

IN THE COURT OF APPEALS OF IOWA

No. 9-905 / 08-1993
Filed January 22, 2010

DOUGLAS DEBRUIN,
Applicant-Appellant,

vs.

STATE OF IOWA,
Respondent-Appellee.

Appeal from the Iowa District Court for Jackson County, Patrick Madden, (summary disposition), Gary D. McKenrick, (preserved postconviction claims), Judges.

Appellant appeals the summary disposition of his application for postconviction relief. **AFFIRMED.**

Steven Stickle, Davenport, for appellant.

Thomas J. Miller, Attorney General, Karen Doland, Assistant Attorney General, James Kivi, Assistant Attorney General, and Chris Raker, County Attorney, for appellee State.

Considered by Vogel, P.J., and Doyle and Mansfield, JJ.

VOGEL, P.J.

Douglas DeBruin appeals the denial of his application for postconviction relief. Arguing he was not sufficiently questioned on his choice to proceed without counsel, he also asserts the court erred in granting summary disposition. He also raises a number of pro se issues. We review postconviction relief proceedings for correction of errors at law. *DeVoss v. State*, 648 N.W.2d 56, 60 (Iowa 2002).

On April 20, 2005, DeBruin was convicted and sentence entered on the jury's findings that he was guilty of murder in the first degree in violation of Iowa Code sections 707.1 and 707.2(1) (1999), and theft in the first degree in violation of sections 714.1(1) and 714.2(1). DeBruin was represented by counsel in this criminal jury trial. He filed an appeal, and this court affirmed the convictions in October 2006. *State v. DeBruin*, No. 05-0766 (Iowa Ct. App. Oct. 25, 2006). In May 2007, DeBruin filed a pro se application seeking postconviction relief, alleging denial of a speedy trial, denial of due process, and claiming ineffective assistance of counsel. He also included a financial statement declaring "no attorney requested." The State responded and moved for summary disposition of DeBruin's claims, which the district court granted in part. DeBruin's claims of ineffective assistance of counsel were preserved for postconviction hearing; in November 2008, the remaining claims were also denied. DeBruin appeals.

Asserting the postconviction court did not engage him in a colloquy which sufficiently apprised him of the dangers and disadvantages inherent in self-representation, DeBruin maintains he did not make a voluntary, knowing, and intelligent waiver of his right to counsel. We agree with the State that the Sixth

Amendment right to counsel does not apply to a state postconviction collateral attack on a criminal conviction. *Conner v. State*, 630 N.W.2d 846, 848 (Iowa Ct. App. 2001). Further,

an 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. See *Fuhrmann v. State*, 433 N.W.2d 720, 722 (Iowa 1988). Iowa Code section 822.5 (2001) provides that the costs of legal services shall be made available to an indigent applicant. In interpreting this section, this court has said that "an attorney need not always be appointed to represent an indigent postconviction applicant." *Furgison v. State*, 217 N.W.2d 613, 615 (Iowa 1974). The determination whether to appoint counsel rests in the district court's sound discretion. *Id.*

Wise v. State, 708 N.W.2d 66, 69 (Iowa 2006).

If an application, in light of the state's response, raises no claim cognizable in a post-conviction proceeding, it is wasteful to appoint counsel to determine solely if the applicant has some grounds for relief not stated in his original application.

Furgison v. State, 217 N.W.2d 613, 615 (Iowa 1974).

During the postconviction hearing, DeBruin reiterated his decision to proceed pro se:

Court: Now, I don't know if you are aware of it or not, but you do have a right to have a guardian ad litem or attorney appointed to help you in this proceeding if you like or you can do it on your own. It's entirely up to you.

DeBruin: Pretty much doing this on my own.

Court: Are you telling me, and I'm the judge, by the way, are you telling me that you waive your right to have a guardian ad litem or attorney to help you in this proceeding?

DeBruin: Yes. I'll be representing myself.

We agree with the postconviction court's sound discretionary call that DeBruin waived his right to counsel and the court was not obligated to make further inquiry as to the voluntariness of his decision to proceed pro se.

DeBruin next argues that he was not allowed sufficient time to prepare between the filing of the State's motion for summary disposition on June 19, 2008, and the hearing on July 1, 2008. He argues because he was allowed to proceed pro se, "he was not aware of the fact that his ability to respond to the motion was being impaired by the court's setting of a hearing a mere twelve days after the motion's filing." We do not utilize a deferential standard when persons choose to represent themselves.

The law does not judge by two standards, one for lawyers and the other for lay persons. Rather, all are expected to act with equal competence. If lay persons choose to proceed pro se, they do so at their own risk.

Metropolitan Jacobson Dev. Venture v. Bd. of Review, 476 N.W.2d 726, 729 (Iowa Ct. App. 1991).

Finally, DeBruin asserts the district court erred in granting summary disposition. In a postconviction relief action, the court may grant a motion for summary disposition when it appears from the record as a whole that there is no genuine issue of material fact. *Manning v. State*, 654 N.W.2d 555, 559-60 (Iowa 2002). The postconviction court found "because the Court of Appeals considered those two issues [speedy trial and due process] and because the Supreme Court of Iowa refused to further review, the State's Motion for Summary Disposition with regard to those two issues is SUSTAINED." We agree and affirm.

DeBruin also raises a number of pro se issues, which are either not preserved for our review, subsumed in the issues raised by his appellate counsel, or otherwise without merit.

AFFIRMED.