FILED
JUN 26 1984
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

DAVID L. EPPS,

Petitioner-Appellant,

vs.

STATE OF IOWA,

Respondent-Appellee.

Filed June 26, 1984

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4-161
83-1093

Appeal from the Iowa District Court for Black Hawk County - William G. Klotzbach, Judge.

Petitioner appeals the summary dismissal of his application seeking postconviction relief from his prior conviction of first degree murder. REVERSED AND REMANDED.

Charles Harrington, Appellate Defender, and Patrick R. Grady, Assistant Appellate Defender, for petitioner-appellant.

Thomas J. Miller, Attorney General, and Richard L. Cleland, Assistant Attorney General, for respondent-appellee.

Heard by Snell, P.J., and Schlegel and Sackett, JJ.

Petitioner, David L. Epps, appeals the summary dismissal of his application seeking postconviction relief from his prior conviction of first degree murder. See State v. Epps, 316 N.W.2d 691 (1982). Epps asserts that the postconviction court violated Iowa Code section 663A.6 (1981), by summarily dismissing his application for postconviction relief without appointing him counsel. We reverse and remand.

On September 17, 1982, David Epps filed in the district court an application for appointment of counsel to represent him in postconviction relief proceedings regarding his prior conviction of first degree murder. Thomas McIntee was appointed to represent Epps on September 27, 1982. On March 21, 1983, McIntee filed in the district court an application to withdraw as counsel and a brief in support. In that brief McIntee stated that he had investigated, and found to be without merit, grounds raised by Epps regarding admissibility of certain evidence, sufficiency of the evidence, alleged prosecutorial misconduct, alleged violation of a plea bargain, and alleged ineffective assistance by Epps' trial counsel.

On March 22, 1983, trial court filed a notice of its intention to dismiss Epps' "postconviction relief application." McIntee filed on Epps' behalf on March 28, 1983, a request for appointment of new counsel or a hearing on the matter. On April 6 and May 10, 1983, Epps filed letters requesting appointment of new counsel.

On June 15, 1983, the trial court dismissed Epps' "application for postconviction relief." The court stated:

> The court remains satisfied on the basis of the application, the record, and the brief filed by petitioner's attorney, Thomas M. McIntee, in support of his application to withdraw, that the applicant is not entitled to postconviction relief and no purpose would be served by any further proceeding.

It appears these proceedings involved the appointment of counsel. We have reviewed the record and find no "application for postconviction relief." Epps sought assistance in presenting his claims and the court appointed McIntee as counsel. McIntee sought to withdraw from the case on the basis of his

professional judgment that, after investigation, Epps claims were without merit. The court sustained the motion to withdraw and dismissed the entire matter pursuant to the first alternative under Iowa Code section 663A.6 (1981). See Hines v. State, 288 N.W.2d 344, 346 (Iowa 1980).

We believe the court erred in summarily dismissing the matter without the appointment of new counsel to assist Epps in filing an application for relief and in resisting the dismissal of the matter. Counsel should be appointed by the trial court when the circumstances of the particular case establish such appointment would be beneficial to petitioner, conductive to a just disposition of the case in the trial court, and helpful on an appeal. Dodd v. State, 232 N.W.2d 472, 474 (Iowa 1975). While trial court does have discretion in the appointment of counsel, that discretion is very limited. Id. at 474-75. "Upon a request [for appointment of counsel] and a showing of inability to pay, counsel should be appointed for the purpose of filing applications for postconviction relief." Hall v. State, 246 N.W.2d 276, 277 (Iowa 1976). The record shows that both conditions have been met in this case. We do not believe McIntee's professional decision to withdraw as counsel affects Epps' right to file an application for postconviction relief or to assistance in filing that application.

"Upon the filing of such application, the trial court must then determine whether counsel should be retained or appointed for hearing and appeal, basing its determination on the application for postconviction relief read in a light most favorable to the petitioner." Id. (emphasis added). It is clear that the court erroneously refused retention of counsel and prematurely dismissed this case prior to the filing of an application specifying the grounds for relief.

We must reverse the actions of the trial court in refusing to appoint counsel for petitioner and in dismissing the case. This case is reversed and remanded for the purpose of appointing counsel for petitioner to enable him to bring his action for postconviction relief.

REVERSED AND REMANDED.