

IN THE SUPREME COURT OF IOWA

No. 16-1938

Marshall County Number PCCI007550

FRANSICO VILLA MAGANA,

Applicant / Petitioner-Appellant,

vs.

STATE OF IOWA

Respondent-Appellant

APPELLANT'S PROOF REPLY BRIEF

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TABLE OF AUTHORITIES

Lado v. State, 804 N.W.2d 248, 250 (Iowa 2011)

Iowa R. Civ. P. 1.944

STATEMENT OF THE ISSUE PRESENTED FOR REVIEW

I

Did the Trial Court err in overruling the Appellant's application to reinstate his first application for postconviction relief following dismissal under Iowa R. Civ. P. 1.944?

ROUTING STATEMENT

As this matter involves application of case law previously determined by the Iowa Court of Appeals and the Iowa Supreme Court, this case would be appropriate for the Iowa Court of Appeals.

STATEMENT OF THE CASE

The Appellant relies on the Statement of the Case from the Proof Brief.

STATEMENT OF THE FACTS

The Appellant relies on the factual statement in the proof brief.

ARGUMENT

Standard of Review: When the applicant's claims are of a constitutional nature, this court engages in a de novo review. *Id.* As was the case in, *Lado v. State*, 804 N.W.2d 248, 250 (Iowa 2011), the Applicant has a statutory right to effective assistance of counsel. As in *Lado*, the standard of review should be de novo with regard to any analysis of ineffective assistance of counsel.

This case is similar to *Lado* in that trial counsel did not file a motion to exempt the case from Iowa R. Civ. P. 1.944. The failure resulted in a dismissal of the action. Unlike *Lado*, trial counsel in this case filed a motion to reinstate. The motion was overruled as stated in the proof brief.

In the event the Court is not persuaded the mandatory reinstatement was required, the Appellant requests the Court to consider the issue of whether trial counsel was ineffective as contemplated in *Lado*, requiring reversal of the dismissal, and proceeding on the merits.

CONCLUSION

For the reasons stated above, the Appellant requests the Court reverse the decision of the District Court, order reinstatement of the Appellant's case and direct the matter be reset for trial.

REQUEST FOR ORAL ARGUMENT

The Appellant respectfully requests to be heard in oral argument.

Respectfully Submitted,

/s/ Christopher A. Clausen

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COSTS CERTIFICATE

As the brief was prepared electronically and filed electronically, the Appellant is aware of no costs which would properly be includible in a cost certificate.

Certificate of Compliance with Type-Volume Limitations, Typeface Requirements and Type-Style Requirements

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/s/ Christopher A. Clausen _____ *August 14th, 2017*
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CERTIFICATE OF SERVICE

The undersigned states to the Court that he placed a copy of the brief in this matter in the United States Postal Service, with sufficient postage prepaid to ensure its delivery at the Hardin County Jail, by placing the same in the United States Post Office on August 14th, 2017. /S/ *Christopher A. Clausen*