IN THE COURT OF APPEALS OF IOWA

ORVILLE RICHARD LUKE,
Petitioner-Appellant,

vs.

STATE OF IOWA,
Respondent-Appellee.

Filed April 21, 1981

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64434

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CLERK SUPREME COURT

Appeal from Lucas District Court. A. V. Hass, Judge.

Petitioner appeals from trial court's dismissal of his petition for post-conviction relief. He asserts that he was denied effective assistance of counsel at the time of his guilty plea and also at the time of his revocation of probation. AFFIRMED.

Stephen Meyer, of Meyer Law Firm, Chariton, Ia., for petitioner-appellant.

Thomas J. Miller, Attorney General of Iowa, and Shirley Ann Steffe, Assistant Attorney General, for respondent-appellee.

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

PER CURIAM

Petitioner appeals from trial court's dismissal of his petition for post-conviction relief. He asserts that he was denied effective assistance of counsel at the time of his guilty plea and also at the time of his revocation of probation. We affirm.

Petitioner was arrested in Lucas county in 1976 and was charged with two counts of obtaining money under false pretenses in violation of section 713.1, The Code 1975, and one count of possession of marijuana in violation of section 204.401, The Code 1975. Attorney Stanley Lamfers was appointed at petitoner's request to represent him. Petitioner entered a guilty plea to one count of obtaining money under false pretenses. The other two charges against him were dropped, apparently as part of a plea bargaining agreement. Petitioner was sentenced to imprisonment for a term of up to seven years. This sentence was suspended, and he was granted probation on the condition that he commit himself to the Residental Treatment Facility at Fort Des Moines. He remained at the treatment facility for about five months after which time he left without authorization. In July 1978, over a year later, he was arrested in Henry County for arson, burglary, and criminal mischief. Parole revocation proceedings were instituted in Lucas County. Attorney Stanley Lamfers again represented petitioner. Upon Lampers' advice, petitioner did not resist the revocation of his probation. He was ordered to serve the sentence imposed earlier. There were no further proceedings on the Henry County charges. In September 1979, petitioner filed his application for post-conviction relief. After his application was denied, he filed his notice of appeal on November 29, 1979.

I. Scope of Review.

Our review of post-conviction relief under section 663A.9, The Code 1979, is generally on error and not de novo. Hinkle v. State, 290 N.W.2d 28, 30 (Iowa 1980). Where petitioner alleges violation of a constitutional safeguard, as here, we will make our own evaluation of the totality of the circumstances under which the ruling was made. Sims v. State, 295 N.W.2d 420, 422 (Iowa 1980); Hinkle, 290 N.W.2d at 30. This is the equivalent of a de novo review. Sims, 295 N.W.2d at 422; Hinkle, 290 N.W.2d at 30.

II. Ineffective Assistance of Counsel.

Petitioner contends that attorney Lamfers gave ineffective assistance both at time of petitioner's 1976 guilty plea and at the time of the 1978 probation revocation

proceedings. Petitioner alleges that, in reference to the 1976 proceedings, Lamfers did not consult with him enough to learn all of the relevant facts, did not prepare adequately, and gave him improper assurances that he would receive a deferred sentence if he plead guilty. As to the 1978 probation revocation proceedings, petitioner alleged that Lamfers advised him not to resist revocation even though petitioner believed that he had a defense. Petitioner further claims that Lamfer disregarded his desire to appeal his revocation of probation. We find no merit in petitioner's contentions.

Iowa follows "range of normal competency" standard in reviewing allegations of ineffective assistance of counsel. Hinkle, 290 N.W.2d at 30. Petitioner must show by a preponderance of the evidence that there is "... an affirmative factual basis demonstrating counsel's inadequacy of representation," Id., and that he was prejudiced by the alleged inadequacy. State v. Rand, 268 N.W.2d 642, 649 (Iowa 1978).

From our review of the record, we agree with trial court's dismissal of petitioner's application for post-conviction relief. Both petitioner and Lamfers testified at the hearing. The trial court heard conflicting evidence about the advice given. In this issue dependent upon a determination of credibility, we find no reason to disturb the finding of the lower court. We conclude no error occurred on this issue and trial court's judgment is therefore affirmed.

AFFIRMED.