IN THE COURT OF APPEALS OF IOWA

No. 1-416 /90-1275

FILED
DEC 31 1991
CLERK SUPREME COURT

RONALD W. BREWER,

Appellant,

vs.

STATE OF IOWA,

Appellee.

Appeal from the Iowa District Court for Pottawattamie County, Leo F. Connolly, Judge.

Brewer sought postconviction relief to challenge his 1963 conviction for second-degree murder. **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and B. John Burns, Assistant State Appellate Defender, for appellant.

Bonnie J. Campbell, Attorney General, Bruce Kempkes, Assistant Attorney General, Richard Crowl, County Attorney, and Timothy T. Markel, Assistant County Attorney, for appellee.

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

PER CURIAM

In 1963 Ronald Brewer was charged with first-degree murder. Following plea negotiations, Brewer entered a plea of guilty to second-degree murder. He was convicted and was sentenced to life in prison.

Brewer took no direct appeal from his conviction. He later challenged the conviction by filing a habeas corpus petition in 1967 and a motion to vacate judgment in 1970. Both of these actions were unsuccessful.

In 1983 Brewer once again challenged his conviction by applying for postconviction relief. This postconviction action has gone on for the intervening years. On two occasions the district court dismissed the action on its own motion. On each occasion, however, the Iowa Supreme Court has reversed the dismissal and has remanded for further proceedings. Brewer v. Iowa Dist. Court, 391 N.W.2d 841 (Iowa 1986); Brewer v. State, 446 N.W.2d 803 (Iowa 1988).

Following the most recent remand, the district court held a postconviction hearing on the merits and denied postconviction relief. Brewer appeals, contending he received ineffective assistance of counsel in the 1963 proceedings.

Brewer first complains his attorneys in the 1963 proceeding were ineffective by inducing him to enter a guilty plea when a question existed as to his mental competence to do so. As such, Brewer claims his plea was

not knowing and voluntary. Brewer also complains his attorneys neglected to pursue the viable defense of insanity in light of his prior history of mental illness. In the alternative, Brewer argues counsel should have pursued an accidental shooting defense.

A postconviction proceeding is not available to relitigate issues previously adjudicated in a habeas corpus action. State v. Jackson, 199 N.W.2d 102, 102-03 (Iowa 1972). After Brewer was initially charged with first-degree murder, he was represented by two attorneys. One was court appointed, and the other was retained by Brewer's family and known for his specialty in criminal law. In his habeas corpus action our supreme court determined both attorneys repeatedly consulted with Brewer about entering a guilty plea to second-degree murder. Brewer v. Bennett, 161 N.W.2d 749, 751 (Iowa 1968). In addition, the supreme court concluded there was no evidence suggesting any coercion by his attorneys or incompetency on Brewer's part to enter the plea. Id. Finally, the supreme court held there was no inadequacy on the part of Brewer's attorneys. Id. at 751-52. No new matters concerning Brewer's plea were presented in this postconviction proceeding which were not already considered and completely reviewed in the habeas corpus case. The principle of res judicata bars additional litigation on matters previously adjudicated. State v. Wetzel, 192 N.W.2d 762, 764 (Iowa 1971).

We conclude Brewer's plea of guilty was valid as voluntarily and intelligently entered in open court. The

record discloses Brewer's counsel at the time he entered the plea was competent. Under such circumstances the plea waived his right to trial where he could have raised the defenses he seeks to rely on here. Jackson, 199 N.W.2d at 103. The judgment of the trial court is affirmed.

AFFIRMED.