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MAR 0 9 1988
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

RICHARD L. WILLIAMS,	)	
Petitioner-Appellant,	)	Filed March 9, 1988 529
vs.	)	
STATE OF IOWA,	)	7-543 87-125
Respondent-Appellee.	)	

Appeal from the Iowa District Court for Polk County (No. 349), Dick Strickler, Judge.

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

Charles L. Harrington, Appellate Defender, and James F. Whalen, Assistant Appellate Defender, for applicant-appellant.

Thomas J. Miller, Attorney General; Bruce Kempkes, Assistant Attorney General; and Catherine H. Thune, Assistant County Attorney, for resister-appellee.

Heard by Oxberger, C.J., and Donielson and Sackett, JJ.

DONIELSON, J. 539

The petitioner appeals from the district court's denial of his application for postconviction relief. We affirm.

On April 19, 1982, the State filed a trial information charging Richard Leon Williams and three others with first-degree robbery and first-degree burglary. The district court set a trial date for July 6, 1982. James Piazza, counsel for a codefendant, moved for continuance because he was going on vacation at that time. John Piazza, counsel for Williams, indicated that a continuance would aid him in further trial preparation and would help avoid a conflict with trial of another case. John Piazza then signed a speedy trial waiver form without consulting his client. The court granted the continuance and set the trial date for July 26, eight days beyond the speedy trial period.

On July 21, Williams filed a pro se motion to dismiss on statutory and constitutional speedy trial grounds. The trial court overruled the dismissal motion on July 27, stating that the various scheduling difficulties constituted good cause for the continuance. The case proceeded to trial, and the jury found Williams guilty of first-degree robbery.

Williams appealed to the supreme court, contending, inter alia, that his attorney's unauthorized waiver of his speedy trial rights denied him due process and effective assistance. The supreme court affirmed Williams' conviction in State v. Williams, 341 N.W.2d 748, 752 (Iowa 1983), finding that defendant was not harmed by such waiver because good cause was shown for the continuance.

On September 18, 1985, Williams filed a pro se application for postconviction relief, raising several ineffective assistance claims. The district court denied postconviction relief, ruling that his ineffective assistance claims concerning the speedy trial waiver had been resolved on direct appeal. The district

court appointed the appellate defender to represent Williams on appeal and denied appellate defender's motion to withdraw based on an alleged conflict of interest.

Because Williams is asserting that his constitutional right to a fair trial was violated, we make an independent evaluation of the totality of the circumstances; this is the equivalent of a de novo review. Taylor v. State, 352 N.W.2d 683, 684 (Iowa 1984).

On appeal, Williams claims that he was denied effective assistance because his trial counsel abandoned his speedy trial rights and acquiesced in the continuance solely to accommodate counsel's brother's vacation plans. The record reveals that Williams' counsel requested a continuance because of a need for further trial preparation and also because of a scheduling conflict with another case. Williams contends that even although counsel's other trial commenced July 6, 1982, counsel "contrived this excuse for a continuance, simply to accommodate the wishes of his brother . . . ." Thus, he claims the conflict was not a bona fide conflict and suggests the question to consider is whether codefendant's counsel's request for a continuance would have constituted good cause for the delay. That issue is not before us to decide.

Williams asserts he was not aware that his attorney did not have a bona fide scheduling conflict and he was not aware of the alleged collusion between his attorney and his attorney's brother. He argues that his unawareness constitutes the reason for this claim not being raised on direct appeal and hence this claim should not be foreclosed from being considered now in this postconviction relief action. See Iowa Code § 663A.8 (1985).

We find Williams' claim to be without merit. There was a bona fide scheduling conflict; counsel's other trial commenced July 6, 1982, the same day Williams' trial was to commence. Furthermore, Williams knew on direct appeal that

his counsel and codefendant's counsel were brothers and that codefendant's counsel requested a continuance to go on a vacation, but failed to assert this claim at that time.

We do not find that counsel's performance fell below the objective standard of reasonableness nor that his alleged deficient assistance was prejudicial to Williams. Taylor, 352 N.W.2d at 685. Williams has not met his burden to prove both of these aspects in claiming his counsel rendered ineffective assistance. Id.

The supreme court on direct appeal held Williams failed to show prejudice because the trial court had found good cause for the continuance. Williams admits this finding was not challenged on direct appeal and hence argues the supreme court did not actually determine there was good cause for the continuance. We are not persuaded by this argument.

We affirm the conviction.

AFFIRMED.