IN THE COURT OF APPEALS OF IOWA

No. 5-089 / 94-330

FILED
MAY 30 1995
CLERK SUPREME COURT

DARRYL DAVIS,

Applicant-Appellee,

vs.

STATE OF IOWA,

Respondent-Appellant.

Appeal from the Iowa District Court for Johnson County, William R. Eads, Judge.

The State appeals an order granting postconviction relief to Darryl Davis. **REVERSED.**

Thomas J. Miller, Attorney General, Mary Tabor, Assistant Attorney General, and J. Patrick White, County Attorney, for appellant.

Philip B. Mears of Mears Law Office, Iowa City, for appellee.

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

DONIELSON, C.J.

The State appeals a district court's order granting an application for postconviction relief. Upon our independent evaluation of the totality of the circumstances, we reverse.

Darryl Davis was charged with OWI, third offense, and driving while his license was revoked. At a jury trial he represented himself with standby counsel. A police officer testified Davis switched places with his passenger, Heather Franzen, as the officer attempted to stop their car. Franzen was issued citations for interference with official acts and failure to maintain control.

Davis claimed Franzen had been the driver all evening. He subpoenaed Franzen to testify at his trial. Franzen's attorney moved to quash the subpoena stating she would invoke her privilege against self-incrimination. The district court sustained the motion to quash the subpoena stating Franzen could not testify without incriminating herself.

On October 2, 1990, Davis was found guilty as charged. On January 11, 1991 he was sentenced to a five-year prison term and a $750 fine on the OWI conviction and to a two-year term on the driving-while-revoked conviction. He did not file a notice of appeal.

Davis filed an application for postconviction relief in July 1992 claiming, among other things, his right to compulsory process was violated because he was precluded from calling Franzen to the stand. Davis asserted he had not filed a direct

appeal because he erroneously believed he was required to post an appeal bond in order to appeal.

Following a hearing, the district court sustained Davis's postconviction relief application holding he had been deprived of his right to compulsory process. The district court found that two days after the trial court had quashed Davis's subpoena, Franzen had accepted a plea bargain whereby she would plead guilty to a pending theft charge in exchange for a dismissal of several pending misdemeanors against her, including the charges arising out of the incident involving Davis. The district court stated Davis should have been informed of the contemplated and pending plea agreement so he could seek a continuance until the agreement was consummated and Franzen was free to testify. The court believed Franzen's testimony was highly significant where the sole evidence presented by the State was the uncorroborated testimony of the arresting officer.

Further, the court held that since Davis was unaware of the plea agreement, he could not have asserted such ground in posttrial motions or on direct appeal. Finally, the district court accepted Davis's claim that he did not appeal from his conviction for financial reasons because, as a pro se litigant, he thought he had to post an appeal bond of $7,000 plus a twenty percent surcharge before he could appeal. For all of these reasons the district court held there was sufficient cause for Davis not to have raised the issue of the denial of compulsory process on direct appeal and prejudice resulted therefrom. The district court granted Davis a new trial. The State appeals.

The State contends Davis has waived the issue of compulsory process by not seeking a direct appeal of his conviction. A "sufficient reason" or cause must exist to excuse Davis's failure to raise this issue on direct appeal. *See* Iowa Code § 822.8 (1993); *Polly v. State*, 355 N.W.2d 849, 856 (Iowa 1984). Davis asserts he did not file a direct appeal because he erroneously believed he would have to post an appeal bond to do so. The district court concluded there was no evidence in the record to indicate Davis was advised by the sentencing court or his stand by trial counsel that he did not have to post a bond to appeal. Absent such evidence, the district court held Davis had sufficient reason for not raising the issue on appeal.

The district court's analysis assumes Davis had to be affirmatively informed of his right to appeal without posting a bond. Davis had opted to proceed pro se. A layperson who represents himself does so at his own risk. *See Metropolitan Jacobson Dev. Venture v. Board of Review*, 476 N.W.2d 726, 729 (Iowa App. 1991). Laypersons and lawyers are expected to act with equal competence. *Id.* If lay persons decide not to utilize professional assistance they should be ready to accept the consequences. *State v. Walker*, 236 N.W.2d 292, 295 (Iowa 1975).

This is not a case in which the applicant was misinformed regarding his legal rights. *See Mott v. State*, 407 N.W.2d 581, 583 (Iowa 1987) (plea may be held invalid if a defendant has been affirmatively misled by an attorney concerning its consequences); *Meier v. State*, 337 N.W.2d 204, 208 (Iowa 1983) (postconviction relief granted where defense counsel had erroneously advised defendant regarding

mandatory minimum sentence). Davis was responsible for perfecting his own appeal and his misunderstanding of the applicable law does not excuse his failure to file an appeal.

The district court further found sufficient reason existed for Davis's failure to file an appeal because Davis did not know of the consummation of Franzen's plea bargaining agreement prior to the expiration of his time to file a notice of appeal. Davis was not sentenced and a final judgment not entered until January 11, 1991. Davis had thirty days to appeal after entry of the final judgment. Iowa R. App. P. 101.

As of December 6, 1990, the docket in Franzen's case reflected that her trial date, originally scheduled for October 2, 1990, had been continued and by December 6, 1990, the charges against her had been dismissed pursuant to a plea agreement. All facts relevant to Davis's compulsory process argument were a matter of public record and discoverable by Davis prior to the expiration of the time period he had for filing an appeal. Davis had opted to represent himself and protect his own legal interests. We cannot conclude there was sufficient reason to excuse Davis's failure to raise this issue on direct appeal. We reverse the decision of the district court granting Davis's application for postconviction relief.

REVERSED.