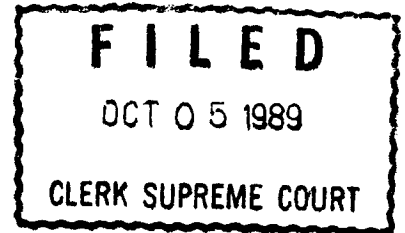


IN THE COURT OF APPEALS OF IOWA

No. 9-228 / 88-1301



MICHAEL TIM RINEHART,

Appellant,

vs.

STATE OF IOWA,

Appellee.

Appeal from the Iowa District Court for Boone County,
Carl E. Peterson, Judge.

Appellant appeals the district court's automatic dismissal of his postconviction relief application and its denial to consider his petition for reinstatement.

AFFIRMED.

Barbara A. Schwartz, of the Clinical Law Programs,
University of Iowa College of Law, Iowa City, for the
appellant.

Thomas J. Miller, Attorney General of Iowa, and
Christie J. Scase, Assistant Attorney General, for
appellee.

Heard by Oxberger, C.J., and Donielson and Schlegel,
JJ. Habhab, J., takes no part.

SCHLEGEL, J.

Rinehart has appealed the automatic dismissal of his application for postconviction relief pursuant to Iowa Rule of Civil Procedure 215.1. The district court later rejected Rinehart's petition for reinstatement; the court concluded it lacked jurisdiction because the petition for reinstatement was not filed within six months of the automatic dismissal. We affirm the trial court.

Rinehart challenges the district court's conclusion about the November 1985 order stating "rule 215.1 is waived for calendar 1986." He contends the district court erred by holding that the November 1985 order extended the case only to January 1, 1987. Because the November 1985 order did not expressly continue the "try-or-dismiss" date until January 1, 1987, and did not expressly provide notice that automatic dismissal would occur on that date, Rinehart contends the order did not result in an automatic dismissal on that date. He argues that automatic dismissal did not occur until January 6, 1988, that his petition for reinstatement was timely as to that date, and that the district court therefore erred by concluding it had no jurisdiction over the case. In the alternative, he contends that construing the November 1985 order to result in automatic dismissal on January 1, 1987, would deprive him of property (his right to file a postconviction action) without due process of law.

In 1978 Michael Rinehart was convicted of first-degree kidnapping and was sentenced to life in prison. The Iowa Supreme Court affirmed this conviction on direct appeal in 1979. State v. Rinehart, 283 N.W.2d 319 (Iowa 1979).

In 1983 Rinehart filed a pro se petition for postconviction relief. In August 1985, after about two years with little activity, the clerk of court issued a notice under Iowa Rule of Civil Procedure 215.1 that the case would be dismissed if not tried before January 1, 1986. In October 1985, an attorney entered an appearance for Rinehart, and in November 1985, the attorney filed a motion to vacate the notice issued under rule 215.1 in August 1985. On November 22, 1985, the district court issued an order stating that "rule 215.1 is waived for calendar 1986."

After a flurry of activity in early 1986, the case once again languished. In August 1987 a second rule 215.1 notice was sent, and on January 6, 1988, a rule 215.1 dismissal was entered on the docket.

In April 1988 there was some further activity in the case: a pretrial conference was held by telephone; an order was entered setting a July 1988 trial date; and an order was entered directing that Rinehart be transported from prison for the trial. However, in June 1988 the parties learned (apparently for the first time) of the January 1988 automatic dismissal of the case. At that time

Rinehart filed a petition for reinstatement, while the State filed a motion to affirm the automatic dismissal and vacate subsequent court orders. In August 1988, the district court denied the petition for reinstatement. The district court held that the November 1985 order stating "rule 215.1 is waived for calendar 1986" had extended the time for automatic dismissal only to January 1, 1987. The court held that the case was automatically dismissed on that date, that no timely petition to reinstate was filed within six months of that date, and that the court had therefore lost jurisdiction of the case.

Ordinarily, our review of postconviction relief proceedings is for errors of law. Hinkle v. State, 290 N.W.2d 28, 30 (Iowa 1980).

Appellant contends his application for postconviction relief is not subject to Iowa Rule of Civil Procedure 215.1 dismissal. This contention arises from an order issued by a Boone County district court judge. The order was issued in response to a request from appellant's counsel for an extension of time before 215.1 dismissal. The order stated:

A 215.1 notice has been given in this case. Applicant's counsel have asked for an extension of time. Counsel for respondent concedes that the facts justify an extension of time. Rule 215.1 is waived for calendar year 1986.

Appellant argues that a reasonable construction of this order would suggest that the entire rule will not begin

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until 1987, thereby giving the appellant until January 1, 1988 to go to trial. This argument fails to recognize the strict construction placed on rule 215.1 by the Iowa supreme court.

The purpose of rule 215.1 is to assure the timely and diligent prosecution of cases on the docket. Doland v. Boone County, 376 N.W.2d 870, 872 (Iowa 1985). Rule 215.1 provides in part:

All such cases shall be assigned and tried or dismissed without prejudice at plaintiff's costs unless satisfactory reasons for want of prosecution or grounds for continuance be shown by application and ruling thereon after notice and not ex parte.

Iowa R. Civ. P. 215.1.

In this case appellant was able to show satisfactory reasons for a continuance. Prior to the order granting this continuance, the first notice of 215.1 dismissal had been issued. When a case is continued, it is not removed from the operation of the rule except that the date of trial is changed. In all other respects the rule remains operative. Brown v. Iowa Dist. Court for Polk County, 272 N.W.2d 457, 458 (Iowa 1978). We have also established that when the time for dismissal arrives, the case is dismissed automatically without formal action either by the court or the clerk. Failure to note the dismissal of record does not save the case. Id. at 459.

The facts show this case would have been dismissed on January 1, 1986, unless a continuance was applied for and

obtained by the appellant. The appellant did obtain a continuance, but that amounted only to an extension of the trial date to January 1, 1987. It is clear that the operation of the entire rule cannot be waived. "It is in the public interest that cases not tried or settled within a reasonable time should be dismissed. Whatever hardship might be suffered by an occasional litigant whose suit is thus lost is more than compensated by the general good that results from the impetus provided by the rule." Doland, 376 N.W.2d at 873. It is apparent that once the rule is started it cannot be stopped even by a possible misinterpretation by the appellant. The rule had begun its operation and that operation could not be stopped, only extended.

The order in this instance did not waive the complete operation of the rule even if that had been possible. The entire paragraph before the statement waiving the rule through 1986 spoke only of extending time, not of restructuring the nature of the rule itself. In addition, the only portion of the rule that was to take place in 1986 was the possible dismissal. The rule would have already run its entire course by January 1, 1986. The only portion that could have been waived, and was waived, was the date of dismissal. That date was only waived until January 1, 1987. Given these facts, the case law cited above requires that dismissal take place regardless of any other action taken by the clerk.

The application for reinstatement must be made within six months of the date of dismissal. The application in this instance was not made until June of 1988, more than seventeen months later. The rule 215.1 dismissal bars us from taking any further action in this case.

Appellant also contends that if the rule itself requires dismissal by operation of law, he will be deprived of property without due process of law in violation of the fourteenth amendment of the United States Constitution. When a postconviction petitioner asserts violation of constitutional safeguards we make our own evaluation based on the totality of the circumstances. This is the equivalent of de novo review. Hinkle, 290 N.W.2d at 30.

Appellant cites us to the proposition that notice must be reasonably calculated under all of the circumstances, to apprise interested parties of the pendency of the action. Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 314, 70 S. Ct. 652, 657, 94 L. Ed. 865, 873 (1949). This standard was clearly met in this case. Rule 215.1 is explicitly set out in the Iowa Rules of Civil Procedure. Appellant was given his notice of 215.1 dismissal by the required date. Appellant applied for a continuance and was granted one until 1987. The language of the order taken as a whole was abundantly clear that the date of dismissal was merely extended until January 1987. In addition, Iowa law has placed the burden of avoiding the dismissal squarely

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with the applicant as he is the one to whom it must have been apparent that the case would not be ready for trial. Doland, 376 N.W.2d at 873. It was the appellant's own inaction, rather than affirmative State action, which resulted in loss of this claim. This is not an exceptional case of injustice caused by the strict operation of the rule, and even if it was, the Iowa Supreme Court has made it clear that no remedy is available absent a timely application for reinstatement.

AFFIRMED.