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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

RICHARD GRANT DAVIS,	)	
Applicant-Appellant,	)	Filed October 28, 1987
vs.	)	55
STATE OF IOWA,	)	7-441 87-358
Resister-Appellee.	)	

Appeal from the Iowa District Court for Polk County (PCR 374), Anthony M. Critelli, Judge.

Appellant appeals from the district court's denial of his application for postconviction relief. **AFFIRMED.**

Charles Harrington, Appellate Defender, and Linda Del Gallo, Assistant Appellate Defender, for applicant-appellant.

Thomas J. Miller, Attorney General, and Ann L. Beneke, Assistant Attorney General, for resister-appellee.

Considered by Donielson, P.J., and Schlegel and Hayden, JJ. Snell, J., takes no part.

PER CURIAM 56

Richard Davis appeals from the district court's denial of his application for postconviction relief, contending that the district court erred in denying relief based upon his alleged failure: (1) to show cause for not challenging his 1958 guilty plea on direct appeal, and (2) to demonstrate that he was prejudiced by errors in the plea proceeding. We affirm.

On February 3, 1958, Richard Davis pleaded guilty to breaking and entering in violation of Iowa Code section 708.8 (1954) and was sentenced to a prison term of up to ten years. Davis did not appeal from the guilty plea proceeding. Davis has served the sentence imposed. On December 9, 1986, he filed an application for postconviction relief challenging the voluntariness of his guilty plea. At the postconviction hearing, he presented evidence tending to show that he had been inadequately informed of his trial-related rights. Davis testified that he was first informed of his right to appeal by the parole board six months into his sentence. Davis did not challenge the guilty plea proceeding until he filed the instant application after being recently charged in federal court with possession of a firearm by a felon.

On February 25, 1987, the district court entered its findings of fact and conclusions of law. The court ruled that due to inadequate advice at his guilty plea hearing, Davis had not made an intelligent waiver of his trial-related rights. However, the court denied his application due to his failure to show cause for not raising this challenge in an earlier proceeding and due to lack of prejudice. Davis appeals from the district court's ruling.

Postconviction relief actions pursuant to Iowa Code chapter 663A are law actions and are ordinarily reviewed only on error. Schertz v. State, 380 N.W.2d 404, 408 (Iowa 1985). However, when there is an alleged violation of a constitutional safeguard, we will make an independent evaluation of the totality

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of the circumstances under which the postconviction ruling was made. Polly v State, 355 N.W.2d 849, 854 (Iowa 1984); Thomas v. State, 316 N.W.2d 182, 183 (Iowa App. 1981).

Iowa Code section 663A.8 (1985) provides:

> All grounds for relief available to an applicant under this chapter must be raised in his original, supplemental or amended application. Any ground finally adjudicated or not raised, or knowingly, voluntarily, and intelligently waived in the proceeding that resulted in the conviction or sentence, or in any other proceeding the applicant has taken to secure relief, may not be the basis for a subsequent application, unless the court finds a ground for relief asserted which for sufficient reason was not asserted or was inadequately raised in the original, supplemental, or amended application.

In addition to our statutory law, in Polly, 355 N.W.2d at 856, the supreme court set forth a two-pronged test which a postconviction applicant must meet in order to obtain relief: (1) "cause" for the failure to challenge the relief in a direct appeal from the original proceedings and (2) actual "prejudice" resulting from the alleged errors. "It is not sufficient that the applicant demonstrate the errors created a possibility of prejudice, he or she must shoulder the burden of showing they worked to his or her actual and substantial disadvantage, infecting the entire trial with error of constitutional dimensions." Id. at 855; see also Waterbury v. State, 387 N.W.2d 309, 310 (Iowa 1986); Gering v. State, 382 N.W.2d 151, 153 (Iowa 1986).

The issue before us is whether the district court erred in holding that Davis failed to meet his burden of showing adequate cause or prejudice.

We first address the "cause" prong of the Polly test. The district court found Davis was not properly and completely advised of his appellate rights when he pleaded guilty in 1958; specifically, his right to trial by jury, privilege against compulsory self-incrimination, and the right to confront one's accusers. The court further found Davis did not learn of his right to appeal until he had been incarcerated for six months and thus "could not be expected to have timely

filed a Notice of Appeal and thereby timely put in issue the alleged constitutional deprivations concerning his plea . . . ." We agree with the district court that although direct appeal was foreclosed, we can find no "cause" why Davis waited 28 years to file the present action for postconviction relief. Davis testified at the postconviction hearing that he knew people attacked their convictions while in prison. This familiarity of the judicial process is demonstrated by his knowledge of jailhouse attorneys throughout his admitted 20 years of incarceration. He stated that the only reason he filed the postconviction action was because of the pending federal court charge, not because of his dissatisfaction with the plea-taking.

Assuming arguendo that Davis did not know of his right to postconviction relief until two months before filing his application, as he now contends, he has the burden to show that he would have exercised his appeal rights, given such knowledge, by submitting some minimal and believable evidence. Polly, 355 N.W.2d at 857. Davis makes no such assertion that he would have directly appealed had he known of his right to do so, nor does he assert that the outcome would have been any different. He testified at the postconviction hearing that he pleaded guilty because he was guilty; his attorney who represented him in 1958 testified to the effect that there were no viable defenses. We do not find that the pending federal charge is good "cause" for waiting 28 years to file a postconviction relief action, nor that Davis would have pursued an appeal had the information been imparted to him earlier. In addition, the court in Polly found that defendant's ignorance of appeal grounds did not satisfy the "cause" prong of the test. Id. at 857.

The second prong of the Polly test is that Davis must show prejudice from the infirmities accompanying the taking of his plea. Davis does not allege innocence. He acknowledged that his coconspirator had implicated him; he provided

no defenses. As previously stated, we can find no evidence that Davis would have altered his decision to plead guilty in 1958 or how proper trial court conduct would have produced a different result. See Schertz, 380 N.W.2d at 412. Davis has not proved the defects in his plea proceeding worked to his actual and substantial disadvantage and prejudiced him.

We hold the district court did not err in dismissing Davis's application for postconviction relief and accordingly affirm the conviction of Davis.

AFFIRMED.