

IN THE COURT OF APPEALS OF IOWA

No. 9-313 / 98-0365

Filed July 23, 1999

STATE OF IOWA,

Appellee,

vs.

STEPHEN C. LEONARD,

Appellant.

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Appeal from the Iowa District Court for Cherokee County, John P. Duffy,
Judge.

Defendant appeals from the denial of his motion to withdraw guilty plea.

AFFIRMED.

Richard Kallsen, Sioux City, for appellant.

Thomas J. Miller, Attorney General, Bruce Kempkes, Assistant Attorney
General, John A. Wibe, County Attorney, and Dennis Cmelik, Special Prosecutor, for
appellee.

Considered by Vogel, P.J., Zimmer, J., and Habhab,* S.J.

* Senior judge assigned by order pursuant to Iowa Code § 602.9206 (1999).

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HABHAB, S.J.

The defendant/appellant, Stephen Leonard, appeals the denial of his motion to withdraw guilty plea. He claims (1) he was denied due process by the trial court's failure to grant him court-appointed counsel *sua sponte*, (2) he was denied his due process right to confrontation by only participating in his hearing by telephone, and (3) his guilty plea was not knowing and voluntary. We affirm.

On January 25, 1995, police officers conducted a search of Stephen Leonard's house under a search warrant. The officers seized numerous items including a gun, marijuana, and methamphetamine. The state charged him with six crimes and the court appointed him two attorneys despite his failure to request such an appointment.

On February 6, 1995, Leonard signed a plea agreement under Iowa Rule of Criminal Procedure 9, which required the court to agree to be bound by the plea. Leonard's attorneys discussed with him the possibility of moving to suppress the evidence obtained by the search warrant, but Leonard refused, preferring to proceed with the plea. The court agreed to be bound by the written plea agreement, accepted his written plea, and conducted the required colloquy on the record. The court sentenced him on February 29 to a five-year and a ten-year sentence to be served concurrently. Leonard did not appeal.

On March 7, 1995 Leonard filed a pro se "Motion for Production of Documents" requesting information concerning the search warrant's validity. He sought information about the reliability of a confidential informant. The court denied his motion. On May 15, 1995 he moved pro se for a reconsideration of the sentence.

The court declined to reconsider his sentence. Leonard subsequently raised the issue of the validity of the search warrant in his first postconviction relief action. The court denied relief.

On December 19, 1997, Leonard, pro se, filed a “Motion to Withdraw Guilty Plea” and a “Request to Proceed In Forma Pauperis.” He claimed newly discovered evidence about the issuance of the search warrant permitted him to withdraw his guilty plea in order to correct a “manifest injustice.” See Iowa R. Crim. P. 9(4) (“... the defendant shall not have the right subsequently to withdraw the plea except upon a showing that withdrawal is necessary to correct a manifest injustice.”). The State treated this motion as another postconviction relief action.

Leonard, proceeding pro se, took part in the hearing telephonically. He examined the magistrate who issued the warrant, the prosecutor, his trial counsel, and his postconviction counsel. After hearing the evidence, the court refused to allow Leonard to withdraw his plea. It ruled he had not proven any manifest injustice had resulted from his entry of the guilty plea.

Leonard appeals and is represented by court-appointed counsel. He contends (1) he was denied due process by the trial court’s failure to grant him court-appointed counsel *sua sponte*, (2) he was denied his due process right of confrontation by participating in the hearing by telephone, and (3) his guilty plea was not knowing and voluntary. The State first argues a defendant who elects to proceed pro se in the district court fails to preserve for appellate review the newly crafted argument that the court should have, on its own motion, appointed him legal counsel. Second, it asserts

Leonard's failure to file a motion in arrest of judgment waives his present challenge to the guilty plea. Third, it claims preclusion principles do not permit Leonard to challenge the search under Iowa Rule of Criminal Procedure 9(4) after unsuccessfully challenging the search in postconviction proceedings. Finally, the State argues Leonard failed to preserve for review any argument his guilty plea was not knowingly and voluntarily made.

Leonard raises his claim the court should have appointed counsel *sua sponte* for the first time on appeal. He has not preserved this issue for our review and we do not address it. *Iowa Elec. Light and Power Co. v. General Elec. Co.*, 352 N.W.2d 231, 236 (Iowa 1984). In addition, given his lengthy history of involvement in the criminal justice system and his repeated choice to proceed pro se, his argument the court should have appointed counsel and/or informed him of the risks of proceeding without counsel is disingenuous at best.

Leonard's claim participation in the postconviction proceeding by telephone denied his due process right of confrontation is without merit. The district court's discretion to exclude an inmate from personally attending a postconviction hearing has been recognized by the supreme court in *Webb v. State*, 555 N.W.2d 824, 826 (Iowa 1996), *Sallis v. Rhoads*, 325 N.W.2d 121, 123 (Iowa 1982), and *Hahn v. State*, 306 N.W.2d 764, 767 (Iowa 1981). Due process is satisfied so long as Leonard had advance notice of the proceeding and was allowed to participate by telephone. *Webb v. State*, 555 N.W.2d at 826.

Iowa Code chapter 822 precludes Leonard from attacking his guilty plea now. Iowa Code §§ 822.3, 822.4 and 822.8; *LeGrand v. State*, 540 N.W.2d 667, 669 (Iowa App. 1995). His argument Iowa Rule of Criminal Procedure 9(4) gives him an exception if done to correct an “manifest injustice” while novel, is without merit. Rule 9(4) does not apply to Leonard since the court did not reject the plea agreement or refuse to be bound by it.

Having considered all of Leonard’s claims, whether specifically addressed in this opinion or not, we affirm the district court’s denial of postconviction relief.

AFFIRMED.