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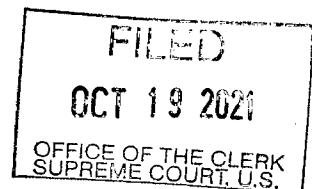
IN THE SUPREME COURT OF THE UNITED STATES

TERM, 2021

Chad Mr. Enderle - Petitioner,

Vs.

State of Iowa - Respondents.



PETITION FOR WRIT OF CERTIORI

Pursuant to 28 U.S.C. 1257(a), Petitioner request the U.S. Supreme Court to
Review the Iowa Supreme Courts conflicting constitutional decisions

RESPECTFULLY SUBMITTED,

Chad L. Enderle

Mr. Chad Enderle I/I # 6643402
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QUESTIONS PRESENTED

- 1) Do the federal Supreme Court cases issued subsequent to the Iowa cases determining the retroactive availability to *Heemstra* require the Iowa law to apply a full retroactive availability to those appeals still pending?
- 2) Do the federal Supreme Court cases issued subsequent to the Iowa cases determining whether the *Heemstra* relief “could have been raised” require Iowa law to deny statute of limitation defenses to those appeals still pending?

PARTIES TO THE PROCEEDINGS

The caption contains the names of all parties to the proceedings.

DIRECTLY RELATED PROCEEDINGS

- 1) Enderle v. State of Iowa, District Court Case# PCCE128166, Post-Conviction Relief (2018) (Summarily Dismissed June 18, 2018).
- 2) Enderle v. State of Iowa, Appeal Case No.20-0259, Denied July 21, 2021
- 3) Enderle v. State of Iowa, Case No. 20-0259, Petition for Further Review, September

14, 2021

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APPENDIX B: Order Denying Appeal, Iowa Appellant Court, Appeal Case# 20-0259, July 21, 2021.

APPENDIX C: Order Denying Further Review. Iowa Supreme Court, Appeal Case# 20-0259, September 14, 2021.

APPENDIX D: Enderle v. State of Iowa, District Court Case# PCCE128166, Filed October 17, 2016.

APPENDIX E: Enderle v. State of Iowa, Appeal Case# 20-0259, Filed July 17, 2020.

APPENDIX F: Enderle v. State of Iowa, Appeal Case# 20-0259, Filed August 10, 2021.

TABLE OF AUTHORITIES

State Cases

DeVoss v. State, 648 N.W. 2d56 (Iowa 2002)

Enderle v. State, 847 N.W. 2d 235, Table Iowa App. 2014 #12-1635, Mar 12, 2014.

Everett v. State, 789 N.W. 2d 151 (Iowa 2010)

Goosman v. State, 764 N.W. 2d 539 (Iowa 2009)

Harrison v. State, 659 N.W. 2d 509 (Iowa 2003)

Nguyen v. State (Nguyen I), 829 N.W. 2d 183 (Iowa 2013)

Nguyen v. State (Nguyen II), 878 N.W. 2d 744 (Iowa 2016)

State v. Beeman, 315 N.W.2d at 777(Iowa 1982)

State v. Enderle, 745 N.W. 2d 438 (Iowa 2007)

State v. Heemstra, 721 N.W. 2d 549 (Iowa 2006)

State v. Robinson, 618 N.W.2d 306 (Iowa 2000)

Federal Cases

Griffith v. Kentucky, 479 U.S. 314 (1987)

Montgomery v. Louisiana, 577 U.S. 460, 136 S. Ct. 718 193 L.Ed.2 599 (2016)

Reed v. Ross, 109 S.Ct. 2901, 82 L.Ed.2d 17, 468 US 1 (1984)

Teague v. Lane, 489 U.S. 288, 109 S.Ct. 1060, 103 L.Ed. 2d 334 (1989)

United States v. Hughes Rand, Inc. 33 F.Supp.2d 1157 (8th Cir. 1999)

Welch v. United States, 578 U.S. 120, 136 S.Ct. 1257, 194 L.Ed. 2d 387 (2016)

Statutes:

Iowa Code 701.1

Iowa Code 708.1

Iowa Code 822.3

NO. _____

IN THE SUPREME COURT OF THE UNITED STATES

TERM, 2021

Chad Mr. Enderle – Petitioner,

Vs.

State of Iowa – Respondents.

On Petition for Direct Collateral Review to
The United State Supreme Court

PETITION FOR WRIT OF CERTIORI

The Petitioner, Chad Mr. Enderle, acting pro se, respectfully prays that this Court issue Writ of Certiorari to review for the Iowa Supreme Courts conflicting constitutional decisions regarding Iowa's 1st degree murder statute, the Iowa Supreme Court refused further review on September 14, 2021.

OPINION BELOW

On September 14, 2021 the Iowa Supreme Court denied further review of the District Court of Scott County's granting of summary dismissal of Mr. Enderle's Post-Conviction Relief on June 18, 2018. The Iowa Appellant Court denied review of the District court's decision on July 21, 2021.

JURISDICTION

The Iowa Supreme Court entered its decision to refuse further review on September 14, 2021. Jurisdiction of this court is invoked under 28 U.S.C. 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Iowa Code 707.2(2) Murder in the first degree.

1. A person commits murder in the first degree when the person commits murder under any of the following circumstances:
 - a. The person willfully, deliberately, and with premeditation kills another person.
 - b. The person kills another person while participating in a forcible felony.
 - c. The person kills another person while escaping or attempting to escape from lawful custody.
- (Sections d. thru f. are irrelevant to the case)
2. Murder in the first degree is a class "A" felony.

Iowa Code 708.4(1) Willful Injury

Any person who does an act which is not justified and which is intended to cause serious injury to another commits willful injury, which is punishable as follows:

1. A class "C" felony, if the person causes serious injury to another.
2. A class "D" felony, if the person causes bodily injury to another.

Iowa Code 822.3 How to commence proceeding — limitation.

A proceeding is commenced by filing an application verified by the applicant with the clerk of the district court in which the conviction or sentence took place. However, if the applicant is seeking relief under section 822.2, subsection 1, paragraph "f", the application shall be filed 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. All 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. However, this limitation does not apply to a ground of fact or law that could not have been raised within the applicable time period. Facts within the personal knowledge of the applicant and the authenticity of all documents and exhibits included in or attached to the application must be sworn to affirmatively as true and correct. The Supreme Court may prescribe the form of the application and verification. The clerk shall docket the application upon its receipt and promptly bring it to the attention of the court and deliver a copy to the county attorney and the attorney general.

STATEMENT OF THE CASE

Mr. Enderle was convicted of the charges of Murder 1st and Willful Injury by a 2003 Scott County jury. Sentencing was December 11, 2003. The Trial Court denied all substantive post-trial Motions and Mr. Enderle was sentenced to Life in Prison.

Mr. Enderle pursued direct appeal. While the direct appeal was pending, the Iowa Supreme Court ruled in *State v. Heemstra* that “if the act causing willful injury is the same act that causes the victim’s death, the former is merged into the murder and therefore cannot serve as the predicate murder for felony-murder purposes.” *State v. Heemstra*, 721 N.W.2d 549, 552 (Iowa 2006). Mr. Enderle’s appellate counsel attempted to amend his appellate brief to include the merger argument. Mr. Enderle’s direct appeal was not only denied, but the appellate decision did not mention any *Heemstra* based analysis.

The Iowa Supreme Court affirmed his convictions. *State v. Enderle*, 745 N.W.2d 438 (Iowa 2007), rehearing denied 2008.

Mr. Enderle filed his first Post-Conviction Relief in February 2009. Mr. Enderle raised various claims including the ineffective assistance to preserve “felony-murder”, thereby seeking reversal of the conviction based on application of *Heemstra* (and other errors). Mr. Enderle’s first Petition for Post-Conviction relief was denied-in its entirety – on August 3rd, 2012. The Iowa Court of Appeals affirmed the District Court’s ruling on March 12th, 2014. *Enderle v. State*, 847 N.W.2d 235 Table Iowa App. 2014, #12-1635, March 12, 2014.

Mr. Enderle filed a second post-conviction petition on October 17, 2016 in which several issues were raised on the new law annunciated in *Montgomery v. Louisiana*, 577 U.S. 460, 136 S. Ct. 718 193 L.Ed.2 599 (2016) and *Welch v. United States*, 578 U.S.

120, 136 S.Ct. 1257, 194 L.Ed. 2d 387 (2016). The Scott County District court granted summary judgment to the State. An appeal was filed on July 17, 2020. The Scott County Courts decision to grant summary judgment was upheld and Mr. Enderle file a request for further review on August 10, 2021. On September 14, 2021 the Iowa Supreme Court refused a request for further review of the issue.

REASONS FOR GRANTING THE WRIT

The interest of justice require the granting of the writ to provide due process and equal protection of the law where the state created an impossible situation and refused to apply the law to those similarly situated. Mr. Enderle fell into a crack in the newly created jurisprudence when the old law prevented his counsel from raising an issue and the new law required it to have been raised. Before Mr. Enderle's case was final there was no law governing the issue because the Iowa Supreme Court overruled the prior precedent but refused to allow the new law to apply to the cases still not yet final. There was simply no way for Mr. Enderle to demand or recover the process due and has been prevented from receiving equal protection.

When the United States Supreme Court decided *Montgomery v. Louisiana*, 577 U.S. 460, 136 S. Ct. 718 193 L.Ed.2 599 (2016) and *Welch v. United States*, 578 U.S. 120, 136 S.Ct. 1257, 194 L.Ed. 2d 387 (2016) Mr. Enderle filed under the new law expecting for it to be equally applied but his efforts have been in vain. The State of Iowa refuses to apply appropriate retroactivity standards to the ruling.

Mr. Enderle believes that the petition for Certiori should be granted to provide the Due Process and Equal Protection of the law guaranteed by the United States Constitution and to avoid a miscarriage of justice.

I. Do the federal Supreme Court cases issued subsequent to the Iowa cases determining the retroactive availability to *Heemstra* require the Iowa law to apply a full retroactive availability to those appeals still pending?

When Enderle's direct appeal was pending, the Iowa Supreme Court issued *State v. Heemstra*. “[I]f the act causing willful injury is the same act that causes the victim's death, the former is merged into the murder and therefore cannot serve as the predicate murder for felony-murder purposes.” *State v. Heemstra*, 721 N.W.2d 549, 552 (Iowa 2006).

In *Montgomery*, the United States Supreme Court held:

...when a new substantive rule of constitutional law controls the outcome of a case, the Constitution requires state collateral review courts to give retroactive effect to that rule. Teague's conclusion establishing the retroactivity of new substantive rules is best understood as resting upon constitutional premises. That constitutional command is, like all federal law, binding on state courts.

Montgomery v. Louisiana, 577 U.S. 460, 136 S.Ct. 718, 729, 193 L.Ed.2d 599 (2016), citing *Teague v. Lane*, 489 U.S. 288, 109 S. Ct. 1060, 103 L.Ed.2d 334 (1989).

The Court must give retroactive effect to new watershed procedural rules and to substantive rules of constitutional law. Substantive constitutional rules include “rules forbidding criminal punishment of certain primary conduct” and “rules prohibiting a certain category of punishment for a class of defendants because of their status or offense.” *Heemstra* clearly announced a new substantive rule of law.

Substantive rules include “rules forbidding criminal punishment of certain primary conduct,” as well as “rules prohibiting a certain category of punishment for a class of defendants because of their status or offense.” *Montgomery* at 136 S.Ct. at 728 (2016). Because *Heemstra*’s interpretation of the felony murder rule prohibits a distinct category of punishment – mandatory life without parole – if the act causing injury is the same act that causes the victim’s death, it is a new substantive rule under *Montgomery*.

Enderle asserts that the United States Supreme Court’s decisions of *Welch* and *Montgomery*, provides “a new ground of law” pursuant to Iowa Code 822.3 which he could not have argued or even predicted in his prior post-conviction proceeding. Further, the District Court should have allowed him to go forward and receive a ruling on the merits of his issue and the district court’s dismissal as to this issue was therefore in error. As it stands, the District Court chose not to address Enderle’s claim that *Montgomery* presents a new ground of law with which to view *Heemstra* and based on *Montgomery*, *Heemstra* should be applied retroactively. *Montgomery* stands for the proposition that federal law requires the application of federal constitutional rules retroactively, such as those put forth in *Griffith*, even when there is a change in State law only. See *Griffith v. Kentucky*, 479 U.S. 314 (1987). *Welch v. U.S.*, 578 U.S. 120, 136 S.Ct. 1257, 194 L.E2d 387 (2016).

Montgomery addresses a fundamental argument around due process and addresses the idea of retroactive application of substantive rules of law. Enderle simply asks the State Court afford him at least as much due process as the Federal Court requires and no less. Because the holding presented in *Montgomery* was entered after Enderle’s last Post-Conviction Relief action was made final, he should not be precluded from presenting this new ground of law to the court. A ruling on the merits of his argument should be made.

At first the Iowa Supreme Court determined that Federal Due Process was not violated when limiting *Heemstra* application to NOT apply to persons whose direct appeals were final prior to the issuance of *Heemstra*. *Goosman* the Supreme Court discussed the *Heemstra* rehearing – to determine the limited manner where *Heemstra* may be able to provide relief. However in *Nguyen I* the Iowa Supreme Court granted *Heemstra*'s protection to a 1999 Murder 1 conviction, though it was more than three years after procedendo had issued on his original direct appeal, but less than three years after *Heemstra*. *Nguyen* went through multiple counsel unable to find an appealable issue, and ultimately (like Enderle) the Court granted the State's Motion for summary disposition. *Id.* The Supreme Court saw the inherent "Catch-22" impossibility and determined he could proceed to a hearing on the merits. It was a 'new' claim, exempting it from the three year statute of limitations. *Nguyen*'s claim was re-instated for a full hearing on *Heemstra* application. (Again, Enderle's PCR appeal was issued after *Nguyen I*.)

As otherwise noted, *Nguyen* had a second appeal, after the remand. The District Court ruled *Nguyen* failed to meet his burden to prove his claims. The Iowa Supreme Court affirmed. The ruling included:¹

"[w]e therefore hold that under Iowa's due process clause, the Iowa Constitution does not require the retroactive application of *Heemstra* to individuals whose direct appeals were final prior to the *Heemstra* decision." *Nguyen v. State (Nguyen II)*, 878 N.W. 2d 744,756 (Iowa 2016).

Enderle points out his direct appeal was **not** final before the *Heemstra* decision.

¹ *Nguyen* has had two appeals regarding *Heemstra* application and protection. The 2013 appeal has been referred to as *Nguyen I* and the 2016 decision as *Nguyen II*. The Iowa Supreme Court retained *Nguyen*'s 2013 appeal instead of transferring to the Court of Appeals. See, *Nguyen II*.

Enderle's further believes he was similarly situated with *Heemstra* at the time *Heemstra* was decided. The only distinction between himself and *Heemstra* was one the court forced upon him. In the appeals court opinion the court made reference to the situation:

“We acknowledge an apparent disconnect between our conclusion that counsel was not obligated to preserve error and *Heemstra*’s retroactivity rule, which requires an attorney to have raised the *Heemstra* issue in the district court to benefit from *Heemstra*’s holding on appeal.” *Enderle*, Id.

In *Nguyen II* the State argued that *Heemstra* created two different classes of defendants: defendants whose convictions were final before the decision and defendants whose convictions became final after the decision. The Supreme Court of Iowa agreed:

“We agree with the State that defendants whose convictions became final before the law changed in *Heemstra* are not similarly situated to defendants charged after *Heemstra*.” Id at 758.

But in fact, the court has created three classes of defendants by their refusal to grant relief to those, other than *Heemstra*, whose cases had not become *final* but were refused relief despite being similarly situated. The court draws a distinction between those whose cases were not yet final and who had raised the issue in the trial court and those who had not.

But in *Nguyen II* the court stated that it was *impossible* to raise the issue of merger due to a long line of controlling president.

Petitioner had cause for failing to raise the issue:

“The state of the law at the time of the appeal did not offer a “reasonable basis” upon which to challenge the jury instruction in question.” *Reed v. Ross*, 109 S.Ct. 2901, 82 L.Ed.2d 17, 468 US 1 (1984).

“Where a constitutional claim is so novel that its legal basis is not reasonably available to counsel a defendant has cause for his failure to raise the claim in accordance with applicable state procedures.” *Reed v. Ross*, Id.

In *Nguyen II* the court also discusses *State v. Robinson*, 618 N.W.2d 306 (Iowa 2000) in which it discussed the considerations in making a case retroactive or prospective. In *Robinson* the court discussed avoiding the very situation it has created in *Heemstra* by limiting the prospectivity of the decision. There was concern that the court would create a rule that defendants would rely upon and then, with a change in the decision, they would be placed “between the proverbial rock and a hard place” (*Robinson*, Id at 312) unable to rely upon the once well-established rule and being unable to have a viable ineffective assistance of counsel claim because of his attorney’s reliance upon the rule that no longer exists, precluding the court from finding that counsels performance fell below the normal range of competency. In *Robinson* the court stated: “This court should avoid such inequitable results when possible.” Id. at 312.

Due to Iowa courts continually upholding the decision in *State v. Beeman*, 315 N.W.2d at 777(Iowa 1982) for more than twenty years, attorneys stopped objecting to the obvious inequity of the decision due to established precedent. Then with no forewarning *Heemstra* is decided. Now the prior decision cannot be relied upon and defendants cannot raise the ineffective assistance of counsel for failing to raise the issue due to the established precedent.

“It is a well-established rule that in construing a statute, this court will, if possible, try to avoid a construction which leads to absurd, unjust, or unconscionable results.” *United States v. Hughes Rand, Inc.* 33 F.Supp.2d 1157 (8th Cir. 1999).

Argument. The real question here is the inherent unfairness of the slowly developing Iowa *Heemstra* retroactive application, in light of the clearly instructive U.S. Supreme Court instructions. Enderle does not dispute that application of *Heemstra* had been addressed within his 2014 PCR appellate ruling. However, at the time of his prior Post-Conviction Relief action, The United States Supreme Court had not issued the 2016 ruling in *Montgomery v. Louisiana* or *Welch v. U.S.* (*Montgomery v. Louisiana*, 577 U.S.460,136 S.Ct. 718, 193L.E.2d 599 (2016) (January), *Welch v. U.S.*, 578 U.S. 120, 136 S.Ct 1257, 1265, 194 L.E2 387 (2016 (April)). Applying the United States Supreme Court’s subsequent decisions it is clear the protections from *Heemstra* must be available for Enderle in a retroactive application.

Mr. Enderle urges that refusal to apply *Heemstra* to his case constitutes a violation of his federal right to due process and equal protection of the law. The *Heemstra* interpretation of the felony murder statute narrowed the scope of conduct that constitutes felony murder and it is therefore a substantive rule involving proper retroactive application for Enderle. Therefore, the Iowa Courts should have given Mr. Enderle a hearing on the merits of his post-conviction petition.

II. Do the federal Supreme Court cases issued subsequent to the Iowa cases determining whether the *Heemstra* relief “could have been raised” require Iowa law to deny statute of limitation defenses to those appeals still pending?

Under Iowa Code 822.3, actions for post-conviction relief must be filed within three years of a conviction. Iowa Code 822.3. However, a post-conviction relief action may be filed after the three-year time limitation if the filing is based on “a ground of fact or law that could not have been raised within the applicable time period”. Iowa Code 822.3.

Enderle argues that the cases of *Montgomery v. Louisiana*, 577 U.S. 460, 136 S.Ct. 718, 193 L. Ed 2d 599, (2016) and *Welch v. United States*, 578 U.S.120, 136 S.Ct. 1257, 194 L.Ed.2d 387 (2016) create new rules and therefore, the rules within these cases can be used after three years from the conviction.

In *Montgomery v. Louisiana*, the court held that “when a new substantive rule of constitutional law controls the outcome of a case, the Constitution requires state collateral review courts to give retroactive effect to that rule”. *Montgomery v. Louisiana*, 577 U.S. at __, 136 S.Ct. 718, 729, 193 L.E2d 599 (2016). In *Welch v. United States*, 578 U.S.120, 136 S.Ct. 1257, 1261, 194 L.E2 387 (2016), the Court held that substantive decisions are “retroactive in cases on collateral review” *Id.* At 1261, 1268. “A rule is substantive rather than procedural if it alters the range of conduct or the class of persons that the law punishes”. *Id.* At 1264 – 1265 (internal citations omitted).

Enderle asserts his case is almost identical to *Nguyen I*. In *Nguyen I* the Iowa Supreme Court permitted *Heemstra* protection to be considered on Nguyen’s 1999 Murder 1st conviction, though it was “more than three years after procedendo had issued on his original direct appeal, but less than three years after *Heemstra*” *Nguyen v. State (Nguyen I)*, 829 N.W. 2d 183, 186 (Iowa 2013). *Nguyen* went through multiple counsel unable to find an appealable issue, and ultimately (like Enderle) the Court granted the State’s Motion for summary disposition. *Id.* The

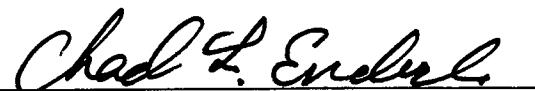
Supreme Court saw the inherent “Catch-22” impossibility and determined he could proceed to a hearing on the merits. It was a “new” claim, exempting it from the three year statute of limitations. *Nguyen’s* claim was re-instated for a full hearing on *Heemstra* application. (Again, Enderle’s PCR appeal was issued after *Nguyen I.*)

Argument. The district Court ruled that Enderle’s Petition was “just a re-filing of the claims previously made in the Applicant’s direct appeal of his conviction and prior post-conviction relief case...” See Ruling Granting State’s Motion for Summary Disposition. However Enderle was seeking further application and argument similar to *Nguyen I.* Further the subsequent United States Supreme Court cases also require *Heemstra* (type) retroactive availability for Enderle and *Heemstra*. Failing to grant Mr. Enderle a hearing on the merits of his case denied him Due Process and Equal Protection of the law, and the court should therefore, be required to give Mr. Enderle a full hearing.

CONCLUSION

For the foregoing reasons, Mr. Mr. Enderle respectfully requests that the Petition for Writ of Certiorari be granted.

Sworn and subscribed under penalty of perjury the 18 day of October, 2021.



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