

IN THE COURT OF APPEALS OF IOWA

No. 0-504 / 09-1692
Filed July 28, 2010

STATE OF IOWA,
Plaintiff-Appellee,

vs.

DANIEL GEORGE JOHNSON,
Defendant-Appellant.

Appeal from the Iowa District Court for Benton County, Kristin L. Hibbs,
Judge.

Daniel George Johnson appeals from his conviction of manufacturing a
controlled substance. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and Robert P. Ranschau,
Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Martha E. Trout, Assistant Attorney
General, David C. Thompson, County Attorney, and Anthony Janney, Assistant
County Attorney, for appellee.

Considered by Vogel, P.J., and Doyle and Mansfield, JJ. Tabor, J. takes
no part.

DOYLE, J.

Daniel George Johnson was charged with manufacturing a controlled substance (methamphetamine), a class B felony, in violation of Iowa Code section 124.401(1)(b)(7) (2007). His first trial ended in a mistrial after the jury could not agree on a verdict. Prior to jury deliberations in the second trial, the State amended the charge to a class C felony. Johnson was found guilty.

After trial and before sentencing, Johnson wrote the trial judge two letters. In both letters Johnson voiced complaints about inadequate communication with his lawyer, a public defender. He was also critical of his lawyer's trial tactics. In one letter he stated: "I have to fire my lawyer just as soon as I can. I am asking you to please consider offering me another lawyer that will take the time to listen to me and let me take the stand."

The district court made no inquiry into the alleged breakdown of communications between Johnson and his lawyer. Johnson was sentenced to an indeterminate term of imprisonment not to exceed ten years. The court suspended the term of imprisonment and placed Johnson on probation for three years. Johnson appeals.

On appeal, Johnson argues that after having presented a colorable complaint to the district court concerning the breakdown in communication between himself and his lawyer, the district court should have inquired as to whether there was such a complete breakdown in communication or such an irreconcilable conflict that Johnson's constitutional right to counsel was violated. *See State v. Tejada*, 677 N.W.2d 744, 751-52 (Iowa 2004). The appropriate remedy is preservation of the issue for postconviction relief proceedings where

an adequate hearing may be held and a record developed. *Id.* at 753. The State agrees.

Given the scant record before us and the availability of an adequate remedy in postconviction, we affirm the judgment of conviction without adjudicating whether Johnson was denied his Sixth Amendment right to counsel. Instead, we preserve this issue for postconviction proceedings.

AFFIRMED.