

IN THE COURT OF APPEALS OF IOWA

No. 8-115 / 06-2044
Filed May 14, 2008

JAMES ROBERT PEOPLES,
Applicant-Appellant,

vs.

STATE OF IOWA,
Respondent-Appellee.

Appeal from the Iowa District Court for Taylor County, Dale Hagen, Judge.

James R. Peoples appeals a district court ruling granting the State's motion for summary judgment on his application for postconviction relief.

AFFIRMED.

Philip B. Mears, Mears Law Office, Iowa City, for appellant.

Thomas J. Miller, Attorney General, Robert P. Ewald, Assistant Attorney General, Clinton L. Spurrier, County Attorney, for appellee.

Heard by Sackett, C.J., and Miller and Vaitheswaran, JJ.

MILLER, J.

James R. Peoples appeals a district court ruling granting the State's motion for summary judgment on his application for postconviction relief. We affirm.

I. BACKGROUND FACTS AND PROCEEDINGS.

On August 26, 2003, the State charged Peoples, by trial information, with two counts of sexual abuse in the second degree, Class "B" felonies, and tampering with a witness, an aggravated misdemeanor. The district court appointed an attorney to represent Peoples. Peoples filed a series of motions and letters seeking replacement of his attorney. Some were overruled and some were withdrawn. The parties eventually reached an agreement pursuant to which Peoples pled guilty to one count of sexual abuse in the third degree, in violation of Iowa Code section 709.4(1) (2003), a Class "C" felony. Peoples waived his right to time before sentencing and was sentenced the same day to a term of incarceration of no more than ten years. Peoples did not file a motion in arrest of judgment or appeal his conviction or sentence.

Approximately two years later Peoples filed a pro se application for postconviction relief alleging the district court in his underlying criminal case should have replaced his attorney due to a conflict with him, and that Peoples had been mentally incompetent to plead guilty or be sentenced because of medication he was taking at the time. In his verified application Peoples stated that he was able to pay court costs and expenses, and did *not* desire court appointed counsel. Peoples concedes on appeal that during the postconviction

proceeding he never requested the appointment of counsel and proceeded pro se.

The same day that he filed his application for postconviction relief Peoples also filed a "Motion to Amend," setting forth an additional argument regarding his claim that the district court should have replaced his attorney in the criminal case. The State answered and several months later moved for summary judgment. The court set the motion for hearing on July 25, 2006, and notified Peoples he had until July 18 to file any resistance to the State's motion.

A hearing was held on July 25, 2006. Peoples participated telephonically. The hearing was not reported. However, each party has submitted a statement under Iowa Rule of Appellate Procedure 6.10(3) regarding what happened at the hearing. The district court approved both statements, stating that it approved Peoples's statement, as supplemented by the State's statement.

Peoples did eventually file a resistance to the motion for summary judgment on August 28, 2006. On September 11, 2006, Peoples also filed an "Affidavit Seeking a Temporary Restraining Order" against prison officials, alleging they were interfering with his ability to respond to the summary judgment motion. On September 20, 2006, the district court granted the State's motion for summary judgment and dismissed Peoples's postconviction application. Peoples appeals.

Peoples claims the district court should have made an inquiry as to whether postconviction counsel should have been appointed to represent him, and upon such inquiry should have appointed counsel. He also claims the court

should not have granted the State summary judgment, because there was a material issue of fact with regard to each of his postconviction claims, whether the district court in the underlying criminal proceeding should have replaced his attorney, and whether as a result of the medication he was taking at the time of his guilty plea he was mentally competent to plead guilty or be sentenced.

II. MERITS.

A. Postconviction Counsel.

“[A]n indigent’s right to counsel in a postconviction relief proceeding is statutorily based; no state or federal constitutional grounds for counsel exist in such proceedings.” *Wise v. State*, 708 N.W.2d 66, 69 (Iowa 2006). Iowa Code section 822.5 (2005) provides, in cases such as this, that the costs of legal representation shall be made available to an indigent applicant. See also Iowa Code § 815.10(1). However, “an attorney need not *always* be appointed to represent an indigent postconviction applicant. This perforce means such determination rests in trial court’s sound discretion.” *Furgison v. State*, 217 N.W.2d 613, 615 (Iowa 1974). We conclude our review of this issue is similarly for abuse of discretion. Reversal for abuse of discretion is warranted only if the court’s discretion has been exercised “on grounds or for reasons clearly untenable or to an extent clearly unreasonable.” *State v. Thomas*, 547 N.W.2d 223, 225 (Iowa 1996).

Peoples argues that his application for postconviction relief presented cognizable claims for postconviction relief. He claims that based on the reasoning (but not the holding) of *Wise* the district court had a duty to engage in

a colloquy with him to determine whether postconviction counsel should have been appointed to represent him. For the following reasons we disagree.

In his verified application for postconviction relief Peoples affirmatively represented that his “[was] able to pay court costs and expenses of representation and [did] Not desire to have counsel appointed to represent [him] concerning [the] application.” He then proceeded to represent himself. The statutes concerning appointment of counsel to represent an applicant for postconviction relief contain no requirement that the district court engage in a colloquy with an applicant who appears to have chosen to represent himself, in an effort to determine whether, to the contrary, the applicant in fact wishes to have counsel appointed. Requiring the court to do so would appear to be unnecessary where, as here, the applicant has expressly stated that he does not desire to have counsel appointed. Furthermore, an applicant seeking court-appointed counsel must present an affidavit of financial status demonstrating required indigency. Iowa Code § 815.9(2). Nothing in the record suggests that during the district court postconviction proceeding Peoples ever claimed, demonstrated, attempted to demonstrate, or in any manner even suggested that he was in fact indigent.

We conclude that under the circumstances shown the district court did not abuse its discretion or otherwise err by not engaging in a colloquy with Peoples to determine whether he wished to have counsel appointed to represent him.¹

¹ We do not mean to state or imply that engaging in the suggested colloquy would not be advisable. Doing so might well lead to the appropriate appointment of counsel in certain cases, with the resulting benefits noted by our supreme court in *Wise*, 708 N.W.2d at 69.

B. Summary Judgment.

Peoples next claims the district court erred in granting the State's motion for summary judgment and dismissing his postconviction application, because there was a genuine issue of material fact regarding whether the district court in the underlying criminal proceeding should have replaced his attorney as a result of a conflict and a breakdown in the attorney/client relationship, and there was a genuine issue of material fact as to whether as a result of medication Peoples was taking at the time he was mentally competent to plead guilty or be sentenced.

Initially, we note that “[w]ith certain exceptions, a guilty plea pursuant to Iowa Rule of Criminal Procedure 2.8(2)(b) waives all defenses and objections, even claims of ineffective assistance of counsel.” *Wise*, 708 N.W.2d at 70 (citations omitted). One of the exceptions is irregularities intrinsic to the plea itself. *Id.* “Irregularities intrinsic to the plea itself are those that bear on the knowing and voluntary nature of the plea.” *Id.* Although there is a question as to whether Peoples's claims here are intrinsic to the plea itself, because we find his claims to be without merit we need not rely on principles of waiver to resolve this issue.

Postconviction proceedings are law actions ordinarily reviewed for errors of law. When summary judgment is granted in a postconviction relief action, we examine the record to determine if a genuine issue of material fact exists and whether the moving party is entitled to a judgment as a matter of law. However, when there is an alleged denial of constitutional rights our review is *de novo*.

Bugley v. State, 596 N.W.2d 893, 895 (Iowa 1999) (citations omitted).

Iowa Code section 822.6 provides that the court may grant a motion for summary disposition of a postconviction application

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.

Summary disposition under section 822.6 is analogous to the summary judgment procedure provided in our rules of civil procedure. *Earnest v. State*, 508 N.W.2d 630, 632 (Iowa 1993). Accordingly, the facts are viewed in the light most favorable to the party opposing summary judgment. *State v. Manning*, 654 N.W.2d 555, 560 (Iowa 2002).

In granting the State's motion for summary judgment, the district court concluded that at Peoples's guilty plea and sentencing in the criminal case the district court had "compiled a very clean and nearly flawless record" that clearly showed (1) the issue of Peoples's wish to retain a different attorney had been resolved and he was satisfied with his attorney, (2) there was nothing in regard to Peoples's medical condition or treatment that had impacted his ability to understand the proceeding, and (3) there was a factual basis for the guilty plea. It also found that the record conclusively illustrated both that Peoples's attorney had not failed to perform an essential duty and that Peoples had not been prejudiced "in the least bit." For the following reasons, we find these findings by the court on this claim of district court error are fully supported by the record, and we agree with the court's conclusions.

At the plea and sentencing proceeding Peoples was asked by the district court if he was satisfied with his attorney and he replied, "Yes. Right now, yes." The court also asked if Peoples knew of anything his attorney should have done on his behalf that he had not done and Peoples responded, "No, not that I know of." Peoples also affirmatively stated there was nothing about his injury or care that would impact his ability to understand what was happening that day, and specifically informed the trial court that the medications he was taking, which apparently included an anti-depressant and a muscle relaxer, were not affecting his ability to understand the proceedings. Finally, at the plea and sentencing the district court established a factual basis for the guilty plea by asking Peoples what he did that made him guilty of the offense charged. Peoples stated he "Took a child, a young boy, and I touched his private parts while I was giving him a shower." He agreed he had done so either by force or against the boy's will. By private parts Peoples said he meant "his penis or testicles."

We find that Peoples's "bare allegations" that he had a conflict with his trial attorney and thus the attorney should have been removed, and that he was not mentally competent to plead guilty or be sentenced because of the medication he was taking, "directly contradict the record" and "do not overcome the presumption that the colloquy above set out reflects the true state of facts." *Wise*, 708 N.W.2d at 71 (quoting *State v. Boge*, 252 N.W.2d 411, 414 (Iowa 1977)). We conclude Peoples's claims are completely refuted by his plea and sentencing statements that he was satisfied with his attorney and his medication was not at all affecting his mental competency. Accordingly, the district court was correct in determining

there was no genuine issue of material fact with regard to these claims and it did not err in granting the State's motion for summary judgment and dismissing Peoples's application for postconviction relief.

AFFIRMED.