

IN THE COURT OF APPEALS OF IOWA

No. 20-1317
Filed March 30, 2022

MICAH S. MATTHEWS,
Applicant-Appellant,

vs.

STATE OF IOWA,
Respondent-Appellee.

Appeal from the Iowa District Court for Johnson County, Wyatt Peterson,
Judge.

Micah Matthews appeals the summary disposition of his application for
postconviction relief. **AFFIRMED.**

Micah S. Matthews, Fort Madison, self-represented appellant.

Thomas J. Miller, Attorney General, and Bridget A. Chambers, Assistant
Attorney General, for appellee State.

Considered by May, P.J., Greer, J., and Mullins, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206
(2022).

CLERK OF SUPREME COURT

MAR 30, 2022

ELECTRONICALLY FILED

Appx. A

MULLINS, Senior Judge.

I. Background Facts and Proceedings

In 2009, sentence was imposed upon Micah Matthews's convictions of first-degree kidnapping, second-degree kidnapping, and first-degree burglary.¹ We affirmed on appeal, rejecting his challenges to the sufficiency of the evidence and the effectiveness of his counsel. *See generally State v. Matthews*, No. 09-0743, 2010 WL 3894455 (Iowa Ct. App. Oct. 6, 2010). *Procedendo* issued in late 2010.

Matthews timely filed his first application for postconviction relief (PCR) in February 2011, forwarding various claims of ineffective assistance of trial and appellate counsel and other claims relating to confrontation, prosecutorial error, and bad-act evidence. The district court denied the application. On appeal, Matthews alleged ineffectiveness of trial, appellate, and PCR counsel. *Matthews v. State*, No. 15-2001, 2017 WL 3524717, at *1–2 (Iowa Ct. App. Aug. 16, 2017). As to the ineffective-assistance claims, we found Matthews failed to prove prejudice, in part, due to the overwhelming evidence of Matthews's guilt, and we affirmed the denial of his application. *Id.* at *2–3. *Procedendo* issued in October 2017.

Matthews filed the PCR application precipitating this appeal in 2018, alleging his first PCR counsel was ineffective. He asserted that, under former law, ineffective assistance of PCR counsel could not overcome the three-year statute of limitations and allow for the filing of a successive application outside of the limitations period. *See Dible v. State*, 557 N.W.2d 881, 886 (Iowa 1996),

¹ A charge of first-degree sexual abuse merged into his conviction of first-degree kidnapping.

abrogated on other grounds by Harrington v. State, 659 N.W.2d 509, 520 (Iowa 2003). Citing our supreme court's recent decision in *Allison v. State*,² he argued he was now excepted from the statute of limitations. As to his claims for relief, Matthews asserted his PCR counsel was ineffective in litigating his claims of ineffective assistance of trial counsel.

In time, the State moved for summary disposition, asserting Matthews's application was time-barred. The court's ruling on the motion turned on whether *Allison* saved Matthews's application from the statute of limitations. Matthews asserted he was prevented from filing a second application until *Allison* was decided. The State argued the second application was not filed "promptly" after the conclusion of the first proceeding, within the meaning of *Allison*. Matthews responded *Allison* was a new ground of law and his application was promptly filed.

Surveying the milestones across the proceedings, the court noted procedendo issued following Matthews's first application on October 10, 2017; *Allison* was decided on June 28, 2018; and Matthews filed his second application on November 29, 2018. The court also considered Matthews's factual assertion that his prison was on "lockdown" from July to November 2017, which encompassed the issuance of procedendo in October 2017 and allegedly

² See 914 N.W.2d 866, 891 (Iowa 2018) (holding that where a timely application is filed within the statute of limitations alleging ineffective assistance of trial counsel, the filing of a successive application that alleges ineffective assistance of PCR counsel in presenting the ineffective-assistance-of-trial-counsel claim, the filing of the second application relates back to the time of the filing of the original application so long as the successive application is filed promptly after the conclusion of the original action); see *a/so Iowa Code § 822.3 (2018) (noting "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").

prevented him from "access[ing] his legal materials and the law library" until the lockdown ended. He argued equitable tolling should apply to the period of time he was on lockdown following procedendo. Ultimately, the court found Matthews's second application was not filed promptly after either the conclusion of his first action or the issuance of *Allison*. As such, the court granted the State's motion for summary disposition, and Matthews appealed.

While the appeal was pending, Matthews moved for a limited remand, asserting the district court "was not apprised that there is a letter from Mr. Matthews[s] attorney to him discussing the fact that Mr. Matthews attempted to file his second application prior to September 15, 2018," but it was rejected by the Johnson County Clerk of Court. Matthews sought a limited remand "for the specific purpose of making a complete record including [his] apparent attempt to file his second application . . . prior to September 15, 2018 (which is less than three months after *Allison* was decided)." The State resisted. Matthews filed a supplement to his motion, in which he explained he mistakenly filed the application in the United States District Court for the Southern District of Iowa. An attached copy of the filing shows the filing was received by the federal clerk's office on August 17, 2018. Matthews further explained this "came about" because he sought federal habeas relief after his first application was decided but before *Allison*. Then, after *Allison* was decided, he prepared a PCR application and mailed it to the federal clerk along with a motion to stay the habeas proceeding. However, he or his counsel neglected to file the application in state court until late November. He again moved for a limited remand to complete the record about the foregoing and an opportunity for the district court to reconsider its ruling. The

supreme court ordered a limited remand “for the limited purpose of making a complete record regarding [Matthews’s] attempt to file his [PCR] application in August of 2018.”

In its responsive order, the district court noted its consultation with the clerk’s office did not uncover any attempt by Matthews to file an application in August 2018. Matthews moved for reconsideration, again explaining that he mistakenly filed the application in federal court. The court confirmed its ruling, repeating there was no record of him attempting to file his application in state court in August 2018. In response, Matthews moved for an evidentiary hearing for the purpose of showing he “did attempt to ‘promptly file’ a second application . . . after *Allison* was decided and that indeed a second application was filed, albeit in the wrong court.” The court denied the motion, finding the “request for an evidentiary hearing exceeds the initial request for limited remand granted by the Iowa Supreme Court and exceeds the scope of Iowa Rule of Appellate Procedure 6.807.” The court noted the record already showed what Matthews wanted to prove,³ but it still remained that no attempt was made to file the application with the proper court in August 2018. The next day, the supreme court entered an order finding the limited remand resolved and directing the briefing schedule to commence. The matter was subsequently transferred to this court for resolution.

³ The attachments filed with Matthews’s various motions were made part of the record.

II. Standard of Review

We ordinarily review summary disposition rulings in PCR proceedings for legal error, but our review is de novo when claims of ineffective assistance of counsel come into play. *Linn v. State*, 929 N.W.2d 717, 729 (Iowa 2019).

III. Analysis

First, Matthews argues *Allison* amounted to a new ground of law under Iowa Code section 822.3, thus excepting him from the statute of limitations. Citing *Nguyen v. State*, he essentially argues the three-year statute of limitations started over when *Allison* was issued. See 829 N.W.2d 183, 188–89 (Iowa 2013) (finding “a ground of law that had been clearly and repeatedly rejected by controlling precedent . . . is one that ‘could not have been raised’ as that phrase is used in section 822.3” and remanding to the district court to determine whether *State v. Heemstra*, 721 N.W.2d 549 (2006), should be treated retroactively based on constitutional guarantees); see also *Nguyen v. State*, 878 N.W.2d 744, 749–50, 759 (Iowa 2016) (explaining claim of *Heemstra* retroactivity was not time-barred because the application was filed within three years of *Heemstra*, but finding non-retroactive application of *Heemstra* is not unconstitutional).

*While the State does not stress the point, we do not believe error was preserved on this specific argument, as the court did not specifically rule upon the question of whether *Allison* amounts to a new ground of law sufficient to restart the statute of limitations upon its issuance; *it only addressed whether Matthews’s situation falls within *Allison*’s parameters for promptness, either after the conclusion of the first proceeding or after *Allison* itself was filed. See *Lamasters v. State*, 821 N.W.2d 856, 862 (Iowa 2012) (“It is a fundamental doctrine of

appellate review that issues must ordinarily be both raised and decided by the district court before we will decide them on appeal. When a district court fails to rule on an issue properly raised by a party, the party who raised the issue must file a motion requesting a ruling in order to preserve error for appeal." (quoting *Meier v. Senecaut*, 641 N.W.2d 532, 537 (Iowa 2002)); see also *Top of Iowa Co-op v. Sime Farms, Inc., 608 N.W.2d 454, 470 (Iowa 2000) (noting interests protected by error-preservation rules allow appellate courts to consider error preservation sua sponte). The proper procedure to preserve error was to file a motion raising the court's failure to decide the issue prior to appealing. See *Lamasters*, 821 N.W.2d at 863.* In an abundance of caution, however, we will address the merits.

1. *We have already noted our disbelief that "*Allison* qualifies as a 'new ground of . . . law' for purposes of section 822.3" but, rather, ^{2.*} "the 'new ground of . . . law' must form a basis of the applicant's *substantive* claims, that is, their claims about alleged flaws in their *criminal conviction*," as was the case in *Nguyen. Velazquez-Ramirez v. State*, No. 21-0316, 2022 WL 108542, at *2 (Iowa Ct. App. Jan. 12, 2022) (alterations in original) (citation omitted).⁴ And, as we have stated, "*Allison* says what it says." ^{3.*} Nothing in *Allison* suggests that the clock for second PCRs runs from the filing of *Allison*. ^{4.*} Rather, by its plain terms, *Allison* only applies to second PCRs 'filed promptly after the conclusion of the first PCR action.'" *Id.* (quoting *Allison*, 914 N.W.2d at 891).^{*} So we reject Matthews's claim that the issuance of *Allison* changed the landscape time-wise.

⁴ While Matthews argues unpublished opinions of this court have no precedential value, and we agree "[u]npublished opinions or decisions shall not constitute controlling legal authority," Iowa R. App. P. 6.904(2)(c), we find our previous holdings persuasive and useful in guiding us.

* We turn to the issue the court did address, whether Matthews's application falls within the parameters of *Allison*. * Procedendo following the first PCR proceeding issued on October 10, 2017. Matthews's second application was filed in the correct court more than a year later, on November 29, 2018. This is not prompt, even if Matthews was allowed tolling for the portion of time he was allegedly on lockdown in prison for roughly one month following the issuance of procedendo. See, e.g., *Maddox v. State*, No. 19-1916, 2020 WL 5230367, at *2 (Iowa Ct. App. Sept. 2, 2020) (collecting cases), *further review denied* (Oct. 28, 2020). * Even if the application had been filed in state court instead of federal court in mid-August 2018—ten months after procedendo issued and roughly nine months after Matthews's lockdown discontinued—that cannot be considered prompt either. See *Polk v. State*, No. 18-0309, 2019 WL 3945964, at *1 (Iowa Ct. App. Aug. 21, 2019) (finding application filed “nearly six months” after procedendo issued was not filed promptly within the meaning of *Allison*); see also *Maddox*, 2020 WL 5230367, at *3 (finding 121 days, or roughly four months, does not qualify as prompt).

* Matthews also submits “the procedural history establishes [he] received ineffective counsel in all court proceedings, which left [him] in the same situation that now finds relief in *Allison v. State*.” He highlights his allegations of ineffective assistance in the criminal proceeding, on direct appeal, and in the first PCR proceeding. * The claims against criminal and appellate counsel are time-barred, as is the claim against first PCR counsel as not being promptly filed. * Matthews goes on to argue second PCR counsel rendered ineffective assistance in various respects relating to Matthews incorrectly filing his second application in the wrong

court.* Even if counsel had done everything Matthews claims he should have, namely ensuring it was filed as soon as possible in the correct court by whatever means, it would have made no difference to the outcome, as filing the application in the correct court as early as August 2018, as already noted, cannot be considered prompt.* Matthews also argues second counsel was ineffective in failing to preserve certain claims against his prior attorneys. But, as noted, claims against all of his prior attorneys are time-barred, so Matthews suffered no prejudice.

We affirm the summary disposition of Matthews's PCR application.⁵

AFFIRMED.

⁵ Both parties address the fact that section 822.3 was amended, effective July 1, 2019—which was after the filing of Matthews's application but before judgment thereon was entered—to arguably overrule *Allison* outright: “An allegation of ineffective assistance of counsel in a prior case under this chapter shall not toll or extend the limitation periods in this section nor shall such claim relate back to a prior filing to avoid the application of the limitation periods.” 2019 Iowa Acts ch. 140, § 34.*The supreme court has ruled “statutes controlling appeals are those that were in effect at the time the judgment or order appealed from was rendered.” *State v. Macke*, 933 N.W.2d 226, 228 (Iowa 2019) (citation omitted).* Because we agree Matthews's situation does not fall within the confines of *Allison*, we need not address the amendment's applicability. See, e.g., *Palmer v. State*, No. 19-1487, 2021 WL 811161, at *1 n.1 (Iowa Ct. App. Mar. 3, 2021) (noting ruling was filed after effective date of amendment but not addressing it based on agreement with district court that *Allison* did not save the application); *Moon*, 2021 WL 610195, at *4 n.6 (“This amendment appears to abrogate *Allison*, although it is not yet clear what PCR applications the amended legislation applies to.”); *Johnson v. State*, No. 19-1949, 2021 WL 210700, at *3 (Iowa Ct. App. Jan. 21, 2021) (finding it unnecessary to address the amendment's applicability because application was time-barred under either the prior or new version of the statute).



STATE OF IOWA COURTS

State of Iowa Courts

Case Number
20-1317

Case Title
Matthews v. State

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IN THE COURT OF APPEALS OF IOWA

No. 20-1317

ORDER

MICAH S. MATTHEWS,
Applicant-Appellant,

vs.

STATE OF IOWA,
Respondent-Appellee.

This matter comes before the court upon the appellant's petition for rehearing. Upon consideration, the petition is denied.

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CLERK OF SUPREME COURT

APR 14, 2022

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{ Appx. B }

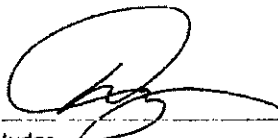


State of Iowa Courts

Case Number
20-1317

Case Title
Matthews v. State

So Ordered



David May, Judge

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IN THE IOWA DISTRICT COURT FOR JOHNSON COUNTY

MICAH S. MATTHEWS,

Applicant,

vs.

STATE OF IOWA,

Respondent.

CAUSE NO. PCCV080406

RULING ON RESPONDENT'S MOTION
FOR SUMMARY DISPOSITION

The Motion for Summary Disposition filed by the Respondent State of Iowa and the Resistance thereto filed by the Applicant Micah Matthews is before the court. Mr. Matthews filed his Second Application for Postconviction Relief on November 29, 2018. *The State's Motion for Summary Disposition submits that Mr. Matthews' second application is barred by Iowa Code section 822.3 and does not meet the "promptly" filed requirement of *Allison v. State*, 914 N.W.2d 866 (Iowa 2018). The matter was deemed submitted on July 31, 2020 at 4:00 p.m. pursuant to the court's order filed July 28, 2020.

The parties agree the basic facts regarding the statute of limitation under Iowa Code section 822.3 and the *Allison* case are undisputed and that the issue of the time bar is appropriately raised for a ruling on the State's motion. The disagreement is with the legal analysis and effect.

Mr. Matthews was found guilty of Kidnapping in the First Degree, Kidnapping in the Second Degree, and Burglary in the First Degree. The charge of Sexual Abuse in the First Degree merged into the finding of guilty of Kidnapping in the First Degree. These verdicts were issued on February 25, 2009 after a bench trial. Judgment and Sentence was entered April 17, 2009. Mr. Matthews appealed the Judgment and Sentence. The Iowa Court of Appeals affirmed

the Judgment and Sentence on October 6, 2010. Procedendo issued December 10, 2010 and was filed with the Johnson County Clerk of Court on December 15, 2010.

Mr. Matthews filed his first Application for Postconviction Relief on February 17, 2011 in Johnson County case PCCV073030. The district court denied his application on November 12, 2015. Mr. Matthews appealed the district court's dismissal of his first Application for Postconviction Relief. The Iowa Court of Appeals affirmed the district court's dismissal of Mr. Matthews' first Application for Postconviction Relief on August 16, 2017. Procedendo issued October 10, 2017.

As noted above, on ^{*}November 29, 2018, Mr. Matthews filed a Second Application for Postconviction Relief in the present case. Mr. Matthews claims his first postconviction relief counsel was ineffective and that he suffered prejudice from such ineffective counsel. Mr. Matthews asserts in his second application that *Allison v. State* allows his second application to proceed without violating the three-year statute of limitations of Iowa Code section 822.3.

^{*}The *Allison* case was filed June 29, 2018. Mr. Matthews asserts that until that date, he was prevented from pursuing a second application for postconviction relief due to the statute of limitations under Section 822.3 as interpreted by the Iowa Supreme Court case *Dible v. State*, 557 N.W.2d 881 (1996). He asserts the *Allison* decision allowed him to pursue such application and that his second application is timely under *Allison*.

The parties agree on the standard concerning summary disposition of postconviction relief applications. See Respondent's Brief in Support of Motion for Summary Disposition at p.3; Applicant's Brief in Support of Resistance to Motion for Summary Disposition at p. 4; and Applicant's Resistance to State's Motion for Summary Disposition at paragraph 1, p. 2. "The court may grant a motion by either party for summary disposition of the application, when it

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appears... that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." Iowa Code § 822.6(3). Summary disposition is proper when there only exists a conflict over legal consequences of undisputed facts. *Castro v. State*, 795 N.W.2d 789, 793 (Iowa 2011). The moving party, here the State, has the burden of proving the material facts are undisputed, and the facts are examined in the light most favorable to the non-moving party, here Mr. Matthews. *Kolrik v. Cory Int'l. Corp.*, 721 N.W.2d 159, 162 (Iowa 2006).

* The first issue is whether or not Mr. Matthews' Second Application for Postconviction Relief was "filed promptly after the conclusion of [his] first PCR action." *Allison v. State*, 914 N.W.2d at 891. The State submits that Mr. Matthews' second application fails the "filed promptly" requirement of *Allison*. The State cites to several unpublished Iowa Court of Appeals opinions in support of its position.

Mr. Matthews submits that until the *Allison* decision on June 29, 2018, Mr. Matthews did not have any ground of law that would allow him to file his second application for PCR. Mr. Matthews further submits that his filings meet the "promptly" filed guideline. Mr. Matthews further submits that the Iowa Court of Appeals cases cited by the State in support of the State's position are unreported cases that do not have any "precedential force", "rely on... wholly defective reasoning", fail to correctly interpret the language of *Allison*, and are based on "illogical defective reasoning."

Procedendo issued in Mr. Matthews' criminal case FECR082288 on December 10, 2010. The procedendo was filed with the Clerk of Court on December 15, 2010. Under Iowa Code section 822.3, the three-year period would end at the latest December 15, 2013. Mr. Matthews filed his First Application for Postconviction Relief February 17, 2011. Procedendo issued October 10, 2017 in that case. Mr. Matthews filed his Second Application for Postconviction

Relief November 29, 2018. This was approximately one year and fifty days, or 415 days, after procedendo issued in the first PCR case.

Mr. Matthews submits that he did not have any grounds to file the second application until the date the *Allison* decision was issued, June 29, 2018. ^{*} There were 152 days or roughly five months, between the date the *Allison* decision was filed and the date that Mr. Matthews filed his Second Application for Postconviction Relief.

^{*} Mr. Matthews filed a motion for the court to consider additional contested facts and legal issues on September 11, 2020. The court has not ruled on that outstanding motion at this time. However, for purposes of this ruling, the court will consider the additional facts noted in the Affidavit attached to Mr. Matthews' motion filed September 11, 2020. In that Affidavit, Mr. Matthews asserts that the Iowa State Penitentiary where he is serving his sentences was on lockdown from July of 2017 until November of 2017. He asserts this was an extraordinary circumstance that should result in "equitable tolling" as it interfered with his access to legal materials and access to the prison law library. He submits this lockdown was beyond his control and interfered with him bringing and raising the *Allison* claim raised in his second application filed November 29, 2018. ^{*} The court notes that the first PCR application was on appeal during this time of lockdown and the Iowa Court of Appeals' opinion was not issued until August 16, 2017. Procedendo was not issued until October 10, 2017. As noted several times before, the *Allison* decision was not issued until June 29, 2018, seven months after the lockdown ended according to Mr. Matthews' Affidavit.

The Iowa Court of Appeals recently determined that a 121 day delay in an applicant filing a second application for postconviction relief did not constitute being "filed promptly" within the meaning of *Allison*. *Maddox v. State*, 2020 WL 5230367, at *3 (Iowa App. September

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2, 2020). The Court of Appeals noted that the delay at issue in *Maddox* is the shortest delay that it has considered since the *Allison* decision. The 121 day period was the time between procedendo being issued on the first application for PCR and the day Mr. Maddox filed the second PCR application.

The Iowa Court of Appeals also determined that more than six months does not constitute being "filed promptly". *Harlston v. State*, 2020 WL 4200859, at *1 (Iowa App. July 22, 2020). The Court of Appeals has found that slightly less than six months also did not constitute being "filed promptly". *Polk v. State*, 2019 WL 3945964, at *2 (Iowa App. August 21, 2019). The Court of Appeals also recently determined that approximately fifteen months after procedendo issued in a first PCR appeal likewise did not meet the "filed promptly" requirement. *Wright v. State*, 2020 WL 4207398, at *2 (Iowa App. July 22, 2020). The *Maddox*, *Harlston*, *Polk*, and *Wright* opinions were all filed since August 21, 2019 with *Maddox* being filed within the last month and *Harlston* and *Wright* being filed just over two months ago.

*The court understands that all of these opinions are unpublished, and that under Iowa Rule of Appellate Procedure 6.904(2)(c) the opinions do "not constitute controlling legal authority." However, the decisions were collectively considered by eight of the current nine judges on the Iowa Court of Appeals and two senior judges specially assigned to the Iowa Court of Appeals pursuant to Iowa Code section 602.9206. While the opinions may not constitute controlling legal authority, consideration should be given to the reasoning of the decisions. The Iowa Court of Appeals being the second highest court in Iowa's court system tasked with deciding these types of cases deserves a reasonable degree of deference by District Courts, in this court's opinion, especially given the number of Court of Appeals judges and cases relatively recently addressing the same issue.

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IN THE SUPREME COURT OF IOWA

No. 20-1317

Johnson County No. PCCV080406

ORDER

MICAH S. MATTHEWS,
Applicant-Appellant,

vs.

STATE OF IOWA,
Respondent-Appellee.

This matter comes before the court upon its own motion. On April 11, 2022, the appellant filed a "notice of appeal" from the court of appeals' March 30, 2022 decision. On May 2, the appellant filed an application for further review from the court of appeals' decision. This court treats the appellant's April 11 notice of appeal as a timely application for further review. The court treats the appellant's May 2 filing as an amended application for further review. The State may file a resistance to the amended application within 10 days of the date of this order.

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Criminal Appeals Division Iowa Attorney General

CLERK OF SUPREME COURT

MAY 03, 2022

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(Appx. B)

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STATE OF IOWA

State of Iowa Courts

Case Number
20-1317

Case Title
Matthews v. State

So Ordered

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Donna M. Humpal, Clerk

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IN THE SUPREME COURT OF IOWA

No. 20-1317

Johnson County No. PCCV080406

ORDER

MICAH S. MATTHEWS,
Applicant-Appellant,

vs.

STATE OF IOWA,
Respondent-Appellee.

After consideration by this court, en banc, further review of the above-captioned case is denied.

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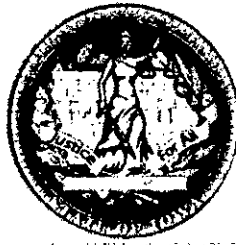
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(Appx. E)

CLERK OF SUPREME COURT

JUN 20, 2022

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State of Iowa Courts

Case Number
20-1317

Case Title
Matthews v. State

So Ordered

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Susan Larson Christensen, Chief Justice

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