

# Postconviction Relief Actions

Hon. Robert J. Blink  
5<sup>th</sup> Judicial District of Iowa

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## Basics

- Protecting yourself – preventing PCRs
  - Two step approach
    - Protect your client
      - Facts & law
      - Consult experienced lawyers
      - Complete disclosure
      - Counsel and execute
    - Protect yourself
      - Take copious notes
      - Keep accurate records
      - Note incriminating statements
      - Memorialize all discussions, advice & explanations
      - “Protective communication”
      - No one case is worth your career or integrity
      - A PCR can be brought against the PCR lawyer
- Prosecuting the action
  - Chapter 822 – Postconviction Statute
    - Equivalent of State habeas corpus action
      - Based on violation of State and/or Federal Constitution
    - Civil suit attacking criminal conviction and/or sentencing
    - Subject to the Rules of Civil Procedure
    - Criminal defendant is the plaintiff and State is the defendant
    - Usually started by a prisoner pro se after appeals have failed
      - Generally with request for counsel & waiver of costs
    - Counsel are appointed
      - Usually counsel recast the petition
        - Once before State’s answer
        - With Court’s permission or consent of State I.R.Civ.Pro. 1.402
      - See I.R.Crim. Pro. 2.37; From 7
      - Caveat: pro se claims
      - Client control
    - Brought in county of conviction/sentence
      - County Attorney represents the State
    - Statute of limitations – 3 years of final conviction or procedendo

- Exception if fact or law could not have been raised in time period
  - 90 day limitation for reduction of sentence
- Common grounds
  - Ineffective counsel
    - *Strickland v. Washington*, 466 U.S. 668 (1984).
    - *Ledezma v. State*, 626 N.W.2d 134 (Iowa 2001).
  - *Prosecutorial misconduct*
  - *Newly discovered evidence*
- Get everything
  - Court file
  - Transcripts
  - Appellate record
  - Complete trial counsel's file
  - Discovery pursuant to rules of civil procedure
  - Depositions of prior counsel and/or pertinent witnesses
- Summary disposition Code Section 822.6
  - Like summary judgment
- Trial of PCR to the bench
  - Generally client not personally present
  - Former trial or appellate counsel are now State's witnesses
  - Civil trial: PCR applicant could be called by the State
  - Courts routinely receive all evidence, subject to any objection
  - Judges usually ask for post-trial briefs or proposed findings
- *Gamble v. State*, 723 N.W.2d 443 (2006); *Jones v. State*, 731 N.W.2d 388 (Iowa 2007).
  - Counsel cannot be ordered to "screen" the claims.
    - Lawyer argues some issues
    - Client argues others
  - Court *must* rule on all pro se claims
- Motion to enlarge ruling I.R.Civ.Pro. 1.904
- Timely appeal
- Resentencing of juveniles
  - *Miller v. Alabama*, 567 U.S. \_\_\_\_ (2012).
  - *State v. Ragland*, 836 N.W.2d 107 (Iowa 2013).
  - *State v. Null*, 836 N.W.2d 41 (Iowa 2013).
- Chapter 610A – Civil Litigation by Inmates

### Recent Iowa Supreme Court Cases

*Nguyen v. State*, 828 N.W.2d 324 (Iowa 2013).

Nguyen, a Vietnamese national pled guilty to third-degree attempted burglary. He filed for PCR claiming ineffective assistance of counsel. The court granted the State's motion for summary judgment. Defendant appealed. Nguyen argued his trial counsel failed to advise him in 2000 that pleading guilty would result in his removal from the United States. His argument was based on a Supreme Court decision issued in 2010. *See Padilla v. Kentucky*, 559 U.S. 356 (2010) (holding a

criminal defendant has a Sixth Amendment right to receive advice from counsel regarding the risk of deportation before pleading guilty). While Nguyen's appeal was pending, the Supreme Court decided *Chaidez v. United States*, 133 S. Ct. 1103 (2013). *Chaidez* explained that *Padilla* announced a new rule and "defendants whose convictions became final prior to *Padilla* therefore cannot benefit from its holding." *Id.* at 1113. The Court also noted that before *Padilla*, state and federal appellate courts had "almost unanimously concluded that the Sixth Amendment does not require attorneys to inform their clients of a conviction's collateral consequences, including deportation." *Id.* at 1109. Based on these decisions, the Iowa Supreme Court held Nguyen's application for PCR was properly denied.

*Nguyen v. State*, 829 N.W.2d 183 (Iowa 2013)

Nguyen was convicted of first-degree murder. He sought PCR after the three-year statute of limitations set forth in the Iowa Code had expired, but within three years of the Iowa Supreme Court's decision in *State v. Heemstra*, 721 N.W.2d 549 (Iowa 2006). *Heemstra* overruled a series of cases which held that an act causing willful injury and also causing the victim's death could serve as the predicate felony for felony-murder. *Id.* at 558. The court stated the newly announced merger rule "shall be applicable only to the present case and those cases not finally resolved on direct appeal." *Id.* Section 822.3 of the Iowa Code provides that the three-year limitations period "does not apply to a ground of fact or law that could not have been raised within the applicable time period." Since the *Heemstra* decision expressly overruled prior law, Nguyen could not have made the argument in district court that it was improper to instruct the jury on felony-murder. The court noted that, in theory, any legal argument can be raised in any case, so Section 822.3 must incorporate the notion that there had to be a possibility of success on the claim. On these grounds, the court reversed and remanded for further proceedings on whether retroactive application of *Heemstra* is required by the equal protection, due process, and separation of powers clauses of the Iowa Constitution, or the Equal Protection Clause of the United States Constitution. NOTE: *Goosman v. State*, 764 N.W.2d 539, 545 (Iowa 2009) held *Heemstra* is not retroactive.

*Ennenga v. State*, 812 N.W.2d 696 (Iowa 2012)

The State failed to "find" an indictment or trial information within 45 days of arrest or show good cause for failing to do so, as required by Iowa Rule of Criminal Procedure 2.33. Ennenga's counsel failed to file a motion to dismiss on these grounds and allowed him to plead guilty. The court found counsel breached an essential duty for failing to file a motion to dismiss the untimely trial information and Ennenga was prejudiced by his plea of guilty. "If Ennenga's attorney did not ensure that the State abided by rule 2.33 and allowed his client to plead guilty to charges that could have been dismissed with prejudice, then he failed to perform an essential duty." The court decided the word "found" in rule 2.33 meant approved and filed. *Ennenga*, 812 N.W.2d at 703 (citing *State v. Schuessler*, 561 N.W.2d 40, 42 (Iowa 1997)). The file date is the date by which to determine whether an indictment has been "found" within 45 days of a defendant's arrest for the purposes of rule 2.33. *Id.* The court rejected the State's argument that the indictment had been "found" since it was both approved by the court and given to the defendant within 45 days. The court rejected the State's argument that Defendant's failure to appear at a preliminary hearing

constituted good cause for delay. *Id.* (“Filing a trial information did not require Ennenga’s approval or participation.”).

*State v. Ragland*, 812 N.W.2d 654 (Iowa 2012)

Defendant, a juvenile offender who was tried as an adult, sought PCR claiming his conviction for first-degree murder should be overturned and that his sentence is illegal because it amounts to cruel and unusual punishment under the State and Federal Constitutions. The court declined to hear Defendant’s arguments attacking his conviction based on the law of case doctrine. However, the court’s prior decisions in *Veal v. State*, 779 N.W.2d 63 (Iowa 2010) and *State v. Bruegger*, 773 N.W.2d 862 (Iowa 2009) determined “a challenge to a sentence of life in prison without the possibility of parole as cruel and unusual punishment under the State and Federal Constitutions is a challenge to an illegal sentence and not subject to the three-year limitation period for postconviction relief actions.” *Ragland*, 812 N.W.2d at 658 (citing *Veal*, 779 N.W. 2d at 64–65; *Bruegger*, 773 N.W.2d at 871–72). The case was remanded to the district court with instructions to consider whether Ragland’s sentence amounts to cruel and unusual punishment under the State and Federal Constitutions.

*Daughenbaugh v. State*, 805 N.W.2d 591 (Iowa 2011)

Defendant pled guilty to criminal charges, received a deferred judgment, and had the charges dismissed after successful completion of probation. He then challenged the “conviction” in a PCR proceeding for ineffective assistance of counsel. This required the court to decide the meaning of the phrase “convicted of” a public offense under Iowa Code Section 822.2. The court concluded a “deferred judgment” should be construed in its “strict legal sense” in the postconviction relief statute, rather than in its “general and popular sense.” As a result, a deferred judgment is not a conviction under Iowa’s postconviction relief statute. The court supported this finding by noting the language of Iowa Code Section 822.4 requires an applicant for PCR to state the “date of the entry of judgment...complained of.” Reading the statutory provisions together, there must be an entry of a judgment of conviction in order to seek PCR.

*Lado v. State*, 804 N.W.2d 248 (Iowa 2011)

Lado filed a pro se petition for PCR which contained a request for appointment of counsel. The appointed counsel was specifically advised that Lado’s application was under an Iowa Rule of Civil Procedure 1.944 dismissal notice for failure to prosecute. The State filed a motion for summary judgment and dismissal. Counsel filed an application for extension, but failed to make a motion to extend or seek relief from the rule 1.944 time requirement. As a result, the district court dismissed Lado’s case by operation of rule 1.944. The court found this to be a breach of an essential duty of counsel. The court also found this to be a “structural error,” or an error “affecting the framework within which the trial proceeds.” *See Lado*, 804 N.W.2d at 252 (noting structural errors occur when: 1) counsel is completely denied, actually or constructively, at a crucial stage of the proceeding; 2) where counsel does not place the prosecution’s case against meaningful adversarial testing; or 3) where surrounding circumstances justify a presumption of ineffectiveness, such as where counsel has an actual conflict of interest in jointly representing multiple defendants (citations omitted)). 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 an analysis "would be a speculative inquiry into what might have occurred in an alternate universe." *Id.* (citation omitted). The court found Lado to be constructively without counsel during his PCR proceeding, and the proceeding to be "presumptively unreliable."

*Everett v. State*, 789 N.W.2d 151 (Iowa 2010)

Defendant was convicted of first-degree robbery and petitioned for PCR based on counsel failing to confer with Defendant regarding a jury question. Normally, objections to the giving of jury instructions are waived on direct appeal if not raised before counsel's closing argument. However, the court found this to be an ineffective assistance of counsel claim that "need not be raised on direct appeal from the criminal proceedings in order to preserve the claim for postconviction purposes." The court found that counsel breached an essential duty by failing to procure the presence of his client during the jury instruction. However, the court's response to the jury to reread the instructions, which included a correct statement of the law, was not prejudicial to Defendant and Defendant did not show a reasonable probability that the outcome would have been different had he been present. Therefore, Defendant's application for PCR is denied.

*State v. Johnson*, 784 N.W.2d 192 (Iowa 2010)

Defendant was charged with first-degree murder. On appeal, Defendant claimed the prosecution's decision not to charge someone Defendant claimed was more culpable than he with first-degree murder constituted a violation of his right to equal protection under the Iowa Constitution and U.S. Constitution. *Johnson*, 784 N.W. 2d at 195 (citing *Oyler v. Boyles*, 368 U.S. 448, 456 (1962) (holding selectivity in prosecution violates the Equal Protection Clause when the decision was "deliberately based upon an unjustifiable standard such as race, religion, or other arbitrary classification"). The court of appeals refused to preserve this claim on the ground that it was too general and did not state on which impermissible classification the prosecutor allegedly based his decision. The Iowa Supreme Court held that since ineffective assistance of counsel claims are no longer required to be made on direct appeal, when they choose to do so, they are not required to make any particular record in order to preserve the claim for postconviction relief. However, if a defendant wishes to have an ineffective assistance claim resolved on direct appeal, the defendant will be required to establish an adequate record to allow the appellate court to address the issue. If the court determines the claim cannot be addressed on appeal, it must still preserve it for a PCR proceeding, regardless of the court's view of the potential viability of the claim.

*Millam v. State*, 745 N.W.2d 719 (Iowa 2008)

Defendant was convicted of two counts of sexual abuse and applied for PCR based on counsel's failure to offer evidence of the alleged victim's (JS) prior false claims of sexual abuse. During the course of the investigating JS's claims, investigators were informed by JS's mother that she had made similar accusations against a previous boyfriend that were later recanted. Defendant's counsel did not offer this evidence, believing it was excluded by Iowa's rape shield law. At the

time of trial in this case, it was unclear whether the rape shield law excluded prior false claims of sexual abuse. The test to determine whether counsel is required to raise an issue is “whether a normally competent attorney would have concluded the question...was not worth raising.” The court found that since this was merely a case of “he said she said,” JS’s credibility was pivotal to the State’s case and counsel should have attempted to offer this evidence. This position was bolstered by the fact that other defense attorneys around that time were attempting to offer this type of evidence. Since this evidence would have greatly impugned JS’s credibility, and the State did not have any physical evidence, Defendant was prejudiced by counsel’s failure.

*Jones v. State*, 731 N.W.2d 388 (Iowa 2007)

Defendant was represented by counsel throughout his PCR proceedings. However, during this time Defendant attempted to file several pleadings in the district court pro se. The trial court refused to consider any of Defendant’s pro se pleadings because he was represented by counsel. The Iowa Supreme Court held 1) a PCR applicant is permitted to raise issues pro se and file papers and pleadings pro se, and 2) the district court must give the applicant an opportunity to be heard on his pro se claims and then must rule on each issue raised, regardless of whether applicant is represented by counsel.

#### Recent Iowa Court of Appeals Cases

*Reed v. State*, No. 12–1184, 2013 WL 5229752 (Iowa Ct. App. Sept. 18, 2013)

Reed filed an application for PCR alleging ineffective assistance of counsel for failing to obtain tape recordings of five State Witnesses at trial. The district court found the claim to be time barred and Reed appealed. The court of appeals found that since Reed knew of the existence of the tape recordings at the time of trial, and failed to raise the ineffectiveness claim within three years, his claim was time barred.

*Montgomery v. State*, No. 12–0894, 2013 WL 4769431 (Iowa Ct. App. Sept. 5, 2013)

Montgomery was charged with multiple drug-related counts. After unsuccessfully attempting to delay the proceedings by claiming she was mentally unstable, Montgomery entered an Alford plea. When asked whether her medications or mental issues prevented her from understanding the proceedings, Montgomery replied “not today, no.” Montgomery appealed her convictions, claiming the court should not have allowed her plea due to mental incompetency. She also alleged ineffective assistance of counsel because counsel did not secure a psychiatric evaluation for her, as well as other general statements of ineffectiveness. The court found “[w]hen complaining about the adequacy of an attorney’s representation, it is not enough to simply claim that counsel should have done a better job.” An applicant must state specific ways in which counsel’s performance was inadequate. The court also found that, despite Montgomery’s claims that she was not mentally competent to enter an Alford plea, she competently participated in all the proceedings and was attempting to manipulate the system. On these grounds, Montgomery had no valid claims for ineffective assistance of counsel.

*Garcia v. State*, No. 12–0690, 2013 WL 4506509 (Iowa Ct. App. Aug. 21, 2013)

Garcia was found guilty of first-degree murder. He sought PCR on the ground that a later case, *State v. Schuler*, 774 N.W.2d 294 (Iowa 2009) disavowed a jury instruction similar to the one given in his case. Garcia argued this rendered his conviction invalid. Since Garcia applied for PCR after the statute of limitations had run, he attempted to rely on the exception for “a ground of fact or law that could not have been raised within the applicable time period.” The court concluded that this exception did not apply because *Schuler* was not “a change in the law that would affect the validity of the conviction” but “merely clarified existing law.”

*Jackson v. State*, No. 12–1496, 2013 WL 4505114 (Iowa Ct. App. Aug. 21, 2013)

Jackson applied for PCR, alleging his appellate postconviction counsel was ineffective. Jackson argues the three-year statute of limitations does not apply to his claim that his postconviction appellate counsel provided ineffective representation, as this is a claim he could only make on a successive postconviction petition. The court held “an applicant for postconviction relief cannot circumvent the effect of the three-year time bar by merely claiming the ineffective assistance of postconviction counsel.” *Jackson* \*2 (citing *Smith v. State*, 542 N.W.2d 853, 854 (Iowa Ct. App. 1995)). The court stated “our case law is clear that postconviction counsel’s conduct does not have a direct impact on the validity of the criminal conviction and does not qualify as a ground of fact that will avoid the limitations period.”

*Lang v. State*, No. 12–1726, 2013 WL 3822113 (Iowa Ct. App. July 24, 2013)

Lang was convicted of first-degree kidnapping in 1988. He filed an untimely application for PCR, relying on the exception of “a ground of fact or law that could not have been raised within the applicable time period.” His exception rests on the assertion that the trial information from 1988 was inadequate because it charged him with first-degree kidnapping rather than charging him with kidnapping. To support this, Lang cites *State v. Maddox*, No. 10–0831, 2011 WL 2075421, at \*8 (Iowa Ct. App. May 25, 2011). Lang claims *Maddox* changed the law with respect to the requirements for a charge of kidnapping when it held, “kidnapping in the first degree and kidnapping in the third degree are not separate offenses; they are different degrees of kidnapping.” The court rejected this argument because *Maddox* dealt with the sufficiency of the evidence to support a kidnapping conviction, not whether the trial information was adequate.