

FILED

MAR 14 1977 298

CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA,	)	
Appellee,	)	Filed March 14, 1977
v.	)	
LEONARD L. LEMKE,	)	66
Appellant.	)	2-59008
	)	

Appeal from Dallas District Court - Robert O. Frederick,
Judge.

Appeal from purported final adjudication of defendant's
pro se motions treated by trial court as application for
postconviction relief and from trial court's denial of request
for court appointed counsel. Reversed and remanded.

Richard C. Turner, Attorney General, Lee M. Jackwig,
Assistant Attorney General, and Alan Shirley, Dallas County
Attorney, for appellee.

Spellman Law Firm by Daniel J. Spellman, and G. Michael
Kealhofer, of Perry, for appellant.

Heard by Allbee, C.J., and Donielson, Snell, Oxberger and
Carter, JJ.

PER CURIAM

This is an appeal from a ruling and purported final adjudication incident to two *pro se* motions filed in the district court by the defendant, Leonard L. Lemke. At the time of said filings the defendant was incarcerated in the Men's Penitentiary at Fort Madison.

The trial court treated these *pro se* filings as an application for postconviction relief from defendant's December 10, 1973, robbery conviction. The motions, as so treated, were denied as frivolous and a final adjudication was made that defendant was not entitled to postconviction relief. Defendant's request, supported by affidavit of indigency, for assistance of counsel to prepare a postconviction application was also denied.

On this appeal the defendant contends that the trial court erred (1) in adjudicating his right to postconviction relief prior to his filing an application for such relief; and (2) in failing to appoint counsel to assist him in filing an application for postconviction relief.

Upon our review of the record, we must agree with both of defendant's contentions. His handwritten motion filed August 15, 1975, was in both form and substance a motion for copies of court records at public expense and perhaps could also be construed as a request for court appointed counsel. His typewritten motion filed November 24, 1975, was not an application for postconviction relief but rather a response to a notice which he had received from the trial court concerning the proposed dismissal of a postconviction application at a time when none had been filed. On this state of the record, we believe that the trial court's adjudication of defendant's right to postconviction relief was premature.

Defendant's November 24 motion contained a request for assistance of counsel to prepare an application for postconviction relief. We believe that this request should have been granted by the trial court. See, *e.g.*, *Hall v. State*, 246 N.W.2d 276 (Iowa 1976).

We reverse the trial court's adjudication of the merits of defendant's potential right to postconviction relief, if any, and remand the matter to the district court with directions to appoint counsel at public expense to assist defendant in preparation of an application for postconviction relief.

REVERSED AND REMANDED.