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IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA,

Appellee,

v.

DAVID LEON WOMACK,

Appellant.

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Filed September 9, 1977

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Appeal from Black Hawk District Court - L. D. Lybbert, Judge.

Appeal from a judgment denying defendant's application for postconviction relief. Reversed and remanded to trial court.

Richard C. Turner, Attorney General, and David Correll, Black Hawk County Attorney, for appellee.

Stanford J. Patterson of Hoxie, Gottschalk & Patterson, of Waterloo, for appellant.

Submitted to Allbee, C.J., and Donielson, Snell, Oxberger & Carter, JJ.

PER CURIAM

This is an appeal from a judgment denying defendant's application for postconviction relief.

I. The defendant asserts that the issues raised by his postconviction application could not properly be adjudicated against him on a motion for summary judgment and that the trial court erred in so doing. The primary thrust of defendant's argument is focused upon the extent to which the record divulges evidence pointing towards his mental incompetency to enter the plea of guilty upon which his conviction was based (the subject of paragraph 1 of his application).¹ We believe, however, that his challenge to the court's summary adjudication is broad enough to also assert the general inadequacy of the sentencing court's determination of the voluntariness of his plea under standards required by *Boykin v. Alabama*, 395 U.S. 238 (1969) and *State v. Sisco*, 169 N.W.2d 542 (Iowa 1969) (the subject of paragraph 5 of his application).

Our disposition of the latter issue makes it unnecessary to resolve the former issue. A showing of voluntariness under *Boykin v. Alabama*, supra, requires some evidence of waiver of defendant's privilege against self-incrimination. *State v. Dowis*, 224 N.W.2d 467, 468-79 (Iowa 1974).

In the present case, as in *Dowis*, the record discloses that the trial court only informed the defendant that his guilty plea would waive the right to jury trial. No mention was made of the privilege against self-incrimination. Also, as in *Dowis*, there is a complete lack of any other record from which we might determine that defendant was aware of and waived his privilege against self-incrimination. It is not shown that defendant consulted his attorney as to this matter and the attorney was not asked whether there was any reason his client should not plead guilty. Under such circumstances the court, in *Dowis*, held the defendant in that case was entitled to plead anew.

1 Prior to the entry of defendant's guilty plea his counsel filed an affidavit with the court reciting that defendant appeared to be confused, hallucinated and was unable to distinguish reality from fiction. The guilty plea proceedings reveal that as a result of these allegations a mental evaluation of defendant was made by a psychiatrist pursuant to court order. The judge who accepted the guilty plea had not received a copy of the results of said examination. This judge was informed by the county attorney prior to the time the guilty plea was accepted that the psychiatrist had identified a "long standing psychiatric problem" with "some indication of schizophrenia in the background." The trial court accepted the guilty plea without making any further inquiry as to the defendant's mental competency to enter a voluntary plea of guilty.

II. **Dowis** was a direct appeal which presented no opportunity for the State to offer extrinsic evidence tending to establish the voluntariness of the defendant's plea or defendant's intelligent and knowing waiver of constitutional rights. The present case is a postconviction proceeding where, arguably, the State could attempt to do so upon remand. The recent decision in *State v. Reaves*, 254 N.W.2d 488 (Iowa 1977) suggests that such extrinsic showing may now be permissible in postconviction proceedings although the State would at all times bear the burden of proof on the issues.² We do not pass upon this issue. We leave it for determination by the trial court upon remand.

III. Because the record of the guilty plea proceedings presents an inadequate showing of defendant's waiver of his privilege against self-incrimination, the judgment of the trial court is reversed and the cause is remanded for further proceedings consistent herewith. If the trial court determines, upon remand, that the State should be permitted to offer extrinsic evidence to cure the defects found to exist in the record of the guilty plea proceedings, defendant should be afforded the opportunity to offer additional evidence concerning the issue of his mental competency to enter a plea of guilty on August 1, 1973.

Reversed and remanded.

2 Similar indications are also present in *Boykin v. Alabama*, supra at 242, where the Court states:

"The record must show, or there must be an allegation and evidence which shows, that an accused...intelligently and understandingly rejected the offer [of counsel]."

"We think that the same standard must be applied in determining whether a guilty plea is voluntarily made." (emphasis added).