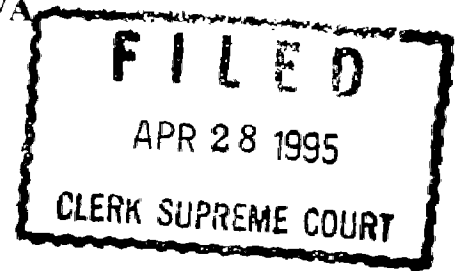


IN THE COURT OF APPEALS OF IOWA

No. 5-176 / 94-1166



**WILLIAM DALE ARNOLD,**

Applicant-Appellant,

vs.

**STATE OF IOWA,**

Respondent-Appellee.

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Appeal from the Iowa District Court for Story County, Ronald H. Schechtman,  
Judge.

Applicant appeals the summary dismissal of his second application for  
postconviction relief. **REVERSED AND REMANDED.**

Patrick W. O'Bryan, Des Moines, for appellant.

Thomas J. Miller, Attorney General; Thomas G. Fisher, Jr., Assistant Attorney  
General; Mary E. Richards, County Attorney; and Christopher Cooklin, Assistant  
County Attorney, for appellee.

Heard by Donielson, C.J., and Hayden and Sackett, JJ.

**DONIELSON, C.J.**

William Arnold appeals the denial of his second application for postconviction relief. We reverse and remand to allow there to be a recorded hearing on the State's combined motion to dismiss and application for summary judgment.

Arnold plead guilty to the crime of criminal mischief in the second degree. In his direct appeal he claimed he had been denied the effective assistance of counsel at his sentencing hearing. In his brief on direct appeal, Arnold argued his sentencing counsel was ineffective for failing to call character references and for not seeking a continuance of the sentencing proceedings when it became apparent the State was going to call the victims as witnesses at the sentencing hearing. In ruling on his direct appeal, the Iowa Supreme Court found the record was inadequate to review Arnold's claim of ineffective assistance of counsel, and it preserved the issue for postconviction proceedings.

On January 28, 1992, Arnold filed his first application for postconviction relief. A trial was held on Arnold's application and an order denying it was filed on November 25, 1992. During the trial on this application Arnold specifically raised, and the district court addressed, the effectiveness of his counsel at the sentencing hearing. Arnold filed an application for the appointment of counsel to pursue an appeal from the denial of his first application for postconviction relief. This application was denied because the time to file a timely appeal had elapsed.

Arnold filed a second application for postconviction relief. The district court noted "a previous Postconviction Relief Application has been filed and prosecuted by Mr. Arnold based on the same subject matter involved in the present Application," and it ordered Arnold to set forth, with particularity, how his second application differed from his first application. This court order was filed March 25, 1994. The State subsequently filed a combined motion to dismiss and application for summary judgment on April 14, 1994. Arnold filed a resistance to the State's motion.

A summary disposition hearing was held, and on June 14, 1994, the district court filed an order dismissing Arnold's second application for postconviction relief. The court sustained the State's motion to dismiss because Arnold had afforded the court no evidence, in the form of affidavits or otherwise, indicating why the grounds upon which relief was now sought were not raised in his first application for postconviction relief. *See* Iowa Code § 822.8

On appeal Arnold contends he was denied the benefit of effective assistance of counsel during the second set of postconviction relief proceedings, and he argues the dismissal of his application without the benefit of a recorded hearing makes it "virtually impossible" for an appellate court to review this claim. A hearing must be held on the State's motion to dismiss an application for postconviction relief. *Poulin v. State*, 525 N.W.2d 815, 816 (Iowa 1994). It is statutorily required a record be made and preserved when a court hears applications for postconviction relief. Iowa Code § 822.7. We conclude summary disposition hearings should be similarly

recorded and preserved to allow adequate appellate review of allegations pertaining to the performance of postconviction counsel.

Without expressing any opinion on the propriety of the district court's dismissal of Arnold's application, we reverse and remand this matter to allow for a recorded hearing on the State's motion to dismiss and application for summary judgment. We also remand for the purpose of allowing the parties to address the issue of mootness alluded to by Arnold during the course of appellate oral arguments.

**REVERSED AND REMANDED.**