

IN THE COURT OF APPEALS OF IOWA

No. 2-656 / 11-0334
Filed March 13, 2013

LEE MICHAEL CASTILLO,
Applicant-Appellee,

vs.

STATE OF IOWA,
Respondent-Appellant.

Appeal from the Iowa District Court for Polk County, Robert B. Hanson,
Judge.

An applicant appeals the district court's order denying postconviction
relief. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and Shellie L. Knipfer, Assistant
Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Thomas W. Andrews (until
withdrawal) and Kevin Cmelik, Assistant Attorneys General, John P. Sarcone,
County Attorney, and Stephanie L. Cox, Assistant County Attorney, for appellee.

Considered by Vogel, P.J., and Danilson and Mullins, JJ. Tabor, J., takes
no part.

VOGEL, P.J.

A postconviction relief applicant, Lee Castillo, appeals the district court's denial of his application for postconviction relief. The district court determined *Padilla v. Kentucky*, 130 S. Ct. 1473 (2010) was not retroactive and therefore Castillo's application was denied. In *Padilla*, the Supreme Court of the United States held the Sixth Amendment requires an attorney for a criminal defendant to provide advice about the risk of deportation arising from entering a guilty plea. The Supreme Court recently determined "under the principles set out in *Teague v. Lane*, 489 U.S. 288 (1989), *Padilla* does not have retroactive effect." *Chaidez v. United States*, ___ S. Ct. ____, 2013 WL 610201 (2013) (holding *Padilla*'s consideration of a "threshold question" of whether "advice about deportation [was] 'categorically removed' from the scope of the Sixth Amendment right to counsel because it involved only a 'collateral consequence' of a conviction, rather than a component of the criminal sentence" announced a new rule of law).

We therefore affirm the district court's denial of Castillo's application for postconviction relief because *Padilla* is a new rule and therefore only applicable to cases on direct review. Under the status of the law at the time of Castillo's plea, his counsel had no affirmative duty to advise him about the risk of deportation and therefore was not ineffective. We affirm the district court, pursuant to Iowa Court Rule 21.29(1)(c), (e).

AFFIRMED.