

IN THE COURT OF APPEALS OF IOWA

No. 9-154 / 08-0838
Filed March 26, 2009

RODNEY FITZGERALD JACKSON,
Applicant-Appellant,

vs.

STATE OF IOWA,
Respondent-Appellee.

Appeal from the Iowa District Court for Woodbury County, Gary E. Wenell (plea and sentencing) and Edward A. Jacobson (postconviction motion for summary judgment), Judges.

Rodney Jackson appeals from the summary judgment dismissal of his postconviction action. **REVERSED AND REMANDED.**

Mark C. Smith, State Appellate Defender, and Stephan Japuntich, Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Kyle Hanson, Assistant Attorney General, Patrick Jennings, County Attorney, and Terry Ganzel, Assistant County Attorney, for appellee State.

Considered by Mahan, P.J., and Miller and Potterfield, JJ.

MAHAN, P.J.

Rodney Jackson appeals from the summary judgment dismissal of his postconviction action. He contends (1) the district court erred in dismissing his postconviction relief action and (2) his postconviction counsel was ineffective. We reverse and remand.

I. Background Facts and Proceedings.

On May 19, 2005, Jackson entered a plea and was convicted of theft in the first degree. His ten-year sentence was suspended, and he was put on probation for three years and assessed fines and costs in the amount of \$1000. Within a few days, on May 26, 2005, Jackson was arrested for public intoxication and failure to obey a police officer. Jackson did not report the arrest to his probation officer, in violation of the terms of his probation. The next day, May 27, 2005, Jackson was arrested again and charged with possession of drug paraphernalia, simple assault, and assault with bodily fluids. He pled guilty to assault on a peace officer on June 8, 2005.

Thereafter, Jackson's probation officer filed an application for hearing on the violation of probation. The hearing was held on August 22, 2005. At the hearing, the court offered Jackson an opportunity to go to alcohol treatment at Project Phoenix in Sioux City. Jackson refused the offer, however, and stated that he wanted to go to treatment in South Dakota. When the court informed Jackson that South Dakota would not accept him for treatment, Jackson still refused treatment in Sioux City. Upon considering Jackson's refusal to participate in treatment, his clear disregard of the terms of his probation, and his

criminal record, the court revoked his probation and imposed the ten-year sentence on Jackson.

Jackson filed two applications for postconviction relief, alleging numerous claims, including ineffective assistance of counsel, racial discrimination on the part of the presiding judge, false statements by the judge and police officer during the revocation hearing, and failure to comprehend the plea agreement.¹ On October 9, 2006, the State filed a motion for summary judgment for each case. A hearing on the motions was held on April 21, 2008.

In those ensuing months, Jackson's counsel did not file a resistance to the State's motions or any affidavits to support Jackson's claims. At the hearing, Jackson's counsel called Jackson to testify, but the court responded, "Whoa, whoa, whoa. . . . I have been around summary judgment hearings for 30 years and I have never had evidence in a summary judgment hearing." Thereafter, the court determined Jackson had waived his claims in his applications for postconviction relief because he failed to file a motion in resistance or otherwise resist the State's motions. The court granted the State's motions and dismissed Jackson's applications. Jackson now appeals.

II. Scope and Standard of Review.

We review the dismissal of an application for postconviction relief to correct errors of law. Iowa R. App. P. 6.4; *Brown v. State*, 589 N.W.2d 273, 274 (Iowa Ct. App. 1998). Those claims concerning alleged constitutional violations,

¹ Jackson filed a third application for postconviction relief, challenging his guilty plea on the charge of assault on a peace officer. The district court denied his application in that case, and it is currently on appeal.

including ineffective assistance of counsel claims, are reviewed de novo. *State v. Decker*, 744 N.W.2d 346 (Iowa 2008).

III. Merits.

Iowa Code section 822.6 prescribes two methods for terminating postconviction relief procedures without trial. *Manning v. State*, 654 N.W.2d 555, 559 (Iowa 2002). The first method permits court initiation of the summary disposition process. Iowa Code § 822.6. Pertinent to this case, however, is the second method, which contemplates the initiation of summary disposition proceedings upon the motion of either party. *Id.* This method of summary termination incorporates the procedural rules applicable to motions for summary judgment and requires their observation, regardless of which party initiates the proceedings. *Manning*, 654 N.W.2d at 560. Our supreme court has stated “[t]he goal here ‘is to provide a method of disposition *once the case has been fully developed by both sides . . .*’” *Id.* at 559.

The nonmoving party must be provided notice and an opportunity to resist the motion for summary dismissal of an application for postconviction relief. *Brown v. State*, 589 N.W.2d 273, 275 (Iowa Ct. App. 1998). Compliance with this requirement is imperative because it ensures applicants are afforded their fundamental constitutional due process rights. See *City of Cedar Rapids v. Municipal Fire & Police Ret. Sys.*, 526 N.W.2d 284, 291 (Iowa 1995) (noting procedural due process requires, at a minimum, notice and an opportunity to be heard).

Summary judgment is available only when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.

Buechel v. Five Star Quality Care, Inc., 745 N.W.2d 732, 735 (Iowa 2008). An issue of material fact occurs when the dispute involves facts that might affect the outcome of the suit under the applicable law. *Wallace v. Des Moines Indep. Sch. Dist. Bd. of Dirs.*, 754 N.W.2d 854, 857 (Iowa 2008). Such issue is “genuine” when the evidence allows a reasonable jury to return a verdict for the nonmoving party. *Id.* The burden of showing the nonexistence of a material fact is on the moving party, and every legitimate inference that reasonably can be deduced from the evidence should be afforded the nonmoving party. *Id.*

Applying these principles to this case, we conclude Jackson was not afforded the protection intended by the statute. This method of disposition is to be used only after “*the case has been fully developed by both sides.*” *Manning*, 654 N.W.2d at 559. Although Jackson received notice of the State’s motions and had eighteen months between the time the State filed the motions in October 2006 and the hearing on the motions in April 2008 to file a resistance or affidavits in support of his claims, his counsel completely failed to file a motion in resistance or otherwise resist the State’s motions. Thereafter, at the hearing on the motions, Jackson’s counsel claimed he had just learned of some of Jackson’s claims, and he attempted to call Jackson to testify. The court denied Jackson’s testimony, reasoning that he would not allow the April 2008 hearing on the motions to become an evidentiary hearing.

Upon our review of the record, we note that Jackson attempted to contact his attorney several times with regard to the status of his case, wrote a letter to the judge, and also filed several pro se motions. This evidence suggests that Jackson had very little contact with his counsel throughout the litigation of his

applications for postconviction relief. As a result, it is unclear whether Jackson was given sufficient opportunity to offer evidence to fulfill his burden of showing the court that there was a genuine issue of material fact worthy of a full postconviction hearing. Even the district court noted concern regarding Jackson's counsel's inactions in its ruling on the State's motions:

The Court is troubled by the inactions of Defense counsel here. The State's Motion for Summary Disposition was filed nearly 18 months ago. The Defendant's counsel, however, has not filed a motion in resistance, or provided the Court with any documentation to resist the State's Motion.

. . . The Defendant's counsel has failed to demonstrate that there is an issue of material fact here, and this failure is fatal to his client's cause.²

We agree. Jackson had the burden to show the court that there was a genuine issue of material fact worthy of a full postconviction hearing. This should have been done by resisting the State's motions and orally arguing in resistance at the hearing on the motions. We conclude Jackson was denied effective assistance of counsel.

Although Jackson was provided notice and adequate time to respond, we find he was not afforded a meaningful opportunity to present his position as to whether there were genuine issues of material fact presented in his application or argue his interpretation of the law. See *Brown*, 589 N.W.2d at 275. This requires we reverse the matter, reinstate the applications for postconviction relief, and remand for further proceedings. If the parties or the court wish to proceed by summary disposition, it must be clear that Jackson was provided a meaningful

² We note that the district court nonetheless proceeded to dismiss Jackson's postconviction claims on their merits.

opportunity to present his position. Otherwise, the application for postconviction relief should be heard as provided by section 822.7.

IV. Conclusion.

This is a case of a defendant who was initially given a good deal by the State and the district court, but then messed up on numerous occasions, refused another good deal, and landed himself in jail. Thereafter, he filed applications for postconviction relief alleging numerous claims. We do not address the merits of these claims in this appeal. Instead, we conclude the most prudent thing to do is to send this case back for further proceedings to ensure the defendant's procedural due process rights are protected and his claims are properly heard.

REVERSED AND REMANDED.