

FILED

AUG 29 1985

CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

JOHN HOVE,

)

182

Petitioner-Appellant,

)

Filed August 29, 1985

vs.

)

STATE OF IOWA,

)

5-294
84-1343

Respondent-Appellee.

)

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

Petitioner appeals from the denial of postconviction relief from his probation. **AFFIRMED.**

Charles Harrington, Chief Appellate Defender, and B. John Burns, Assistant Appellate Defender, for petitioner-appellant.

Thomas J. Miller, Attorney General of Iowa, and Pamela S. Greenman, Assistant Attorney General, for respondent-appellee.

Considered by Oxberger, C.J., Snell, and Hayden, JJ.

HAYDEN, J.

Petitioner appeals from the denial of postconviction relief from his probation. He asserts 1) that he was deprived of the right to counsel without a valid waiver, and 2) that the revocation court erred in failing to adequately state its reasons for imposing consecutive sentences. We affirm.

In 1981, John Hove was convicted for lascivious acts with a child and sentenced to five years' probation. In October 1983, Hove's probation was revoked based on a conviction of third degree sexual abuse. He was sentenced to a term of incarceration not to exceed five years; the sentence was to run consecutively with that imposed on the sexual abuse conviction.

Hove subsequently filed an application for postconviction relief challenging the revocation of probation. The application was denied and petitioner has appealed from this determination.

Petitioner first claims that his waiver of the right to counsel should be considered invalid. He argues that the revocation court erred in failing to emphasize the importance of the hearing and the possibility of consecutive sentences. We are unpersuaded by this argument.

Iowa Rule of Criminal Procedure 26.1 establishes a statutory right to counsel in probation revocation hearings. We believe that petitioner effectively waived his right. This is not a case where we are asked to presume waiver from a silent record. Petitioner was offered a court-appointed attorney prior to the hearing; he was also asked twice during the course of the hearing whether he wished to be represented by counsel. On each occasion he stated that he did not want an attorney.

While the court did not detail the importance of the hearing and possible consequences, we cannot say this is not a sufficient ground for reversal. Due to the nature of the hearing we see little reason to require an extensive colloquy

concerning petitioner's right to counsel. Probation revocation hearings are considerably different than criminal trials. In absence of a statutorily prescribed procedure, this type of proceeding can be informal or even summary in nature. Calvert v. State, 310 N.W.2d 185, 187 (Iowa 1981); State v. Hughes, 200 N.W.2d 559, 562 (Iowa 1972). As long as it is apparent that a petitioner understands that he has a right to counsel and clearly waives it, the waiver should be considered valid.

Hove also argues that the revocation court erred in failing to state reasons for the imposition of consecutive sentences. He claims that due to ineffective assistance of postconviction counsel we should consider the issue even though it is raised for the first time on appeal. We disagree.

In order to prevail on a claim of ineffective assistance of counsel, petitioner must demonstrate: (1) that counsel failed to perform an essential duty, and (2) that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Strickland v. Washington, ___ U.S. ___, ___, 104 S. Ct. 2052, 2068, 80 L. Ed. 2d 674, 698 (1984).

Upon reviewing the record, we conclude that petitioner has failed to show the requisite prejudice. The court stated that probation should be revoked for the reasons stated in the State's application, which included a copy of a report characterizing petitioner's performance on probation as unacceptable, together with the conviction on the sexual abuse charge. Since it is clear what the court relied on in sentencing Hove, it cannot be said that but for counsel's failure to raise the issue in postconviction proceedings, the result of this case would have been different.

Finding no error, we affirm.

AFFIRMED.