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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

427

DONALD WILLIAM WOOD,	)	
Petitioner-Appellant,	)	Filed October 25, 1983
vs.	)	
STATE OF IOWA,	)	3-214 / 2-68792
Respondent-Appellee.	)	

Appeal from Black Hawk District Court - Roger F. Peterson, Judge.

The petitioner appeals from the trial court's denial of postconviction relief. AFFIRMED.

Patrick R. Grady, Assistant Appellate Defendar, for petitioner-appellant.

Thomas J. Miller, Attorney General, and Joseph P. Weeg, Assistant Attorney General, for defendant-appellee.

Considered by Oxberger, C.J., and Donielson, Snell, Schlegel, Hayden and Sackett, JJ.

SACKETT, J.

Wood was convicted of robbery with aggravation in Black Hawk County in 1974. He appealed his conviction to the Iowa Supreme Court. See State v. Wood, 241 N.W.2d 8 (Iowa 1976). The only issue raised in the 1976 appeal was whether or not Wood had been denied a speedy trial under the provisions of the Interstate Agreement on Detainer. The supreme court found he had not been denied a speedy trial under the Interstate Agreement and affirmed his conviction.

On August 29, 1980, Wood filed an application for postconviction relief asserting that he had not received a speedy trial under Iowa Code section 795.2 (1973) and that his right to due process had been violated by the state's failure to provide during trial certain documentary evidence proving the sale by Wood of an automobile. Wood had been cross-examined at trial about driving said automobile the night before the robbery.

Two other issues were raised in the postconviction application but are not urged on this appeal.

Wood was arrested on July 3, 1974. A county attorney's information charging him with the crime of robbery with aggravation was filed two days later on July 5. On July 26, 1974, Wood filed a motion to dismiss the information. The motion was set for hearing on August 2, 1974. An order overruling the motion was filed on August 19, 1974. Wood's trial was set for September 3, 1974. On the morning of trial, Wood filed a motion to dismiss urging two grounds. The first ground was the Interstate Detainers issue upon which Wood's unsuccessful appeal to the Iowa Supreme Court was taken. His second ground was that more than sixty-two days had expired since his arrest and he had not been arraigned or brought to trial under Iowa Code section 759.2. The trial court overruled Wood's motion.

During the course of the trial Wood was cross-examined about being chased by the Dubuque police while driving a 1965 Chrysler on the evening before the robbery. Wood denied being chased. Wood did testify that he had purchased a 1965 Chrysler on January 23, 1973; but he claimed he sold it to a dealer in Winona, Minnesota, on the same day. The county attorney indicated on the record in chambers that he hoped to present as a rebuttal witness a police officer from Lansing who would testify to chasing Wood in the Chrysler the evening before the robbery. The record indicates that the county attorney and Wood's attorney visited at that time about some joint effort to verify whether or not the Chrysler had been sold as Wood alleged. The next morning the state indicated they were not going to call the rebuttal witness. The case was submitted and the jury returned a guilty verdict.

Prior to sentencing Wood made a motion for new trial indicating that the state had available to them at some time during the trial information showing that the Chrysler automobile had been sold when Wood claimed it was. The county attorney indicated that the information had not been received until after the state had presented its case in chief and the defendant rested; but that the information was given to defendant's counsel before the state rested.

The trial court overruled Wood's motion and sentenced Wood.

After Wood was sentenced he was returned to prison in Wisconsin. From there he wrote to his attorney, Knock, regarding an appeal.

> . . . I'm just sick about the whole thing how could a jury find me guilty. . . They violated my rights to fast speedy trial due process under the 14th article. But not arrigneing [sic] me or bringing me to trial plus jury was not informed that proof was found I did not even own car at time of robbery so was not involved in chase, etc. . .

On October 26, 1976, Wood again wrote to his attorney from the Wisconsin State Prison. Wood wanted to be certain his appeal had been filed. He told his attorney, " . . . they did not Arriegn [sic] me or try me in time with the Iowa Code, plus our motion for new trial was a good one . . ."

The notice of appeal was timely filed and the case was appealed and affirmed. Wood has never alleged; nor does he allege now that Mr. Knock, his trial and appellate counsel, was not competent.

The testimony of attorney Richard Knock in the postconviction hearing indicated he had little recollection of the facts surrounding the appeal. He did testify, however, that he thought the issue they appealed was a good issue and they were on the right side; but the supreme court decided otherwise.

Wood testified that while in the Wisconsin State Prison he received a copy of the appellate brief attorney Knock prepared. There is no evidence that Wood contacted his attorney after receiving the brief.

Before the merits of Wood's application can be considered, he must show "sufficient reason" for his failure to address these issues on his direct appeal. Hinkle v. State, 290 N.W. 2d 28 (Iowa 1980); Redding v. State, 274 N.W. 2d 315 (Iowa 1979); Bledsoe v. State, 257 N.W. 2d 32,33 (Iowa 1977) State v. Boge, 252 N.W. 2d 411 (Iowa 1977).

The issues that Wood raises here were presented to and considered by the trial court. His attorney chose not to include them in his appeal, going forward instead with an issue of first impression in Iowa. State v. Wood, 241 N.W. 2d 8,11 (Iowa 1976).

Ordinarily, except for such basic decisions as whether to plead guilty, waive a jury or testify in his or her own behalf, the accused is bound by the tactical or strategic decisions made by counsel, even those rising to constitutional dimensions. Sims v. State, 295 N.W. 2d 420, 425 (Iowa 1980). Litigants are generally bound by the conduct of their attorneys, absent egregious circumstances. United States v. Guerra de Aguilera, 600 F. 2d 752, 753 (9th Cir. 1979). A client is bound by the acts of an attorney within the scope of the latter's authority. State v. La Mar, 224 N.W. 2d 252, 254 (Iowa 1974); 7 C.J.S. Attorney & Client 67.

Iowa Code section 663 A.8 provides:

> 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.

Wood claims the fact that he was incarcerated in Wisconsin during the time the appeal was pending prevented him from having meaningful communication with his attorney. The record reveals that Wood's appellate counsel was aware of the issues which Wood now asserts and that he made a conscious decision to limit the issues on appeal. That decision was an effective section 663A.8 waiver, thus foreclosing Wood's right to raise these issues at this juncture. Since there is no claim of ineffective assistance of appellate counsel, and since Wood's counsel failed to raise the issues now asserted on direct appeal, the relief now sought is unavailable.

Postconviction relief is ordinarily not available to correct errors which should have been (but were not) raised at some previous stage of the proceedings. Otherwise a defendant could have numerous appeals, which is not the intent or purpose of the postconviction act. Carstens v. Rans, 210 N.W. 2d 663, 665 (Iowa 1973). Both arguments now presented were raised and adjudicated at the trial court level. In postconviction relief, relitigation of a previously adjudicated issue is barred. State v. Halverson, 192 N.W. 2d 765 (Iowa 1972).

We hold that Wood's failure to raise the speedy trial issue and failure to raise the issue of information on the car sale in the possession of the county attorney on his prior appeal was an effective section 663A.8 waiver, and he is foreclosed from raising them now.

AFFIRMED.