IN THE COURT OF APPEALS OF IOWA

No. 0-729 / 09-1094
Filed November 10, 2010

PATRICK CONNER,
Applicant-Appellant,

vs.

STATE OF IOWA,
Respondent-Appellee.

Appeal from the Iowa District Court for Polk County, Robert B. Hanson, Judge.

A postconviction relief applicant appeals the district court's summary disposition of his application. **REVERSED AND REMANDED.**

Mark C. Smith, State Appellate Defender, and Theresa R. Wilson, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Sheryl A. Soich, Assistant Attorney General, John P. Sarcone, County Attorney, and Stephan Bayens, Assistant County Attorney, for appellee State.

Considered by Vaitheswaran, P.J., and Eisenhauer and Danilson, JJ. Tabor, J., takes no part.

VAITHESWARAN, P.J.

A postconviction relief applicant appeals the district court's summary disposition of his application.

I. Background Facts and Proceedings

An Iowa parole officer claimed Patrick Conner did not report for parole supervision in Iowa, in contravention of "the instructions in his parole order and agreement." An Iowa magistrate found probable cause for the issuance of an arrest warrant. Conner was arrested pursuant to the warrant. Crack cocaine and marijuana were found in his possession.

Following his arrest, Conner wrote to the court, explaining that he served time in Illinois pursuant to an Interstate Compact agreement with Iowa. Upon his release from the Illinois prison, he said he reported to an Illinois parole office, as required by his parole agreement. He claimed nothing in the agreement required him to report to Iowa for parole supervision on the offense for which he was previously incarcerated. This letter presaged Conner's defense to subsequently filed charges.

Those charges, as detailed in the State's trial information, were: (1) possession of crack cocaine with intent to deliver, (2) failure to possess a tax stamp, and (3) possession of marijuana as a habitual offender. Shortly after the trial information was filed, Conner moved to suppress the evidence on the ground the arrest warrant was issued without probable cause. He asked the court to schedule a hearing on the motion. The State responded that a plea offer on the table would be withdrawn if the motion was heard. Conner elected to proceed with a suppression hearing.

At the subsequently-scheduled hearing, Conner changed his mind. He informed the district court he would withdraw his motion to suppress and enter a guilty plea to a single count of possession of crack cocaine with intent to deliver.

Two months after pleading guilty, Conner filed an application for postconviction relief. Again, he asserted the arrest warrant that precipitated these charges lacked probable cause and all evidence seized by virtue of his arrest was inadmissible. The State responded with a motion for summary disposition, citing *Speed v. State*, 616 N.W.2d 158, 159 (Iowa 2000) for the proposition that "defense counsel's failure to seek suppression of certain evidence does not bear on the knowing and voluntary nature of a plea." Following a hearing on the State's motion, the district court ruled that "[b]ecause the Petitioner knowingly and intelligently pled guilty, and none of the Constitutional challenges undermine the validity of that plea, the Respondent's motion for summary judgment should be granted." Conner appealed.

II. Analysis

Conner contends the district court erred in summarily disposing of his ineffective-assistance-of-counsel claim. He maintains the court should have held an evidentiary hearing to develop the claim that his trial attorney was ineffective in "failing to follow through with his motion to suppress."

The statutory provision on summary disposition of postconviction relief claims states:

> The court may grant a motion by either party for summary disposition of the application, 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). Disposition under section 822.6 is analogous to the summary judgment procedure in Iowa Rules of Civil Procedure 1.981–1.983. *Manning v. State*, 654 N.W.2d 555, 559 (Iowa 2002). Our review is for correction of errors at law. *Id.* at 558–59.

Conner preliminarily contends the district court overlooked *State v. Carroll*, 767 N.W.2d 638 (Iowa 2009), an opinion that called into question the State's primary authority, *Speed v. State*. In *Speed*, the Iowa Supreme Court held that "claims arising from the denial of a motion to suppress or from counsel's failure to investigate or file a motion to suppress do not survive the entry of a guilty plea." 616 N.W.2d at 159. In *Carroll*, the court disavowed this holding, explaining it was inappropriate to reject broad categories of ineffective-assistance-of-counsel claims as a matter of law. 767 N.W.2d at 643–44. The more appropriate course, the court held, was to engage in a "case-by-case analysis . . . to determine whether counsel in a particular case breached a duty in advance of a guilty plea, and whether any such breach rendered the defendant's plea unintelligent or involuntary." *Id.* at 644.

Although the district court did not cite *Carroll*, the court also did not rely on *Speed* in disposing of Conner's application. Instead, the court noted "exceptions" to the general rule that a defendant's guilty plea waives defenses and objections, but concluded those exceptions did not apply. This disposition is consistent with the holding of *Carroll.*

That said, we believe fact issues precluded summary disposition of Conner's postconviction relief application. In several filings, Conner alleged he was coerced into taking the plea and he would have insisted on going to trial rather than pleading guilty but for counsel's advice to forego his motion to suppress. Without an evidentiary record, we cannot determine the viability of this claim. *See Manning*, 654 N.W.2d at 561 (stating "claims bearing on whether [applicant's] pleas were knowing and voluntary raise genuine issues of material fact precluding entry of summary disposition on those claims" where the state presents no evidence bearing on the knowing and voluntary nature of the pleas); *see also State v. Straw*, 709 N.W.2d 128, 138 (Iowa 2006) ("Under the 'reasonable probability' standard, it is abundantly clear that most claims of ineffective assistance of counsel in the context of a guilty plea will require a record more substantial than the one now before us."); *Foster v. State*, 395 N.W.2d 637, 638 (Iowa 1986) (finding summary disposition improper where applicant's claims raised facts outside the record).

For this reason, we reverse the district court's summary disposition of Conner's postconviction relief application and remand for an evidentiary hearing on his claim that his attorney "misadvised him regarding his suppression issue and . . . plea counsel's advice rendered his withdrawal of his suppression motion and the entry of his guilty plea involuntary and unintelligent." *See State v. Oberhart*, ___ N.W.2d ___, ___ (Iowa 2010) (preserving issue for postconviction relief); *accord State v. Johnson*, 784 N.W.2d 192, 198 (Iowa 2010).

REVERSED AND REMANDED.