

IN THE COURT OF APPEALS OF IOWA

No. 7-322 / 06-1065
Filed June 13, 2007

VICTOR A. NOVANDER,
Plaintiff-Appellant,

vs.

STATE OF IOWA,
Defendant-Appellee.

Appeal from the Iowa District Court for Dubuque County, Lawrence M. Fautsch, Judge.

Appeal from the district court's dismissal of an application for postconviction relief. **AFFIRMED.**

Leslie M. Blair III and Christopher M. Soppe of Blair & Fitzsimmons, P.C., Dubuque, for appellant.

Victor Novander, Dubuque, pro se.

Thomas J. Miller, Attorney General, Cristen Douglass, Assistant Attorney General, Ralph Potter, County Attorney, and Michael Whalen, Assistant County Attorney, for appellee.

Considered by Sackett, C.J., and Vogel and Miller, JJ.

SACKETT, C.J.

Victor Novander appeals from the district court's dismissal of his application for postconviction relief. He contends the court erred (1) in ordering defense counsel to evaluate his claims and not making specific findings of fact and conclusions on each issue raised and (2) in not allowing him to amend his application. We affirm.

Appellant pleaded guilty to operating while intoxicated, second offense. This court affirmed his conviction on direct appeal. *State v. Novander*, No. 04-0330 (Iowa Ct. App. Feb. 24, 2005). On November 29, 2005, he filed an application for postconviction relief. On December 2 the court appointed an attorney to represent him, and ordered her to evaluate the merits of the postconviction claims. On February 20, 2006, the attorney filed her report evaluating the claims. On March 29 the court issued an order noting the results of counsel's evaluation of the claims, finding insufficient grounds for postconviction relief, giving notice of its intent to dismiss the application, and giving Novander until April 28 to reply. On April 28 Novander filed his own response, generally expressing dissatisfaction with the judicial system. On May 23, after reviewing the response, the court found insufficient evidence to support the single claim Novander raised in his response and dismissed the application for postconviction relief. On June 21 Novander appealed.

Novander contends the district court erred in ordering defense counsel to evaluate his claims and in not making findings of fact or conclusions of law on the issues he raised in his application. Postconviction proceedings are reviewed for correction of errors at law. *Rhiner v. State*, 703 N.W.2d 174, 176 (Iowa 2005).

Novander did not request specific findings, challenge the order that counsel evaluate his claims, or file a motion to amend or enlarge after the court's order. The district court was not given the opportunity to rule on the issue now raised on appeal. We conclude error was not preserved. See *Meier v. Senecaut III*, 641 N.W.2d 532, 539 (Iowa 2002).

Novander argues the supreme court's decision in *Gamble v. State*, 723 N.W.2d 443, 446 (Iowa 2006), should apply retroactively in his case. In *Gamble*, the supreme court determined the widespread practice of having postconviction counsel evaluate an applicant's claims for the court should not be used because the court should be making findings of fact and conclusions of law on each issue. *Gamble*, 723 N.W.2d at 446; see Iowa Code § 822.7 (2005) (requiring that the district court make specific findings of fact and conclusions of law as to each issue). When considering retroactive application of a judicial decision, we consider the three factors relied on in *Beeck v. S.R. Smith Co.*, 359 N.W.2d 482, 484 (Iowa 1984) (citing *Chevron Oil Co. v. Huson*, 404 U.S. 97, 106-07, 92 S. Ct. 349, 355, 30 L. Ed. 2d 296, 306 (1971)). As the supreme court applied the new rule of law set forth in *State v. Heemstra*, 721 N.W.2d 549, 558 (Iowa 2006), we would conclude the rule set forth in *Gamble* should "be applicable only to [that] case and those cases not finally resolved on direct appeal *in which the issue has been raised in the district court.*" *Heemstra*, 721 N.W.2d at 558 (emphasis added). Novander did not raise this issue in the district court, so the rule in *Gamble* would not apply.

Novander also contends the court erred in not allowing him to amend his application for postconviction relief. When evaluating Novander's claims,

counsel recommended the appointment of “counsel for purposes of amending the application” to aid in making an “all inclusive record” on the issues counsel felt were too vague. The district court determined it was unnecessary to appoint “second counsel for amending the application” because Novander “has shown insufficient grounds for postconviction relief and no further purpose would be served by further proceedings.” We find no error in the district court’s decision.

AFFIRMED.