

IN THE COURT OF APPEALS OF IOWA

No. 1-493 / 10-1407
Filed August 24, 2011

RODNEY FITZGERALD JACKSON,
Plaintiff-Appellant,

vs.

STATE OF IOWA,
Defendant-Appellee.

Appeal from the Iowa District Court for Woodbury County, Jeffrey A. Neary, Judge.

Rodney Fitzgerald Jackson appeals from the district court order granting summary disposition on his applications for postconviction relief. **AFFIRMED IN PART, REVERSED AND REMANDED IN PART.**

Mark C. Smith, State Appellate Defender, and Stephan J. Japuntich, Assistant State Appellate Defender.

Thomas J. Miller, Attorney General, Kyle Hanson, Assistant Attorney General, Patrick Jennings, County Attorney, and Terry Ganzal, Assistant County Attorney, for appellee.

Considered by Eisenhauer, P.J., and Potterfield and Tabor, JJ.

TABOR, J.

This appeal marks the second time that our court has considered these postconviction relief (PCR) actions filed by Rodney Fitzgerald Jackson. In 2009 we reversed the district court's grant of summary disposition and remanded Jackson's claims for further proceedings at which he would have "a meaningful opportunity to present his position." Following that remand, Jackson's new postconviction counsel filed written resistances to the State's motion for summary judgment and argued at a motion hearing that Jackson's applications presented issues of material fact concerning the performance of counsel at both the plea and probation revocation stages. The district court again granted summary disposition. Jackson appeals, contending summary disposition was inappropriate, or alternatively, that his PCR counsel was ineffective.

Because Jackson's ineffective-assistance-of-counsel claim bearing on whether his guilty plea was knowing and voluntary raises a genuine issue of material fact precluding the entry of summary disposition, we reverse that portion of the district court ruling and remand for an evidentiary hearing under Iowa Code section 822.7 (2005). We affirm the district court's dismissal on all remaining claims.

I. Background Facts and Proceedings.

On April 24, 2004, Rodney Jackson stole a watch from the wrist of a fellow patron at the Pearl Street Paradise in Sioux City. On June 3, 2004, the Woodbury County Attorney charged him with first-degree theft from a person in violation of Iowa Code section 714.2(1) (2003). Pursuant to an agreement, on

May 19, 2005, Jackson pleaded guilty to first-degree theft and received a ten-year suspended sentence, three years of probation, and costs and fines totaling \$1000.

One week later, Jackson was arrested for public intoxication and failure to obey a police officer. Jackson did not report this arrest to his probation officer. On May 27, 2005, Jackson was arrested and charged with possession of drug paraphernalia, simple assault, and assault with bodily fluids. Jackson pleaded guilty to assault on a peace officer on June 8, 2005.

At an August 22, 2005 probation revocation hearing, Jackson testified that he was trying to get into alcohol treatment program in Sioux Falls, but his probation officer testified that South Dakota officials were not willing to supervise Jackson's probation. Jackson expressed an unwillingness to participate in an Iowa treatment program. Citing Jackson's record, his criminal conduct within days of being placed on probation, and his failure to take responsibility for his actions, the court revoked Jackson's probation and imposed the ten-year sentence for his theft conviction.

On November 9, 2005, Jackson filed a PCR application challenging his attorney's performance in the guilty plea proceedings. On January 10, 2006, Jackson filed a PCR application contesting his probation revocation. On November 9, 2006, the State moved for summary disposition of both applications. Jackson's postconviction counsel did not file a resistance to those motions or any affidavits to support Jackson's claims. The court denied

Jackson's attempt to testify at the April 21, 2008 hearing on the motions and granted summary disposition on both, finding Jackson had waived his claims.

Jackson appealed the summary dispositions and this court reversed, finding Jackson was denied effective assistance of postconviction counsel. The court held "he was not afforded a meaningful opportunity to present his position as to whether there were genuine issues of material fact presented in his application or to argue his interpretation of the law." *Jackson v. State*, No. 08-0838 (Iowa Ct. App. Mar, 26, 2009). Our court remanded the case "for further proceedings to ensure the defendant's procedural due process rights are protected and his claims are properly heard." *Id.* The decision explained:

If the parties or the court wish to proceed by summary disposition, it must be clear that Jackson was provided a meaningful opportunity to present his position. Otherwise the application for postconviction relief should be heard as provided by section 822.7.

Following remand, Jackson—through newly appointed counsel—resisted both motions for summary disposition. While fully reciting the legal standard for summary judgments, the resistances advanced meager support for Jackson's factual assertions, stating only "he makes specific allegation and specific statements of facts that create material fact for the Court to rule on." Jackson's resistance in the probation violation action further alleged the probation revocation transcript "is not sufficient to establish that [his] assertions have no basis in fact," and "[t]he transcript is not sufficient to establish that there are no issues of material fact to be determined by the court."

The district court held a hearing on the motions on June 9, 2010. At the hearing, Jackson's counsel argued that he had "really two claims of ineffective assistance of counsel." Counsel explained that the first one involved his attorney advising him not to reveal to the plea-taking court that Jackson had been drinking alcohol before the plea proceeding. The second claim involved the failure of his attorney at the probation revocation proceeding to vigorously argue the option of the out-of-state treatment facility.

In a fifteen-page ruling filed on August 9, 2010, the district court addressed each of Jackson's PCR claims. The court dismissed the applications, finding:

The applicant has failed to identify the meaning or import of his allegations, and the failure to do so leads to the conclusion that there is no issue of material fact. . . . The applicant has not provided the court with any support from the record to demonstrate a violation of his constitutional rights, nor has he shown any material facts that are in dispute.

On August 9, 2010, Jackson filed his notice of appeal.

II. Scope and Standard of Review.

We review summary dismissal of a PCR application for the correction of errors at law. *Brown v. State*, 589 N.W.2d 273, 274 (Iowa Ct. App. 1998). Claims of ineffective assistance of counsel receive de novo review. *Collins v. State*, 588 N.W.2d 399, 401 (Iowa 1998). When claims of ineffective assistance of counsel are properly raised in a PCR application, "an evidentiary hearing on the merits is ordinarily required." *Manning v. State*, 654 N.W.2d 555, 562 (Iowa 2002).

III. Analysis.

The district court summarized Jackson's postconviction claims as follows:

1. His attorney in the plea and sentencing hearing was ineffective because the attorney did not explain Jackson's rights to him, did not want to fight the case and provided poor counsel because Jackson was indigent, misled him by saying he would receive the maximum sentence if he went to trial, and coached him in what to say at the plea and sentencing hearing;

2. His attorney in the probation revocation hearing was ineffective because the attorney misled him about the plea bargain by saying he would not have a prison term, failed to negotiate a plea bargain after promising to, did not explain his rights, and failed to promptly consult with him before making decisions;

3. He did not comprehend the content of the August 22 revocation hearing or the consequences of the plea bargain;

4. The judge in the probation revocation hearing had racial prejudice toward him;

5. The judge made false statement in the revocation proceeding;

6. The probation office made false statement under oath in the revocation proceeding;

7. The sentence was too harsh; and

8. His Sixth and Fourteenth Amendment rights were violated.

Iowa Code section 822.6 (2005) provides for disposition of a PCR application without a trial on the merits. Summary disposition may be granted

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. This summary disposition is analogous to the summary judgment procedure found in Iowa Rules of Civil Procedure 1.981. *Manning v. State*, 654 N.W.2d 555, 559 (Iowa 2002). Our court applies the same rules for summary judgment to motions for summary disposition of PCR applications filed by either party. *Id.* at 560. Accordingly, summary disposition is only proper when

there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Id.* The burden is on the moving party to show the nonexistence of a material fact and the court is to view the record in the light most favorable to the nonmoving party. *Id.* “A genuine issue of material fact exists if reasonable minds could draw different inferences and reach different conclusions from the undisputed facts.” *Id.*

The State moved for summary disposition arguing no genuine issue of material fact exists. With regard to Jackson’s claims of ineffective assistance of counsel, the State argued error was not preserved, the claims are contradicted by the record, Jackson failed to cite authority, and Jackson failed to show he was prejudiced. After remand from this court, Jackson filed resistances to the motions that refuted the State’s claims but failed to provide any additional information regarding his claims or evidence supporting them. See Iowa Code § 822.4 (“Affidavits, records, or other evidence supporting its allegations shall be attached to the application or the application shall recite why they are not attached.”).

Iowa Rule of Civil Procedure 1.981(5) states:

When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials in the pleadings, but the response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If the adverse party does not so respond, summary judgment, if appropriate, shall be entered.

In resisting summary disposition, Jackson failed to point to any facts that support the allegations set forth in his PCR application. At the hearing on the motions for

summary judgment, his counsel stated Jackson “has really two claims of ineffective assistance of counsel.”

The first claim was with regard to Jackson’s guilty plea on the theft charge and whether it was knowingly and voluntarily entered into. His counsel stated at the hearing:

It’s Mr. Jackson’s contention . . . that was his first felony plea of guilty. He was extremely nervous. He had been drinking and he told his attorney he’d been drinking before and his attorney said no, that’s, okay, let’s just—you know—get this done and over with.

This matter was outside the record of the proceedings. Where questions of fact are raised on matters outside the record, summary disposition is inappropriate. *See Foster v. State*, 395 N.W.2d 637, 628 (Iowa 1986); *see also Manning*, 654 N.W.2d at 559 (emphasizing the goal is to provide summary disposition once the case has been fully developed by both sides). We reverse the portion of the district court order summarily dismissing Jackson’s postconviction claim of ineffective assistance relating to the knowing and voluntary nature of his plea and remand for an evidentiary hearing on the merits of this claim.

Jackson’s other claim of ineffective assistance of counsel relates to the probation revocation hearing. His counsel stated:

[M]y understanding is the basic contention is that he had been accepted at a place—a treatment facility in Sioux Falls, South Dakota. And he says there is a letter that said he was accepted at this facility which he wished to go to and that he wasn’t allowed to go there and stay. Instead, his probation was revoked and he was sentenced to ten years in prison.

And his counsel was ineffective for not—I don’t know if counsel didn’t present the letter or counsel didn’t argue that this was an option for him, but that is basically—I believe the biggest part of that contention.

The record contradicts this assertion. At the probation revocation hearing, Jackson's counsel introduced the letter from the treatment center that indicated Jackson's application had been received and accepted. Counsel also questioned both Jackson and his probation officer about this option. Accordingly, summary disposition of this claim was appropriate.

We concur in the district court's analysis of the applicant's remaining claims and find no error in the court disposing of them by summary disposition.

AFFIRMED IN PART, REVERSED AND REMANDED IN PART.

Eisenhauer, P.J., concurs; Potterfield, J., dissents.

POTTERFIELD, J. (concurring in part and dissenting in part)

I concur in part and dissent in part. I concur in the affirmance of the district court's ruling sustaining the State's motions for summary judgment. I respectfully dissent from the majority's decision to reverse and remand the portion of the district court's order summarily dismissing Jackson's postconviction claim of ineffective assistance relating to the knowing and voluntary nature of his plea. Because I do not believe Jackson generated a fact question regarding the prejudice element of this claim, I would affirm the district court's opinion in full.

Jackson asserts his counsel was ineffective in "coach[ing] him in what to say at the plea and sentencing hearing." This claim apparently refers to Jackson's assertion that he informed his counsel at the time of the 2005 plea and sentencing hearing on the theft charge that he had consumed alcohol within the previous twenty-four hours and his counsel advised him not to tell the district court about his recent alcohol use. The transcript reveals that Jackson informed the court he had not consumed alcohol within the previous twenty-four hours and does not reflect any confusion or communication difficulty on Jackson's part.

Jackson never reduced this specific claim to writing, neither in his postconviction application nor in his resistances to the State's 2006 motions for summary judgment. Through years of litigation, including an appeal, two postconviction counsel, and two hearings on the State's motions for summary judgment on Jackson's postconviction applications, this claim was brought to the district court only by statements of counsel. It was never made part of the written record before the district court, and so was not mentioned in the court's thorough

ruling on the motions for summary judgment. No post-ruling motion was filed to bring it to the district court's attention. However, since the majority elected to address this claim, I turn to the merits.

The majority concludes that because the matter of counsel's advice regarding Jackson's potential intoxication was outside the record, we must remand for an evidentiary hearing on the merits of the claim. Because I believe Jackson cannot generate a fact question regarding the prejudice element of his claim, I would find we need not consider counsel's alleged failure to perform an essential duty and would affirm the district court.

To succeed on his claim, Jackson must prove both his counsel's failure to perform an essential duty and resulting prejudice. *See State v. Tate*, 710 N.W.2d 237, 240 (Iowa 2006). To establish prejudice, Jackson must prove that counsel's errors had an adverse impact on his defense. *See id.* (stating that even when counsel's errors are unreasonable, the defendant must show the errors "actually had an adverse impact on the defense"). The minutes of evidence in this case reveal Jackson admitted to a police officer that he had taken the victim's watch and the watch was found on his person. Given this overwhelming evidence against him, even assuming Jackson's allegations regarding counsel's "coaching" at the plea and sentencing hearing are true, Jackson cannot establish counsel's conduct had any adverse impact on his defense. Jackson received a suspended sentence and a three-year term of probation. Jackson cannot establish a more favorable outcome would have been available had he proceeded to trial. Without proof of prejudice, Jackson's claim of ineffective

assistance must fail as a matter of law. *State v. Leckington*, 713 N.W.2d 208, 218 (Iowa 2006).

Because I would find no genuine issue of material fact exists concerning the prejudice prong of Jackson's claim of ineffective assistance, I would affirm the district court's ruling sustaining the State's motion for summary judgment on Jackson's claim of ineffective assistance relating to the knowing and voluntary nature of his plea. I concur with the remainder of the majority's opinion.