id*. After receiving no objection, the district court ordered the clerk to hold the $50,000 until a conservatorship or trust could be established for the victim's minor child. FECR020872 Bond Order (4/4/2013); Attachment B. Three months later, the court ordered the clerk to release the $50,000 to the child's trust. FECR020872 Bond Order (7/12/2013); Attachment C.

In June 2014, the Court of Appeals affirmed Farnsworth's conviction and sentence. *State v. Farnsworth*, No. 12-0401, 2014 WL 2884732 (Iowa Ct. App. June 25, 2014).

In November 2015, Farnsworth filed an application for postconviction relief. PCR Appl. (11/30/2015); App. 15. Following an evidentiary hearing, the district court rejected Farnsworth's numerous ineffective assistance claims and denied postconviction relief. Ruling (4/24/2020); App. 32.

Farnsworth appealed, and the Court of Appeals rejected ten of his ineffective assistance claims. *Farnsworth v. State*, No. 20-0786, slip op. at 2–13 (Iowa Ct. App. No. 3, 2021). However, the Court of Appeals found ineffective assistance for mishandling the bond forfeiture and ordered the clerk to return $50,000 to Farnsworth. *Id.* at 13–15.

The State now seeks further review of only section IV, subsection H of that ruling (Slip. Op. at 13–15).

ARGUMENT

I. Postconviction Relief Was Not the Appropriate Method to Challenge Post-Sentencing Bond Forfeiture, and a Refund Is Not an Appropriate Remedy.

PCR was the wrong forum, and a refund was not an available remedy. Bond forfeiture is normally a collateral civil matter, not a "conviction" or "sentence" that can be challenged in a PCR. Farnsworth's bond forfeiture was resolved after criminal sentencing, confirming it was civil in nature. And even if the bond forfeiture was inappropriate, the PCR statute does not provide the remedy of refunding money that the clerk has already paid toward a valid restitution obligation.

A. Post-sentencing bond forfeiture is a collateral civil matter, so the PCR statute does not apply.

The PCR statute applies only to challenges of criminal convictions or sentences. The applicable ground allows a convicted person to seek postconviction relief when "[t]he *conviction or sentence* was in violation of the Constitution of the United States or the Constitution or laws of this state." Iowa Code § 822.2(1) (emphasis added); *see also* PCR Appl. (11/30/2015) at 2; App. 16 (alleging this ground for relief). Therefore, Farnsworth's bond forfeiture must first be a "sentence" in order to raise the challenge in postconviction relief.

Bond forfeiture is not generally a matter of criminal sentencing. "[B]ail is normally a matter we address and review separate from the entry of a judgment and sentence." *State v. Letscher*, 888 N.W.2d 880, 883 (Iowa 2016); *see also State v. Costello*, 489 N.W.2d 735, 738 (Iowa 1992) ("'These proceedings for forfeiture of bail and judgment therein are civil actions . . . .'" (quoting *State v. Zylstra*, 263 N.W.2d 529, 531 (Iowa 1978))). However, *Letscher* found an exception to this general rule when the bond forfeiture was "made . . . into a term of the sentencing order," which then "becomes part of the

sentence and may be challenged on appeal." *Letscher*, 888 N.W.2d at 883 (citing *State v. Formaro*, 638 N.W.2d 720, 727 (Iowa 2002)).

Farnsworth's bond forfeiture was civil in nature. Twelve days after sentencing, the district court stated its intent to forfeit the $50,000 cash bond and apply it toward victim restitution. Bond Order (3/20/2013); App. 13. The court gave the parties approximately two weeks to object. *Id.* That time passed with no objections, so the district court ordered the clerk to forfeit the $50,000 and hold the funds until they could be transferred to the victim's minor child. FECR020872 Bond Order (4/4/2013); Attachment B. The court released the funds three months later after a trust was formed for the child. FECR020872 Bond Order (7/12/2013); Attachment C. These circumstances differ from *Letscher*, in which "the district court did not allow the bail to be disbursed by the clerk of court collateral to sentencing so that Letscher would have had an opportunity to assert a challenge, but ordered forfeiture as a part of sentencing." *Id.* at 884. Farnsworth had the opportunity to object after sentencing, so the forfeiture of his bond was not a term of his sentence.

This Court should grant further review to address the availability of postconviction relief for bond forfeiture. Like other civil

issues that might arise in the course of a criminal case, bail forfeiture pursued after sentencing is not part of the "sentence" that can be challenged in a PCR action under chapter 822. The Court of Appeals improperly applied the postconviction statute to resolve a collateral civil matter, so this Court should vacate the portion of that ruling granting postconviction relief for the post-sentencing bond forfeiture.

B. Refunding bond money is not the appropriate remedy.

Although postconviction relief was not available for Farnsworth's post-sentencing bail forfeiture, he was not left without a remedy. He had the right to timely appeal or apply for certiorari following the post-sentencing bond forfeiture. *See State v. Dodd*, 346 N.W.2d 42, 44 (Iowa Ct. App. 1984) (addressing appellate jurisdiction following bond forfeiture); *Letscher*, 888 N.W2d at 886 (discussing the availability of certiorari review of bond forfeiture). And if counsel's negligence for failing to appeal caused Farnsworth economic damages, then his remedy was to pursue a civil malpractice suit.[1]

[1] The State has maintained this position throughout the postconviction proceedings and current appeal. *See* State's Trial Br. (11/21/2019) at 12; App. --- ("If Farnsworth believes he should have bond money back, he should file a civil malpractice suit, not raise this

The PCR statute does not afford the remedy of refunding bond money. If the district court grants postconviction relief, "it shall enter an appropriate order *with respect to the conviction or sentence* in the former proceedings." Iowa Code § 822.7 (emphasis added). It can also issue "any supplementary orders as to rearraignment, retrial, custody, bail, discharge, correction of sentence, or other matters that may be necessary and proper." *Id.* In Farnsworth's case, the post-sentencing bond forfeiture was not part of his "sentence," so the postconviction court could not enter an "appropriate order" for relief. And because there was no primary order "with respect to the conviction or sentence," there could be no "supplementary order" either. Instead, the statute's reference to a "supplementary order[] as to . . . bail" only applies if the conviction is overturned, upon which a defendant may become eligible for bail pending retrial.

The Court of Appeals also overlooked the restitution component of Farnsworth's claim. He was ordered to pay $150,000 to the victim's heir as required by section 910.3B. Judgment (3/8/2013) at

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issue in post-conviction relief."); Appellee's Final Br. at 45 (arguing that although Farnsworth's family "might have a civil cause of action—the disposition of the bond money does not entitle Farnsworth to postconviction relief").

2; App. 12. The forfeited $50,000 cash bond has been applied toward that restitution obligation. *See* FECR020872 Restitution Plan (11/7/2013); App. --- (crediting $50,000 paid toward restitution). Granting Farnsworth's request for postconviction relief would alter restitution, but restitution is expressly excluded from the PCR statute. *See* Iowa Code 822.2(g) (stating PCR is not available for "alleged error relating to restitution, court costs, or fees under section 904.702 or chapter 815 or 910"). Thus, refunding lawfully imposed restitution is not a remedy available under the PCR statute.

Additionally, the Court of Appeals did not consider who currently possesses the $50,000. The Court of Appeals decided to "'return the case to the district court for the clerk to disburse the bail money as required by law.'" Slip op. at 15 (quoting *Letscher*, 888 N.W.2d at 886). However, the $50,000 is not in the possession of the district court clerk, the judicial branch, or the state general fund. The $50,000 has been disbursed to the victim's minor child. FECR020872 Bond Order (7/12/2013); App. ---. That child was entitled to receive the $50,000 from Farnsworth, and Farnsworth still owed an additional $100,000 to the child. The Court of Appeals did not cite—and the State has not found—any authority that would

require clawing back money from a crime victim to repay a defendant who still owes restitution.

The unjust result demonstrates why Farnsworth's bond complaint was not a proper subject for postconviction relief. His post-sentencing bond forfeiture was not a "sentence" for which the PCR court could order relief, and it impacted his restitution obligation even though restitution is expressly excluded from PCR. Although Farnsworth did not get his $50,000 cash bond returned, that sum has been applied toward a debt he lawfully owes. If he experienced any economic harm from his attorney's handling of the civil bond forfeiture, his remedy was to pursue a civil malpractice suit. Accordingly, this Court should grant further review and find that a refund is not an appropriate remedy under the PCR statute.

II. The Constitutional Right to Effective Assistance of Counsel Does Not Apply to Collateral Civil Matters.

Even if bond forfeiture were a proper inquiry for postconviction relief, Farnsworth failed to prove his ineffective assistance claim. His bond forfeiture occurred more than three years before the practice was condemned in *Letscher*, and reasonable competence did not require foreseeing that result. More fundamentally, Farnsworth only lodges a purely financial complaint flowing from the post-sentencing

bond forfeiture, which does not bear on the legitimacy of his criminal conviction or sentence. The Court of Appeals improperly expanded the prejudice prong of the effective-assistance right to redress a collateral civil matter, so this Court should grant further review to address that issue of first impression.

The familiar two-prong ineffective assistance standard requires the applicant to prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." *Strickland v. Washington*, 466 U.S. 668, 686 (1984). First, the applicant must show counsel's representation fell below an objective standard of reasonableness. *Id.* at 687–88. The reviewing court must be highly deferential to counsel's performance, avoid judging in hindsight, and "indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance." *Id.* at 689. Second, "[t]he defendant must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Id.* at 694.

A. Trial counsel was not required to foresee the rule announced three years later in *Letscher*.

The Court of Appeals faulted trial counsel for not following rule announced more than three years after Farnsworth's bond forfeiture. The district court sought objections to bond forfeiture in March 2013. Bond Order (3/20/2013); App. 13. Three and a half years later, *Letscher* found "a sentencing court is without statutory authority to forfeit bail as a part of a sentence." *Letscher*, 888 N.W.2d at 887.

Reasonable competence did not require foreseeing the result in *Letscher*. *See, e.g.*, *State v. Schoelerman*, 315 N.W.2d 67, 72 (Iowa 1982) ("We recognize that an attorney need not be a 'crystal gazer' who can predict future changes in established rules of law in order to provide effective assistance to a criminal defendant."). The Court of Appeals found "counsel did not require *Letscher* to argue that no statutory authority supported the forfeiture of the cash bond for restitution." Slip Op. at 15. Despite the statutory language, the practice of forfeiting cash bond to pay restitution was common enough that it appears in standard forms, in this case from Cerro Gordo County, in *Letscher* from Winnebago County, and perhaps many other counties across the state. Thus, *Letscher* is what alerted reasonably competent attorneys to object to the accepted practice.

B. The prejudice prong does not cover a purely financial complaint resulting from post-sentencing bond forfeiture.

Even assuming Farnsworth could prove deficient performance, he did not demonstrate prejudice to his constitutional right to counsel. The established ineffective-assistance right applies to a criminal conviction or sentence. But Farnsworth's bond forfeiture occurred after this criminal sentencing, so it was not part of his "sentence." *See* Bond Order (3/12/2013); App. 13; Bond Order (4/4/2013), Bond Order (7/12/2013); Attachments B & C. Prejudice, if any, does not affect the legitimacy of his conviction or his punishment—it is purely financial. Neither Farnsworth nor the Court of Appeals cited any authority to support extending the right to effective assistance to a supposed economic loss resulting from a collateral civil matter like post-sentencing bond forfeiture.

Furthermore, it is doubtful Farnsworth even experienced an economic harm at all, and certainly not a harm redressable through ineffective assistance. The Court of Appeals affirmed his murder conviction, so there is no question that he was lawfully ordered to pay $150,000 of victim restitution under section 910.3B. Although Farnsworth did not receive a $50,000 refund of his cash bond, that

amount was applied toward restitution. Thus, he received the legal benefit of reducing the amount owed toward a lawfully imposed debt. His ledger is even, so he did not experience any personal financial prejudice. His current complaint is no different than that of any debtor who seeks to avoid satisfying a valid financial obligation. And to the extent Farnsworth would have skipped paying restitution in favor of returning the cash bond to family members who gave it to him, his claim devolves into nothing more than an intra-familial dispute over money—a dispute than cannot be resolved through an ineffective assistance claim.

Using ineffective assistance to resolve a family financial squabble is especially inappropriate when it threatens lawfully imposed victim restitution. The $50,000 at issue was transferred to the murder victim's child over eight years ago. Bond Order (7/12/2013); Attachment C. The right to effective assistance does not encompass a remedy of trying to compel the child to repay the man who murdered his father and who still owes nearly $100,000 more.

The Court of Appeals decision presents a significant expansion of the constitutional right to counsel. Farnsworth's post-sentencing bond forfeiture was not a term if his sentence, so it does not fit within

the established bounds of the constitutional right to effective assistance. And Farnsworth presents no case form this state or any other that supports extending the right to a collateral civil matter. Rather, this Court has refused to extend right-to-counsel protections to collateral civil matters that arise in criminal cases. *See Ruiz v. State*, 912 N.W.2d 435 (Iowa 2018) (finding the right to effective assistance did not attach when an attorney gave immigration-law advice that led to a criminal charge); *State v. Alspach*, 554 N.W.2d 882, 884 (Iowa 1996) (recognizing that when a defendant files an action to modify restitution after sentencing, "the suit is civil in nature and not part of the criminal proceedings," so "[t]he offender would ordinarily have no right to appointed counsel under such circumstances"); *cf. State v. Gross*, 935 N.W.2d 695, 704 (Iowa 2019) (differentiating the constitutional protections available "when the sheriff pursues only a civil judgment instead of a restitution award" for reimbursement of jail fees).

This Court should grant further review to rein in the significant and unsupported expansion of the effective-assistance right. *Letscher* came more than three years after Farnsworth's bond forfeiture, and reasonably competent counsel was not obligated to enforce that not-

yet-announced ruling. More fundamentally, ineffective assistance does not cover any purely financial prejudice resulting from a collateral civil matter such as bond forfeiture that occurred after sentencing. Further review is warranted to answer the important issue of first impression of whether to extend the right to effective assistance of counsel beyond its current bounds.

CONCLUSION

The Court should grant further review to vacate section IV, subsection H of the Court of Appeals' ruling and affirm the entirety of the district court's order denying Farnsworth's application for postconviction relief.

REQUEST FOR ORAL SUBMISSION

Oral argument might be helpful to resolve the issues addressed in this application for further review.

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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