

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE)	
)	
)	
v.)	
)	ID No. 0105020018A
)	
AARON K. CARTER,)	
)	
Defendant.)	

MEMORANDUM OPINION

Aaron Carter has filed a petition which appears to be brought pursuant to Rule 61. He argues that the United States Supreme Court’s decision in *Martinez v. Ryan*¹ creates a new constitutional right to counsel for defendants seeking post conviction relief in state courts. He asks this court to “reverse and remand” its denials of his earlier motions for post conviction relief.

Carter was convicted of several crimes for a viscous 2001 home invasion. This court described his crime in its 2006 order denying an earlier motion for post conviction relief.

¹ ___U.S.___, 132 S.Ct. 1309 (2012)

In the early morning hours of March 24, 2001, Defendant Aaron A. Carter and an accomplice broke into the New Castle County residence of Michael and Gina Dudlek. After entering the master bedroom, Carter aimed a .45 caliber handgun at the couple and ordered Michael from his bed. The rest of the Dudlek family, including Gina and their two young children, were herded into a room on the first floor of the house under the guard of Carter's accomplice.

Carter ordered Michael into his car and accompanied him to several area banks to withdraw funds from ATM Machines. Michael deducted \$500.00 from his joint account using his own ATM card. He was then denied further withdrawals due to established transactional limitations. Carter ordered Michael to return home to obtain his wife's ATM card, to make further deductions. Michael obtained her ATM card and was forced to return to an ATM Machine to deduct another \$500.00 from the account. After the transactions were complete, Carter ordered Michael to return home. Michael had withdrawn \$1000.00 on Carter's demand.

Upon returning to the Dudlek residence, Carter ordered Michael to draft a check, payable to cash, in the amount of \$1000.00. With the check, the \$1000.00 cash, and various items of property in hand, Carter and his accomplice left the Dudlek residence.

After the jury found Carter guilty of a host of crimes, including multiple kidnapping and weapons offenses, this court sentenced him to a period of 57 years of incarceration followed by probation. His conviction was affirmed by the Supreme Court on direct appeal.

This is at least Carter's third application for post conviction relief. He filed his first application in 2006 which was for the most part denied by this court.² That ruling was affirmed on appeal. In 2009 Carter filed another Rule 61 motion which was denied by this court. That denial was also affirmed by the Supreme Court.

Carter now argues that *Martinez v. Ryan* creates a new constitutional right to counsel in post trial matters and therefore lifts any procedural bars facing him. His argument fails because *Martinez* did not create a constitutional right to counsel in state post trial proceedings. Rather it simply held that, as a matter of equity, certain federal habeas corpus petitions from state prisoners would not be subjected to federal procedural bars if the state prisoner was not represented by counsel when the prisoner first sought to challenge the effectiveness of his trial counsel. On repeated occasions this court has rejected the notion that *Martinez v. Ryan* creates a constitutional right. In *State v. Jones*³ Judge Stokes of this court cogently summarized the now-established law:

Defendant's second ground for relief is based upon the contention that, in the case of *Martinez v. Ryan* the

² The same day this court modified its sentence by striking the convictions on two of the 33 counts for which Carter was convicted.

³ 2013 WL 2152198 (Del. Super.)

United States Supreme Court established a newly created right which thereby provides relief from the time bar of Rule 61(i)(1). Although in all other situations the three-year time bar noted earlier in this decision applies, if a “new right” is created, then “a defendant whose action is otherwise time barred has one year to file the motion from the date the new right was established. [quoting *Martinez*.]”

Martinez did not create a constitutional right, which is the type of “right” Rule 61(i)(1) encompasses. The United States Supreme Court's holding in *Martinez* was that “in federal habeas actions, defendants would be able to avoid procedural default in federal court due to what happened in the earlier state postconviction actions” and that holding “is limited only to that narrow procedural situation under federal law concerning *habeas corpus*. ” As the Superior Court concluded in [*State v. Travis*, 2013 WL 1196332 (Del. Super.)] “[t]his cannot qualify as a ‘new right’ under Rule 61(i)(1).”⁴

The Delaware Supreme Court has also weighed in on this issue. In *State v. Smith*⁵ this court held that *Martinez v. Ryan* “does not provide a constitutional right to have effective counsel at the initial post-conviction proceedings in order to raise an ineffective assistance of counsel claim against trial counsel.” The holding in *Smith* was affirmed on appeal by the Delaware Supreme Court.⁶

Although it is not entirely clear, it is arguable that Carter is seeking nothing more than appointment of counsel. *Martinez* is not

⁴ *Id.* at 2-3 (footnotes omitted)

⁵ 2012 WL 5577827 (Del. Super.)

⁶ 2012 WL 3870567 (Del.)

controlling in this court because it does not find a constitutional right. Further, this court has previously ruled that *Martinez* is not retroactive.⁷ Thus *Martinez* does not require appointment of counsel here. In the exercise of the discretion to appoint counsel granted to this court by Rule 61, the court declines to do so because the claims here are procedurally barred or otherwise frivolous.

Carter's motion for relief pursuant to Rule 61 and his motion for appointment of counsel are therefore **DENIED**.

John A. Parkins, Jr.

Date: June 18, 2013

oc: Prothonotary

cc: Aaron K. Carter, SBI 179415, JTVCC, Smyrna, Delaware
Sean P. Lugg, Esquire, Department of Justice, Wilmington,
Delaware

⁷ *State v. Travis*, 2013 WL 5577827 (Del. Super.) (“[s]ince *Martinez* did not establish a new constitutional right, it cannot be applied retroactively”)