

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

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APPLICATION TO IOWA SUPREME COURT FOR FURTHER REVIEW

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Christopher A. Clausen  
AT0001553  
Clausen Law Office  
315 – 6<sup>th</sup> Street, Suite 201  
Ames, Iowa 50010  
Electronic Mail: [chris@cacloia.com](mailto:chris@cacloia.com)  
Telephone: 515-663-9515  
Cell Phone 515-422-6364  
Facsimile: 515-663-9517

Attorney for Appellant / Defendant

QUESTION PRESENTED FOR REVIEW

Did the Trial Court err in refusing to reinstate Mr. Villa-Magana's Application?

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## STATEMENT SUPPORTING FURTHER REVIEW

The appellant contends this case warrants further review as The Iowa Court of Appeals found the Applicant had failed to meet his burden of proof to show that he was using reasonable diligence in preparing the case for trial and the dismissal was the result of oversight, mistake, or other reasonable cause. The Applicant contends his actions were reasonable in light of the motion of a new trial which Applicant was advised was proceeding through the courts.

## BRIEF

### **DID THE TRIAL COURT ERR IN REFUSING TO REINSTATE MR. VILLA-MAGANA'S APPLICATION?**

The Applicant's application for postconviction relief was dismissed pursuant to Iowa R. Civ. P. 1.944 for failure to bring the case to trial within the time frame authorized by the rule cited above. The Applicant contends reinstatement was mandatory for this case.

The Court has noted no action was taken on this case from December of 2014 until the application to reinstate the dismissed application for postconviction relief was filed shortly before the deadline to apply. The Applicant was informed that his motion for a new trial was being pursued and the parties were informed the present action would be put on hold until the motion for a new trial was resolved.

The motion for a new trial, if successful, was to obviate the need for the postconviction action which was the basis for this action. The Applicant nor counsel was provided any documentation to support the action had been filed, but the Applicant was advised by his counsel, on the application for a new trial, the matter was completed in January 2016. To date Applicant has no documents relating to that action.

The Applicant was informed his case was moving forward to a motion for a new trial up to and including the time the present case was dismissed. No action was taken to prepare the underlying case as the motion for a new trial was to be completed prior to resuming action on the present application. Although the undersigned has found no case law to support his position, the Applicant contends that not preparing the present action for trial was reasonable based on his understanding of the motion for a new trial. The applicant believed the direction from the Court was to wait for the motion for a new trial to be resolved prior to moving forward on the present action. Iowa R. Civ. P 1.944 provides that a case not tried within the stated timeframe will be dismissed unless the plaintiff establishes “satisfactory reasons for want of prosecution” or shows “grounds for continuance.” Iowa R. Civ. P. 1.944(2). *Duder v. Shanks*, 689 N.W.2d 214 (Iowa). As the Applicant was under the impression that another action was pending, which placed this action on hold, it seems his reason for not pursuing the present action is a satisfactory reason for not trying the case within the deadline. If the other action had been successful, the present action would not have been necessary.

## **CONCLUSION**

For the reasons stated above, the appellant respectfully requests the Court to grant further review of this matter, and upon further review reverse the decision of

the Iowa Court of Appeals and the ruling of the District Court and remand with instructions to reinstate.

### **REQUEST FOR ORAL ARGUMENT**

If the Supreme Court of Iowa grants further review, Mr. Villa-Magana respectfully requests to be heard in oral argument.

Respectfully Submitted,

*/s/ Christopher A. Clausen*  
Christopher A. Clausen  
Clausen Law Office  
315 6<sup>th</sup> Street  
Suite 201  
Ames, Iowa 50010  
[chris@cacloia.com](mailto:chris@cacloia.com)  
515-663-9515 phone  
515-663-9517 fax