

**IN THE COURT OF APPEALS OF IOWA**

No. 3-256 / 12-1119  
Filed May 15, 2013

**TIMOTHY J. PAULSON,**  
Applicant-Appellant,

**vs.**

**STATE OF IOWA,**  
Respondent-Appellee.

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Appeal from the Iowa District Court for Kossuth County, John P. Duffy,  
Judge.

Timothy Paulson appeals the denial of his application for postconviction  
relief. **AFFIRMED.**

Patrick W. O'Bryan, Des Moines, for appellant.

Timothy John Paulson, Newton, pro se.

Thomas J. Miller, Attorney General, Sheryl A. Soich, Assistant Attorney  
General, Todd Holmes, County Attorney, and Stephanie M. Nielsen, Assistant  
County Attorney, for appellee State.

Considered by Eisenhauer, C.J., and Danilson and Bower, JJ.

**EISENHAUER, C.J.**

In February 2005, Timothy Paulson was charged with *two counts* of sexual abuse. On April 13, 2005, Paulson's trial counsel filed a waiver of speedy trial. On September 15, 2005, defense counsel moved for a continuance and specifically noted the State had moved to amend the trial information to add *four additional* felony counts; had sought to add new witnesses, including an expert witness; and had applied for protection of the child victim through testimony out of the defendant's presence. The trial court granted the motion, finding "a continuance . . . is nearly mandatory."

Paulson was convicted by a jury of three counts of sex abuse, three counts of lascivious acts with a child, and one count of dissemination and exhibition of obscene material to a minor. He appealed and we affirmed his conviction. See *State v. Paulson*, No. 06-0141, 2007 WL 461323, at \*6 (Iowa Ct. App. Feb. 14, 2007).<sup>1</sup>

In April 2011, Paulson filed a pro se application for postconviction relief alleging his defense attorney "provided ineffective assistance as he unlawfully waived [my] constitutional speedy trial rights by signing a waiver without having the authority to do such." In July 2011, Paulson's appointed counsel filed a

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<sup>1</sup> In July 2010, Paulson filed a pro se "Motion for Correction of Illegal Sentence." He argued his attorney unlawfully waived his right to a speedy trial. The district court, relying on *State v. LeFlore*, 308 N.W.2d 39, 41 (Iowa 1981), ruled: "Paulson's counsel was acting within the scope of his authority by waiving Paulson's right to a speedy trial" and "defendant was not illegally sentenced." On January 13, 2011, Paulson filed a pro se statement entitled: "The court erred in failing to dismiss charges pursuant to I.R.CR.P. 2.33(2)(b), Sixth Amendment to the U.S. Constitution, Article One Section Ten Iowa Constitution." Paulson argued he was sentenced illegally and his attorney "did unlawfully waive Defendant's Right to a Speedy Trial." The court noted Paulson "raises a matter earlier raised and ruled upon" and, citing *LeFlore*, the court affirmed its earlier ruling.

motion to amend the pro se application's requested relief to "dismissal of all legal proceedings herein." The postconviction court granted the motion to amend.

In February 2012, Paulson filed "Applicant's Motion to Dismiss Charges and Memorandum of Facts and Law." The motion was filed in the postconviction action. An affidavit from Paulson was also filed. The motion to dismiss came on for hearing in April 2012. Counsel and the court treated the motion hearing as a trial on the merits of the postconviction relief application. At the hearing, postconviction counsel argued Paulson's affidavit shows he intended to utilize his ninety-day speedy trial rights and shows Paulson "was never asked by [the defense attorney] to sign any type of waiver." Counsel also argued the affidavit shows Paulson "didn't intend to give [the defense attorney] any authority to sign any waiver on his behalf; and, therefore, [Paulson] feels that his right to a speedy trial was prejudiced." Paulson testified: "I've never waived my rights [to a speedy trial], and I don't think that's right."

Also at the hearing, postconviction counsel admitted *State v. Leflore*, 308 N.W.2d 39 (Iowa 1981), provides authority for a defense attorney to waive speedy trial without client authorization, but he argued "the best remedy here is to overturn the *State v. Leflore* case." The postconviction court denied relief and this appeal<sup>2</sup> followed.

Ineffective-assistance claims are reviewed de novo. *State v. Clark*, 814 N.W.2d 551, 560 (Iowa 2012). To prevail, Paulson must prove by a preponderance of the evidence his trial attorney failed to perform an essential

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<sup>2</sup> Based on Paulson's application for postconviction relief and based on Paulson's pro se filing of an appeal from the postconviction court's judgment, we analyze the issues on appeal using the application's ineffective-assistance-of-counsel framework.

duty and this failure resulted in prejudice. *State v. Straw*, 709 N.W.2d 128, 133 (Iowa 2006).

The sole issue in *LeFlore* was “whether the right to a speedy trial must be waived personally by a defendant or whether defense counsel can waive this right on the defendant's behalf without the defendant's express consent.” *Id.* at 40. The court ruled: “[The] right to a speedy trial . . . is not a personal right that can be waived only by the defendant. Defense counsel . . . may waive this right on the defendant's behalf without the defendant's express consent.” *Id.* at 41.

We decline Paulson’s request to overrule *LeFlore*. We conclude Paulson’s trial counsel demonstrated his effective assistance, rather than ineffective assistance, by ensuring adequate time to respond to the State’s escalating case. As recognized by the United States Supreme Court:

Scheduling matters are plainly among those . . . counsel generally controls . . . . [Counsel] agreed to a specified delay in trial. When that subject is under consideration, only counsel is in a position to assess the benefit or detriment of the delay to the defendant’s case. Likewise, only counsel is in a position to assess whether the defense would even be prepared to proceed any earlier.

*New York v. Hill*, 528 U.S. 110, 115 (2000) (ruling “[a]lthough there are basic rights that the attorney cannot waive without the fully informed and publicly acknowledged consent of the client [right to counsel, right to plead not guilty] the lawyer has-and must have-full authority to manage the conduct of the trial”).

Accordingly, we affirm.

**AFFIRMED.**