IN THE COURT OF APPEALS OF IOWA

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ANTHONY P. NOLAN,

Petitioner-Appellant,

vs.

STATE OF IOWA,

Respondent-Appellee.

Appeal from the Iowa District Court for Dubuque County (No. 14362) - T. H. Nelson, Judge.

Defendant appeals from the trial court's order denying postconviction relief. **AFFIRMED.**

Charles L. Harrington, Chief Appellate Defender, for petitioner-appellant.

Thomas J. Miller, Attorney General; Elizabeth E. Ciebell, Assistant Attorney General; and Ralph R. Potter, Assistant Dubuque County Attorney, for respondent-appellee.

Considered by Donielson, P.J., and Snell, and Sackett, JJ.

SACKETT, J. 254

Anthony P. Nolan appeals from the trial court's summary dismissal of his petition for postconviction relief. Nolan claims his trial counsel was ineffective in failing to raise a competency defense and the trial court erred in failing to appoint a new attorney for Nolan after his postconviction attorney withdrew. We affirm the trial court.

In September, 1980, Nolan pled guilty to burglary in the second degree in violation of Iowa Code §§713.1 and 713.3 (1979). He was sentenced and placed on probation. No direct appeal was taken.

In July, 1981, Nolan pled guilty to a second charge of burglary in the second degree. He was sentenced and his earlier probation was revoked. No direct appeal was taken.

In 1985, Nolan filed pro se an application for postconviction relief challenging both judgments. His petition claimed he had a history of fascination for women's clothing. He contended his trial attorney knew of his mental condition but failed to raise the issue of his competency and failed to tell defendant he had the right to do so. Nolan also asked legal counsel be appointed. Legal counsel was appointed. Nolan was dissatisfied with counsel and asked that other counsel be appointed. His request for new counsel was not ruled on. The trial court subsequently indicated its intention to dismiss Nolan's petition, holding the record reflected no basis on which he is entitled to relief. Nolan was given 60 days to respond to the proposed dismissal.

Nolan filed a pro se resistence in essence claiming he was caught in a house in women's clothing and his trial counsel should have discussed with him his right to a trial as to his mental problems. Nolan contended he should have a new trial to address his mental problems. Nolan's attorney then moved to

withdraw on the grounds his review of the case showed no basis for postconviction relief. He asked that new counsel be appointed. No new counsel was appointed. Nolan filed another motion for new counsel. The trial court then denied both the motion for new counsel and for postconviction relief.

We determine the trial court was correct in denying postconviction relief. While the record clearly shows Nolan had a fascination for women's clothing, there is no suggestion this fact rendered him incapable of forming a criminal intent. Nolan does not claim nor is there evidence Nolan did not know the nature and quality of his acts or he did not know what he was doing when the crimes were committed. To establish an insanity defense it is necessary for the accused to show he was laboring under such a defect of reason, from disease of the mind, as not to know the nature and quality of the act he was doing, or if he did know it, that he did not know he was doing wrong. State v. Thomas, 219 N.W.2d 316 (Iowa 1974). The summary dismissal was proper.

We affirm the trial court's refusal to appoint a second attorney for Nolan on his postconviction relief petition. An attorney must not always be appointed in these circumstances. See Furgison v. State, 217 N.W.2d 613, 618 (Iowa 1974); State v. Mulqueen, 188 N.W.2d 360, 366 (Iowa 1971); State v. Grady, 367 N.W.2d 263, 265 (Iowa App. 1985). Having considered defendant's argument, we find the trial court did not err in failing to appoint a second attorney for Nolan. Furgison, 217 N.W.2d at 618.

AFFIRMED.