

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR KENT COUNTY**

STATE OF DELAWARE,)	
)	
Plaintiff,)	
)	
v.)	ID# 0801037592
)	
ALFRED V. FINN,)	
)	
Defendant.)	
)	

ORDER

Defendant, Alfred V. Finn, appealed the Commissioner’s findings of facts and recommendations as to his motion for postconviction relief. The court referred Defendant’s motion to Superior Court Commissioner Parker pursuant to 10 *Del. C.* § 512(b) and Superior Court Criminal Rule of Procedure 62. The Commissioner filed her report on May 23, 2012 and recommended that Defendant’s motion be denied. Defendant’s motion was based on an ineffective assistance counsel claim alleging four specific grounds: 1. Defendant’s waiver of his right to a jury was coerced by counsel; 2. counsel failed to investigate and raise issues of Defendant’s mental health; 3. counsel failed to adequately challenge the State’s case with adversarial testing; and 4. counsel failed to file pre-trial

motions. Defendant filed his appeal to the Commissioner's recommendation on July 2, 2012.¹

The Commissioner found Defendant failed to establish ineffective assistance of counsel under *Strickland v. Washington*.² The Commissioner concluded Defendant's waiver of his right to a jury trial was voluntarily and intelligently waived. She reviewed defense counsel's affidavit, counsel's on the record representations, the waiver form signed by Defendant, and the court's colloquy with Defendant. She found they belied Defendant's subsequent argument that his waiver was not voluntary and intelligent. The court adopts the Commissioner's findings rejecting this ground for relief.

The Commissioner also concluded Defendant's counsel was not ineffective for failing to raise a mental health defense. Defendant's experienced trial counsel determined there was not a good faith basis for a mental health defense. The court adopts the Commissioner's findings rejecting this ground for relief.

Next the Commissioner concluded counsel was not ineffective in failing to adequately challenge the state's case. Defendant did not argue which witnesses should have been called and were not called and how that would have affected the outcome of the trial. Even if a defendant can show "counsel's representation fell below an objective standard of

¹ Defendant requested an enlargement of the time to perfect his appeal because of the delay before he received the Commissioner's report in the prison's mail system. The court has excused the untimely appeal pursuant to Del. Super. Ct. Crim. R. 62(a)(1)(ii).

² 466 U.S. 668 (1984).

reasonableness,” he must further show “that there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.”³ The Commissioner determined the allegations were conclusory and insufficient and, regardless, defense counsel did the best he could, given the eyewitnesses and “overwhelming” evidence against Defendant.⁴ The court adopts the Commissioner’s findings rejecting this ground for relief.

Finally, the Commissioner found counsel was not ineffective because he did not file certain pre-trial motions. Defense counsel averred he did not file pre-trial motions other than one to reduce bail because he did not have a good faith basis to do so. Defendant failed to put forth sufficient evidence that any meritorious motions should have been filed. The court adopts the Commissioner’s findings rejecting this ground for relief.

Defendant made other miscellaneous claims in his filings. The court further adopts the Commissioner’s findings rejecting those claims.

Finally in his motion to enlarge time, Defendant appeals the Commissioner’s decision not to appoint counsel for his motion for postconviction relief. The Commissioner considered the request and denied it. The court agrees with the Commissioner’s conclusion and will expound on it because it appears to be the first time a Delaware court

³ *Richardson v. State*, 3 A.3d 233, 240 (Del. 2010) (quoting *Strickland*, 466 U.S. at 694).

⁴ *State v. Finn*, Crim. ID. No. 0801037592 at ¶¶31-21 (Del. Super. May 23, 2012) (Parker, C.).

has considered the issue since the U.S. Supreme Court's ruling in *Martinez v. Ryan*.⁵

In *Martinez* the court held,

[w]here, under state law, claims of ineffective assistance of trial counsel must be raised in an initial-review collateral proceeding, a procedural default will not bar a federal habeas court from hearing a substantial claim of ineffective assistance at trial if, in the initial-review collateral proceeding, there was no counsel or counsel in that proceeding was ineffective.⁶

However, the *Martinez* Court specifically stated that its ruling did not address whether an exception exists to the constitutional rule that there is no right to counsel in collateral proceedings when that collateral proceeding is an initial review.⁷ In fact the court ruled on equitable grounds, not constitutional grounds.⁸ Thus, the Court directed that its decision did not establish a constitutional right to counsel in postconviction collateral proceedings.

Delaware Superior Court Criminal Rule 61 provides for postconviction relief and in subsection (e) this issue directly addressed. The rule permits the court to “appoint counsel for an indigent movant only in the *exercise of discretion* and for good cause shown, but not otherwise.”⁹ The Delaware Supreme Court has consistently held that

⁵ 566 U.S. ___, 132 S.Ct. 1309 (2012).

⁶ *Id.* at 1320.

⁷ *Id.* at 1315 (stating that “[t]his is not the case . . . to resolve whether that exception exists as a constitutional matter”).

⁸ *Id.* at 1319-20.

⁹ Del. Super. Ct. Crim. R. 61(e)(1) (emphasis added).

“[t]here is no constitutional right to counsel in a postconviction proceeding.”¹⁰

Martinez does not change Delaware’s longstanding rule that defendants are not entitled postconviction relief counsel. Moreover, in *Martinez* the court addressed whether a procedural default could “bar a federal habeas court from hearing a substantial claim of ineffective assistance” of counsel.¹¹ The Commissioner here did not find Defendant’s claims were procedurally barred, but rather she considered them on the merits. Accordingly, *Martinez* does not apply to this case. The court agrees with the Commissioner that Defendant has not shown good cause for the appointment of counsel and, therefore, adopts her decision not to appoint postconviction relief counsel.

After careful and *de novo* review of the record in this case, the Commissioner’s Report, and the court’s own analysis, Defendant’s motion for postconviction relief is **DENIED**.

IT IS SO ORDERED.

Dated: July 10, 2012

Judge John A. Parkins, Jr.

oc: Prothonotary

cc: Kathleen Vavala, Esquire, Department of Justice, Wilmington, Delaware
Alfred V. Finn, *pro se*, James T. Vaughn Correctional Center, Smyrna, Delaware
Edmund M. Hillis, Esquire, Office of the Public Defender, Wilmington, Delaware

¹⁰ *Garnett v. State*, 1998 WL 184489 (Del. Supr.) (ORDER) (quoting *Pennsylvania v. Finley*, 481 U.S. 551, 555 (1987)); *see also Cropper v. State*, 2001 WL 1636542 (Del. Supr.) (ORDER) (“[T]here is no right to court-appointed counsel in postconviction proceedings.”).

¹¹ *Martinez*, 132 S.Ct. at 1320.