

**IN THE COURT OF APPEALS OF IOWA**

No. 3-396 / 11-0791  
Filed July 24, 2013

**MICHAEL YOUNG,**  
Applicant-Appellant,

**vs.**

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

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Appeal from the Iowa District Court for Linn County, Marsha M. Beckelman, Judge.

Applicant appeals the district court decision denying his application for postconviction relief. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and David Arthur Adams and Nan Jennisch, Assistant Appellate Defenders, for appellant.

Thomas J. Miller, Attorney General, Sheryl A. Soich, Assistant Attorney General, Jerry Vander Sanden, County Attorney, and Robert Hruska, Assistant County Attorney, for appellee.

Considered by Vogel, P.J., Vaitheswaran, J., and Sackett, S.J.\*

\*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2013).

**PER CURIAM**

On April 22, 2009, Michael Young entered a written guilty plea to a charge of harassment in the first degree, in violation of Iowa Code section 708.7(2) (2009), an aggravated misdemeanor. He was sentenced to 365 days in jail, with credit for time served, the balance was suspended, and he was placed on probation. He did not appeal his conviction.

On March 15, 2010, Young filed an application for postconviction relief, claiming he received ineffective assistance because defense counsel did not contact potential witnesses or adequately investigate possible defenses. In a scheduling order filed on June 21, 2010, the postconviction hearing was set for May 11, 2011, at 9:00 a.m.

At the time set for the postconviction hearing, Young did not appear. Postconviction counsel made an oral motion for a continuance. He stated, "I have spoken to Mr. Young and I spoke to him in the—late last week about this hearing. I know that he knew that the hearing was today and what time it was." Postconviction counsel could only speculate that something unexpected happened to Young which caused him to fail to appear. Young's defense counsel testified at the hearing. The district court denied the oral motion to continue.

Young's defense counsel testified at the postconviction hearing about his interactions with Young. No other witnesses were called. The district court determined Young had failed to show he received ineffective assistance of counsel, and denied his application for postconviction relief. He now appeals,

claiming the district court abused its discretion by denying the oral motion to continue.

Generally, a district court's denial of a motion for continuance is reviewed for an abuse of discretion. *State v. Clark*, 814 N.W.2d 551, 560 (Iowa 2012). "An abuse of discretion occurs when the court's discretion is based on a ground or reason that is clearly untenable or when the court's discretion is exercised to a clearly unreasonable degree." *State v. Becker*, 818 N.W.2d 135, 140 (Iowa 2012). In this civil postconviction proceeding, Young did not have a constitutional right to be present. *Webb v. State*, 555 N.W.2d 824, 825 (Iowa 1996).

We determine the district court did not abuse its discretion in denying the oral motion to continue. The judge, attorneys, and Young's former defense counsel were present and ready to proceed at the time set for the hearing. The prosecutor noted the case had been pending for quite some time. The court stated there had been a substitution of counsel, an amended application for postconviction relief, and the case had been on the calendar for nearly a year. The court also found Young was aware of the hearing and had talked to postconviction counsel the week earlier.

We affirm the decision of the district court denying the oral motion to continue.

**AFFIRMED.**