IN THE COURT OF APPEALS OF IOWA

No. 0-112 / 09-0450
Filed March 24, 2010

JODI LINDQUIST,
Applicant-Appellant,

vs.

STATE OF IOWA,
Respondent-Appellee.

Appeal from the Iowa District Court for Cerro Gordo County, Christopher C. Foy, Judge.

A postconviction relief applicant contends that the district court erred in summarily dismissing her application for postconviction relief without an evidentiary hearing. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and Bradley M. Bender, Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Martha E. Trout, Assistant Attorney General, Paul L. Martin, County Attorney, and William Hoekstra, Assistant County Attorney, for appellee.

Considered by Vaitheswaran, P.J., and Potterfield and Mansfield, JJ.

VAITHESWARAN, P.J.

Jodi Lindquist represented herself in a jury trial on charges of disorderly conduct and third-degree harassment. The jury found her guilty, and her judgment and sentences were affirmed.

Lindquist filed a postconviction relief application, which was later amended. In the amended application, her attorney alleged that Lindquist's deficiencies as her own trial counsel prejudiced her case. The State moved to dismiss the application on the ground that Lindquist voluntarily waived her right to counsel and presented no medical evidence to suggest she was incompetent to represent herself. The district court granted the State's motion and denied Lindquist's motion to reconsider. Lindquist appealed.

Before addressing the merits of Lindquist's appeal, it is worth emphasizing the arguments she does not make. Lindquist does not argue that the district court failed in its obligation to ensure that she properly waived her right to counsel. *See Faretta v. California*, 422 U.S. 806, 835, 95 S. Ct. 2525, 2541, 45 L. Ed. 2d 562, 581 (1975); *see also* U.S. Const. amend. VI. She also does not argue that her waiver of her right to counsel was involuntary. *See Faretta*, 422 U.S. at 835, 95 S. Ct. at 2541, 45 L. Ed. 2d at 581. Finally, she does not argue that a mental illness prevented her from properly representing herself. *See generally Indiana v. Edwards*, ___ U.S. ___, 128 S. Ct. 2379, 171 L. Ed. 2d 345 (2008).

Lindquist makes a more general claim. Citing *Wheat v. United States*, 486 U.S. 153, 160, 108 S. Ct. 1692, 1698, 100 L. Ed. 2d 140, 149 (1988), she asserts that the trial court failed to ensure the trial was within "the ethical standards of the

profession" and was "fair to all who observe them." In her view, the postconviction court should have held an evidentiary hearing on the merits of this claim rather than disposing of it by summary disposition.

> Summary disposition of a postconviction relief application is appropriate
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> when it appears from the pleadings, depositions, answers to interrogatories, and admissions and agreements of fact, together with any affidavits submitted, 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 (2007); *accord Manning v. State*, 654 N.W.2d 555, 559 (Iowa 2002).

Lindquist lists several occurrences during the trial that she contends created a genuine issue of material fact precluding summary disposition. She fails to acknowledge, however, that the district court accepted her factual assertions as true in ruling on the State's motion to dismiss. More importantly, we agree with the State that the facts she cites, (1) her emotional state during the trial, (2) a juror's inquiry about her innuendos during questioning, and (3) the court's statement that it might declare a mistrial and order her to have a lawyer, are all consequences of her decision to represent herself, a decision she made knowingly after being apprised of the risks.

We turn to the law. Lindquist concedes she found "no case law [] exactly on point" to support her proposition that the listed facts could establish an independent due process claim. *Wheat*, the United States Supreme Court opinion which she cites, did not address the pitfalls of self-representation, but focused on an attorney's multiple representation of defendants claimed to have been involved in a criminal conspiracy. *Wheat*, 486 U.S. at 159, 108 S. Ct. at

1697, 100 L. Ed. 2d at 149. It is inapposite. The remaining case law she cites also does not recognize a due process claim based on deficiencies in the performance of a self-represented defendant where the self-representation was preceded by an adequate discussion with the court about the consequences and no evidence was offered that the deficiencies were based on a mental illness. As the district court stated:

> Applicant bases her motion on a unique argument. She asserts that notwithstanding her valid waiver of counsel and irrespective of the cause of any problems during the trial, the U.S. Constitution requires that the proceedings in her trial meet certain "standards of fairness and due process." The Court rejects this argument for three reasons. First, as Applicant herself acknowledges, no precedent exits to support it. Second, Applicant has not attempted to define the standard of fairness and due process that she wants the Court to enforce. Without any guidance from the appellate courts, the Court is not inclined to create a new rule of constitutional law out of whole cloth.
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> The third, and most significant, reason is based on the simple principle of individual responsibility. . . . The Court can see no legal or practical reason why it should fashion some type of constitutional remedy to protect Applicant from the consequences of her own extreme conduct and poor judgment. Magistrate Cherry warned Applicant about the risks of self-representation and offered to appoint trial counsel for her. In spite of the risks, Applicant chose to act as her own attorney. To paraphrase an old saying: Applicant made her bed, now she must lie in it.

We discern no error in this ruling. *See Faretta*, 422 U.S. at 834, 95 S. Ct. at 2540–41, 45 L. Ed. 2d at 581 ("[A]lthough [a defendant] may conduct his own defense ultimately to his own detriment, his choice must be honored out of 'that respect for the individual which is the lifeblood of the law.'" (quoting *Illinois v. Allen*, 397 U.S. 337, 350–51, 90 S. Ct. 1057, 1064, 25 L. Ed. 2d 353, 363 (1970) (Brennan, J., concurring))).

As Lindquist could not prove her due process claim as a matter of law, we find it unnecessary to address her assertion that postconviction counsel was ineffective in failing to provide the postconviction court with the recordings of the underlying proceedings.[1] Accordingly, we affirm the district court's dismissal of Lindquist's postconviction relief application.

AFFIRMED.

[1] We note, however, that the recordings are part of our record and presumably were part of the postconviction court's record as well.