

IN THE SUPREME COURT OF IOWA
Supreme Court No. 18–1911

ADNAN SAHINOVIC,
Applicant-Appellant,

vs.

STATE OF IOWA,
Respondent-Appellee.

APPEAL FROM THE IOWA DISTRICT COURT
FOR POLK COUNTY
THE HONORABLE SAMANTHA GRONEWALD, JUDGE

APPELLEE’S BRIEF

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STATEMENT OF THE ISSUE PRESENTED FOR REVIEW

- I. Sahinovic’s PCR application challenged his guilty plea. His PCR application was filed more than three years after his original conviction had become final, but it was less than three years after his *Lyle* resentencing. Did the PCR court err in finding this action untimely under section 822.3?**

Authorities

Hill v. United States, 368 U.S. 424 (1968)
Brewer v. Iowa District Court for Pottawattamie County,
395 N.W.2d 841 (Iowa 1986)
Bugley v. State, 596 N.W.2d 893 (Iowa 1999)
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Tindell v. State, 629 N.W.2d 357 (Iowa 2001)
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Iowa Code § 822.2(1)(a)
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ROUTING STATEMENT

The State agrees with Sahinovic's routing statement. This case involves application of settled legal principles and established law. As such, transfer to the Iowa Court of Appeals would be appropriate. *See* Iowa R. App. P. 6.1101(3)(a); App's Br. at 4.

STATEMENT OF THE CASE

Nature of the Case

This is Adnan Sahinovic's appeal from summary disposition of his PCR action, filed more than three years after his actual convictions. In July 2011, he entered guilty pleas to one count of robbery in the second degree, a Class C felony, in violation of Iowa Code section 711.3 (2011), and one count of forgery, an aggravated misdemeanor, in violation of Iowa Code section 715A.2 (2011). Sahinovic's sentence was entered in July 2011 and included the 70% mandatory minimum before parole eligibility that Iowa Code section 902.12(5) prescribed.

On January 24, 2014, Sahinovic filed a motion to correct an illegal sentence that attacked the constitutionality of sentencing him to that 70% mandatory minimum, because he was a juvenile when he committed these crimes. *See* Motion (1/24/14); App. 8. His motion was still pending when *State v. Lyle* was decided on July 18, 2014. *See State v. Lyle*, 854 N.W.2d 378, 400 (Iowa 2014).

Meanwhile, Sahinovic had sought to add some additional claims to his motion to correct an illegal sentence: he wanted to challenge his guilty pleas on grounds that “counsel failed to properly investigate, failed to take depositions, failed to seek any defenses on [his] behalf and failed to advise [him] of any immigration consequences.” *See* Motion to Extend Deadline to Recast Motion (10/6/14), Ex. 2, at 3; App. 11. The district court denied his attempt to recast his motion to correct an illegal sentence to include ineffective-assistance claims or any other claims that did not challenge the legality of the sentence, and it noted that Sahinovic could, “if he chooses, initiate and pursue post-conviction relief in a separate case.” Order (12/1/14); App. 25.

In its ruling on Sahinovic’s motion, the district court applied *State v. Lyle* and found that Sahinovic’s sentence should be corrected to include no minimum term before parole eligibility. *See* Order on Resentencing (4/27/15) at 1–4; App. 28–31. It also reiterated this:

Defendant also challenged his plea. There is no indication he can do so on a motion to correct sentence. The only legal means by which he was allowed to challenge his sentence as part of this criminal case was due to the mandate set forth by the Iowa Supreme Court in *Lyle*. He may be able to challenge his plea by post-conviction relief or other means, but cannot do so as part of this action.

Id. at 5; App. 32. After that, it amended the sentencing order:

The July 5, 2011 sentencing order is amended to remove the mandatory minimum sentence of 70 percent before eligibility for parole. Defendant is sentenced to a total sentence not to exceed ten years, but is eligible for parole as determined by the board of parole. All other terms of the sentencing order shall remain in effect.

Id.; App. 32. Sahinovic appealed, arguing that Iowa should adopt the plain error rule and that the district court should have granted relief based on “his defective plea claim at the resentencing hearing.” *See State v. Sahinovic*, No. 15–0737, 2016 WL 1683039, at *1–2 (Iowa Ct. App. Apr. 27, 2016). The Iowa Court of Appeals rejected his argument for the plain error rule and noted that he did not provide authority that supported any other route for reaching his claims that had attacked the validity of his guilty pleas. *See id.* at *2. Sahinovic’s application for further review was denied and procedendo issued.

Sahinovic filed this PCR action while that appeal was pending. *See* PCR Application (8/12/15); App. 33. The court granted a stay during the appeal. *See* Order Granting Motion (11/17/15); App. 44; Order to Lift Stay (3/13/18); App. 56. Subsequently, the State moved for summary disposition, arguing that “[c]hallenges to [Sahinovic’s] original plea and sentencing are barred by the statute of limitations” in section 822.3. *See* Motion for Summary Judgment (7/19/18) at 4; App. 61. Sahinovic resisted. *See* Resistance (8/23/18); App. 94.

The PCR court granted the motion for summary disposition:

[Sahinovic]’s main argument in this matter is that his trial counsel failed to advise him regarding the risk of deportation prior to the entry of his guilty plea. . . . This argument relates back to events occurring on or before July 5, 2011; however, [Sahinovic] asserts this does not preclude the court from considering his Petition because his conviction was not final until the date of his resentencing in 2015. In making this argument, [Sahinovic] seeks to avoid the dismissal of his Petition as time-barred. In contrast, [the State] asserts [Sahinovic]’s challenges to his original plea and sentencing are barred by the statute of limitation. The court agrees.

On July 5, 2011, [Sahinovic] entered into an *Alford* plea to one count of robbery in the second degree and one count of forgery. The court’s acceptance of [Sahinovic]’s plea constituted a conviction of the highest order and authorized the court to sentence the defendant as though the fact finder returned a guilty verdict. *See State v. Kobrock*, 213 N.W.2d 481, 483 (Iowa 1973). The court’s Order on Resentencing did not vacate or set aside [Sahinovic]’s adjudication of guilt (i.e., the judgment of conviction). *See Kurtz v. State*, 854 N.W.2d 474, 479 (Iowa Ct. App. 2014). Further it is clear that [Sahinovic]’s “resentencing” was not a true resentencing in that the court’s power was limited. [Sahinovic]’s April 24, 2015 “resentencing” does not open the door for him to challenge events occurring on or before July 5, 2011 and; therefore, his Petition is time-barred.

PCR Ruling (10/5/18) at 3–4; App. 98–99.

Sahinovic appeals from that ruling. He argues that his claim is timely because it was filed before three years had elapsed from the date of the order that corrected his sentence under *Lyle* (or from issuance of procedendo on the subsequent appeal from other parts of that order).

Course of Proceedings

Beyond the description already provided, the State generally accepts Sahinovic's description of the relevant procedural history. *See* Iowa R. App. P. 6.903(3); App's Br. at 5–7.

Facts

The underlying facts of the offense and the criminal proceedings are not relevant to the legal issue presented in this appeal. Additional procedural facts will be discussed when relevant.

ARGUMENT

I. **Summary disposition was properly granted. This PCR action was already time-barred before the correction.**

Preservation of Error

In the PCR court’s ruling that granted summary disposition, it considered and rejected Sahinovic’s argument on this point. *See* PCR Ruling (10/5/18); App. 96; PCR Tr. 7:15–8:8. That preserved error. *See Lamasters v. State*, 821 N.W.2d 856, 864 (Iowa 2012).

Standard of Review

“Postconviction relief proceedings are actions at law and are reviewed on error.” *Osborn v. State*, 573 N.W.2d 917, 920 (Iowa 1998). This is also the correct standard for rulings that interpret the statutes creating requirements for post-conviction relief actions. *See, e.g., Castro v. State*, 795 N.W.2d 789, 792 (Iowa 2011); *Harrington v. State*, 659 N.W.2d 509, 519–20 (Iowa 2003).

Merits

When summary disposition is granted in a PCR action, “we examine the record to determine if a genuine issue of fact exists and whether the moving party is entitled to a judgment as a matter of law.” *See Bugley v. State*, 596 N.W.2d 893, 895 (Iowa 1999). In this case, summary disposition was proper because the action was time-barred.

Iowa Code section 822.3 requires PCR claims to be filed within three years of the date when a conviction becomes finalized, which is intended to “limit postconviction litigation in order to conserve judicial resources, promote substantive goals of the criminal law, foster rehabilitation, and restore a sense of repose in our system of justice.” *See Wilkins v. State*, 522 N.W.2d 822, 824 (Iowa 1994) (quoting *State v. Edman*, 444 N.W.2d 103, 106 (Iowa Ct. App. 1989)). Any PCR application filed outside of the applicable three-year limitations period “is time barred unless an exception applies.” *See Harrington*, 659 N.W.2d at 520.

Sahinovic’s argument rests on the definition of “conviction” under section 822.3—he argues that he “was resentenced when the court corrected his illegal sentence” to remove the minimum before parole eligibility. *See App’s Br.* at 9–13. It is true that section 822.3 refers to a conviction “in its technical legal sense, [and] it requires a formal adjudication by the court and the formal entry of a judgment of conviction.” *Daughenbaugh v. State*, 805 N.W.2d 591, 597 (Iowa 2011) (citing *State v. Hanna*, 179 N.W.2d 503, 507–08 (Iowa 1970)). And Sahinovic is also right that a corrected sentence will count as a “final judgment of sentence” for the purpose of enabling an appeal as

of right, which allows review for defects in the resentencing procedure. *See* Iowa Code § 814.6(1)(a); *see also State v. Propps*, 897 N.W.2d 91, 96 (Iowa 2017). But that does not mean that any corrected sentence restarts the time-bar under section 822.3, nor does it let a claimant re-open PCR litigation where the statute of limitations had already barred those claims and finality had already taken hold. When there is a judgment of conviction and sentence, and the original sentence is subsequently corrected, that does not affect the original *conviction*—even under the definitional analysis in *Daughenbaugh*.

Sahinovic’s approach to the statutory text makes some sense when considering section 822.3 in a vacuum. *See* App’s Br. at 9–13. He is right that a “conviction” under chapter 822 requires a judgment, and that “final judgment” usually refers to imposition of a sentence. *See Daughenbaugh*, 805 N.W.2d at 597. But section 822.2 enables PCR challenges aimed at multiple targets, and many of its provisions differentiate between them: claimants can assert “[t]he conviction *or* sentence was in violation of the Constitution of the United States or the Constitution or laws of this state.” *See* Iowa Code § 822.2(1)(a) (emphasis added); *accord* § 822.2(1) (describing remedy for “[a]ny person who has been convicted of, or sentenced for, a public offense”);

§ 822.2(1)(g) (noting that PCR claimants can allege “[t]he conviction or sentence is otherwise subject to collateral attack” on any grounds); § 822.2(2) (explaining PCR actions do not substitute for “direct review of the sentence or conviction”). This disjunctive language suggests there must be room for courts to differentiate between challenges to convictions and challenges to sentences—indeed, failure to draw any distinction at all would result in surplusage. *See* Iowa Code § 4.4(2).

That language stands in contrast to section 822.3, which starts a limitations period from “the date the conviction or decision is final”—with no mention of the date of the sentencing. *See* Iowa Code § 822.3. This suggests that issuing an order that corrects a prior sentencing order does not restart the limitations period—that three-year period runs from the date of conviction, not sentencing or resentencing.

Daughenbaugh held that a deferred judgment does not count as a “conviction” under chapter 822, because “an adjudication of guilt does not occur when the defendant receives a deferred judgment.” *See Daughenbaugh*, 805 N.W.2d at 597–98 (citing *State v. Farmer*, 234 N.W.2d 89 (Iowa 1975)). This hints at the principle that resolves this challenge: the initial judgment in a criminal prosecution requires and contains both conviction and sentence, but fixing an illegal sentence

will require the court to enter a new final judgment *of sentence*—and not a new final judgment *of conviction*. An illegal sentence will rarely affect the finality of the conviction itself. When it does not, it cannot restart the limitations period for PCR claims attacking the conviction.

For any PCR claim alleging that the *original* conviction is in violation of the state/federal constitution (like Sahinovic’s), “the date the conviction or decision is final” in section 822.3 can only refer to the date when the *original* judgment of conviction and sentence was entered and became enforceable. *See* Iowa Code § 822.3. Conversely, if a PCR claim targets the resentencing proceedings, the claimant has three years from the date when the corrected sentence became final. This avoids unfairness because all claimants get the same amount of time to bring PCR claims to challenge their underlying proceedings, with no windfall for claimants whose sentences contain illegalities.

A motion to correct illegal sentence may be filed at any time, even long after section 822.3 would bar PCR applications as untimely. *See Veal v. State*, 779 N.W.2d 63, 64–65 (Iowa 2010). But that vehicle cannot be used to bypass section 822.3 to bring claims that attempt to “re-examine errors occurring at the trial or other proceedings prior to the imposition of the sentence.” *State v. Bruegger*, 773 N.W.2d 862,

872 (Iowa 2009) (quoting *Hill v. United States*, 368 U.S. 424, 430 (1968)); accord *Jefferson v. Iowa District Court for Scott County*, No. 16–1544 (Iowa Apr. 12, 2019); *Tindell v. State*, 629 N.W.2d 357, 360 (Iowa 2001); *State v. Wilson*, 294 N.W.2d 824, 825 (Iowa 1980). Adopting Sahinovic’s reading would invert that principle, and allow untimely PCR claims to piggy-back on unrelated motions to correct illegal sentences—even if the only corrections are *de minimis*. See, e.g., *State v. Phipps*, No. 17–0544, 2018 WL 540438, at *1 (Iowa Ct. App. Jan. 24, 2018) (finding district court imposed an illegal sentence by assessing a \$125 law enforcement initiative surcharge, and also by assessing a \$10 D.A.R.E. surcharge). If claimants could use that type of minor illegality to sneak the camel’s nose under the tent, then it would be impossible to rely on section 822.3 to further the “legitimate interest in preventing the litigation of stale claims” and to ensure that litigation targeting underlying prosecutions “end[s] within reasonable time limits.” See *Davis v. State*, 443 N.W.2d 707, 710 (Iowa 1989); see also *Wilkins*, 522 N.W.2d at 824 (quoting *Edman*, 444 N.W.2d at 106). This Court should reject such loopholes. Sahinovic’s present attempt to exploit a corrected sentence to bring untimely PCR claims should fail, just as his last attempt did. See *Sahinovic*, 2016 WL 1683039, at *1–2.

When confronted with PCR claims raised after a sentence has been corrected, a PCR court should ask: when did this specific claim under section 822.3 arise? Here, because Sahinovic is alleging that he received ineffective assistance in his plea proceedings, this claim did not arise at the pronouncement of a new, corrected sentence—rather, it arose at the initial entry of judgment of conviction and sentence, which made Sahinovic potentially deportable. *See* PCR Application (8/12/15); App. 33. The answer would change if Sahinovic raised a PCR challenge to some error introduced by the resentencing order: the limitations period for that claim would run from the entry of his corrected sentence or from the conclusion of his appeal from the order imposing it. *See* Iowa Code § 822.3; *accord Vossoughi v. Polaschek*, 859 N.W.2d 643, 652 (Iowa 2015) (“[T]he statute of limitations cannot sensibly be applied in a way that forces parties to file suit before an actual injury has been sustained on penalty of losing the opportunity to file a claim at all.”). But if the claim could have been brought more than three years ago, then the limitations period ran before Sahinovic’s sentence was corrected—and section 822.3 will only resuscitate those expired claims if they “could not have been raised within the applicable time period.” *See* Iowa Code § 822.3.

Sahinovic claims that he “did not have a ‘conviction’ within the meaning of the postconviction relief statute until a final order was issued on his motion granting his correction of illegal sentence.” *See* App’s Br. at 14. But that cannot be true—Sahinovic was convicted and sentenced on July 5, 2011, and he has been incarcerated accordingly (and even with counsel, he did not file any petition for habeas relief). For three years, Sahinovic had an opportunity to raise PCR claims—but he did not. Because Sahinovic’s claims *were* previously available, section 822.3 intends to bar them. *See Wilkins*, 522 N.W.2d at 824 (quoting Iowa Code § 822.3) (“Section 822.3 creates an exception for untimely filed applications if they are based on claims that ‘could not’ have been previously raised because they were not available.”). This aligns with the likely result under 822.8, if Sahinovic *had* filed a prior PCR application: the correction of his sentence would not exempt him from the rule that his second PCR application could not raise grounds that were omitted from his first PCR application (unless Sahinovic had omitted those claims “for sufficient reason”). *See* Iowa Code § 822.8. Sahinovic’s new carve-out for untimely PCR claims that *were* available before his sentence was corrected would contravene the unambiguous legislative intent that animates both section 822.3 and section 822.8.

At best, correcting the sentence imposes a *new* final judgment that may be the target of PCR actions—but it cannot restart the clock for any claims that could target the original conviction or sentence, especially if those claims have already lapsed into finality. The purpose of the PCR statute of limitations is “to reduce injustices occurring as a result of lost witnesses for (a) resolution of factual disputes arising in the postconviction proceedings and (b) the retrial of cases in which convictions are overturned.” *See Brewer v. Iowa District Court for Pottawattamie County*, 395 N.W.2d 841, 843 (Iowa 1986). Both of those valid purposes would be undermined by Sahinovic’s reading, which re-opens entire cases for PCR litigation after decades of repose.

Sahinovic’s challenge is especially dangerous after *Lyle* and *Sweet* ordered the correction of a plethora of now-illegal sentences—his position would wipe away the time-bar effect of section 822.3 for every long-since-convicted defendant who has been resentenced, for reasons unrelated to the impetus for resentencing them. *See State v. Sweet*, 879 N.W.2d 811, 839 (Iowa 2016); *Lyle*, 854 N.W.2d at 403. This jeopardizes those long-dormant convictions for serious crimes, when a motion to correct an illegal sentence is supposed to be strictly limited to excising latent illegality in the sentence—and nothing else.

A challenge to the legality of a sentence—even a challenge of constitutional magnitude—does not affect the enforceability of the underlying conviction. All such a challenge does is affect the enforceability of the particular sentence. In such a case, the defendant is entitled to be resentenced appropriately under existing law. While Iowa law permits a claim of an illegal sentence to be raised at any time—even on a collateral attack—there is no Iowa authority to suggest that a claim of an illegal sentence can be used to collaterally attack the conviction upon which an illegal sentence is based.

Kurtz v. State, 854 N.W.2d 479 (Iowa Ct. App. 2014); accord *State v. Hoeck*, No. 11–1228, 2013 WL 3830121, at *3 (Iowa Ct. App. July 24, 2013) (rejecting claim that Hoeck was entitled to be present or had any right to make a statement in mitigation of punishment when the district court entered an order that converted his LWOP sentence to a life-with-parole-eligibility sentence after *Graham* and *Miller* because “[t]he court did not resentence Hoeck; it corrected his sentence by striking one provision”), *aff’d by State v. Hoeck*, 843 N.W.2d 67, 72 (Iowa 2014) (“We will let the court of appeals decision stand as our final decision on all other issues raised by Hoeck.”). But if Sahinovic prevails, then claims asserting an illegality in the sentence *will* affect the enforceability of the underlying conviction, by reopening the door to PCR actions challenging its validity. Sahinovic’s proposal would do what the Iowa Supreme Court sought to prevent in *Tindell*: “it would

open up a virtual Pandora’s box of complaints with no statutorily prescribed procedures for their disposition nor any time limits for their implementation” by permitting the use of motions to correct illegal sentences as vehicles for stale claims that “encompass redress for underlying procedural defects.” *See Tindell*, 629 N.W.2d at 360.

One thing is clear from *Daughenbaugh*: “The ambiguous use of the term ‘conviction’ in [chapter 822] must be read *in pari materia*” with other provisions in chapter 822 that would be affected by this choice between any alternative meanings. *See Daughenbaugh*, 805 N.W.2d at 599 (citing *State v. Nail*, 743 N.W.2d 535, 541 (Iowa 2007)). Sahinovic’s proposal inserts the word “sentence” into section 822.3, when the legislature specifically omitted it from that section (and included it in disjunctive phrasing elsewhere). *Compare* Iowa Code § 822.2, *with* Iowa Code § 822.3; *accord* *Staff Mgmt. v. Jimenez*, 839 N.W.2d 640, 649 (Iowa 2013) (quoting *Meinders v. Dunkerton Cmty. Sch. Dist.*, 645 N.W.2d 632, 637 (Iowa 2002)) (“[L]egislative intent is expressed by omission as well as by inclusion, and the express mention of one thing implies the exclusion of others not so mentioned.”). And it undermines a clear legislative intent to promote finality and repose in criminal convictions and PCR actions. Thus, it should be rejected.

CONCLUSION

Sahinovic’s suggestion would allow offenders who are entitled to correction of sentences to do what Iowa cases expressly prohibit: use a motion to correct an illegal sentence to “reassert or raise for the first time constitutional challenges to their underlying conviction.” *See Bruegger*, 773 N.W.2d at 871; *accord Jefferson*, 2019 WL 1574664, at *5. The State respectfully requests this Court reject his challenge and affirm the PCR court’s ruling granting summary disposition.

REQUEST FOR NONORAL SUBMISSION

This case should be set for nonoral submission. In the event argument is scheduled, the State asks to be heard.

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:

- This brief has been prepared in a proportionally spaced typeface using Georgia in size 14 and contains **3,592** words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).

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