**IN THE COURT OF APPEALS OF IOWA**

No. 8-454 / 97-0723

FILED
OCT 29 1998
CLERK SUPREME COURT

**CHRIS LEGEAR,**
Appellant,

vs.

**STATE OF IOWA,**
Appellee.

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Appeal from the Iowa District Court for Pottawattamie County, Keith E. Burgett, Judge.

Chris LeGear appeals from the summary dismissal of his application for postconviction relief. **REVERSED AND REMANDED WITH DIRECTION.**

Kellie Rae Taylor, Council Bluffs, for appellant.

Thomas J. Miller, Attorney General, Richard J. Bennett, Assistant Attorney General, and Richard Crowl, County Attorney, for appellee.

Heard by Streit, P.J., Mahan, J., and Hayden, S.J.*

*Senior judge assigned by order pursuant to Iowa Code § 602.9206 (1997).

**PER CURIAM.**

The applicant, Christopher LeGear, appeals the district court's summary dismissal of his application for postconviction relief. We reverse and remand for further proceedings.

***I. Background and Proceedings.***

Chris LeGear was convicted of first-degree murder. His conviction was affirmed on direct appeal by the Iowa Supreme Court in *State v. LeGear*, 346 N.W.2d 21 (Iowa 1984).

On February 12, 1988, LeGear filed an application for postconviction relief alleging multiple grounds for ineffective assistance of counsel at both the trial and appellate levels, multiple plain errors committed by the trial court, denial of fair trial, and denial of discretionary reversal. On February 25, 1988, the application for postconviction relief was denied by the trial court. On May 24, 1990, the Iowa Court of Appeals affirmed the ruling of the trial court.

On September 12, 1996, LeGear filed a second application for postconviction relief. On March 11, 1997, the trial court dismissed this second application. The trial court summarily ruled the application was barred by the three-year statute of limitations provision contained in Iowa Code section 822.3. In addition, the trial court found petitioner's second application was the same as or similar to the first application denied on February 25, 1988. No hearing was held nor was notice and opportunity to respond given to LeGear before the trial court entered its ruling. Furthermore, no record or preservation was made of the dismissal proceedings.

On March 25, 1997, a Motion to Reconsider the Order of Dismissal of Petitioner's Postconviction Relief Application was filed by LeGear. The motion was overruled on April 1, 1997. LeGear brought the current appeal on April 21, 1997.

***II. Scope of Review.***

Dismissal of an application for postconviction relief is reviewed to correct errors of law. *Dible v. State*, 557 N.W.2d 881, 883 (Iowa 1996); *see also* Iowa R. App. P. 4.

***III. Dismissal of the Application for Postconviction Relief.***

There are two ways to dismiss an application for postconviction relief. The trial court must either set a hearing to rule on a motion to dismiss or give notice to the applicant that the court intends to dismiss the application and give the applicant an opportunity to respond. *Watson v. State*, 294 N.W.2d 555, 556 (Iowa 1980); *Hines v. State*, 288 N.W.2d 344, 346 (Iowa 1980). As Iowa Code section 822.6 states, "when a court is satisfied, on the basis of the application [for postconviction relief] . . . that the applicant is not entitled to postconviction relief . . . the applicant *shall* be given an opportunity to reply to the proposed dismissal." Iowa Code § 822.6 (1997) (emphasis added). The application for postconviction relief was ruled on without setting the matter for hearing or giving notice to LeGear of the intention to dismiss and allowing him to respond.

Furthermore, the trial court failed to follow Iowa Code section 822.7. This section requires a record of the proceedings to be made and preserved, and also requires the trial court to make specific findings of fact and conclusions of law

relating to issues raised by the application for postconviction relief. Iowa Code § 822.7. Though the application for postconviction relief was ruled upon by the trial court, no record was preserved and no specific findings of fact or conclusions of law were made.

*IV. Conclusions.*

We reverse and remand to the trial court to comply with the provisions of chapter 822 of the Iowa Code (1997). The trial court is directed to follow the provisions set forth in Iowa Code sections 822.6 and 822.7 (1997). By this ruling, we do not take a position with respect to the merits of the application itself or the grounds for dismissal. We do not retain jurisdiction.

**REVERSED AND REMANDED WITH DIRECTION.**