

**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 APPLICATION
TO THE IOWA SUPREME COURT FOR FURTHER REVIEW
OF THE AUGUST 21, 2024 COURT OF APPEALS DECISION**

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QUESTIONS PRESENTED FOR REVIEW

Did the Court of Appeals err when it affirmed the dismissal of Mr. Ruiz's PCR application, despite evidence of structural error when PCR counsel failed to file anything on Mr. Ruiz's behalf?

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STATEMENT SUPPORTING FURTHER REVIEW

COMES NOW the Applicant-Appellant, Brandon Ruiz, 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 Court of Appeals by this Court.

2. On August 21, 2024, the Iowa Court of Appeals entered its decision and opinion affirming the decision of the Iowa District Court of Scott County, Honorable Tamra J. Roberts. A true and accurate copy of the Iowa Court of Appeals decision is attached hereto.

3. Pursuant to Iowa R. App. P. 6.1103, Mr. Ruiz applies for further review.

4. Mr. Ruiz's case requires further review, pursuant to Iowa R. App. P. 6.1103(b)(1), because the Court of Appeals has entered a decision in conflict with decisions of the Iowa Supreme Court and the Iowa Court of Appeals on an important matter. The Court of Appeals' decision contradicts this Court's holding in *Lado v. State*, 804 N.W.2d 248 (Iowa 2011) and the Court of Appeals' own opinion in *Mayorga v. State*, 2024 WL 1295965 (Iowa Ct. App. 2024).

5. In addition, Mr. Ruiz's case requires further review because the Court of Appeals has erroneously decided an important issue of constitutional law. Iowa

R. App. P. 6.1103(b)(2). Ineffective assistance of counsel claims are constitutional in nature. *See Desimone v. State*, 803 N.W.2d 97, 102 (Iowa 2011).

6. Finally, further review is appropriate in Mr. Ruiz's case because the Iowa Court of Appeals has decided an issue of broad public importance that should ultimately be decided by the Iowa Supreme Court. Iowa R. App. P. 6.1103(b)(4). Ineffective assistance of counsel claims are fundamental constitutional safeguards that protect defendants from improper court action and bolster public trust in the judiciary. *See Strickland v. Washington*, 466 U.S. 668, 700 (1984).

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

STATEMENT OF THE CASE

In her dissent from the Court of Appeals’ decision, Chief Judge Tabor accurately described the background of this case:

Ruiz was sentenced in July 2018; his direct appeal concluded in December 2019. His first PCR started in January 2020 and ended in August 2023 – four months after Iowa Code section 822.3’s three-year statute of limitations expired. Self-represented, Ruiz filed this second application for PCR on September 5, 2023. His application alleged the ineffective assistance of both his first PCR trial counsel and PCR appellate counsel and asserted actual innocence.

Eight days later, the district court appointed counsel, directing her to confer with Ruiz and recast the PCR application by December 12 or file a statement that no recast application would be forthcoming. One day after her appointment, counsel moved to withdraw, citing high caseloads. The court rejected that request, explaining that there were “no other contract attorneys with the public defender’s office to handle PCR cases in this county.” Two days later, counsel entered her appearance. And then, crickets.

Counsel did not file a resistance to the State’s motion to dismiss Ruiz’s application as untimely. Counsel did not file a recast application nor did counsel file a statement saying that Ruiz would stand on his self-represented filing. And counsel did not move to withdraw based on the contention that Ruiz’s second PCR application was frivolous. Apparently, counsel did appear at an unreported video hearing and asked for thirty days to file a brief. But, according to the court’s order granting the State’s motion to dismiss, counsel did not file that brief.

So without any argument for why this second PCR was not time barred, the district court granted the State’s motion to dismiss.

Ruiz v. State, 2024 WL 3887241, at *3-4 (Iowa Ct. App. 2024) (Tabor, C.J., dissenting) (citations omitted).

Mr. Ruiz appealed from the denial of his second PCR application. On appeal, Mr. Ruiz urged the court to adopt the doctrine of equitable tolling for his case and similar cases “where a defendant’s first PCR action is not completed until after the three-year window for new PCR actions closes.” *Ruiz*, 2024 WL 3887241, at *1. The Court of Appeals “decline[d] to consider this issue,” as it was not raised in the district court. *Id.*; *but see State v. Williams*, 895 N.W.2d 856, 859 n.2 (Iowa 2017) (“[I]t would make little sense to require a party to argue existing case law should be overturned before a court without the authority to do so.”).

Mr. Ruiz requested relief due to the severe structural errors that resulted in the dismissal of his second PCR action. *Ruiz*, 2024 WL 3887241, at *1-2. The Court of Appeals declined, finding the record inadequate to decide the claim: “while we can see from our review of the record that counsel did not make any filings on Ruiz’s behalf, we cannot tell what happened at the unreported hearing on the motion to dismiss.” *Id.* at *2. The court concluded that “arguing counsel’s failure to take action amounted to structural error is not enough” and affirmed the dismissal of Mr. Ruiz’s PCR application. *Id.* at *2-3.

Mr. Ruiz now petitions this Court for further review of the August 21, 2024 decision of the Iowa Court of Appeals.

ARGUMENT

I. The Court of Appeals' decision is in conflict with this Court's decision in *Lado v. State*.

This Court should grant further review of Mr. Ruiz's case because the Court of Appeals' decision directly conflicts with a decision of this Court: *Lado v. State*, 804 N.W.2d 248 (Iowa 2011). In *Lado*, this Court reversed the lower court's dismissal of a PCR action due to structural error, finding:

Lado has proven his counsel was ineffective in failing to seek a continuance to prevent dismissal. . . or to make application to the court for the reinstatement of his case after it was dismissed. . . Counsel's failure was a structural error that allowed Lado's application to be denied without consideration of the merits or adversarial testing. This type of structural error renders the entire postconviction relief proceeding unreliable and undermines Lado's right to a fair trial. Therefore, prejudice is presumed.

Id. at 253.

In that case, counsel was aware that Lado's PCR action was subject to dismissal pursuant to Iowa R. Civ. P. 1.944. *Id.* at 252. Yet when the State filed motions for summary judgment and dismissal, "Lado's counsel sat silent and did not respond." *Id.* Despite knowing that Lado's PCR action would be dismissed without further action, "Lado's counsel filed nothing." *Id.* at 250. "Lado's counsel did represent him at his hearing, which was not reported," but took no other actions to prevent dismissal. *Id.* As a result, the court dismissed Lado's PCR application without ever reaching the merits. *Id.* at 250, 252-53.

In *Lado*, this Court found that counsel breached an essential duty of representation by failing to do anything that might have prevented Lado's PCR petition from being dismissed without consideration on the merits. The Court noted that permitting a client's PCR application to be dismissed because of inaction is never an effective trial strategy: "Counsel's failure to seek a continuance of the case, or apply to have the case reinstated, resulted from abdication, not exercise, of professional judgment." *Id.* at 251.

While ordinarily, a claimant must establish prejudice to be entitled to relief, the Court examined Lado's case and found that a structural error had occurred. "Structural errors are not merely errors in a legal proceeding, but errors 'affecting the framework within which the trial proceeds.'" *Id.* at 252 (citing *Arizona v. Fulminante*, 499 U.S. 279, 310 (1991)). This Court has recognized structural errors in a variety of circumstances, such as when:

- (1) counsel is completely denied, actually or constructively, at a crucial stage of the proceeding;
- (2) counsel does not subject the opposing party's case to meaningful adversarial testing; or
- (3) the surrounding circumstances of the case justify a presumption of ineffectiveness.

See id. at 252. When structural error occurs, an applicant for relief need not make a specific showing of prejudice, as the underlying process itself is rendered "presumptively unreliable." *Id.* (citing *United States v. Cronin*, 466 U.S. 648, 659

(1984)). “Stated another way, when counsel commits a structural error, the defendant does not have to show he would have obtained a different outcome absent the counsel’s structural error because such analysis ‘would be a speculative inquiry into what might have occurred in an alternate universe.’” *Id.* (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’s case, the Court found that structural error had occurred because counsel knew that Lado’s PCR application was subject to dismissal but did not seek a continuance or otherwise seek relief from the rule’s consequences. *Id.* at 250, 252. Despite a court order requiring counsel to provide written materials “at least two days before the hearing,” counsel filed nothing. *Id.* at 250. Counsel did represent Lado at a hearing, but the hearing was not reported. *Id.* As a result of counsel’s inaction, the district court dismissed Lado’s PCR application without ever reaching the merits. *Id.*

This Court found that “Lado was constructively *without counsel* during his postconviction relief proceeding as his application was dismissed without any consideration of its merits or meaningful adversarial testing.” *Id.* at 253 (emphasis

added). Prejudice was presumed because the entire proceeding was rendered presumptively unreliable. *Id.*

As explained below, Mr. Ruiz’s case is almost identical to the facts set forth in *Lado*:

<i>Lado v. State</i>	Mr. Ruiz’s Case
Counsel knew that Lado’s PCR action was subject to dismissal.	Counsel knew that Mr. Ruiz’s PCR action was subject to dismissal.
Counsel represented Lado at an unreported hearing.	Counsel represented Mr. Ruiz at an unreported hearing.
Counsel filed nothing.	Counsel filed nothing.
Because of counsel’s inaction, the PCR action was dismissed without any consideration of its merits or meaningful adversarial testing.	Because of counsel’s inaction, the PCR action was dismissed without any consideration of its merits or meaningful adversarial testing.

The Court of Appeals did not identify a single factor that might distinguish Mr. Ruiz’s situation from this Court’s clear precedent in *Lado*. In fact, the court failed to analyze *Lado*’s applicability to Mr. Ruiz’s case at all. As a result, the Court of Appeals entered a decision that directly contradicts this Court’s precedent in *Lado*. This Court should grant further review to correct the Court of Appeals’ mistake.

II. The Court of Appeals’ decision conflicts with another decision by that court in *Mayorga v. State*.

In *Mayorga v. State*, the Court of Appeals reversed the district court’s dismissal of a PCR application after finding structural error. 2024 WL 1295965, at *3 (Iowa Ct. App. 2024). In that case, counsel moved to continue the PCR trial “only a few hours before the date” set by the district court and, though the court had not yet ruled on the pending motion, failed to appear for the trial at all. *Id.* at *2. “The motion was the only action taken by Mayorga’s counsel in this case.” *Id.* The court found that counsel breached an essential duty of representation by failing to prepare for the PCR trial, which demonstrated “a deficiency of any due care, and not ordinary error.” *Id.*

On appeal, Mayorga argued that PCR counsel “committed structural error,” so the Court of Appeals did not require a specific showing of prejudice. *Id.* (citing *Lado*, 804 N.W.2d at 252). The Court of Appeals presumed prejudice, noting that “counsel’s failure to prepare for the PCR trial and moving for a continuance after over a year had elapsed since the PCR trial date was set, and on the eve of the PCR trial, amounted to Mayorga being constructively without counsel.” *Id.* at *3.

In Mr. Ruiz’s case, the Court of Appeals entered a decision that directly conflicts with *Mayorga*. The court argued that “*Mayorga* can be distinguished” because, among other reasons, Mr. Ruiz’s PCR counsel “participated in the hearing on the motion to dismiss.” *Ruiz*, 2024 WL 3887241, at *2. Yet in *Mayorga*, the Court

of Appeals flatly rejected the proposition “that constructive denial of counsel requires *complete* abandonment.” *Mayorga*, 2024 WL 1295965, at *3 (emphasis added). The Court of Appeals acknowledged that it was possible to find “counsel’s performance deficient enough to rise to the level of structural error” even if counsel took *some* steps to advance a PCR petition, such as filing for an extension or representing a client at an unreported hearing (as in *Lado*). *Id.* The key question is not whether counsel ever filed anything or appeared before the court on the client’s behalf, but whether counsel’s deficient performance, viewed as a whole, left the applicant for PCR constructively without counsel. *Id.* For this reason, the Court of Appeals’ decision in Mr. Ruiz’s case conflicts with *Mayorga*, and this Court should step in to correct the discrepancy.

III. This Court should adopt the doctrine of equitable tolling.

The Court of Appeals declined to reach the merits of Mr. Ruiz’s equitable-tolling claim, finding that Mr. Ruiz did not preserve error. *Ruiz*, 2024 WL 3887241, at *1. Mr. Ruiz did not raise the issue in the district court, and the district court did not rule on the issue. *See Sandoval v. State*, 975 N.W.2d 434, 438 (Iowa 2022) (“These challenges are thus not preserved for appellate review, and we will not consider them for the first time on appeal.”).

Mr. Ruiz concedes that he did not raise this issue in the lower court. In fact, he was unable to raise *any* issues in the district court as, “being represented by

counsel, he could not make any arguments on his own behalf.” *Ruiz*, 2024 WL 3887241, at *4 (Tabor, C.J., dissenting). Mr. Ruiz was left to the mercy of PCR counsel, who made “no arguments at all on his behalf.” *Id.*

When a statute of limitations deprives PCR applicants of the “reasonable opportunity to have the issue heard,” this Court should intervene. *Davis v. State*, 443 N.W.2d 707, 711 (Iowa 1989). Mr. Ruiz’s first PCR application was timely but unsuccessful. As Chief Judge Tabor noted in her dissent, “more than two years elapsed between Ruiz filing his self-represented application and his court-appointed counsel filing an amended application.” *Ruiz*, 2024 WL 3887241, at *3 (Tabor, C.J., dissenting). By the time Mr. Ruiz’s first PCR action ended, the three-year statute of limitations had passed. *Id.* Mr. Ruiz filed a second application for PCR and was appointed a new attorney. *Id.* Counsel did not raise any arguments to get around the three-year statute of limitations (including arguing for equitable tolling). Counsel filed only an unsuccessful motion to withdraw and an appearance. *Id.* “And then, crickets.” *Id.*

Though *Allison v. State* was abrogated by statute, this Court’s reasoning still rings true:

We bristle at the notion that a criminal defendant has no constitutionally protected right to at least one competent attorney. . . [T]here is a distinct possibility that a defendant may be convicted of serious crimes even though he never had an effective lawyer at trial or in PCR and, thus, was deprived of the opportunity to have potentially meritorious issues

determined by a court. No one can find much comfort in such an outcome.

914 N.W.2d 866, 890 (Iowa 2018), *abrogated by statute*. Mr. Ruiz’s case demonstrates the considerable dangers considered by this Court in *Allison*. Mr. Ruiz is entitled to at least one competent attorney. He is entitled to at least one proceeding free of structural error. The doctrine of equitable tolling should apply in cases like Mr. Ruiz’s, such as when an applicant for PCR demonstrates that he has been diligently pursuing his rights and that extraordinary circumstances – including ineffective assistance of counsel – stood in the way to prevent a timely filing.

IV. Further review is required to protect the constitutional rights of Iowans like Mr. Ruiz.

As this Court is well aware, Iowa is suffering from a serious shortage of contract attorneys. *See, e.g.,* Trish Mehaffey, *Lack of Iowa Contract Lawyers a “Crisis,” Leading to “Grueling” Caseloads*, THE GAZETTE (Mar. 13, 2023), <https://www.thegazette.com/crime-courts/lack-of-iowa-contract-lawyers-a-crisis-leading-to-grueling-caseloads>. From 2014 to 2023, the number of lawyers taking court-appointed cases decreased nearly 50 percent. *Id.* In Scott County, which has the third largest population in the state, “only three attorneys had contracts with the state public defender to handle PCRs in that county.” *Ruiz*, 2024 WL 3887241, at *3 n.5 (Tabor, C.J., dissenting). When Mr. Ruiz’s second PCR counsel moved to withdraw, citing a high case load, the district court denied the request, “concluding,

‘there are no other contract attorneys with the public defender’s office to handle PCR cases in this county.’” *Id.* at *3 n.3. Apparently, the Court of Appeals would excuse second-PCR counsel’s failure to file *anything* simply because there were no other attorneys to take the case.

Iowa’s contract attorney shortage does not diminish Mr. Ruiz’s constitutional and statutory right to effective counsel. As Chief Justice Christensen has remarked, this Court is “keenly aware of how the contract attorney shortage delays justice and jeopardizes the constitutional rights of indigent Iowans.” *Ruiz*, 2024 WL 3887241, at *3 n.5 (citing Susan Christensen, C.J., Iowa Sup. Ct., State of the Judiciary Address to the Iowa Legislature (Jan. 11, 2023)). This Court must intervene to correct the Court of Appeals’ mistake. Without further review, indigent Iowans like Mr. Ruiz will find it much more difficult to challenge structural errors, even when those errors are so severe as to render the underlying proceedings presumptively unreliable.

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. 6.1103(5) because it contains fewer than 5,200 words (or two-fifths of the 13,000-word limitation for a required brief as specified in Rule 6.903(1)(i), 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 September 3, 2024, I served the foregoing Applicant-Appellant’s Brief by mailing one copy to the following:

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/s/ Jessica Donels
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