IN THE SUPREME COURT OF IOWA
Supreme Court No. 20-0396

FERNANDO SANDOVAL,
Applicant-Appellant,

vs.

STATE OF IOWA,
Respondent-Appellee.

APPEAL FROM THE IOWA DISTRICT COURT
FOR POLK COUNTY
THE HONORABLE JOSEPH SEIDLIN, JUDGE

APPELLEE'S BRIEF

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ROUTING STATEMENT

This case can be decided based on existing legal principles. Transfer to the Court of Appeals would be appropriate. Iowa R. App. P. 6.1101(3).

STATEMENT OF THE CASE

Nature of the Case

Applicant Fernando Sandoval appeals the summary dismissal of his fourth application for postconviction relief concerning his 2005 convictions for two counts of first-degree murder and two counts of attempted murder.

Course of Proceedings

In 2005, a jury convicted applicant Sandoval of two counts of first-degree murder and two counts of attempted murder. Ruling (12/16/2019) at 1; App. 17. He appealed, and the Court of Appeals affirmed his convictions. *State v. Sandoval*, No. 05-0426, 2006 WL 3018152 (Iowa Ct. App. Oct. 25, 2006). Procedendo issued on November 21, 2006. Procedendo (Sup. Ct. no. 05-0426, FECR181133); App. 109.

Sandoval filed his first postconviction application on June 15, 2007. PCCE056248 Appl. (6/15/2007); App. 41. The district court denied relief. PCCE056248 Ruling (12/31/2008); App. 49. His appeal

was dismissed as frivolous. Ruling (12/16/2019) at 2; App. 18. Procedendo issued on February 16, 2010. Procedendo (Sup. Ct. no. 09-0039, PCCE056248); App. 61.

Sandoval filed a second postconviction application on May 30, 2012. PCCE071784 Appl. (5/30/2012); App. 63. The district court dismissed the application as time barred. PCCE071784 Ruling (7/10/2013), PCCE071784 Enlarged Ruling (2/7/2014); App. 71, 73. The Court of Appeals affirmed. *Sandoval v. State*, No. 14-0341, 2015 WL 1849404 (Iowa Ct. App. Apr. 22, 2015). Procedendo issued on June 17, 2015. Procedendo (Sup. Ct. no. 14-0341, PCCE071784); App. 81.

Sandoval filed a third postconviction application on January 25, 2016. PCCE079547 Appl. (1/25/2016); App. 84. The district court granted the State's motion for summary disposition. PCCE079547 Ruling (10/10/2016); App. 91. The Court of Appeals affirmed. *Sandoval v. State*, No. 16-1875, 2018 WL 2727690 (Iowa Ct. App. June 6. 2018). Procedendo issued on July 10, 2018. Procedendo (Sup. Ct. no. 16-1875, PCCE079547); App. 103.

Sandoval's current postconviction application—his fourth—was file-stamped on July 8, 2019. PCR Appl. (7/8/2019); App. 6. The

State filed a motion for summary dismissal. Motion to Dismiss (7/24/2019); App. 13. Following a hearing, the district court dismissed the application as untimely. Ruling (12/16/2019), Enlarged Ruling (2/17/2020); App. 17, 30. Sandoval appeals. Notice (3/4/2020); App. 33.

Facts

Early one morning in 2004, applicant Sandoval and his brother Jorge Perez-Castillo got into an altercation with a group of men outside a bar in Des Moines. *Sandoval*, 2006 WL 3018152, at *1. Eyewitness testimony indicated "Perez-Castillo had retrieved a gun from his pickup truck and, in rapid succession, shot Bueso Jr. while he was being restrained by Sandoval, shot Bueso Sr., then shot Ulloa while Sandoval stopped a member of the Bueso party who was attempting to go to Ulloa's aid." *Id.* at *2. Of the three men who were shot, two died of their injuries. *Id.* at *1.

Sandoval and his brother fled the scene in his brother's pickup truck, with Sandoval riding in the passenger seat. *Id.* at *1. Police attempted to stop the truck, and a high-speed chase ensued. *Id.* During the chase, shots were fired from the passenger side of the truck, and one bullet hit the windshield of Officer David Viggers's

squad car. *Id.* at *1, 2. When the truck became disabled, the pursuit continued on foot. *Id.* at *1. Perez-Castillo fired at pursuing officers. *Id.* Sandoval did not surrender until his brother ran out of ammunition. *Id.*

"Both men were arrested and charged with two counts of murder in the first degree based on the deaths of Bueso Sr. and Ulloa, one count of attempted murder based on the shooting of Bueso Jr., and one count of attempted murder based on the shots fired at Officer Viggers." *Id.*

ARGUMENT

I. The District Court Properly Granted Summary Dismissal of Sandoval's Fourth Application for Postconviction Relief.

Preservation of Error

Sandoval preserved error to the extent he challenges the dismissal of his application under Iowa Code section 822.3. The district court's ruling and Sandoval's motion to enlarge addressed the statutory grounds. Ruling (12/16/2019), Motion to Enlarge (1/17/2020); App. 17, 23.

However, Sandoval did not preserve his constitutional arguments. On appeal, he contends summary dismissal violated the constitutional protections of due process and equal protection.

Applicant's Proof Br. at 20–23. But he did not raise due process or equal protection in the district court—those terms do not appear in any written resistance or the hearing transcript. Instead, Sandoval only offered a vague assertion: "I don't believe that the amendments to the post-conviction relief statute are constitutional under the Iowa Constitution and nor should apply in this circumstance." PCR Tr. 7:15–18. That ambiguous allegation did not preserve the due process and equal protection challenges he raises for the first time on appeal. *See State v. Hernandez-Lopez*, 639 N.W.2d 226, 234 (Iowa 2002) ("Contrary to the defendants' argument, a mere assertion that a statute is 'unconstitutional' does not encompass every conceivable constitutional violation."); *see also Taft v. Iowa Dist. Court for Linn Cty.*, 828 N.W.2d 309, 322–23 (Iowa 2013) ("A party cannot preserve error for appeal by making only general reference to a constitutional provision in the district court and then seeking to develop the argument on appeal.").

Additionally, Sandoval failed to secure a district court ruling on his constitutional challenges. The initial ruling did not address either constitutional challenge. *See* Ruling (12/16/2019); App. 17 (not discussing "due process" or "equal protection"). And although

Sandoval filed a motion to enlarge, that motion did not make any due process or equal protection argument. Motion to Enlarge (1/17/2020); App. 23. Therefore, the constitutional arguments are not preserved for this Court's review. *See Meier v. Senecaut*, 641 N.W.2d 532, 537 (Iowa 2002) ("When a district court fails to rule on an issue properly raised by a party, the party who raised the issue must file a motion requesting a ruling in order to preserve error for appeal.").

Standard of Review

"Our review of the court's ruling on the State's statute-of limitations defense is for correction of errors of law." *Harrington v. State*, 659 N.W.2d 509, 519 (Iowa 2003).

Discussion

Sandoval's fourth postconviction application was untimely. First, he does not get the benefit of the *Allison* extension because he filed his current application after the statutory abrogation of that case. Second, even if *Allison* still applied, he did not "promptly" file his fourth application. Therefore, the district court properly granted summary dismissal.

There is no question that Sandoval's fourth PCR application was filed beyond the three-year statute of limitations. A postconviction

application "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. Procedendo for Sandoval's direct appeal issued on November 21, 2006. Procedendo (Sup. Ct. no. 05-0426, FECR181133); App. 109. He initiated his current postconviction action in July 2019 (App. 6), nearly a decade after the three-year statute of limitations expired.

Sandoval attempts to exploit the extension from *Allison v. State*, 914 N.W.2d 866 (Iowa 2018). Before *Allison*, the Court followed the rule that "a successive PCR application filed outside the three-year statute of limitations in Iowa Code section 822.3 was untimely and that ineffective assistance of counsel was not a 'ground of fact' sufficient to extend the running of the limitations period." *Id.* at 871 (citing *Dible v. State*, 557 N.W.2d 881, 886 (Iowa 1996)). The *Allison* Court decided to "qualify" *Dible* and created an extension of section 822.3's three-year limitation:

> ...[W]e think the best approach is to hold that where a PCR petition alleging ineffective assistance of trial counsel has been timely filed per section 822.3 and there is a successive PCR petition alleging postconviction counsel was ineffective in presenting the ineffective-assistance-of-trial-counsel claim, the timing of the filing of the second PCR petition relates

> back to the timing of the filing of the original PCR petition for purposes of Iowa Code section 822.3 if the successive PCR petition is filed promptly after the conclusion of the first PCR action.

Id. at 891. However, Sandoval does not qualify for this extension.

A. The *Allison* extension was abrogated by statute before Sandoval filed his fourth postconviction application.

In response to the *Allison* decision, the General Assembly amended section 822.3 by adding:

> An allegation of ineffective assistance of counsel in a prior case under this chapter shall not toll or extend the limitation periods in this section nor shall such claim relate back to a prior filing to avoid the application of the limitation periods.

Iowa Code § 822.3 (as amended by 2019 Iowa Acts ch. 140, § 34). This amendment became effective on July 1, 2019.

The 2019 amendment of section 822.3 constitutes a clear abrogation of *Allison*. It was passed in the next legislative session after the *Allison* decision, reflecting the legislature's intent to undo the judicial interpretation of section 822.3. Also, the amendment's use of terms such as "toll," "extend," and "relate back" match key terms in the *Allison* decision, demonstrating the legislature's purpose to reverse *Allison*'s holding. Consequently, any postconviction

application filed after July 1, 2019 does not receive an extension relating back to the filing of a previous postconviction action.

The 2019 amendment applies to Sandoval's present case. The district court file-stamped his application on July 8, 2019. PCR Appl. (7/8/2019); App. 6. Because his application was filed after the July 1 effective date, the new version of section 822.3 applies and prevents his current application from relating back to his previous postconviction actions.

Contrary to Sandoval's argument, he does not qualify for any "mailbox rule" extension. First, he recognizes that "Iowa does not have a statutory prison mailbox rule…" Applicant's Proof Br. at 34. Second, even if Iowa recognized the prison mailbox rule, Sandoval failed to prove it applied to the mailing of his application. He contends he timely mailed the application "by providing it to prison authorities on June 27, 2019." Applicant's Proof Br. at 35. However, his application does not have a certificate of filing or service—instead, it was only subscribed and sworn before a notary on June 27, 2019. PCR Appl. (7/8/2019) at 4, 5; App. 9, 10. The notary date is not necessarily the same date Sandoval placed the application in the mail, so it does not provide competent evidence of the date of mailing. *See,*

e.g., *Henderson-El v. Maschner*, 180 F.3d 984, 985–86 (8th Cir. 1999) ("The only facts before the Court are that Appellant signed the petition on April 20, 1997, and the Clerk's office filed it on May 6, 1997. Neither of these dates aids in determining whether the petition was mailed on or before April 24. Because Appellant failed to provide any evidence of the date on which he mailed his petition, he may not avail himself of the benefits of the prison mailbox rule."). Finally, Sandoval is wrong to allege a due process violation by suggesting that "State agents operating the prison delayed providing his mail to the United States postal service…" Applicant's Proof Br. at 35. The Court decided *Allison* on June 29, 2018, yet Sandoval waited nearly an entire year to prepare his application for filing. Even if prison security measures delayed mailing by a few days, it did not excuse Sandoval's dilatory pursuit of his *Allison* claim.

Allison does not apply. The General Assembly abrogated *Allison* effective July 1, 2019. Sandoval's application was filed after the effective date, so his fourth postconviction application does not "relate back." The district court properly granted summary dismissal of his untimely application.

B. Even if *Allison* still applied, Sandoval did not "promptly" file his fourth postconviction application.

Sandoval did not "promptly" file his fourth application after his first postconviction action ended. *Allison* can extend the deadline "if the successive PCR petition is filed promptly after the conclusion of the *first* PCR action." *Allison*, 914 N.W.2d at 891 (emphasis added). Sandoval's first postconviction action ended February 16, 2010 (Procedendo 09-0039; App. 61), which was more than 9 years before he filed the July 8, 2019 application in the present postconviction case. *Allison*'s plain language limits the extension to a second postconviction action. *See Allison*, 914 N.W.2d at 891 (extending "the timing of the filing of the *second* PCR petition" (emphasis added)). And even if *Allison* applied beyond its plain language to any subsequent PCR application, Sandoval filed his fourth application approximately 12 full months after his third PCR ended. *See* Procedendo (Sup. Ct. no. 16-1875, PCCE079547); App. 103 (issued July 10, 2018).

Sandoval's delay was too long. Standing alone, the delay of 12 months between the third and fourth applications does not meet *Allison*'s "promptly filed" timeframe. *See, e.g.*, *Polk v. State*, No. 18-

0309, 2019 WL 3945964, at *2 (Iowa Ct. App. Aug. 21, 2019) ("A gap of almost six months between his voluntary dismissal of the first PCR appeal and filing the second PCR petition does not fit the definition of prompt."); *State v. Harlston*, No. 19-0627, 2020 WL 4200859, at *1 (Iowa Ct. App. July 22, 2020) ("Harlston filed his second PCR application more than six months after the conclusion of his first PCR action, and 'this court has already concluded six months 'does not fit the definition of prompt' for purposes of the *Allison* decision.'" (quoting *Demery v. State*, No. 19-1465, 2020 WL 1887955, at *2 (Iowa Ct. App. Apr. 15, 2020))).

The untimeliness becomes even more apparent when considering the delays between all of Sandoval's previous postconviction cases. More than 27 months passed between his first and second PCR cases. *See* Procedendo (Sup. Ct. no. 09-0039, PCCE056248) (2/16/2010), PCCE071784 Appl. (5/30/2012); App. 61, 63. Another seven months passed between his second and third PCR cases. *See* Procedendo (Sup. Ct. no. 14-0341, PCCE071784) (6/17/2015), PCCE079547 Appl. (1/25/2016); App. 81, 84. In total, approximately 46 months have elapsed between Sandoval's postconviction cases, which shows he was not "prompt" in pursuing

his current ineffective assistance claim against trial counsel. *See, e.g.*, *Kelly v. State*, No. 17-0382, 2018 WL 3650287, at *4 (Iowa Ct. App. Aug. 1, 2018) (finding the applicant did not "promptly" file when 15 months passed after his first PCR and more than a year passed after his second PCR).

Even if Sandoval's fourth application were "promptly filed," it did not relate back all the way to his first postconviction case. *Allison* requires that the "successive PCR petition alleg[e] postconviction counsel was ineffective in presenting the ineffective-assistance-of-trial-counsel claim." *Allison*, 914 N.W.2d at 891. In other words, postconviction applicants must show continuity in the successive petitions alleging ineffective presentation of a particular claim against trial counsel. *See Kelly*, 2018 WL 3650287, at *4 ("This is not Kelly's second application but his third. His second application, while claiming first PCR counsel was ineffective, did not claim that first PCR counsel failed to effectively present his claims that trial counsel was ineffective but rather claimed first PCR counsel was ineffective for failing to exhaust state remedies."). Sandoval's current PCR action alleges ineffective assistance of trial counsel, but his third PCR action raised a claim of newly discovered evidence. *See Sandoval*, 2018 WL

2727690, at *1. Because there was a break in the chain of ineffective assistance claims, his current allegations do not relate back to his first postconviction application.

Sandoval's misinterpretation of *Allison* would permit an endless train of postconviction actions. In effect, his rule would allow any successive application to "relate back" to the first application as long as it was filed within a certain time after the previous action ended, no matter what issue was raised in the previous action. That result matches the prediction made by the *Allison* dissenters. *See Allison*, 914 N.W.2d at 898 (Waterman, J., dissenting) ("Going forward, any allegation of ineffective assistance by PCR counsel will avoid the three-year statute of limitations. This opens the floodgates to stale PCR actions. In effect, there is no longer a statute of limitations in PCR actions."). This Court should not accept Sandoval's position that would allow the "exception to the three-year time-bar [to] swallow that time-bar." *Id.*

The district court properly dismissed Sandoval's untimely postconviction application. His fourth application—filed more than 12 years after his direct appeal—violated section 822.3's three-year statute of limitations. Because his successive applications were not

"promptly filed" and did not relate back, he would not get the benefit of *Allison*'s narrow qualification even if *Allison* still applied. Accordingly, this Court should affirm the denial of postconviction relief.

II. Sandoval Was Not Entitled to Juvenile-Sentencing Procedures for Offenses He Committed as an Adult.

Appellate Jurisdiction

Sandoval has no right to challenge the legality of his sentence in this postconviction appeal. Illegal-sentence claims are not proper subjects for PCR cases. Even if Sandoval had raised his illegal-sentence challenge in the district court, he would not have the right to appeal its denial.

Postconviction relief is not the proper forum for Sandoval to raise his illegal-sentence claim. Instead, he should have filed a motion to correct his sentence in the district court criminal case. *See Bonilla v. State*, 791 N.W.2d 697, 699 (Iowa 2010) ("Bonilla filed a postconviction relief action. Because he complains his sentence is illegal, however, the claim 'is not a postconviction relief action.'"); *see also Veal v. State*, 779 N.W.2d 63, 65 (Iowa 2010) ("Although not labeled as such, the district court on remand should treat her

application for postconviction relief as a challenge to an illegal sentence…").

If Sandoval had raised his illegal-sentence challenge in the district court, he would not have the right to appeal it. The denial of a motion to correct an illegal sentence is not a "final judgment of sentence" from which a defendant has the right to appeal. *See State v. Propps*, 897 N.W.2d 91, 96 (Iowa 2017) ("In the ruling denying Propps's motion, the district court neither disturbed the underlying sentence nor entered a new judgment of sentence. An appeal as of right under Iowa Code section 814.6(1)(a) on the grounds of appealing a 'final judgment of sentence' was improper in this case."). Rather than appeal of right, discretionary review or certiorari are the only proper methods to review the denial of a motion to correct an illegal sentence. *Id.* at 96–97.

Sandoval has not sought the proper form of relief. He did not file a motion to correct in the district court criminal file, and he did not challenge the legality of his sentence in the district court postconviction proceedings. Rather, he raises his illegal-sentence challenge for the first time in his proof brief on appeal of his postconviction case. This Court may choose to treat his notice of

appeal and proof brief as an application for writ of certiorari. *See id.* at 97 ("[W]e will treat Propps's notice of appeal and accompanying briefs as a petition for writ of certiorari, as we conclude that appeals from a motion to correct an illegal sentence are most appropriately fashioned in this manner."); *see also Smith v. State*, No. 16-1231, 2017 WL 2684346, at *1 & n.1 (Iowa Ct. App. June 21, 2017) (construing the PCR application as a motion to correct illegal sentence and reviewing its denial as an application for writ of certiorari); *Nix v. State*, No. 18-1853, 2019 WL 2373640, at *1 (Iowa Ct. App. June 5, 2019) ("We construe Nix's application as a motion to correct an illegal sentence, the denial of which he has no right to appeal from. The proper form of review is by a petition for writ of certiorari. We therefore treat Nix's notice of appeal and appellate briefs as a petition for writ of certiorari…" (citations omitted)).

The Court has discretion to grant or deny review of Sandoval's illegal-sentence challenge. As discussed below, this Court has repeatedly rejected Sandoval's claim that juvenile-sentencing procedures should apply to crimes committed after the offender turned 18. That clear authority weighs against indulging Sandoval's argument with any further attention. However, this Court may choose

to grant review and deny his illegal-sentence challenge to prevent any further litigation on the topic. Sandoval is a prolific litigator, and denying his illegal-sentence claim now might stop him from refiling the same claim in the district court.

Preservation of Error

Sandoval admits "[t]hat this issue was not properly preserved at the district court level." Applicant's Proof Br. at 35. He contends that his illegal-sentence claim "may be brought at any time," but he only cites cases involving timely direct appeals. Applicant's Br. at 35–36 (citing *State v. Bruegger*, 773 N.W.2d 862, 872 (Iowa 2009); *State v. Parker*, 747 N.W.2d 196, 212 (Iowa 2008); *State v. Lyle*, 854 N.W.2d 378, 382 (Iowa 2014)). Sandoval's direct appeal ended in 2006. *See Sandoval*, 2006 WL 3018152 (decided 10/25/2006). He provides no authority allowing an unpreserved illegal-sentence claim to be raised in the appeal of an untimely fourth PCR application almost 14 years after his conviction and sentence became final.

Standard of Review

"Although challenges to illegal sentences are ordinarily reviewed for correction of legal errors, we review an allegedly unconstitutional sentence de novo." *Lyle*, 854 N.W.2d at 382.

Discussion

Sandoval's illegal-sentence claim holds no merit. Both the Supreme Court and the Court of Appeals have refused to extend juvenile-sentencing procedures to offenders who committed their crimes after turning 18. Sandoval was 19, so he was properly sentenced as an adult.

Sandoval asks the Court to "apply the same protections, such as the prohibition on life sentencing, to teenage offenders who have reached the age of majority…as provided to juvenile offenders." Applicant's Proof Br. at 64. But the Supreme Court has consistently drawn the line at 18. *See State v. Seats*, 865 N.W.2d 545, 556–57 (Iowa 2015) ("…[T]he line between being a juvenile and an adult was drawn for cruel and unusual punishment purposes at eighteen years of age." (citing *Roper v. Simmons*, 543 U.S. 551, 574 (2005))); *see also Lyle*, 854 N.W.2d at 403 ("[O]ur holding today has no application to sentencing laws affecting adult offenders. Lines are drawn in our law by necessity and are incorporated into the jurisprudence we have developed to usher the Iowa Constitution through time….").

Likewise, the Court of Appeals has repeatedly recognized that the line was drawn at 18. *See Smith v. State*, No. 16-1711, 2017 WL 3283311, at *2 (Iowa Ct. App. Aug. 2, 2017) (further review denied) (collecting cases and rejecting both cruel-and-unusual-punishment and equal-protection challenges). In particular, the Court of Appeals has rejected challenges by adults who committed their offenses a short time after turning 18. *See, e.g.*, *Lukinich v. State*, No. 18-0322, 2019 WL 3330457, at *7 (Iowa Ct. App. July 24, 2019) (88 days after turning 18); *Smith*, 2017 WL 2684346, at * 1 (six weeks after turning 18); *Schultz v. State*, No. 16-0626, 2017 WL 1400874, at *1 (Iowa Ct. App. Apr. 19, 2017) (five days after turning 18).

Sandoval's sentence is not cruel and unusual. He was convicted for his role in the fatal shooting of two men during a bar fight, the shooting a third man, and then shooting at pursuing police officers. *Sandoval*, 2006 WL 3018152, at *1. Although Sandoval now attempts to place the blame on his brother, the evidence at trial indicated Sandoval held down one victim while his brother shot him and then blocked a family member from aiding another shooting victim. *Id.* at *2. Evidence also indicated a bullet that hit the police officer's windshield was fired from the passenger side of the truck where

Sandoval was seated. *Id.* A life sentence was not grossly disproportionate, and Sandoval was not entitled to any juvenile-sentencing procedures for the murderous crime spree in which he participated as an adult. Consequently, this Court should reject his cruel-and-unusual-punishment challenge.

CONCLUSION

The Court should affirm the summary dismissal of Fernando Sandoval's fourth postconviction application.

REQUEST FOR NONORAL SUBMISSION

This case is appropriate for submission without oral argument.

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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