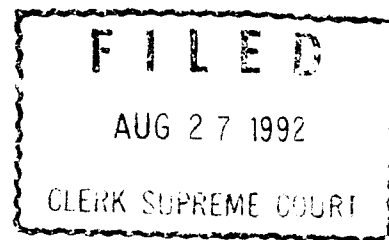


IN THE COURT OF APPEALS OF IOWA

No. 2-341 / 91-1505



JOSEPH T. HARTWIG,

Appellant,

vs.

STATE OF IOWA,

Appellee.

Appeal from the Iowa District Court for Dubuque County,
Robert J. Curnan, Judge.

Joseph T. Hartwig appeals the district court's ruling dismissing his application for postconviction relief challenging a parole revocation decision. **AFFIRMED.**

C.J. May, III of Reynolds & Kenline, Dubuque, for appellant.

Bonnie J. Campbell, Attorney General, Bruce Kempkes, Assistant Attorney General, and Fred H. McCaw, County Attorney, for appellee.

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

PER CURIAM

Joseph Hartwig, a parolee, became involved in an altercation outside a tavern in Cedar Rapids. As a result, Hartwig was charged with assault with injury and interference with official acts. The charges, however, were subsequently dismissed. A parole officer filed a preliminary parole violation information report indicating Hartwig violated his parole by becoming involved in the incident. The officer indicated Hartwig violated a condition of parole, which was to refrain from assaultive behavior. Another condition of Hartwig's parole was to refrain from entry into taverns that primarily sell alcoholic beverages. Hartwig admitted he was involved in the altercation and entered the tavern. Subsequently, Hartwig's parole was revoked on the basis of the parole violations.

After exhausting his administrative remedies, Hartwig filed a petition for postconviction relief challenging the parole revocation. The petitioner contended he had not violated his parole condition because he had an oral agreement with his parole officer by which he could enter a tavern that served food. At the time Hartwig filed his petition, he filed a motion to proceed in forma pauperis.

The district court granted Hartwig's request to proceed in forma pauperis, but indicated the court intended to dismiss the application on the basis the applicant was not entitled to postconviction relief and no purpose would be served for any further proceedings.

Subsequently, Hartwig filed a further response and motion to produce requesting the State produce documents, including parole records of the applicant. The State failed to produce such records.

On August 28, 1991, the district court entered an order dismissing the postconviction relief petition. Hartwig appeals contending the district court (1) abused its discretion by failing to appoint legal counsel in these proceedings, and (2) erred by summarily dismissing the postconviction relief application.

The appointment of legal counsel for a postconviction relief applicant rests in the sound discretion of the district court. Leonard v. State, 461 N.W.2d 465, 467 (Iowa 1990) (citing Furgison v. State, 217 N.W.2d 613, 615 (Iowa 1974)). State v. Mulqueen is a postconviction case in which the Iowa Supreme Court held legal counsel should have been appointed to the petitioner. State v. Mulqueen, 188 N.W.2d 360, 366 (Iowa 1971). However, the court clearly limited this statement to the facts of the case. Id. In Mulqueen the petitioner had brain damage, a mental capacity of a nine to seventeen year old, received extensive psychiatric treatment, and had an extremely limited vocabulary. Id. The court statement "is not to be construed . . . as meaning an attorney must always be appointed to . . . hearing accorded on every application for postconviction review." Id. (citations omitted). We hold the facts of this case do not warrant the appointment of an attorney. We affirm on this issue.

With regard to the second issue, we determine the district court did not err by summarily dismissing Hartwig's application for postconviction relief. Section 663A.6 of the Iowa Code provides the court may dismiss a petition for postconviction relief if the application, answer or motion, and record indicate the petitioner is not entitled to relief and no purpose would be served by further proceedings. Iowa Code 663A.6 (1991). The petitioner, however, argues he is protected by an exception to this rule that provides a petition cannot be dismissed if a material issue of fact exists. Id. We hold no material issue of fact exists and affirm the district court.

AFFIRMED.