IN THE SUPREME COURT FOR THE STATE OF IOWA
NO. 18-1911

ADNAN SAHINOVIC,
Applicant-Appellant

vs.

STATE OF IOWA,
Respondent-Appellee.

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

APPLICANT-APPELLANT'S FINAL REPLY BRIEF AND REQUEST FOR ORAL ARGUMENT

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CERTIFICATE OF FILING AND SERVICE

I hereby certify that I e-filed the Applicant-Appellant's Final Reply Brief with the Electronic Document Management System with the Appellate Court on the 3rd day of June 2019.

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I hereby certify that on the 3rd day of June 2019, I did serve the Applicant-Appellant's Final Reply Brief on Appellant, listed below, by mailing one copy thereof to the following Plaintiff-Appellant:

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I. MR. SAHINOVIC WAS WITHIN THE THREE-YEAR TIME LIMITATION

The State argues for an interpretation of the statutory text that has no support in either the text itself, or in the Iowa Supreme Court's various decisions interpreting the statutory text. The State acknowledges that Mr. Sahinovic is correct that a conviction requires judgment, that final judgment usually refers to imposition of a sentence, that a corrected sentence will count as a final judgment of sentence for the purpose of an appeal, and that 822.3 refers to a conviction in its technical legal sentence, requiring a formal adjudication by the court and the formal entry of a judgment of conviction. State's Br. at 13-14. The State even admits that when reading 822.3, it makes sense when reading the statutory text.

The State highlights several different portions of Iowa Code Chapter 822 which use both the terms "conviction" or "sentence" in order to support the State's argument that the statute does not allow a resentenced defendant to challenge his or her underlying conviction within three years of the new resentencing date. The problem with the State's argument is that all of these various portions of the statute were in front of the Iowa Supreme Court when the court decided that "the statute uses the term 'conviction' in its technical sense, namely, to require adjudication and the entry of judgment."

Daughenbaugh v. State, 805 N.W.2d 591, 599 (Iowa 2011). Iowa Code § 822.4 lists the pleading requirements of the statute, and the Iowa Supreme Court reasoned that because the applicant must state the date of the entry of the judgment complained of there must be an entry of a judgment of conviction and "conviction" is to be read in the technical legal sense. Id. As an aside, Mr. Sahinovic's petition lists the entry of judgment as April 27, 2015, his resentencing date. (App. 78).

The State argues that there must be room for courts to differentiate between challenges to convictions and challenges to sentences. State's Br. at 14-15. Maybe that is so, but it does not change the relevant statute here, which is 822.3, and requires that "applications 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." The phrase at issued in Daughenbaugh was "Any person who has been convicted of, or sentenced for, a public offense." The court still found that "conviction" in the postconviction relief statute refers strictly to the technical legal sense requiring adjudication and entry of judgment, and the applicant in Daughenbaugh was not allowed to proceed with his postconviction relief challenge. Daughenbaugh v. State, 805 N.W.2d 591, 599 (Iowa 2011). If the court must differentiate between challenges to the illegality of a particular "conviction" or to a particular

sentence, it can do so via the pleading requirements of Iowa Code § 822.4, which requires the applicant to "specifically set forth the grounds upon which the application is based, and clearly state the relief desired."

The States argues that since 822.3 has no mention of sentencing, it means that issuing an order correcting a prior sentencing order does not restart the limitations period, and the three-year period runs from the date of conviction, not sentencing or resentencing. State's Br. at 15. This argument is a direct contradiction of Daughenbaugh. The "conviction" required by statute is not the guilty plea as the State is conceiving of it, but rather "the statute uses the term 'conviction' in its technical sense, namely, to require adjudication and the entry of judgment." Daughenbaugh v. State, 805 N.W.2d 591, 599 (Iowa 2011).

The State argues that "fixing an illegal sentence will require the court to enter a new final judgment *of sentence*—and not a new final judgment *of conviction*." See State's Br. at 15-16. The State is trying to parse out words where the meaning of the words has already been decided. The court has already decided that "the statute uses the term 'conviction' in its technical sense, namely, to require adjudication and the entry of judgment." Daughenbaugh v. State, 805 N.W.2d 591, 599 (Iowa 2011). When Iowa Code § 822.3 says "conviction" it means both conviction and sentencing. The State

is confusing the term "conviction" in the statute for the term "conviction" in the popular sense, meaning only "establishment of guilt independent of judgment and sentence." See Daughenbaugh v. State, 805 N.W.2d 591, 597 (Iowa 2011). A successful resentencing hearing produces a new entry of judgment. See State v. Propps, 897 N.W.2d 91, 96 (Iowa 2017).

The State claims that the State's rule avoids unfairness because all claimants will get the same amount of time to bring PCR claims to challenge their underlying proceedings and there will be no windfall for claimants whose sentences are illegal. First, being forced to serve an illegal sentence for a period of time is no "windfall" to anyone. Second, the amount of time to challenge criminal convictions has always been subject to various time constraints for different defendants. Simple misdemeanor defendants only have ten days to challenge a conviction as of right on appeal, while other defendants have 30 days. See Iowa R. Cr. P. 2.73(1); Iowa R. App. P. 6.101. Defendants can be eligible or not eligible for some form of relief after conviction based on whether the individual received a deferred judgment, the individual's probation status, the advice the individual received from counsel, and the individual's immigration status, but none of these distinctions have changed the court's interpretations of the statutes. See Mendoza v. State, 2017 WL 4050111, at *3 (Iowa Ct. App. 2017).

It is also not clear why the State should be protected from this "windfall" and the defendants should be punished. In State v. Woody, 613 N.W.2d 215, 218 (Iowa 2000), the defendant had a valid plea but an illegal sentence. The court only corrected the illegal sentence and upheld the plea, even if the State wanted to reinstate original charges. Id. The court ruled that "the State should bear the consequences of a decision that was based on the State's wrong assumption that the habitual-offender statute applied." Id. The State should bear the consequences of later postconviction relief applications if the State is not ensuring that the court is entering correct and legal sentences.

The State claims that Mr. Sahinovic's reading would invert "legitimate interest in preventing the litigation of stale claims." State's Br. at 17. But to determine legislative intent, the court looks to the language chosen by the legislature, and not what the legislature might have said. Schadendorf v. Snap-On Tools Corp., 757 N.W.2d 330, 337 (Iowa 2008). Even if an outcome is not the actual intent of the legislature, if it is the intent expressed by the words the legislature chose to use, the court must follow the statute. Noll v. Iowa Dist. Ct. for Muscatine Cty., 919 N.W.2d 232, 236 (Iowa 2018). The legislature could have defined the term "conviction" or they could have broken up when the statute of limitations for various claims run out. They could have banned claims challenging the guilty plea three years after the guilty plea, or claims

challenging the trial three years after the trial, or claims challenging sentencing three years after the sentencing, or claims challenging resentencing three years after the resentencing. That is not when they defined the point for starting the statute of limitations. The legislature made the starting point for the statute of limitations "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. Mr. Sahinovic's petition lists the entry of judgment as April 27, 2015, his resentencing date. (08.23.2018 Amended Application for Postconviction Relief in Polk County Case No. PCCE078744). From there, the court can see whether the Petition was timely filed three years after that date. The court would have to engage in significant judicial modification, which the appellate courts are precluded from engaging in, to accept the State's interpretation of the statute of limitations. See City of Asbury v. Iowa City Dev. Bd., 723 N.W.2d 188, 197 (Iowa 2006).

The State refers to Mr. Sahinovic's argument as a "loophole." Perhaps it is not what the State envisioned would happen when it won Daughenbaugh v. State, 805 N.W.2d 591 (Iowa 2011). But Mr. Sahinovic's interpretation is based upon the Iowa Supreme Court's interpretation of the word "conviction" in Iowa Code § 822.3 and the plain language used in the statute. It is not a "loophole" to take the legislature at their word on when a statute of limitations

ends. If the legislature does not like the result of the case, they are free to amend the postconviction relief statute after the decision in this case.

The State claims that the court should ask is "when did this specific claim under section 822.3 arise?" See State's Br. at 18. This is incorrect. The court should ask "when is the conviction or decision final or the date the writ of procedendo is issued?" because that is the statutory language of 822.3. The court can do this by looking at the pleadings from the pleading requirements of 822.4, which require the applicant to state the date of the entry of the judgment complained of there must be an entry of a judgment.

The State claims that "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." State's Br. at 19. This is incorrect. The unambiguous legislative intent of 822.3 is that "[a]ll other applications 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."

If the legislature wanted the statute of limitations to start running at a different time other than when the conviction or sentence is final, as the State claims, it would set different time limitations for different claims. For example, if an applicant wants to make the claim that their "reduction of

sentence pursuant to sections 903A.1 through 903A.7 has been unlawfully forfeited" under Iowa Code § 822.2(1)(f), then they have a different statute of limitations, and must file the application "with the clerk of the district court of the county in which the applicant is being confined within ninety days from the date the disciplinary decision is final." Iowa Code § 822.3. The statute does not give a different time frame for challenging the guilty plea, even though the guilty plea might take place long before the sentencing. "[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." Staff Mgmt. v. Jimenez, 839 N.W.2d 640, 649 (Iowa 2013).

It is hard to see how Iowa Code § 822.8 expresses intent for the State's interpretation. That section bars second PCR applications from raising grounds that were omitted from the first PCR application unless those claims were not included "for sufficient reason." The obvious reason behind this rule is to preserve judicial resources from adjudicating multiple PCR petitions, when the applicant could have brought all claims for relief the first time. This is Mr. Sahinovic's first PCR.

The State claims that "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." State's Br. at 20. This interpretation is at odds with the plain language of Iowa Code § 822.3, which only mentions the "clock" as starting at the final judgment of sentence. The State is asking the court to add additional words to the statute to better fit the State's purposes.

The State also argues that Sahinovic's interpretation of the statute is "dangerous" after State v. Lyle, 854 N.W.2d 378, 403 (Iowa 2014) and State v. Sweet, 879 N.W.2d 811 (Iowa 2016) produced many illegal sentences, once thought legal, that needed to be corrected. State's Br. at 20. It would be odd for the court to not adhere to its previous construction of the statute because of a previous decision granting justice to juvenile defendants. The court did not fear that additional proceedings that would be caused by the Lyle decision. State v. Lyle, 854 N.W.2d 378, 403 (Iowa 2014). The court recognized that the the process would "likely impose administrative and other burdens, but burdens our legal system is required to assume. Individual rights are not just recognized when convenient. Our court history has been one that stands up to preserve and protect individual rights regardless of the consequences." Id.

Regardless, the court has not feared the filing of additional potentially meritorious postconviction relief claims before in order to preserve justice. Allison v. State, 914 N.W.2d 866 (Iowa 2018) essentially allowed second

postconviction relief claims past the time bar, but the court did "not fear the deluge. Lawyers must have a good-faith basis for filing a pleading, and this principle applies in postconviction proceedings. Further, our court system is fully capable of quickly disposing of claims that have no basis in law or fact." Allison v. State, 914 N.W.2d 866, 891 (Iowa 2018). A PCR applicant years after his case is done usually has the same difficulties that the State does in producing witnesses (even his or her trial attorney) and recreating files that may be long lost.

The State argues that Sahinovic's proposal inserts the word "sentence" into section 822.3, when the legislature specifically omitted it from that section. State's Br. at 22. While Mr. Sahinovic does want to include the word "sentence" in section 822.3, that is because the Iowa Supreme Court has already specifically said that it is included in the word "conviction" of section 822.3. The Iowa Supreme Court has already said that section 822.3 "uses the term 'conviction' in its technical sense, namely, to require adjudication and the entry of judgment." Daughenbaugh v. State, 805 N.W.2d 591, 599 (Iowa 2011). It is the State that would like to excise that interpretation and return the word "conviction" to return the general and more popular definition of "the establishment of guilt independent of judgment and sentence." See id. at 597.

CONCLUSION

Mr. Sahinovic 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. The State, fearing the consequences of the very interpretation that it argued for in Daughenbaugh v. State, 805 N.W.2d 591 (Iowa 2011), is asking the court to read terms and add words into a statute that clearly sets the statute of limitations to start for after a conviction has begun. Mr. Sahinovic requests the court reverse the decision of the district judge granting summary dismissal of his application for postconviction relief and remand the case back to the district court for trial on the merits.

ORAL ARGUMENT NOTICE

Counsel requests oral argument.

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CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMITATION, TYPEFACE REQUIREMENTS, AND TYPE STYLE REQUIREMENTS

This brief complies with the type-volume limitation of Iowa R. App. P. 6.903(1)(g)(1) (no more than 14,000 words) because this brief contains 2,587 words, excluding the parts of the brief exempted by Rule 6.903(1)(g)(1), which are the table of contents, table of authorities, statement of the issues, and certificates.

This brief complies with the typeface requirements of Iowa R. App. P. 6.903(1)(e) and the type-style requirements of Iowa R. App. P.6.903(1)(f) because this brief has been prepared in a proportionally spaced typeface using Microsoft Office Word 2010 in font size 14, Times New Roman.

/S/ Alexander Smith
Dated: June 3, 2019
Alexander Smith