

IN THE SUPREME COURT OF IOWA
Supreme Court No. 16-1938

FRANCISCO VILLA MAGANA,
Petitioner-Appellant,

vs.

STATE OF IOWA,
Respondent-Appellee.

APPEAL FROM THE IOWA DISTRICT COURT
FOR MARSHALL COUNTY
THE HONORABLE JAMES C. ELLEFSON, JUDGE

APPELLEE'S BRIEF

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**STATEMENT OF THE ISSUE PRESENTED FOR
REVIEW**

**I. The District Court Correctly Declined to Reinstate
Villa’s Postconviction Relief Action After Its Dismissal
For Failure to Prosecute.**

Authorities

Friedley v. State, No. 11-1782, 2013 WL 988628
(Iowa Ct. App. Mar. 13, 2013)
Greene v. Tri-County Cmty Sch. Dist., 315 N.W.2d 779
(Iowa 1982)
Harrington v. State, 659 N.W.2d 509 (Iowa 2003)
Holland Bros. Const. Co. v. Iowa Dept. of Transp.,
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Matter of Estate of Bearbower, 376 N.W.2d 922
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Sanchez v. Kilts, 459 N.W.2d 646 (Iowa Ct. App. 1990)
State v. Olsen, 794 N.W.2d 285 (Iowa 2011)
Tiffany v. Brenton State Bank of Jefferson, 508 N.W.2d 87
(Iowa Ct. App. 1993)
Walker v. State, 572 N.W.2d 589 (Iowa 1997)
Wharff v. Iowa Methodist Hosp., 219 N.W.2d 18 (Iowa 1974)
Iowa R. Civ. P. 1.944(2)
Iowa R. Civ. P. 1.944(6)
Iowa R. Civ. P. 1.944
Iowa R. Civ. P. 1.904(2)

ROUTING STATEMENT

The State agrees with Villa that this case involves the application of existing legal principles, and that transfer to the Iowa Court of Appeals would be appropriate. Iowa R. App. P. 6.1101(3)(a).

STATEMENT OF THE CASE

Nature of the Case

Following the district court's dismissal of his application for postconviction relief pursuant to Iowa Rule 1.944 and denial of his subsequent motion to reinstate, Francisco Villa Magana ("Villa") appeals. He asserts that the district court erred when it did not find he was mandatorily or discretionarily entitled to reinstatement. The Honorable James C. Ellefson presided.

Facts and Course of Proceedings

On October 17, 2012, Villa filed an application for postconviction relief in Marshall County criminal cases AGCRO76215, AGCRO76110, AGCRO75618, and FECRO76562. 10/17/2012 PCR Application; App. 6. Villa alleged that there existed evidence of material facts, not previously presented and heard, that required vacation of his conviction or sentence, and that the conviction or sentence was otherwise subject to collateral attack. 10/17/2012 PCR Application p.2; App. 7. Villa specified that he wished to go back to

court to prove that he was forced to plead guilty, and that he in fact wished to go to trial and produce evidence of his innocence.

10/17/2012 PCR Application p.2–3; App. 7–8. Various counsel were appointed and withdrew as Villa’s attorney, with attorney Clausen eventually substituted to represent Villa on March 27, 2014.

3/27/2014 Appointment; App. 13–14.

As of July 15, 2014, the case had already been pending without a substantive filing for almost two years, and a rule 1.944 dismissal notice was entered. 7/15/2014 1.944 Dismissal Notice; App. 16. A trial date was set for December 11, 2014, however Villa’s original plea counsel then entered an appearance in the case on December 4.

8/22/2014 Order Setting Trial; 12/4/2014 Appearance; App. 17–18.

After a hearing to resolve plea counsel’s appearance in the case, the district court determined that a motion for new trial based on newly discovered evidence would be filed in the underlying criminal files; the postconviction relief action was to be stayed until the completion of the new trial litigation. 12/11/2014 Order for Continuance;

App. 19–20. The court ordered the postconviction relief case removed from rule 1.944’s automatic dismissal rule on January 1, 2015, and continued the case for rule 1.944 purposes until December 31, 2015.

12/11/2014 Order for Continuance p. 2; App. 20. The Court explicitly indicated that “This case will not be rescheduled for trial until the motion for new trial on the underlying criminal case has been decided. Counsel will be responsible for calling the need to reset this case for trial to the court’s attention.” 12/11/2014 Order for Continuance p. 2; App. 20.

Villa took no action in the postconviction relief file during the entirety of 2015. On July 15, 2015, the clerk entered a 1.944 dismissal notice indicating that if the case was not tried or exempted by order by January 1, 2016, it would be dismissed. 7/15/2015 1.944 Dismissal Notice; App. 22. On January 8, 2016, the case was dismissed pursuant to the rule. 1/8/2016 1.944 Dismissal; App. 23.

Villa’s counsel moved for reinstatement on June 26, 2016, four days before the case would have been beyond reinstatement pursuant to rule 1.944(6). 6/26/2016 Motion to Reinstate; App. 24–25. The State resisted, and after additional continuances requested by Villa’s counsel, an unreported hearing occurred on September 12, 2016. 7/8/2016 Motion to Continue; 8/14/2016 Motion to Continue; 9/11/2016 Motion to Continue; 9/12/2016 Response to Applicant’s Motion to Continue; 9/12/2016 Villa’s Brief; App. 26–40. Following

the hearing, the district court denied reinstatement, finding that “Under the circumstances, this case should not be reinstated under either the mandatory or the discretionary reinstatement provisions of Rule 1.944.” 9/13/2016 Order; App. 41–43. Villa filed a motion pursuant to Rule of Civil Procedure 1.904(2) for reconsideration, which the court also denied. 9/28/2016 Motion to Reconsider; 10/12/2016 Order; App. 45–47. Villa filed a notice of appeal on November 10, 2016. 11/10/2016 Notice of Appeal; App. 50.

ARGUMENT

I. The Postconviction Relief Court Correctly Denied Villa’s Motion to Reinstate this Postconviction Relief Action.

Preservation of Error

The issue of reinstatement was raised and ruled upon. 9/13/2016 Order; App. 41–43. The issue was preserved. *See Lamasters v. State*, 821 N.W.2d 856, 864 (Iowa 2012).

Standard of Review

“Postconviction relief proceedings are actions at law and are reviewed on error.” *Osborn v. State*, 573 N.W.2d 917, 920 (Iowa 1998). This is also the correct standard for rulings that interpret the statutes creating requirements for post-conviction relief actions. *See, e.g., Harrington v. State*, 659 N.W.2d 509, 519–20 (Iowa 2003).

Additionally, rulings on motions for reinstatement are reviewed for errors at law. *See Walker v. State*, 572 N.W.2d 589, 590 (Iowa 1997) (citing *Wharff v. Iowa Methodist Hosp.*, 219 N.W.2d 18, 21 (Iowa 1974)). Iowa’s appellate courts will affirm the district court’s reinstatement decision where substantial evidence exists to support it. *See Tiffany v. Brenton State Bank of Jefferson*, 508 N.W.2d 87, 90–91 (Iowa Ct. App. 1993). “Whatever hardship might be suffered by an occasional litigant whose suit is thus lost is more than compensated by the general good that results from the impetus provided by the rule.” *Sanchez v. Kilts*, 459 N.W.2d 646, 649 (Iowa Ct. App. 1990) (citing *Greene v. Tri-County Cmty Sch. Dist.*, 315 N.W.2d 779, 781 (Iowa 1982)).

Merits

Iowa Rule of Civil Procedure 1.944 establishes an automatic mechanism to dispose of languishing cases. The rule’s purpose is to “assure the timely and diligent prosecution of cases on the docket.”

Id. at 648. The text of the rule provides:

All cases at law or in equity where the petition has been filed more than one year prior to July 15 of any year shall be tried prior to January 1 of the next succeeding year . . . or dismissed without prejudice at plaintiff’s costs unless satisfactory reasons for want of

prosecution or grounds for continuance be shown by application and ruling thereon after notice and not ex parte.

Iowa R. Civ. P. 1.944(2). Even after automatic dismissal, relief from the dismissal and reinstatement is available:

The trial court may, in its discretion, and shall upon a showing that such dismissal was the result of oversight, mistake or other reasonable cause, reinstate the action or actions so dismissed. Application for such reinstatement, setting forth the grounds therefor, shall be filed within six months from the date of dismissal.

Iowa R. Civ. P. 1.944(6). “The trial court’s decision as to whether there is sufficient showing of mistake or oversight is not factual, but a legal question on review.” *Holland Bros. Const. Co. v. Iowa Dept. of Transp.*, 434 N.W.2d 902, 903 (Iowa Ct. App. 1988). “Both types of reinstatement require proof counsel exercised reasonable diligence in preparing and pursuing the case for trial.” *Tiffany*, 508 N.W.2d at 90. When considering the sufficiency of the proof adduced by the party seeking reinstatement, Iowa courts have previously held that

Ignoring notice while showing nothing more than excuse, plea, apology, or explanation, is not sufficient to allow a party to escape default. Among the factors to be considered are whether the plaintiff made a good faith effort to prosecute or continue the action, whether the plaintiff was seeking a trial

assignment or merely a continuance when the case was dismissed, whether the mistake or oversight is understandable under the circumstances, or whether plaintiff promptly applied to reinstate the case.

Holland, 434 N.W.2d at 904 (internal citations omitted) (*citing Matter of Estate of Bearbower*, 376 N.W.2d 922, 923–25 (Iowa App. 1985) and *Rath v. Sholty*, 199 N.W.2d 333, 337 (Iowa 1972)). Villa bears the burden to establish reasons supporting reinstatement. *Id.* at 90–91. As the district court correctly determined, he failed to meet that burden. Villa was not entitled to either mandatory or discretionary reinstatement on the record presented.

This postconviction relief action was initially filed in October 2012. *See* 10/17/2012 PCR Application; App. 6–8. Trial was set in August, 2013, and then was repeatedly continued—due to requests from both Villa and the State—to November 2013, February 2014, April 2014, May, 2014, July 2014, August 2015, and ultimately, December 2014. In the interim, the case had already been subject to one 1.944 dismissal notice. 7/15/2014 1.944 Dismissal Notice; App. 16. Because of a pending motion in the underlying criminal file, on December 2014, the district court exempted the case from dismissal in December 2014, and further stayed the effect of Rule 1.944 until

December 31, 2015. 12/11/2014 Order for Continuance; App. 19–20. At that time, the court made clear “This case will not be rescheduled for trial until the motion for new trial on the underlying criminal case has been decided. Counsel will be responsible for calling the need to reset this case for trial to the court’s attention.” 12/11/2014 Order for Continuance p. 2; App. 20. This case then lay dormant until the automatic notice of dismissal was filed on July 15, 2015. 7/15/2015 1.944 Dismissal Notice; App. 22. It remained dormant for an additional six months until the clerk of court entered a dismissal order on January 8, 2016. 1/8/2016 1.944 Dismissal; App. 23. Counsel only filed a notice on June 26, 2016—four days prior to reinstatement being barred completely.

Before the district court Villa’s counsel asserted that the case should have been reinstated because his failure to file a motion to prevent dismissal was an oversight and that counsel’s military service was sufficient cause to “have the action exempted from the automatic dismissal list.” 9/12/2016 Villa’s Brief; *see also* 9/28/2016 Motion to Reconsider p. 2–3; 6/26/2016 Motion to Reinstate; App. 24–25, 38–40; 45–47. The district court correctly rejected the argument. Villa’s filings offered no details as to the length, location, or nature of his

military service, nor any other explanation regarding how or why his military service prevented him from filing a reinstatement notice sooner. Notably, the motion filed pursuant to rule 1.904(2) suggested that counsel was aware of the initial dismissal warning, but took no action prior to the January 8 dismissal. 9/28/2016 1.904 Motion p. 3 (“It is clear the reason the case was dismissed was because counsel failed to apply to have the case excepted from automatic dismissal. The *dismissal* came at a time immediately prior to counsel being called to military duty and a timely notice to exclude under rule 1.933 was not filed.” (emphasis added)); App. 46. Following dismissal, Villa did not request a trial date immediately after filing for reinstatement. Instead, he requested three additional continuances for the reinstatement hearing due to scheduling conflicts and difficulties in contacting Villa. 7/8/2016 Motion for Continuance; 8/14/2016 Motion for Continuance; 9/11/2016 Motion for Continuance; App. 28–29, 33–34. Further, the record is unclear as to when the litigation that initially paused this matter came to a close. 9/28/2016 Motion to Reconsider p.1 (“The Petitioner believes the [proceedings were] resolved in January or February of 2016.”); App. 45. When moving the district court to reinstate this case, Villa did not request the

district court to take notice of the applicable criminal file or admit the dispositive rulings as an exhibit attached to the motion. *See generally* 6/26/2016 Motion to Reinstate; 9/12/2016 Villa's Brief; 9/28/2016 Motion to Reconsider; App. 24–25, 38–40, 45–47.

The record makes clear that the duty to disturb this case from dormancy rested squarely with counsel: “Counsel will be responsible for calling the need to reset this case for trial to the court’s attention.” 12/11/2014 Order for Continuance p.2; App. 20. Even though he was not prosecuting the motion for new trial in the underlying criminal file, both Villa and his counsel were in far better position to know the status of that litigation than the district court. With the onus, opportunity, and notice resting squarely with Villa and his postconviction relief counsel, neither acted. The district court correctly rejected Villa’s claims that he was entitled to mandatory or discretionary reinstatement. The decision was based upon substantial evidence of dilatory behavior, and respectfully, this Court should affirm.

The State would note that Villa does not assert an ineffective assistance of counsel claim in his brief, and this Court should not build the argument on his behalf or allow him to present it for the

first time on reply. *See, e.g., State v. Olsen*, 794 N.W.2d 285, 287 n.1 (Iowa 2011) (“Because Olsen failed to raise this issue in his original brief, the issue is not preserved for our review.”). *But see Friedley v. State*, No. 11-1782, 2013 WL 988628, at *1–2 (Iowa Ct. App. Mar. 13, 2013) (finding counsel ineffective for failing to prevent dismissal pursuant to Iowa R. Civ. P. 1.944). Reversing the district court in this instance would essentially create a per se rule of structural error where a postconviction relief action was dismissed pursuant to rule 1.944. Such a construction would render rule 1.944 meaningless for purposes of postconviction relief and would encourage further dilatory conduct of postconviction relief counsel, not curb it. *See Sanchez*, 459 N.W.2d at 649 (“Whatever hardship might be suffered by an occasional litigant whose suit is thus lost is more than compensated by the general good that results from the impetus provided by the rule.”).

Likewise, to the extent that Villa suggests this court should “consider” that he has been “taken into Immigration Customs Enforcement custody following his release from custody,” he is mistaken. Appellant’s Br. 12; 9/11/2016 Motion to Continue; App. 33–34. Villa’s immigration status is not relevant to the question of

whether the district court abused its discretion in denying reinstatement under Rule 1.944. Because the available record supports the district court's decision not to reinstate Villa's case, Villa's excuses are unavailing. The district court should be affirmed.

CONCLUSION

The district court's decision to dismiss Villa's application for postconviction relief was based upon substantial evidence of Villa's failure to prosecute the claim. This Court should affirm.

REQUEST FOR NONORAL SUBMISSION

The State does not request oral argument. In the event oral argument is ordered, the State respectfully requests to be heard.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

This brief complies with the typeface requirements and type-volume limitation of Iowa Rs. App. P. 6.903(1)(d) and 6.903(1)(g)(1) or (2) because:

- This brief has been prepared in a proportionally spaced typeface using Georgia in size 14 and contains **2,358** words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).

Dated: August 15, 2017



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