

**IN THE SUPREME COURT  
FOR THE STATE OF IOWA  
NO. 24-0085**

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**BRANDON DANIEL RUIZ,  
Applicant-Appellant,**

**vs.**

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

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**APPEAL FROM THE IOWA DISTRICT COURT  
FOR SCOTT COUNTY, CASE NO. PCCE136818  
HONORABLE TAMRA J. ROBERTS**

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**AMENDED APPLICANT-APPELLANT'S BRIEF**

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Jessica Donels  
Parrish Kruidenier, L.L.P.  
2910 Grand Avenue  
Des Moines, Iowa 50312  
Telephone: (515) 284-5737  
Facsimile: (515) 284-1704  
Email: [jdonels@parrishlaw.com](mailto:jdonels@parrishlaw.com)  
**ATTORNEY FOR  
APPLICANT-APPELLANT**

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## **STATEMENT OF ISSUES PRESENTED FOR REVIEW**

- I. The Court should adopt the doctrine of equitable tolling to PCR actions positioned like Mr. Ruiz's, where three years pass before the first PCR is completed.**
- II. Mr. Ruiz is entitled to relief due to PCR's counsel's unprofessional failure to submit any filings on his behalf, which resulted in the complete dismissal of his PCR claim.**

## **ROUTING STATEMENT**

This case should be retained by the Iowa Supreme Court, as it involves substantial questions as to the validity of a statute, fundamental and urgent issues of public importance, and substantial questions of enunciating or changing legal principles. Iowa R. App. P. 6.1101(2)(a), (d), and (f).

## **NATURE OF THE CASE**

Applicant-Appellant, Brandon Daniel Ruiz, appeals following the dismissal of his second post-conviction relief (PCR) case. On September 5, 2023, Mr. Ruiz filed a pro se PCR petition challenging his conviction for Sexual Abuse in the Second Degree in Scott County, Iowa. (PCCE136818 D0001). The State moved for summary disposition and dismissal, arguing that Mr. Ruiz's PCR petition was untimely under Iowa Code § 822.3. (PCCE136818 D0005). After an unsuccessful attempt to withdraw from the case, Mr. Ruiz's counsel filed an appearance in the matter. (PCCE136818 D0004, D0006). Then she filed nothing else. The matter proceeded to a hearing, where PCR counsel requested an additional 30 days to file a brief in resistance to the State's motion to dismiss. (PCCE136818 D0012). Again,

PCR counsel filed nothing. On January 3, 2024, after PCR counsel failed to file anything or make any argument in response to the State's motion to dismiss, the district court dismissed Mr. Ruiz's PCR petition as untimely without reaching its merits. (PCCE136818 D0012). Timely notice of appeal was filed on January 13, 2024. (PCCE136818 D0015).

### **STATEMENT OF FACTS**

Following a bench trial, Mr. Ruiz was found guilty of Sexual Abuse in the Second Degree, in violation of Iowa Code § 709.3(1)(b). (FECR380783 D0101). Mr. Ruiz was sentenced to a term of 25 years' incarceration on July 12, 2018. (FECR380783 D0114). On August 7, 2019, the Iowa Court of Appeals affirmed Mr. Ruiz's conviction. *State v. Ruiz*, 2019 WL 3729562 (Iowa Ct. App. 2019). Procedendo was issued on December 10, 2019. (FECR380783 D0158).

Mr. Ruiz's first PCR application was timely filed on January 22, 2020. (PCCE132563 D0001). In his application for PCR, Mr. Ruiz asserted ineffective assistance of both trial counsel and appellate counsel. (PCCE132563 D0001, D0011). The district court denied Mr. Ruiz's PCR application and the Court of Appeals affirmed. (PCCE132563 D0023). *Ruiz v. State*, 2023 WL 4529424 (Iowa Ct. App. 2023). Procedendo issued on August 23, 2023. (PCCE132563 D0044).

Less than two weeks later, on September 5, 2023, Mr. Ruiz filed a second PCR petition. (PCCE136818 D0001). In his pro se petition, Mr. Ruiz raised several

grounds. He asserted that his conviction or sentence was imposed in violation of the Constitution of the United States or the Iowa Constitution; that new material facts, not previously presented or heard, required vacation of the conviction or sentence in the interest of justice; and that the conviction or sentence was otherwise subject to collateral attack upon grounds of alleged error formerly available. (PCCE136818 D0001). Specifically, Mr. Ruiz alleged: (1) ineffective assistance of post-conviction counsel for failing to argue essential elements of claims at the post-conviction trial level; (2) ineffective assistance of post-conviction counsel for failing to preserve error for appeal; and (3) actual innocence. (PCCE136818 D0001). The district court, finding that Mr. Ruiz was indigent, appointed attorney Agnes Warutere. (PCCE136818 D0002). From this point on, the court was prevented from considering any pro se filings pursuant to Iowa Code § 822.3B. (PCCE136818 D0002). The fate of Mr. Ruiz's PCR application rested entirely in PCR counsel's hands.

The State moved to dismiss the PCR petition on September 14, 2023, asserting that the action was time-barred pursuant to Iowa Code § 822.3. (PCCE136818 D0005). On the same day, PCR counsel filed a motion to withdraw from Mr. Ruiz's case, citing a high case load. (PCCE136818 D0004). Noting that "there are no other contract attorneys with the public defender's office to handle PCR cases in this county," the court denied the motion. (PCCE136818 D0006).



In the weeks and months that followed, PCR counsel only filed an appearance in Mr. Ruiz’s case. (PCCE136818 D0007). The State filed a motion to dismiss. (PCCE136818 D0005). In response, PCR counsel filed nothing. The court set a deadline for filing a recast PCR application. (PCCE136818 D0002). PCR counsel filed nothing. The court set a deadline for notification that no recast petition would be filed. (PCCE136818 D0002). PCR counsel filed nothing. Counsel failed to submit any written motions prior to a hearing on the motion to dismiss, which was not reported. (PCCE136818 D0009, D0010). In fact, despite “request[ing] 30 days to file a brief” *after* the hearing, PCR counsel did not file “any additional pleadings prior to the deadline.” (PCCE136818 D0012, at 1).

On January 3, 2024, the district court granted the State’s motion to dismiss. (PCCE136818 D0012). In its ruling, the court addressed the statute of limitations matter only and did not reach the merits of the application:

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.

(PCCE136818 D0012). Mr. Ruiz timely filed a notice of appeal, and new counsel was appointed. (PCCE136818 D0015, D0017, D0020, D0021).

## ARGUMENT

### **I. The Court adopt the doctrine of equitable tolling to PCR actions positioned like Mr. Ruiz’s, where three years pass before the first PCR is completed.**

#### ***A. Preservation of Error***

Mr. Ruiz concedes that he did not ask the district court to adopt the doctrine of equitable tolling for his PCR application. However, he had no duty to raise the matter in the district court, as “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.” *State v. Williams*, 895 N.W.2d 856, 859 n.2 (Iowa 2017). The Court may properly consider this matter.

#### ***B. Standard of Review***

The Court reviews constitutional challenges de novo. *Ledezma v. State*, 626 N.W.2d 134, 141 (Iowa 2001).

#### ***C. Argument***

The Iowa Constitution provides that “[t]he writ of habeas corpus shall not be suspended or refused when application is made as required by law, unless in case of rebellion or invasion the public safety may require it.” IOWA CONST. art. I, § 13. Prior to the statutory enactments of habeas corpus, claims of ineffective assistance of counsel were properly raised in common law habeas corpus proceedings. *See, e.g., Brewer v. Bennett*, 161 N.W.2d 749, 751 (Iowa 1968); *Birk v. Bennett*, 141 N.W.2d 576, 578 (Iowa 1966). Now, however, the common law writ of habeas corpus has

been supplanted and replaced by statutory PCR provisions, located in Iowa Code chapters 663 and 822 (formerly 663A). See *McElhaney v. Auger*, 238 N.W.2d 797, 799 (Iowa 1976). Under the statute, an application for PCR 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.” Iowa Code § 822.3.

In 1989, this Court examined the constitutionality of the three-year statute of limitations in *Davis v. State*, 443 N.W.2d 707, 709-10 (Iowa 1989). Statutes of limitations “find their justification in necessity and convenience, rather than in logic.” *Chase Secs. Corp. v. Donaldson*, 325 U.S. 304, 314 (1945). “They are by definition arbitrary, and their operation does not discriminate between the just and the unjust claim, or the avoidable and unavoidable delay. . . They represent a public policy about the privilege to litigate.” *Id.* The *Davis* court found that “[s]uch reasonable regulations are proper so long as no constitutional right is materially impaired.” 443 N.W.2d at 709 (citing *Schloemer v. Uhlenhopp*, 21 N.W.2d 457, 458 (Iowa 1946) (emphasis added)). In other words, so long as an applicant for PCR still “had a remedy” that he could choose to exercise, the statute of limitations was reasonable. *Id.* at 709-10.

In 2024, the landscape of PCR is noticeably altered. Whereas in 1989, the text of the statute still included an “escape clause,” modern criminal defendants have no such protection. *Id.* at 708. Several years ago, applicants for PCR lost the benefit of

*Allison*'s relation-back doctrine, despite the Iowa Supreme Court's recognition of a right to effective assistance of counsel in PCR proceedings. See *Sandoval v. State*, 975 N.W.2d 434, 437 (Iowa 2022) (recognizing abrogation of *Allison v. State*, 914 N.W.2d 866 (Iowa 2018)). Now that the statute has been amended to explicitly limit "allegation[s] of ineffective assistance of counsel in a prior case," *Davis*' "escape clause" has been effectively deleted from Iowa Code § 822.3. The Court should not allow bureaucratic convenience to erode individual rights. The 2019 amendments to § 822.3 require adaptation of equitable tolling to ensure that the writ of habeas corpus is not unconstitutionally suspended.

***1. The 2019 amendment to § 822.3 deprives defendants of the reasonable opportunity to be heard where the original PCR outlasts the statute of limitations.***

The Court must intervene because the time now set for PCR actions strips criminal defendants of the reasonable opportunity to be heard. *Davis*, 443 N.W.2d at 711 ("We will only interfere when the time set is so short as to prevent a reasonable opportunity to have the issue heard."). As the Iowa Supreme Court has noted, "Meeting the three-year requirement may be difficult because a nonlawyer applicant may not recognize that PCR counsel has been ineffective until after the expiration of the statute of limitations." *Allison v. State*, 914 N.W.2d 866, 890 (Iowa 2018). Meeting the requirement became still more difficult in 2019, when the amendments to § 822.3 eliminated the *Allison* relation-back doctrine.

This is exactly what happened in Mr. Ruiz’s case: “His first PCR was timely, but unsuccessful.” (PCCE136818 D0012). The first PCR proceeding stretched on for several years, during much of which it lay completely dormant. Unfortunately, by the time Mr. Ruiz recognized that his prior PCR counsel was ineffective and attempted to file a second PCR action, the amended version of Iowa Code § 822.3 was in effect. As discussed above, the district court dismissed Mr. Ruiz’s PCR petition, noting “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.” (PCCE136818 D0012). PCR counsels’ errors not only destroyed Mr. Ruiz’s chances of challenging his conviction through the initial PCR application but left him without the opportunity to have his subsequent claims considered at all. Such a result strips defendants of the reasonable opportunity to be heard. The Court must step in to protect criminal defendants’ rights.

***2. The doctrine of equitable tolling should apply to Iowa PCR claims to allow victims of structural error a forum in which to bring their actions.***

The United States Supreme Court adopted the doctrine of equitable tolling for habeas corpus claims over a decade ago. *See Holland v. Florida*, 560 U.S. 631, 649 (2010). Federal courts apply the doctrine of equitable tolling in post-conviction cases when an applicant seeking relief demonstrates two factors: “(1) that he has been pursuing his rights diligently, and (2) that some extraordinary circumstance stood in

his way.” *Pace v. DiGuglielmo*, 544 U.S. 408, 418 (2005) (citing *Irwin v. Dep’t Veterans Affs.*, 498 U.S. 89, 96 (1990)). Under this doctrine, an application for PCR that would otherwise be untimely may still be considered on its merits. *Id.*

“[E]quitable exceptions to limitations statutes are common in Iowa.” *Mormann v. Iowa Workforce Dev.*, 913 N.W.2d 554, 566 (Iowa 2018). Yet despite the Iowa Supreme Court’s historic tradition of protecting individual rights, this Court has yet to directly consider the issue of equitable tolling in PCR actions. *See James v. State*, 858 N.W.2d 32, 33 (Iowa Ct. App. 2014). In addition, a number of unpublished Court of Appeals cases have declined to adopt the doctrine, citing a lack of authority to unilaterally invoke the practice.<sup>1</sup> *Allison* was described by the Court of Appeals “as a ‘variant’ of equitable tolling,” but there is no indication that this Court considered it as such. *Ung v. State*, 2022 WL 108473, at \*2 (Iowa Ct. App. 2022) (citing *Stechcon v. State*, 2018 WL 3913126, at \*2 (Iowa Ct. App. 2018)).

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<sup>1</sup> *See, e.g., McCullough v. State*, 2018 WL 346463, at \*1 (Iowa Ct. App. 2018); *Long v. State*, 2017 WL 2684345, at \*2 (Iowa Ct. App. 2017); *Harrington v. State*, 2017 WL 2684340, at \*1 (Iowa Ct. App. 2017); *Perdue v. State*, 2016 WL 4036173, at \*1 (Iowa Ct. App. 2016); *Weatherly v. State*, 2016 WL 1366827, at \*1 (Iowa Ct. App. 2016); *Everett v. State*, 2014 WL 3749338, at \*2 (Iowa Ct. App. 2014); *Majors v. State*, 2013 WL 2637599, at \*5 (Iowa Ct. App. 2013); *Fagan v. State*, 2012 WL 3854635, at \*1 (Iowa Ct. App. 2012); *Rieflin v. State*, 2012 WL 3590453, at \*2 (Iowa Ct. App. 2012); *Lawrence v. State*, 2011 WL 768785, at \*2 (Iowa Ct. App. 2011); *Stringer v. State*, 2008 WL 5235491, at \*2 (Iowa Ct. App. 2008).

This has created a bizarre result in which federal applicants have more constitutional protection than state applicants for PCR – a departure from Iowa’s rich history of providing greater constitutional protections for its citizens than the federal constitutional “floor.” *See, e.g., State v. Short*, 851 N.W.2d 474, 482-83 (Iowa 2014); *State v. Baldon*, 829 N.W.2d 785, 803-34 (Iowa 2013) (Appel, J., concurring specially).

There are good policy reasons for allowing applicants to invoke the doctrine of equitable tolling. Like civil rights complaints, PCR actions “are often filed by laypersons.” *Mormann*, 913 N.W.2d at 568. “Strict and highly technical enforcement of filing limitations is inconsistent with the statutory purpose of providing a remedial avenue for unrepresented claimants.” *Id.* at 569 (citation omitted). In PCR actions, courts are prohibited from considering pro se filings submitted by applicants with court-appointed PCR counsel. Iowa Code § 822.3B. In the rare event that PCR counsel is ineffective, as occurred here, and the original PCR outlasts the statute of limitations, the applicant for PCR loses the chance to be heard on the merits. The doctrine of equitable tolling offers an alternative route.

The Court should allow PCR applicants to invoke the equitable tolling doctrine when extraordinary circumstances outside their control, including ineffectiveness of PCR counsel that delays their applications beyond the three-year limitation. The Court should further reverse the dismissal of Mr. Ruiz’s PCR petition

on the above grounds and remand it for further PCR proceedings or, in the alternative, determine Mr. Ruiz's PCR claims on the merits.

**II. Mr. Ruiz is entitled to relief due to PCR's counsel's unprofessional failure to submit any filings on his behalf, which resulted in the complete dismissal of his PCR claim.**

**A. Preservation of Error**

A claim for ineffective assistance of counsel is “an exception to the general rule of error preservation,” because as a practical matter, attorneys do not raise claims against their own actions. *State v. Lucas*, 323 N.W.2d 228, 232 (Iowa 1982). Ordinarily, this Court does not review claims of ineffective assistance on direct appeal; such claims are now reserved for PCR proceedings. *See State v. Tucker*, 982 N.W.2d 645, 653 (Iowa 2022) (citing Iowa Code § 814.7). However, as Mr. Ruiz cannot “wait to bring any claims of ineffective assistance in an application for postconviction relief” given the unique structural errors present in this case, Mr. Ruiz asks that the Court find that the appellate record is adequate and consider his claim. *State v. Clay*, 824 N.W.2d 488, 494 (Iowa 2012), *abrogated by statute*; *see also State v. Treptow*, 960 N.W.2d 98, 108 (Iowa 2021) (“There is no due process right to present claims of ineffective assistance of counsel on direct appeal. Due process merely requires an opportunity to present those claims in some forum.”). Should the Court decline to hear Mr. Ruiz's case, he will be entirely denied any forum in which to bring forward his claims.



## ***B. Standard of Review***

PCR proceedings are generally reviewed for the correction of errors at law. *Goode v. State*, 920 N.W.2d 520, 523 (Iowa 2018). PCR applications alleging ineffective assistance of counsel are reviewed de novo. *Linn v. State*, 929 N.W.2d 717, 729 (Iowa 2019). While an applicant’s right to effective assistance from counsel is statutory, rather than constitutional in nature, review is still de novo. *Lado v. State*, 804 N.W.2d 248, 250 (Iowa 2011); *see also Dunbar v. State*, 515 N.W.2d 12, 15 (Iowa 1994) (statutory right to counsel under Iowa Code § 822.5, formerly located at § 633A.5, necessarily implies a right to “effective assistance” of that counsel).

## ***C. Argument***

Although ineffective assistance claims must typically be brought in PCR proceedings, the Court should decide Mr. Ruiz’s case due to the unique series of structural errors that have left him without another forum. This Court has decided claims of ineffective assistance on direct appeal in certain situations, such as when an appeal was already pending on July 1, 2019, when the new rules took effect. *State v. Warren*, 955 N.W.2d 848, 856 (Iowa 2021). As long as “the record is adequate to warrant a ruling,” the Court may properly consider the matter. *State v. Ross*, 941 N.W.2d 341, 345 (Iowa 2020). When an applicant alleges structural error, the Court should determine that a similar exception applies and decide the matter so long as the record is adequate. Without such protections, applicants like Mr. Ruiz who are

victims of structural error will find themselves deprived of a forum by the time the three-year statute of limitations expires. Though this Court has held that an applicant does not have a due process right to present ineffective assistance claims on direct appeal, due process does “require[] an opportunity to present those claims *in some forum.*” *Treptow*, 960 N.W.2d at 108. The current regime leaves applicants without any forum and cannot survive a constitutional challenge. The Court should therefore consider Mr. Ruiz’s claims of ineffective assistance, as the record is adequate.

In this case, Mr. Ruiz had a statutory right to effective PCR counsel under Iowa Code chapter 822. *See Dunbar*, 515 N.W.2d at 14 (statutory right to counsel necessarily implies a right to effective counsel). Iowa courts use “federal constitutional law to guide our analysis of the postconviction relief applicant’s statutory right to effective assistance of counsel.” *Lado*, 804 N.W.2d at 251 (citing *Dunbar*, 515 N.W.2d at 15). To succeed on a claim of ineffective assistance of counsel, an applicant must prove: (1) counsel failed to perform an essential duty, and (2) prejudice resulted. *See Strickland v. Washington*, 466 U.S. 668, 687 (1984); *Ledezma*, 626 N.W.2d at 142.

***1. PCR counsel for Mr. Ruiz breached an essential duty by failing to present any arguments on Mr. Ruiz’s behalf.***

“An attorney breaches an essential duty when ‘counsel’s representation [falls] below an objective standard of reasonableness.’” *Lado*, 804 N.W.2d at 251 (citing *Strickland*, 466 U.S. at 688). The Court is more likely to find ineffective assistance

when counsel's actions are the result of a lack of diligence, rather than a mere error in judgment. *Ledezma*, 626 N.W.2d at 142-43. This Court has found a breach of an essential duty when counsel was apprised of a pending dismissal and failed to take any action that would prevent the case from being dismissed. *See Lado*, 804 N.W.2d at 251.

In this case, just as in *Lado*, prior counsel stood back and let a client's petition for relief be dismissed by the court. There were valid arguments against dismissal, but PCR counsel never raised them. Counsel could have pointed out that Mr. Ruiz's pro se petition alleged new facts that were previously unavailable. (PCCE136818 D0001). Under Iowa Code § 822.3, a PCR petition that would otherwise be untimely is excused when it contains "a ground of fact or law that could not have been raised within the applicable time period." Yet PCR counsel failed to assert the new ground of fact or law in any subsequent motions or briefs.

PCR counsel could also have challenged the series of structural errors that led Mr. Ruiz's second PCR application to be time-barred. A cursory review of the record in Mr. Ruiz's first PCR shows that over a *year* passed without a single filing, even though Mr. Ruiz had been appointed counsel. (PCCE132563 D0005 [appointment of first PCR counsel, on March 1, 2020]; D0011 [amended application for PCR, on February 1, 2022]). PCR counsel in Mr. Ruiz's second case could have pointed out that the untimeliness of the second PCR petition was out of Mr. Ruiz's control. *See*,

*e.g.*, *Stechcon*, 2018 WL 3913126, at \*2 (“Where *Stechcon* is challenging counsel’s failure to timely file the application, it would be anomalous to require a timely filed application before he could proceed.”).

Counsel did not raise any of these issues. She did not file any motions or briefs in resistance to the State’s motion to dismiss. Instead, at the hearing on the motion to dismiss, which was not reported, the parties agreed that the issue could be submitted on written motions. At that time, PCR counsel requested 30 additional days to file a brief. (PCCE136818 D0012, at 1). Then she failed to file anything. When the district court made its decision, it had nothing to consider but the written record, which contained only the State’s arguments from its motion and zero arguments from PCR counsel. (PCCE136818 D00012).

Under § 822.3B, Mr. Ruiz could not submit pro se filings for the court’s consideration, so Mr. Ruiz could not have filed his own resistance to the State’s pending motion. PCR counsel held the entire future of Mr. Ruiz’s claims in her hands – and she let the claim fall through. Given counsel’s attempt to withdraw from representation and counsel’s repeated failures to file anything, it is clear that this was an abdication of duty, rather than a judgment call. “Permitting a client’s postconviction relief application to be dismissed because of inaction is never an effective trial strategy.” *Lado*, 804 N.W.2d at 251. “Counsel therefore breached an essential duty, resulting in the case being dismissed.” *Id.*

## 2. *PCR counsel's failure resulted in prejudice.*

The Court should presume prejudice in Mr. Ruiz's case, as counsel's structural error deprived Mr. Ruiz of the chance to be heard. The "serious denial of the entire judicial proceeding itself" demands a presumption of prejudice. *Roe v. Flores-Ortega*, 528 U.S. 470, 483 (2000). The Court should therefore find that Mr. Ruiz has met the second prong of the *Strickland* test.

When counsel commits a structural error, an applicant need not demonstrate actual prejudice, as the underlying process is rendered "presumptively unreliable." *United States v. Cronin*, 466 U.S. 648, 659 (1984). An applicant seeking relief from a structural error is not required to "show he would have obtained a different outcome absent the counsel's structural error, because such an analysis 'would be a speculative inquiry into what might have occurred in an alternate universe.'" *Lado*, 804 N.W.2d at 252 (citing *United States v. Gonzalez-Lopez*, 548 U.S. 140, 150 (2006)). "In sum, when a structural error occurs in a proceeding, the underlying criminal proceeding is so unreliable the constitutional or statutory right to counsel entitles the defendant to a new proceeding without the need to show the error actually caused prejudice." *Id.*

In *Lado*, the Iowa Supreme Court presumed prejudice when Lado's counsel "sat silent and did not respond," thus allowing Lado's application for PCR to be dismissed "without any consideration of its merits or meaningful adversarial

testing.” *Id.* at 252-53. The Court remarked, “Lado was constructively without counsel during his postconviction relief proceeding.” *Id.* at 253. “Accordingly, Lado’s statutory right to effective counsel entitle[d] him to have his postconviction relief dismissal reversed and to proceed with his postconviction relief proceeding.” *Id.*

In the present case, Mr. Ruiz was constructively without counsel during his PCR proceedings. He did not have the legal training necessary to navigate the perils of Iowa Code § 822.3’s statute of limitations. He could not file anything on his own behalf due to the restrictions of § 822.3B. His only hope was PCR counsel. Because PCR counsel failed to function as counsel, the Court should presume prejudice, reverse the dismissal of Mr. Ruiz’s PCR petition, and allow Mr. Ruiz to move forward with his PCR proceeding.

Remand is appropriate in this case because Mr. Ruiz suffered a serious structural error due to counsel’s unprofessional actions, leaving him without any other options. In *Goode*, the Iowa Supreme Court rejected the idea of a remand, stating that it was “contrary to the symmetry of our appellate process and our role as a court of review.” 920 N.W.2d at 526. However, *Goode* was decided before the legislature abrogated *Allison*’s relation-back doctrine. See *Sandoval v. State*, 975 N.W.2d 434, 437 (Iowa 2022) (recognizing abrogation). The Court in *Goode* explicitly relied on *Allison* in its conclusion that remand was inappropriate and the

applicant's claims of ineffective assistance of PCR counsel must be filed as a separate application in the district court. *Id.* at 525 (“Based on *Allison*, the statutory limitation period is not an impediment to pursuing a second PCR application relating to the claim in this case if promptly filed following the appeal.”). Now that *Allison* has been abrogated by statute, the Court should reverse the dismissal of Mr. Ruiz's PCR petition and remand it for further proceedings.

### **CONCLUSION**

After a series of structural errors, Mr. Ruiz is now an applicant without a forum. The 2019 amendment to § 822.3, which prevented applicants like Mr. Ruiz from relating their claims back to escape the statute of limitations, threatens to result in an unconstitutional restriction on habeas corpus. The district court erred in dismissing Mr. Ruiz's application for PCR. This Court should correct the error by finding that Mr. Ruiz's claim was not time-barred, as the statute of limitations was sufficiently tolled. In addition, Mr. Ruiz is entitled to relief due to PCR counsel's ineffective assistance, which was further compounded by a series of structural errors that left Mr. Ruiz without a path forward. The Court should reverse and remand for further proceedings to give Mr. Ruiz the opportunity to develop his claims at trial.

### **ORAL ARGUMENT NOTICE**

Counsel respectfully requests oral argument.

## **CERTIFICATE OF COMPLIANCE AND SERVICE**

This brief complies with the typeface requirements of Iowa R. App. P. 6.903(1)(g) and the type-style requirements of Iowa R. App. P. 6.903(1)(h) because this brief has been prepared in a proportionally spaced serif typeface, Times New Roman, in 14-point font size.

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I hereby certify that on April 3, 2024, I served the foregoing Applicant-Appellant's Brief by mailing one copy to the following:

Brandon Ruiz  
**APPLICANT-APPELLANT**

*/s/ Jessica Donels*

Jessica Donels  
**ATTORNEY FOR**  
**APPLICANT-APPELLANT**