

**IN THE COURT OF APPEALS OF IOWA**

No. 9-627 / 08-1362  
Filed September 17, 2009

**RODERICK N. REIFENSTAHL,**  
Applicant-Appellant,

**vs.**

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

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Appeal from the Iowa District Court for Polk County, Eliza J. Ovrorn,  
Judge.

Applicant appeals the district court's dismissal of his postconviction action  
on the ground the issues had been previously adjudicated. **AFFIRMED.**

Charles Kenville, Des Moines, for appellant.

Thomas J. Miller, Attorney General, Sharon Hall, Assistant Attorney  
General, John P. Sarcone, County Attorney, and Jacki L. Livingston, Assistant  
County Attorney, for appellee.

Considered by Vaitheswaran, P.J., and Mansfield, J., and Schechtman,  
S.J.\*

\*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2009).

**SCHECHTMAN, S.J.****I. Background Facts & Proceedings**

On January 26, 2006, Roderick Reifensahl was charged by trial information with two counts of second-degree kidnapping, first-degree burglary, assault while participating in a felony, and going armed with intent. There were two alleged female victims to his crimes, one being Wanda Wiegand. On March 20, 2006, Reifensahl signed a limited waiver of speedy trial to May 1, 2006.<sup>1</sup> Trial was scheduled for that date.

On April 24, 2006, the State moved for a continuance to May 22, 2006. It asserted that Wiegand's sister had suddenly died the previous day; that Wiegand was responsible for the funeral arrangements, disposing of the estate, and arranging for the care of the decedent's child.

A hearing on the continuance was held on April 26, 2006. Reifensahl resisted, contending lack of good cause. At this time, a second-degree theft charge against Reifensahl was also pending in Polk County. His attorney offered that he was "out on bond" on the theft charge, though in custody on the subject prosecution. The district court stated, *sua sponte*, "Well, I believe his bond was revoked." The court attendant, after being asked to do a computer search, confirmed that the bond in the theft charge had been revoked. The court concluded, "the State has presented good cause for continuance of trial. Trial in this matter is continued to May 10, 2006." The case went to trial on May 10.

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<sup>1</sup> Riefensahl executed this extension of five days (speedy trial expired on April 26, 2006, pursuant to our ninety-day rule under Iowa Rule of Criminal Procedure 2.33(2)(b)) as his attorney had a conflict with a military reserve duty commitment.

Reifenstahl was convicted of two counts of false imprisonment, second-degree burglary, and assault while participating in a felony. He was sentenced to consecutive terms totaling seventeen years.

In his direct appeal Reifenstahl raised as an issue that the district court abused its discretion in granting the State's motion for a continuance, as it violated his right to a speedy trial. He also claimed ineffective assistance of counsel for failure to file a motion to dismiss on speedy trial grounds. The appellate opinion, directly after commenting on the circumstances confronting Wiegand, stated:

[W]e can understand and respect the difficulty one faces in the mourning period immediately following the death of a close relative. We agree with the district court this is an exceptional circumstance that justified the trial being continued beyond the speedy trial deadline.

*State v. Reifenstahl*, No. 06-0962 (Iowa Ct. App. Aug. 8, 2007). The opinion further related:

The delay of only ten days was reasonable. Defendant had asserted his right to a speedy trial but had agreed to a partial waiver to assure availability of his attorney. There is no showing that defendant was prejudiced. He was incarcerated on another charge, so he would not have been released even if this case had been dismissed on May 2. We affirm on this issue.

*Id.* We preserved for possible postconviction proceedings the other claims of ineffective assistance of counsel unrelated to speedy trial. *Id.* The Iowa Supreme Court denied Reifenstahl's application for further review.

Reifenstahl filed an application seeking postconviction relief, contending (1) material facts, not previously presented, requires a vacation of his sentences; and, (2) he received ineffective assistance because (a) defense counsel did not

file a motion to dismiss on speedy trial grounds; and (b) failed to object to certain testimony/exhibits and to move for mistrial due to jury misconduct.<sup>2</sup>

After hearing, the district court denied Reifensahl's petition for postconviction relief, prompting this appeal. The grounds of appeal were narrowed to (1) the court's error in ruling that the doctrine of claim preclusion barred consideration of the violation of his right to speedy trial, and (2) the court's error in denying his claim of ineffective assistance of counsel.

## **II. Standard of Review**

Postconviction proceedings are law actions ordinarily reviewed for the correction of errors at law. *Bugley v. State*, 596 N.W.2d 893, 895 (Iowa 1999). Claims of ineffective assistance of counsel, however, are reviewed de novo. *State v. Bergmann*, 600 N.W.2d 311, 313 (Iowa 1999). To establish a claim of ineffective assistance of counsel, a defendant must show (1) the attorney failed to perform an essential duty, and (2) prejudice resulted to the extent it denied defendant a fair trial. *State v. Carroll*, 767 N.W.2d 638, 641 (Iowa 2008).

## **III. Speedy Trial**

Reifensahl contends the district court erred in ruling that the doctrine of claim preclusion barred him from claiming, in this postconviction action, that there had been a speedy trial violation. He recognizes that this same issue was previously considered by the court of appeals in the direct appeal of his criminal conviction. But Reifensahl contends "[t]here was never a final adjudication on the merits in the direct appeal because the true facts regarding the applicant-

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<sup>2</sup> These allegations were dropped on appeal after the district court's dismissal of each of them.

appellant's custody status were never considered." He suggests it was the trial court's duty to re-analyze the speedy trial issue under similar standards as the appellate court, but with the correct facts that he was not in custody on the theft charge.

Iowa Code section 822.8 (2007) (in our chapter entitled "Postconviction Procedure"), with the preface, "*Grounds must be all-inclusive,*" provides:

Any ground finally adjudicated or not raised, or knowingly, voluntarily, and intelligently waived in the proceeding that resulted in the conviction or sentence, or in any other proceeding the applicant has taken to secure relief, may not be the basis for a subsequent application, unless the court finds a ground for relief asserted which for sufficient reason was not asserted or was inadequately raised in the original, supplemental, or amended application.

Under section 822.8, "[r]elitigation of previously adjudicated issues is barred." *State v. Wetzel*, 192 N.W.2d 762, 764 (Iowa 1971). Reifenthal's claim that the nine day continuance violated his right to a speedy trial was finally adjudicated by the court of appeals. *State v. Reifenthal*, No. 06-0962 (Iowa Ct. App. Aug. 8, 2007). His claim would be barred by section 822.8, unless he has "sufficient reason" for failing to have previously raised the misunderstanding relating to his custody on the theft charge. His appeal focused on the lack of good cause and he has urged no sufficient reason for having ignored its alleged potential prior to this proceeding.

But there are other factors that bear directly upon this issue. One of the situations for applicants to seek postconviction relief is if "there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice." Iowa Code § 822.2(d). This

statute is the basis of Reifenthal's application to address issue preclusion. The applicant needs to establish four elements to succeed on this ground of new material facts: (1) the evidence was discovered after judgment; (2) the evidence could not have been discovered earlier in the exercise of due diligence; (3) it is material to the issue, not merely cumulative or impeaching; and (4) it would probably change the result if a new trial were granted. *Summage v. State*, 579 N.W.2d 821,822 (Iowa 1998).

Not only was the evidence discovered before judgment, but the continuance would have been granted notwithstanding. The continuance court focused on whether "good cause" existed for the delay. See *State v. Winters*, 690 N.W.2d 903, 908 (Iowa 2005). The reason for the delay was not that Reifenthal was in jail, but because of the travails of the victim witness, who was in a mourning period for her sister. The applicant has failed to convince the postconviction court, or this court, that if the court had known the applicant was not in custody, that would have resulted in a denial of the the ten-day continuance.

We conclude the district court did not err in concluding Reifenthal's speedy trial claims had been previously adjudicated, and therefore further relitigation of that issue was barred. See *Wetzel*, 192 N.W.2d at 764.

#### **IV. Ineffective Assistance**

Reifenthal asserts he received ineffective assistance because his trial counsel failed to file a motion to dismiss on speedy trial grounds. The opinion in his direct appeal states:

He further contends that if error on this issue is not preserved because his defense counsel failed to file a motion to dismiss because he was not brought to trial within the speedy trial deadline, then we should find his defense counsel ineffective. The speedy trial issue was addressed by the parties in arguing the motion to continue and the district court's ruling indicates the court considered the speedy trial issue. Consequently, we find the issue adequately preserved.

*State v. Reifenthal*, No. 06-0962 (Iowa Ct. App. Aug. 8, 2007). The opinion proceeds to aver that the district court had not abused its discretion by granting the motion for continuance. *Id.* On this basis, a motion to dismiss on speedy trial grounds would have been unsuccessful.

Because there has already been a finding that a motion to dismiss on speedy trial grounds, whenever made, would have been unsuccessful, Reifenthal cannot show he received ineffective assistance due to his counsel's failure to file a motion to dismiss. We will not find counsel engaged in ineffective assistance due to a failure to raise a meritless claim. *State v. Hildebrand*, 405 N.W.2d 839, 841 (Iowa 1987).

We conclude the district court properly denied Reifenthal's application for postconviction relief.

**AFFIRMED.**