

**IN THE COURT OF APPEALS OF IOWA**

No. 2-536 / 10-1900  
Filed August 22, 2012

**STATE OF IOWA,**  
Plaintiff-Appellee,

**vs.**

**ERIC FITZGERALD LEWIS,**  
Defendant-Appellant.

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Appeal from the Iowa District Court for Polk County, Richard G. Blane II,  
Judge.

Eric Lewis appeals from the district court's denial of his miscellaneous pro se filings, arguing the court should have treated them as an application for postconviction relief. **AFFIRMED.**

Susan R. Stockdale, Des Moines, for appellant.

Thomas J. Miller, Attorney General, Julie J. Busanmass, Assistant Attorney General, John Sarcone, County Attorney, and Jim Ward, Assistant County Attorney, for appellee.

Considered by Vogel, P.J., and Tabor and Bower, JJ.

**TABOR, J.**

Four and one-half years after his extradition to Nebraska to face sexual abuse and robbery charges, Eric Lewis filed a series of documents in Polk County District Court, apparently challenging the extradition. The district court treated the filings as a request for a writ of habeas corpus and denied relief on the grounds it lacked jurisdiction over the matter.

In this appeal, Lewis claims the court should have considered the documents to be an application for postconviction relief (PCR) and provided him notice of its intent to dismiss.<sup>1</sup> Because Lewis's pro se filings cannot properly be construed as an application for PCR, no such notice was required. We affirm.

**I. Background Facts and Proceedings.**

On December 25, 2005, the Polk County Attorney charged Lewis with second-degree theft and being a fugitive from justice. The prosecution later added charges for two counts of inmate assault with bodily fluids. In February 2006, on the county attorney's motion, the district court dismissed the charges without prejudice. That same month, then Governor Thomas J. Vilsak signed an order to extradite Lewis to Nebraska to face unrelated charges of first-degree sexual assault and robbery.

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<sup>1</sup> After this case was submitted to this court, Lewis filed a pro se brief with attachments and requested to be heard in oral argument. Because his brief is untimely, it will not be considered. See Iowa R. App. P. 6.901(2)(a) (stating that any pro se supplemental brief or designation filed more than fifteen days after service of the proof brief filed by the defendant's counsel will not be considered by the court). Furthermore, we decline Lewis's request to present oral argument because the case has been submitted to this court without oral argument.

In July 2010, while an inmate in Nebraska, Lewis began sending letters to the Polk County clerk of court asking for information and assistance concerning his extradition from Iowa to Nebraska. Lewis filed pro se documents captioned: "Complaint"; "Petition Under 28 U.S.C. § 2254 for Writ of Habeas Corpus by a Person in State Custody"; "Application for Writ of Habeas Corpus (RE: Revocation of Governor's Warrant)"; "Motion for Revocation Temporary Custody of Nebraska Governor Requisition Warrant for Fugitive from Justice Because of Corruption and Failure to Release Defendant of [sic] Custody in 180 Days (RE: Fugitive From Justice For 2 Cts of Rape & Robbery)"; "Motion for Evidentiary Hearing"; "Motion to Set for Habeas Corpus Hearing and Date of Defendant Request to Revocate [sic] Nebraska Governor's Request for Temporary Custody Extradiction [sic] of Probably Cause Warrant and Extra-diction [sic]"; Motion for Iowa Polk County Judge Bernard Shaw to Request Douglas County Attorney and Public Defender for the Inmate Status Certificate in the Extradition Agreement [sic] Allowing Eric Lewis to Return to Nebraska on a Governors Warrant"; "Motion to Set for Habeas Corpus Hearing"; "Motion to Appoint Counsel for Standbye [sic] Counsel for Revocation Hearing of Nebraska Governor Warrant"; "Courts Brief"; and "Praecipe Summons." The substance of the filings concerned his extradition to Nebraska and subsequent criminal trial in that state.

On October 20, 2010, the district court entered an order denying all of Lewis's requests. The court determined it had no jurisdiction to consider a habeas corpus action for the Nebraska convictions and no personal jurisdiction over the named defendants, all of whom are Nebraska residents, in any 42

U.S.C. section 1983 claims Lewis was making. The court also found any challenge to the 2006 order honoring the extradition request was not timely appealed to the Iowa Supreme Court and, therefore, could not be considered.

Lewis filed a document captioned, “Motion to Redress the Court Re: Extradition Habeas Corpus Proceeding, Revocation or Nebraska Governor’s Warrant Requisition, and Iowa Governor Arrest Warrant.” One week later, the district court received additional documents from Lewis captioned, “Notice of Appeal,” “Praecipe Transcripts,” “Motion to Prepare the Bill of Exceptions,” “Application Motion [sic] for Leave to Proceed In Forma Pauperis,” and “In Forma Pauperis Affidavit.” The district court treated the “Motion to Redress” as a motion to reconsider, which it denied in a November 4, 2010 order. The court treated the remaining filings as a timely notice of appeal.

## **II. Scope and Standard of Review.**

We review the district court’s orders for the correction of errors at law. Iowa R. App. P. 6.907; *see also Montgomery v. Wells*, 708 N.W.2d 704, 707 (“Issues of the jurisdiction, authority, and venue of the district court are legal issues reviewed on error.”). We are not bound by the district court’s application of legal principles or its conclusions of law. *Trobaugh v. Sondag*, 668 N.W.2d 577, 580 (Iowa 2003).

## **III. Analysis.**

On appeal, Lewis is represented by counsel who contends the district court should have treated the pro se filings as an application for PCR. Because the district court is required to give notice of its intent to dismiss a PCR action,

Iowa Code § 822.6 (2009), and the court gave no such notice here, Lewis argues the court erred as a matter of law. He asks us to reverse and remand the case to the district court. See *Dodd v. State*, 232 N.W.2d 472, 474 (Iowa 1975) (noting failure to provide notice of intention to dismiss an application for PCR requires reversal and a remand to allow the applicant an opportunity to respond to the court's intended dismissal, not a hearing on the merits).

Although Lewis never labeled any of his filings as an application for PCR, he was not required to do so under Iowa's notice-pleading rules. See Iowa R. Civ. P. 1.402(2) ("No technical forms of pleadings are required."). Our rules of civil procedure provide for liberal construction of motions and pleadings. *Werner's Inc. v. Grinnell Mut. Reins. Co.*, 477 N.W.2d 868, 870 (Iowa Ct. App. 1991). But Iowa Code section 822.4 sets forth specific requirements of a PCR application: "The application shall identify the proceedings in which the applicant was convicted, give the date of the entry of the judgment of conviction or sentence complained of, specifically set forth the grounds upon which the application is based, and clearly state the relief desired." Lewis cannot identify the date of judgment entry because all charges brought against him in Iowa were dismissed. See *Daughenbaugh v. State*, 805 N.W.2d 591, 599 (Iowa 2011) (holding the term "conviction" in the Iowa PCR statute must be based upon an underlying criminal judgment).

Nor can the relief requested be afforded under chapter 822.<sup>2</sup> Lewis challenges his 2006 extradition to Nebraska. Under the Uniform Criminal Extradition Act, the proper way to challenge the legality of an arrest under a governor's extradition warrant is to apply for a writ of habeas corpus. Iowa Code § 820.10; *State v. Iowa Dist. Ct.*, 500 N.W.2d 51, 53 (Iowa 1993).

We conclude Lewis's filings cannot be considered an application for PCR. Accordingly, the district court was not required to provide him with notice of its intent to dismiss the action. Finding no error, we affirm.

**AFFIRMED.**

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<sup>2</sup> A postconviction relief action is for those convicted of a public offense who claim the following:

- a. The conviction or sentence was in violation of the Constitution of the United States or the Constitution or laws of this state.
- b. The court was without jurisdiction to impose sentence.
- c. The sentence exceeds the maximum authorized by law.
- d. There exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice.
- e. The person's sentence has expired, or probation, parole, or conditional release has been unlawfully revoked, or the person is otherwise unlawfully held in custody or other restraint.
- f. The person's reduction of sentence pursuant to sections 903A.1 through 903A.7 has been unlawfully forfeited and the person has exhausted the appeal procedure of section 903A.3, subsection 2.

Iowa Code § 822.2.