

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

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

vs.

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

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

APPLICANT-APPELLANT’S REPLY BRIEF

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INTRODUCTION

Mr. Ruiz was denied his statutory right to counsel in the underlying proceeding, when PCR counsel abandoned him at a critical juncture in his second PCR case. The State may have had defenses to Mr. Ruiz's second PCR. Mr. Ruiz may have been able to overcome those defenses. Without a remand, the only thing this Court can know for sure is that Mr. Ruiz was not represented by counsel in any meaningful way below.

ARGUMENT

Despite the State's numerous arguments to the contrary, it is well within this court's authority to remand Mr. Ruiz's case as requested, due to the ineffective assistance of counsel resulting in structural error. Mr. Ruiz's case is virtually identical to a recently decided case by the Iowa Court of Appeals, *Mayorga v. State*, No. 23-0029, 2024 WL 1295965 (Iowa Ct. App. 2024).¹

Mayorga, like Mr. Ruiz, filed a pro se PCR petition and was appointed counsel. *Id.* at *1. PCR counsel in Mayorga's case – like Mr. Ruiz's PCR counsel – then did nothing to advance Mayorga's case until a few hours before the time set for a merits hearing, when he filed a motion to continue. *Id.* The motion was denied and the petition was summarily dismissed. *Id.*

¹ A final publication decision is noted to be pending for this case on Westlaw. This case was issued after Appellant filed his brief.

The Court of Appeals in *Mayorga* recognized the un-preserved structural error and ineffective assistance of counsel claims that Mr. Ruiz is making here:

The right to effective assistance of PCR counsel is statutory. *See* Iowa Code § 822.5 (2021); *Lado*, 804 N.W.2d at 250 (stating that the applicant “has a statutory, not a constitutional right to effective assistance of counsel on postconviction relief.”). Generally, when a PCR applicant claims PCR counsel provided ineffective assistance, the applicant has the burden to establish (1) “counsel failed to perform an essential duty, and (2) this failure resulted in prejudice.” *Lado*, 804 N.W.2d at 251 (applying the constitutional ineffective-assistance-of-counsel framework from *Strickland v. Washington*, 466 U.S. 668, 687-88 (1984)). However, when an applicant maintains PCR counsel committed structural error, no specific showing of prejudice is required. *Id.* at 252. When PCR counsel commits structural error, “the underlying . . . 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.*

Structural error includes when “counsel is completely denied, actually or constructively, at a crucial stage of the proceeding.” *Id.*; *accord Villa Magana v. State*, 908 N.W.2d 255, 259 (Iowa 2018) (finding that because Villa Magana was constructively without counsel and “never had a PCR application considered by the district court with respect to the convictions in question,” the case must be reversed and remanded for further proceedings). We have found, more specifically, that when PCR counsel filed a motion to continue the hearing on a motion to dismiss but did not file a motion to continue the PCR trial, failed to appear for that trial, and the applicant’s PCR application was then dismissed, such failure to act constituted structural error requiring reversal. *Burkett Brown v. State*, No. 21-1255, 2022 WL 1488542, at *2 (Iowa Ct. App. May 11, 2022) (reversing and remanding for further proceedings because “Burkett Brown ‘was constructively without counsel during his [PCR] proceeding as his application was dismissed without any consideration of its merits or meaningful adversarial testing’” (citation omitted)). *But see Hoosman v. State*, No. 17-1277, 2018 WL 3912122, at *3 (Iowa Ct. App. Aug. 15, 2018) (finding that when a PCR application was denied after PCR counsel prevented the application from being dismissed pursuant to the automatic dismissal

rule and filed a timely appeal which resulted in reversal and new ruling on the merits, the applicant was not constructively without counsel).

Id. at *2.

Mr. Ruiz's PCR counsel was ineffective for failing to resist dismissal. This ineffective assistance of counsel prevented any meaningful review of his claims, which were based, according to his pro se petition, on newly discovered evidence and actual innocence. (D0001, App. for PCR Sept. 5, 2023). It is certainly possible the State could have prevailed on its claim that the case was time-barred. It is also possible that Mr. Ruiz could have met the challenge of Iowa Code 822.3 and presented a new ground of fact or law to open his application. On the record below – hampered by ineffective assistance of counsel and structural error – the only thing that is clear is that Mr. Ruiz did not have the opportunity to present his case.

CONCLUSION

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.

This brief complies with the type-volume limitation of Iowa R. App. P. 6.903(1)(i)(1) because it contains fewer than 6,500 words, excluding the parts of the brief that are exempt from the limitation, such as the captions, tables of contents or authorities, statement of the issues, signature blocks, and certificates.

I hereby certify that on May 2, 2024, I served the foregoing Applicant-Appellant's Brief by mailing one copy to the following:

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