IN THE COURT OF APPEALS OF IOWA

No. 7-150 / 06-1287
Filed April 11, 2007

EDDIE EARL YOUNG,
Applicant-Appellee,

vs.

STATE OF IOWA,
Respondent-Appellant.

Appeal from the Iowa District Court for Black Hawk County, Todd A. Geer, Judge.

State appeals from a district court order granting applicant's request for postconviction relief. **REVERSED.**

Alison Werner Smith, Hayek, Hayek, Brown, Moreland & Hayek, L.L.P., Iowa City, for appellee.

Thomas J. Miller, Attorney General, Karen Doland, Assistant Attorney General, Thomas J. Ferguson, County Attorney, and Kimberly Griffith, Assistant County Attorney, for appellant.

Considered by Zimmer, P.J., and Miller and Baker, JJ.

MILLER, J.

The State appeals a district court order granting Eddie Earl Young's application for postconviction relief. The State claims the district court erred because, contrary to Young's contention, he did knowingly, voluntarily, and intelligently waive his right to a jury trial. We reverse.

I. BACKGROUND FACTS AND PROCEEDINGS.

On December 4, 2000, Young was charged by trial information with possession of more than five grams of cocaine with the intent to deliver while in possession of a firearm, failure to affix a drug tax stamp, and possession of marijuana. Young entered a plea of not guilty, and the matter was set for a jury trial. Prior to trial, Young's attorney filed a motion to suppress evidence obtained from an allegedly invalid search warrant. The district court denied the motion to suppress. Young's counsel applied for discretionary review of the district court's ruling, which was also denied.

On August 30, 2001, Young and his attorney appeared before the district court. Young's counsel informed the court that his client wished to waive his right to a jury trial and submit to "a trial on the minutes." Young did not file a written waiver of his right to a jury trial. However, the court conducted an in-court colloquy with Young to determine whether Young understood he had a right "to a jury trial . . . and to have a jury of 12 people hear the evidence and have witnesses come in and testify." The court also asked Young whether he understood that the court "wouldn't consider any other evidence other than what is contained in the minutes" if Young stipulated to a trial on the minutes of evidence. Finally, the court asked Young whether he understood the court

"alone will review the minutes and I will render a decision based upon those minutes in this case." Young indicated he understood each of the questions. The district court concluded the colloquy by inquiring, "And it's your desire, then, to waive the jury and have the matter tried to the Court alone; is that correct?" Young answered affirmatively.

The district court found Young guilty of all three offenses on October 25, 2001. The court stated it "made appropriate inquiries on the record" and found the "defendant waived a jury and requested that the Court reach its decision based upon the minutes of testimony alone." Young was sentenced to fifty years in prison on the cocaine conviction, five years on the drug tax stamp conviction, and six months on the possession of marijuana conviction. The district court ordered the sentences to run concurrently. Based upon the State's recommendation, the district court did not impose the mandatory one-third minimum sentence for the cocaine conviction.

Young appealed, alleging 1) the search warrant was invalid; 2) the district court erred in overruling the motion to suppress evidence seized pursuant to the search warrant; and 3) trial counsel was ineffective for failing to move to suppress Young's statements to the police. We rejected Young's claims and affirmed his convictions. *State v. Young*, No. 01-1983 (Iowa Ct. App. Feb. 12, 2003).

Young filed a pro se application for postconviction relief asserting multiple bases for relief. The State filed a motion to dismiss the application. The district court sustained the State's motion in part and dismissed all but one of Young's claims. The district court found the only issue preserved for postconviction relief

was whether Young "knowingly waived his right to a jury trial and knowingly consented to a trial to the court based on the minutes of testimony." The district court granted Young's application for postconviction relief pursuant to *State v. Stallings*, 658 N.W.2d 106 (Iowa 2003), reasoning that because "three of the five elements" of *Stallings* were "not complied with, particularly when no written waiver was filed, the court cannot conclude that the rule and constitutional requirements were substantially complied with." The district court set aside the convictions and remanded the case for trial by jury. The State appeals, claiming the district court erred in granting postconviction relief because Young knowingly, voluntarily, and intelligently waived his right to a jury trial during an in-court colloquy.

II. SCOPE AND STANDARDS OF REVIEW.

We typically review postconviction relief proceedings for the correction of errors at law. *Ledezma v. State*, 626 N.W.2d 134, 141 (Iowa 2001). In addition, we give weight to the district court's findings concerning witness credibility. *Id.* (citations omitted).

III. MERITS.

Young relies on our supreme court's decisions in *Stallings* and *State v. Liddell*, 672 N.W.2d 805 (Iowa 2003) in arguing that his waiver of jury trial was not valid. The district court granted Young's postconviction relief application on the basis that the waiver was not valid because "three of the five elements [of *Stallings*] were not complied with." Both *Stallings* and *Liddell* were filed after the conclusion of the trial court proceedings in this case.

Rule 2.17(1) of the Iowa Rules of Criminal Procedure provides, in relevant part, "[c]ases required to be tried by jury shall be so tried unless the defendant voluntarily and intelligently waives a jury trial in writing and on the record . . . ." The rule "requires the court to conduct an in-court colloquy with defendants who wish to waive their jury trial rights." *Liddell*, 672 N.W.2d at 811-12.[1] Our supreme court has suggested a five-part inquiry to "determine whether a defendant's waiver of his right to a jury trial is knowing, voluntary, and intelligent."[2] *Id.* at 811.

We find the district court erred in determining that Young's waiver was not knowingly, voluntarily, and intelligently made. We begin our discussion by noting that the "five subjects of inquiry" in *Stallings* "are not 'black-letter rules' nor a 'checklist' by which all jury-trial waivers must be strictly judged." *Id.* at 814. The "failure to recite, in prayer-like fashion, *Stallings'* five subjects of inquiry" will not automatically nullify a jury trial waiver. *Id.* In addition, the absence of a written waiver "will not necessarily invalidate a waiver of the right to trial by jury if the waiver can otherwise be shown to have been entered knowingly, voluntarily, and intelligently." *Stallings*, 658 N.W.2d at 110. We again note that *Stallings* and *Liddell* were decided after Young waived his right to trial by a jury. Our supreme

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[1] *Liddell* partially overruled *State v. Lawrence*, 344 N.W.2d 227 (Iowa 1984) to require some in-court colloquy to ensure jury trial waivers are knowing, voluntary, and intelligent. *Id.* at 813-14.

[2] In *Stallings*, the supreme court stated the trial court should inquire into the defendant's understanding of the difference between jury and nonjury trials by informing the defendant: (1) twelve members of the community compose a jury, (2) the defendant may take part in jury selection, (3) jury verdicts must be unanimous, and (4) the court alone decides guilt or innocence if the defendant waives a jury trial. *Stallings*, 658 N.W.2d at 111-12 (citation omitted). The Court "should [also] seek to ascertain whether [the] defendant is under [the] erroneous impression that he or she will be rewarded, by either court or prosecution, for waiving [a] jury trial." *Id.* at 111-12.

court clearly indicated its holding in *Liddell* would have prospective application only. *Liddell*, 672 N.W.2d at 814. We do not require our trial attorneys to be "a crystal gazer; it is not necessary to know what the law will become in the future to provide effective assistance of counsel." *Snethen v. State*, 308 N.W.2d 11, 16 (Iowa 1981).

We therefore must determine whether Young's jury trial waiver was valid pursuant to the law in effect at the time of the waiver.[3] "The ultimate inquiry remains the same: whether the defendant's waiver is knowing, voluntary, and intelligent." *Liddell*, 672 N.W.2d at 814. Young argues his waiver was not knowing and intelligent because he is unable to read and needs to have written material explained to him. However, Young engaged in an in-court colloquy with the trial court regarding his decision to waive his right to a jury trial.[4] Young's counsel testified that he discussed the matter with Young. Counsel testified that Young understood the rights he was waiving by agreeing to a trial on the minutes, although he "wasn't happy about things." Young's counsel further testified the decision to waive a jury trial was made because of the State's concomitant agreement to recommend that the court forgo imposing the mandatory one-third minimum on the possession of cocaine charge. Counsel believed accepting the State's offer was the best option because the facts were

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[3] *See, e.g., State v. Buck*, 510 N.W.2d 850, 851-53 (Iowa 1994) (limited colloquy and written jury trial waiver signed by defendant's attorney was "overwhelming evidence" of a knowing, voluntary, and intelligent waiver); *Lawrence*, 344 N.W.2d at 229-230 (written waiver alone is "prima facie evidence that the waiver was voluntary and intelligent"); *State v. Combs*, 316 N.W.2d 880, 883-84 (Iowa 1982) ("a lengthy inquiry into defendant's waiver of jury" is not required).

[4] Young asserted that he never appeared before the trial court to waive his right to a jury trial. However, the record and Young's counsel, who the district court found "highly credible," refute this contention.

not seriously disputed. Thus, the decision to waive a jury trial was a tactical one. *See Combs*, 316 N.W.2d at 884. We conclude the record here reveals affirmative evidence of a valid jury trial waiver based on the law in effect at the time of the waiver.

IV. CONCLUSION.

We find the district court erred in determining Young's waiver of a jury trial was invalid because "three of the five elements [of *Stallings*] were not complied with."[5] The district court's in-court colloquy with Young was sufficient to satisfy the requirements of rule 2.17(1) pursuant to the applicable law at the time of the waiver, and the record adequately demonstrates a knowing, voluntary, and intelligent waiver. We accordingly reverse the judgment of the district court.

REVERSED.

[5] We do not need to address the State's argument that the district court erred in finding that prejudice was presumed pursuant to *Stallings* because of our conclusion that trial counsel did not fail to perform an essential duty. *See Stallings*, 658 N.W.2d at 112 (prejudice is presumed where counsel fails to assure compliance with rule 2.17(1)).