

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

STATE OF DELAWARE	)	
	)	
	)	
v.	)	ID#: 0611011396
	)	
KEINO CHRICHLOW,	)	
Defendant.	)	

**ORDER**

**Upon Defendant’s Request for Appointment of Counsel – DENIED.**

1. On September 17, 2013, Defendant filed this motion requesting appointment of counsel to file a third motion for postconviction relief. Defendant asserts *Holmes v. State*<sup>1</sup> entitles him to appointed counsel.

2. This case’s procedural history is unusual and noteworthy.<sup>2</sup> In summary, post-trial the court reduced several convictions from robbery first degree to aggravated menacing, prompting an appeal by the State. Defendant’s court appointed appellate counsel successfully resisted the State’s appeal but did not file a direct or cross appeal. To remedy that, the court permitted Defendant, pro se, in his first motion for postconviction relief to raise appellate claims, which all centered on accomplice liability under *Allen v. State*<sup>3</sup> and 11 *Del. C.* § 274. After considering

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<sup>1</sup> *Holmes v. State*, 67 A.3d 1022 (Del. 2013).  
<sup>2</sup> *State v. Chrichlow*, 2011 WL 7063684 (Del. Super.).  
<sup>3</sup> 970 A.2d 203 (Del. 2009).

*Horne*<sup>4</sup> affidavits from trial and appellate counsel, this court found, and the Supreme Court affirmed,<sup>5</sup> trial counsel's approach was a conscious, professionally responsible decision to argue for acquittal.

3. On October 23, 2012, Defendant filed a second motion for postconviction relief arguing ineffective assistance of counsel. This court held that despite the procedural irregularity, Defendant, in effect, had counsel for appellate purposes.<sup>6</sup> The court reached that conclusion because appellate counsel's *Horne* affidavit included counsel's opinion that Defendant had no potentially meritorious issues for appeal and Defendant had the opportunity in his first motion for postconviction relief to raise the issues he saw. So, the court viewed the *Horne* affidavit and the motion for postconviction relief, taken together, as tantamount to an appeal under Supreme Court Rule 26(c).<sup>7</sup>

4. In both the second motion for postconviction relief and here, Defendant has asserted *Martinez v. Ryan*<sup>8</sup> entitles him to appointed counsel. This court held *Martinez* only applies to federal *habeas* consideration of ineffective counsel claims, not state court consideration.<sup>9</sup> Further, *Martinez* is, by its terms, an

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<sup>4</sup> *Horne v. State*, 887 A.2d 973 (Del. 2005).

<sup>5</sup> *Chrichlow v. State*, 49 A.3d 1192 (Table) (Del. 2012).

<sup>6</sup> *State v. Chrichlow*, 2013 WL 2423118 (Del. Super.).

<sup>7</sup> *Id.*

<sup>8</sup> 566 U.S. —, 132 S. Ct. 1309 (2012).

<sup>9</sup> *Chrichlow*, *supra* note 5.

“equitable ruling” rather than a “constitutional ruling,” which would apply retroactively.<sup>10</sup>

5. Now, Defendant’s reliance on *Holmes* is similarly misguided. The Supreme Court recently confirmed that *Holmes* does not provide a constitutional right to counsel in a first postconviction proceeding.<sup>11</sup> *Holmes* merely enforces the recent amendment to Superior Court Criminal Rule 61(e)(1). The recent modification of Rule 61 is simply not retroactive.<sup>12</sup>

6. This court and the Supreme Court have considered this case repeatedly. While this court views the mandatory sentence imposed as harsh, the fact remains that Defendant actively participated in a dramatic bank robbery. No one, including the court, sees a way that Defendant could have done better at trial and on appeal. Accordingly, it does not appear that appointing a third lawyer to represent Defendant is justified.<sup>13</sup>

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<sup>10</sup> *Id.*

<sup>11</sup> *Roten v. State*, 2013 WL 5808236 (Del. Supr.).

<sup>12</sup> *Id.* at \*1 (“The rule was adopted May 6, 2013 and is *not* retroactive.”) (emphasis in original).

<sup>13</sup> *Chrichlow*, *supra* note 2.

For the foregoing reasons, Defendant's latest request for appointment of counsel is **DENIED**.

**IT IS SO ORDERED.**

Date: November 13, 2013

/s/ Fred S. Silverman

Judge

oc: Prothonotary, (Criminal Division)  
pc: Josette D. Manning, Deputy Attorney General  
Keino S. Chrichlow, Defendant