

IN THE COURT OF APPEALS OF IOWA

No. 8-756 / 07-0860
Filed December 17, 2008

TRENTON HOWARD,
Applicant-Appellant,

vs.

STATE OF IOWA,
Respondent-Appellee.

Appeal from the Iowa District Court for Scott County, Patrick J. Madden,
Judge.

Applicant appeals the summary disposition of his postconviction claims of
ineffective assistance of counsel. **REVERSED AND REMANDED.**

Alicia D. Gieck of Cartee & Clausen Law Firm, P.C., Davenport, for
appellant.

Thomas J. Miller, Attorney General, Martha E. Boesen, Assistant Attorney
General, and Michael J. Walton, County Attorney, for appellee.

Considered by Sackett, C.J., and Miller, J., and Robinson, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2007).

ROBINSON, S.J.**I. Background Facts & Proceedings**

Trenton Howard was charged with first-degree murder, first-degree robbery, first-degree theft, willful injury with serious injury, conspiracy, and first-degree kidnapping. During his criminal trial, the State sought to introduce the videotaped testimony of Illinois State Trooper Vernon Smith. The video equipment malfunctioned, and the deposition of Smith was read into the record. Later, the video equipment was repaired, and the videotape of the deposition was shown to the jury. Also, the videotaped deposition of Dr. Marcus Nashelsky was shown to the jury. Defense counsel did not object in any of these instances.

Howard was convicted of all of the charges against him, except kidnapping. His convictions for willful injury and conspiracy merged into his other convictions. See Iowa Code § 701.9 (2003). He was sentenced to a lifetime prison term on the first-degree murder charge, and a term of imprisonment not to exceed twenty-five years on the first-degree robbery conviction and ten years on the theft conviction, all to be served concurrently.

Howard appealed his convictions. One of the issues he raised on appeal was that he received ineffective assistance because defense counsel failed to object because one of the videotaped depositions was not played in full to the jury. *State v. Howard*, No. 04-1662 (Iowa Ct. App. April 26, 2006). The court of appeals rejected this claim, finding “Howard does not identify any alleged discrepancy between the deposition testimony read to the jury by counsel and the videotaped deposition which was played for the jury.” *Id.*

On November 27, 2005, Howard filed an application for postconviction relief. He claimed he received ineffective assistance because his defense counsel failed to object to violations of his rights under the Confrontation Clause of the Sixth Amendment to the United States Constitution and Article I, section 10 of the Iowa Constitution. He claimed the presentation of the videotape depositions of Trooper Smith and Dr. Nashelsky violated his right to confront these witnesses.

The State filed a motion for summary disposition of Howard's postconviction claims. The State asserted this issue had been decided by the court of appeals on Howard's direct appeal. The district court ruled, "all issues raised by the Applicant in his Application for Postconviction Relief were previously ruled upon by the Court of Appeals in the direct appeal."¹ Howard appeals the decision of the district court denying his request for postconviction relief.

II. Standard of Review

Postconviction proceedings are civil actions, and are generally reviewed for the correction of errors at law. Iowa R. App. P. 6.4; *Bugley v. State*, 596 N.W.2d 893, 895 (Iowa 1999). The district court may grant summary judgment in a postconviction action if "there is no genuine issue of fact and the moving party is entitled to judgment as a matter of law." Iowa Code § 822.6. "The moving party has the burden of showing the nonexistence of a material fact and the court

¹ The district court's ruling states the motion for summary disposition came before the court for hearing with oral argument. Apparently no transcript was made of the oral arguments. See Iowa Code § 822.7 ("A record of the proceedings shall be made and preserved."). Because there was no transcript, the parties could have filed a statement of the evidence, as permitted by Iowa Rule of Appellate Procedure 6.10(3).

is to consider all materials available to it in the light most favorable to the party opposing summary judgment.” *Manning v. State*, 654 N.W.2d 555, 560 (Iowa 2002).

III. Merits

The district court granted summary disposition to the State, under section 822.6, based on its conclusion that all of the issues raised by Howard in his application for postconviction relief had been disposed of in the court of appeals opinion in the direct appeal. A review of the court of appeals opinion, however, does not show any reference to or discussion of the Confrontation Clause. See *State v. Howard*, No. 04-1662 (Iowa Ct. App. April 26, 2006). We conclude the Confrontation Clause issue was not decided in the direct appeal, and the district court erred in granting summary disposition to the State on this ground.

The State has not shown that on the issue of the Confrontation Clause that there is no genuine issue of material fact and it is entitled to judgment as a matter of law. See Iowa Code § 822.6. We reverse the district court’s grant of summary disposition to the State on the issue regarding the Confrontation Clause, and remand for further proceedings before the district court.

REVERSED AND REMANDED.