FILED
JAN 28 1987
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

STEVEN ALAN WILLIAMSON,)

Petitioner-Appellant,) Filed January 28, 1987

vs.) 275

STATE OF IOWA,) 6-477
86-194

Respondent-Appellee.)

Appeal from the Iowa District Court for Dallas County (27203) - Van Wifvat, Judge.

The petitioner appeals from the district court's summary dismissal of his pro se application for postconviction relief. **AFFIRMED.**

Charles Harrington, Chief Appellate Defender, and Dory A. Stuker, Assistant Appellate Defender, for petitioner-appellant.

Thomas J. Miller, Attorney General of Iowa; Lona Hansen, Assistant Attorney General of Iowa; and David J. Welu, Dallas County Attorney; for respondent-appellee.

Considered by Oxberger, C.J., Snell, and Hayden, JJ.

PER CURIAM 276

On July 26, 1985, a Dallas County jury found the petitioner guilty of burglary in the second degree. Petitioner appeared before a Polk County District Court where judgment was entered and sentence pronounced. The petitioner's trial counsel advised him that any challenge to the Polk County District Court's sentencing jurisdiction upon a Dallas County adjudication would constitute a frivolous appeal.

On December 13, 1985, petitioner filed a pro se application for postconviction relief alleging inter alia that he had been denied effective assistance of counsel at both the trial and appellate level. His application also requested an opportunity to amend upon receipt of the trial transcript. The State answered and moved to dismiss the petitioner's application. On January 16, 1986, petitioner filed a pro se response to the State's motion. On January 24, 1986, the Dallas County District Court summarily dismissed the application for lack of merit.

Petitioner contends the trial court erred in summarily dismissing his application for postconviction relief. He argues that liberal construction of his pro se allegations of ineffective assistance of counsel reveals that he generated a material issue of fact, making summary disposition improper. Petitioner also argues that the trial court erred in not appointing counsel for postconviction relief purposes. Finally, he contends that the trial court's error becomes apparent given the pro se nature of his application and his request for an opportunity to amend.

We note that postconviction proceedings are treated as actions at law. Kelly v. Nix, 329 N.W.2d 287, 291 (Iowa 1983). Because fundamental constitutional rights are involved, our review is de novo in light of the totality of the circumstances and record upon which the court ruling was made. Wagner v. State, 364 N.W.2d 246, 249 (Iowa 1985).

The Supreme Court had stressed that counsel should be appointed by the trial court when the circumstances of the particular case establish such appointment as beneficial to petitioner, conducive to a just disposition of the case in the trial court, and helpful on appeal. Chartier v. State, 223 N.W.2d 255, 257 (Iowa 1974) (emphasis added).

> [I]n determining whether counsel should be appointed, trial judges should inceptionally read the often inartfully drawn application in a light most favorable to the applicant. In event it thus appears a substantial issue of law or fact may exist then counsel should be at once appointed.

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

From the record it is unclear whether petitioner ever directly requested the appointment of trial counsel. Assuming such request was made, we still find the trial court was correct in dismissing this application. Upon a careful review of the record, we conclude that no issue of fact or law existed within petitioner's postconviction relief application.

AFFIRMED.