

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

STATE OF DELAWARE)	
)	
v.)	
)	ID #0104000628
RAPHAEL MARTINEZ,)	
)	
Defendant.)	

Submitted: September 24, 2002
Decided: October 31, 2002

**UPON DEFENDANT’S “MOTION TO CERTIFY ADDITIONAL
QUESTIONS OF LAW TO THE DELAWARE SUPREME COURT.”
DENIED.**

ORDER

This 31st day of October, upon consideration of a “Motion to Certify Additional Questions of Law to the Delaware Supreme Court” (the “Motion”) filed by defendant Raphael Martinez (“Defendant”), it appears to this Court that:

1. This is a capital murder prosecution. Defendant was indicted for one count of Murder First Degree (title 11, section 636 of the Delaware Code), one count of Possession of a Firearm During the Commission of a Felony (title 11, section 1447A of the Delaware Code), and one count of Possession of a Deadly Weapon by Person Prohibited (title 11, section 1448

of the Delaware Code). The basis for these indictments was the alleged homicide of Valerie Sims on March 3, 2000.

2. On August 9, 2002, this Court certified 16 questions of law to the Delaware Supreme Court in the case of State of Delaware v. Miles Brice and Leon Caulk, ID #0107007736, ID #0107007679. The certified questions related to the constitutionality and construction of certain aspects of the Delaware death penalty statute (title 11, section 4209 of the Delaware Code) in light of the recent United States Supreme Court decision in Ring v. Arizona.¹ The Delaware Supreme Court accepted four of the 16 questions that this Court certified but simultaneously determined that “[t]he decision whether or not to accept any of the other questions certified by the Superior Court in this matter is deferred.”²

3. Defendant now seek the certification of two additional questions of law relating to the constitutionality and construction of the Delaware death penalty statute; these questions were questions that the

¹ 536 U.S. ___ (2002) (holding that an Arizona statute under which the trial judge alone determined the presence or absence of aggravating factors required under Arizona law for imposition of the death penalty violated the Sixth Amendment right to a jury trial in capital prosecutions).

² Brice and Caulk v. State, Del. Supr., No. 468, 2002 (Aug. 30, 2002) (en banc), Order at 4.

Delaware Supreme Court had earlier declined to accept in the Brice and Caulk case.

The two questions of law previously considered in the Brice and Caulk case that were “deferred” by the Supreme Court which Defendant now seeks to have certified in this case are:

- [1]. Does the failure of...[title 11, section 4209 of the Delaware Code], as it existed on June 24, 2002 to require that the statutory aggravators be part of the indictment, render it unconstitutional?
- [2]. Does the failure of the newly enacted...[title 11, section 4209 of the Delaware Code], to required that the statutory aggravators be part of the indictment render it unconstitutional?

Defendant argues that “under existing United States Supreme Court precedent, it is appropriate for the Court to require an indictment of those aggravating factors which will be utilized by the State in seeking the enhanced penalty of death.”³

In response, the State argues against certification of the two additional questions of law. The State contends that the statutory aggravators that support imposition of the death penalty in this case are Defendant’s past convictions of Assault Second Degree (title 11, section 612 of the Delaware Code) and Reckless Endangering First Degree (title 11, section 604 of the Delaware Code). The State claims that statutory aggravators consisting solely of past convictions need not have been contained in the present

³ Def’s. Mot. ¶ 2.

indictment, so that “the issue of whether or not the statutory aggravators[] in the form of the [D]efendant’s prior convictions[] is of no moment here.”⁴

4. Although the Brice and Caulk case may be factually distinguishable from the current prosecution of Defendant, the Delaware Supreme Court, through that case, has already determined that it would not accept the two questions sought by Defendant to be certified in this case. Notably, the Supreme Court “deferred” ruling on whether or not to accept any additional questions certified to it by this Court in that case. It may well be that the Supreme Court will address some or all of the “deferred” questions in its decision in the Brice and Caulk case. However, in its discretion, this Court declines to certify any additional questions in this case, given that the Supreme Court has already ruled what questions of law concerning the death penalty statute are to be considered.⁵ Defendant’s

Motion is therefore **DENIED**.

IT IS SO ORDERED.

Richard R. Cooch, J.

oc: Prothonotary

xc: Christina M. Showalter, Esquire and Colleen K. Norris, Esquire,
Deputy Attorneys General

Kevin J. O’Connell, Esquire, Attorney for Raphael Martinez

Thomas A. Pedersen, Esquire, Attorney for Raphael Martinez

⁴ State’s Resp. at 2.

⁵ Although Supreme Court Rule 41(b)(iii) identifies issues of the constitutionality and/or construction of a statute as potential grounds for accepting a certified question, this Court need not reach the application of that rule here given the Supreme Court’s earlier decision.