

IN THE COURT OF APPEALS OF IOWA

No. 9-982 / 09-0859
Filed February 10, 2010

MONSHEEKA WHITE,
Applicant-Appellant,

vs.

STATE OF IOWA,
Respondent-Appellee.

Appeal from the Iowa District Court for Scott County, Mark J. Smith,
Judge.

Monsheeka White appeals from the dismissal of her application for
postconviction relief. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and David A. Adams, Assistant
Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Cristen Douglass, Assistant Attorney
General, Michael J. Walton, County Attorney, and Jerald L. Feuerbach, Assistant
County Attorney, for appellee State.

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

DOYLE, J.

Monsheeka White appeals from the dismissal of her application for postconviction relief. She contends the district court erred and denied her the right to counsel by failing to inquire into White's allegations of a breakdown in the attorney-client relationship. She requests we preserve this issue for a second postconviction relief proceeding.

In 2006, a Scott County jury found White guilty of burglary in the first degree in violation of Iowa Code section 713.3 (2005), willful injury resulting in bodily injury in violation of section 708.4(2), going armed with intent in violation of section 708.8, and robbery in the first degree in violation of section 711.2. She was sentenced to two terms of twenty-five years and two terms of five years, with all the terms to be served concurrently. She filed an appeal, and this court affirmed the convictions. *State v. White*, No. 06-1810 (Iowa Ct. App. Dec. 12, 2007).

White filed her application for postconviction relief on March 5, 2008. She was appointed counsel, who filed an amended application on June 8, 2008. Hearing was held May 14, 2009. White participated and gave testimony via the Iowa Communications Network, and White's counsel appeared at the hearing on her behalf. The court issued its ruling on May 20, 2009, and denied the application on all grounds.

Although her appeal is "from all rulings and orders adverse to [White] in the above captioned cause that concluded with ruling on May 20, 2009," White does not, in her brief, challenge the merits of the district court's denial of her application for postconviction relief. She instead argues the court erred and

denied her the right to counsel by failing to inquire into her allegations of a breakdown in the attorney-client relationship. White asks this court to preserve this issue for a second postconviction relief action to allow White to address the court as to the breakdown in communications with her appointed postconviction counsel and to address the possible ineffective assistance of postconviction counsel. She makes no argument in her brief that her postconviction relief counsel was ineffective.

The issue of the alleged breakdown in the attorney-client relationship between White and her appointed postconviction counsel was not addressed by White at the hearing, nor addressed or ruled on by the court. However, both parties agree that White's two pro se letters to the judge were sufficient to preserve her issue for appellate review. See *State v. Tejada*, 677 N.W.2d 744, 749 (Iowa 2004). White acknowledges her right to postconviction counsel is not constitutional, but instead derived from Iowa Code section 822.5 (2007). *Connor v. State*, 630 N.W.2d 846, 848 (Iowa Ct. App. 2001). Our review of a denial of a request for substitute counsel is for abuse of discretion. *State v. Lopez*, 633 N.W.2d 774, 778 (Iowa 2001). To establish an abuse of discretion, White must show "the court exercised the discretion on grounds or for reasons clearly untenable or to an extent clearly unreasonable." *Id.* (quoting *State v. Maghee*, 573 N.W.2d 1, 5 (Iowa 1997)).

After White filed her original application for postconviction relief, she was appointed counsel. About eight weeks later, on May 18, 2008, White wrote the district court judge requesting the court to ask her counsel to either contact her, or to appoint another attorney. In the letter she stated her attorney had

not made any effort to communicate with me. He has not even acknowledged that he was appointed to represent me. . . . I can only assume that [my attorney] is disinterested in my case or too busy to put even a minimal amount of effort forward to help me.

The district court sent a copy of the letter to White's counsel and asked that he contact White at his earliest convenience. A little over a month later, on July 8, 2008, White's counsel filed an amended application for postconviction relief. On March 29, 2009, White wrote another letter to the district court requesting her attorney be removed from her case. She stated, "I feel [my attorney] is not keeping my best interest in mind. But basically just doing his job just to get it over with." A handwritten note on the letter dated April 1, 2009, bearing the district court judge's initials, indicates the attorney "will contact client." Hearing on White's postconviction relief application was held May 14, 2009. After White testified to issues raised in her application, White's attorney asked her,

Are there any other issues related to your case that we have not discussed or anything else that you think the Judge should know in this case to present evidence? Is there anything else you want to tell the Judge?

White responded, "No, sir." On redirect, White was again asked, "Are there any other issues that we have not discussed with relation to your case or your appeal or anything the Judge needs to know at all?" White responded, "No." The court made no any inquiry of White regarding her request for substitute counsel.

The *Tejeda* court explicitly recognized that a court has a duty to inquire into a defendant's request for substitute trial counsel, where the request is based on an alleged breakdown in communication with current counsel. *Tejeda*, 677 N.W.2d at 750. When a defendant raises an issue of conflict of interest in a postconviction proceeding, the district court is required to inquire into the

possible conflict. *Conner*, 630 N.W.2d at 848. “This is not to say courts must conduct a hearing every time a dissatisfied defendant lodges a complaint about his attorney.” *Tejeda*, 677 N.W.2d at 751. The duty to inquire is triggered upon the court’s receipt of a colorable complaint. *Id.* at 751-52. For the reasons that follow we need not decide whether the duty to inquire was triggered in this case.

The substance of White’s complaint is that she was not appointed substitute postconviction counsel. A defendant bears the burden of showing sufficient cause to warrant appointment of substitute counsel. *State v. Brooks*, 540 N.W.2d 270, 272 (Iowa Ct. App. 1995). “Sufficient reasons include a conflict of interest, an irreconcilable conflict with the client, or a complete breakdown in communications between the attorney and the client.” *Id.* Unless defendant has been denied counsel or counsel has a conflict of interest, defendant must show prejudice. *Id.* White has failed in her burden to show prejudice.

White alleges a breakdown in communication with her postconviction counsel. Not every breakdown in communication is sufficient to warrant appointment of substitute counsel; a complete breakdown is required. *Id.* “[T]o prove a total breakdown in communication, a defendant must put forth evidence of a severe and pervasive conflict with his attorney or evidence that he had such minimal contact with the attorney that meaningful communication was not possible.” *Tejeda*, 677 N.W.2d at 752 (quoting *United States v. Lott*, 310 F.3d 1231, 1249 (10th Cir. 2002)). White asks that we preserve this issue for a second postconviction relief proceeding so she can develop a record on the breakdown in communication with her postconviction counsel and to address the possible ineffectiveness of her postconviction counsel.

Even if there was a complete breakdown in communication, White must still show prejudice to warrant appointment of substitute counsel. *Brooks*, 540 N.W.2d at 272. White failed to argue, or even state, that she suffered prejudice from the district court's denial of appointment of substitute postconviction counsel. She failed to state or argue that the result of the postconviction hearing would have been different had she been appointed substitute counsel. She has thus waived the issue. *Hollingsworth v. Schminkey*, 553 N.W.2d 591, 596 (Iowa 1996) ("When a party, in an appellate brief, fails to . . . argue . . . in support of an issue, the issue may be deemed waived."). Prejudice is not presumed, and having failed in her burden to show or even argue prejudice resulting from the district court's failure to inquire about White's allegations of a breakdown in communication with her postconviction relief counsel and failure to appoint substitute counsel, we deny White's request to preserve the breakdown in communications issue for a second postconviction relief proceeding and accordingly affirm the district court's denial of her application for postconviction relief.

AFFIRMED.