

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

STATE OF DELAWARE,)	
)	
v.)	Cr. ID No. 30903471DI
)	IN 89-06-0083
HENRY R. TAYLOR, JR.,)	
)	
Defendant.)	
)	

Submitted: May 6, 2013
Decided: August 1, 2013

MEMORANDUM OPINION AND ORDER

Henry R. Taylor, Jr., SBI 00, James T. Vaughn Correctional Center, Smyrna, Delaware.

Kathleen M. Jennings, Esquire, Delaware Department of Justice, Wilmington, Delaware.

DAVIS, J.

1. On September 5, 1989, a jury found Henry R. Taylor, Jr. guilty of Burglary Second Degree. On November 27, 1989, the Court declared Mr. Taylor a habitual offender under 11 *Del. C.* § 4214(B) and sentenced him to the custody of the Department of Correction at Supervision Level V for life. The Supreme Court affirmed Mr. Taylor’s conviction on May 17, 1991. Mr. Taylor has since filed three motions for postconviction relief which were denied or dismissed by this Court.

2. Before the Court is Mr. Taylor’s fourth Motion for Postconviction Relief, which he initially filed on March 18, 2013. On March 22, 2013, Mr. Taylor requested leave to amend his Motion. The Court granted Mr. Taylor leave to amend his motion within 30 days on April 12, 2013. On April 11, 2013, Mr. Taylor filed: (i) a Motion to Expand the Record, and (ii) a Motion for Appointment of Counsel. The Court, by Order dated April 18, 2013, granted the

Motion to Expand the Record and denied the Motion for Appointment of Counsel. The Court denied the Motion for Appointment of Counsel as:

Here, Mr. Taylor has not shown good cause why the Court should appoint counsel on his behalf. Moreover, there are no extraordinary circumstances present here which warrant appointment of counsel. As the voluminous record indicates, Mr. Taylor has had ample opportunity to raise any claims he may have had regarding his convictions and sentences. Moreover, though he may be unskilled at law, Mr. Taylor has filed *pro se* motions in Superior Court Rule 61.¹

In essence, the Court denied this motion, in part, because Mr. Taylor had demonstrated his “*pro se* ability” to navigate the legal system through multiple postconviction relief filings.

3. Mr. Taylor filed an amended Motion for Postconviction Relief on April 18, 2013. Mr. Taylor amended his Motion a second time on May 6, 2013.

4. In his Second Amended Motion for Postconviction Relief, Mr. Taylor contends that his trial counsel’s failure to object to the coercive police nature of testimonial evidence obtained from a co-defendant constitutes ineffective assistance of counsel. Mr. Taylor argues that the consequent admission of the co-defendant’s testimony as evidence was a constitutional violation that gave rise to a colorable claim of a miscarriage of justice, fulfilling Rule 61’s exception to procedural bars to review for postconviction relief. Additionally, Mr. Taylor contends that “the Prosecution withheld *Brady* material involving attorney error(s).”² Mr. Taylor argues that his claim of ineffective assistance of counsel cannot be procedurally barred, under *Martinez v. Ryan*,³ because Mr. Taylor did not have counsel for his initial postconviction proceeding.

5. Superior Court Criminal Rule 61 governs motions for postconviction remedy. Before addressing the substantive merits of any claim for postconviction relief, the Court must

¹ *State v. Taylor*, Cr. ID No. 30903471DI, Order dated April 17, 2013 ¶8.

² Def.’s Second. Am. Mot. ¶ 9.

³ 566 U.S. —;132 S. Ct. 1309 (2012).

determine whether the defendant has satisfied the procedural requirements of Superior Court Criminal Rule 61 (“Rule 61”).⁴ Rule 61(i) pertains to bars to relief. Under Rule 61(i)(1), “[a] motion for postconviction relief may not be filed more than one year after the judgment of conviction is final.”⁵ Under Rule 61(i)(2) any ground not asserted in a prior postconviction proceeding is barred “unless consideration of the claim is warranted in the interest of justice.”⁶ Under Rule 61(i)(3), “[a]ny ground for relief not asserted in the proceedings leading to judgment of conviction . . . is thereafter barred, unless the movant shows (A) cause for relief from the procedural default and (B) Prejudice from violation of the movant’s rights.”⁷ A defect under Rule 61(i)(1), (2), or (3), will not bar a movant’s “claim that the court lacked jurisdiction or . . . a colorable claim that there was a miscarriage of justice because of a constitutional violation that undermined the fundamental legality, reliability, integrity, or fairness of the proceedings leading to the judgment of conviction.”⁸ Finally, Under Rule 61(i)(4), any ground for relief that was formerly adjudicated in the proceedings leading to conviction, postconviction proceedings, or a habeas corpus proceeding “is thereafter barred unless reconsideration of the claim is warranted in the interests of justice.”⁹ “[T]he interest of justice has been narrowly defined to require that the movant show that the trial court lacked authority to convict or punish him.”¹⁰

6. This Court addressed Mr. Taylor’s asserted basis for ineffective assistance of counsel in its June 13, 1994 decision denying Mr. Taylor’s first motion for postconviction relief. In that motion, Mr. Taylor argued there that his counsel’s failure to object to the admission of a co-defendant’s testimony as evidence constituted ineffective assistance of counsel because the

⁴ *Younger v. State*, 580 A.2d 552, 554 (Del. 1990). See also *Bailey v. State*, 588 A.2d 1121, 1127 (Del. 1991); *State v. Mayfield*, 2003 WL 21267422, at *2 (Del. Super. Ct. June 2, 2003).

⁵ Del. Super. Crim. R. 61(i)(1).

⁶ *Id.* R. 61(i)(2).

⁷ *Id.* R. 61(i)(3).

⁸ *Id.* R. 61(i)(5).

⁹ Del. Super. Crim. R. 61(i)(4).

¹⁰ *State v. Wright*, 653 A.2d 288, 298 (Del. Super. 1994).

testimony was coerced. Mr. Taylor claimed that the co-defendant's statement was coerced, motivated, and induced by the promise or expectation of a benefit, that benefit being entry into a drug rehabilitation program. After analyzing the relevant portion of the co-defendant's testimony, the Court concluded that Mr. Taylor's argument was unmeritorious. The Court determined that the co-defendant's statement was not coerced, motivated or induced because he brought up the subject of rehabilitation himself, and the interviewing officer gave him a noncommittal response. That being the case, counsel did not deviate from reasonable professional standards in not objecting to the admission of the statement, and Mr. Taylor could not show cause for relief from Rule 61(i)(3).

7. The Court also addressed Mr. Taylor's claim that portions of the co-defendant's statement that were not admitted at trial contained *Brady* material. The Court found that the claim was procedurally barred under Rule 61(i)(3) because he did not raise it prior to filing his motion.

8. Mr. Taylor also relies upon the United States Supreme Court's decision in *Martinez v. Ryan*.¹¹ *Martinez* sets forth that procedural default does not bar a federal habeas court from hearing claims for ineffective assistance of counsel where there was no counsel or there was ineffective counsel during an initial-review collateral proceeding.¹² The Court's holding did not establish or recognize a constitutional right; rather it is an "equitable ruling."¹³ The Court specifically observed that a State may conclude no cause exists for a procedural default where the ineffective assistance of counsel claim is without merit, or if the conduct of the attorney in question did not fall below constitutional standards.¹⁴

¹¹ 566 U.S. —;132 S. Ct. 1309 (2012).

¹² *Id.* at 1320.

¹³ *Id.* at 1319-20.

¹⁴ *Id.* at 1319.

9. By invoking *Martinez*, Mr. Taylor seeks to take advantage of the means of relief from the one year time bar in Superior Court Criminal Rule 61(i)(1), which states:

Time limitation. A motion for postconviction relief may not be filed more than one year after the judgment of conviction is final or, if it asserts a retroactively applicable right that is newly recognized after the judgment of conviction is final, more than one year after the right is first recognized by the Supreme Court of Delaware or by the United States Supreme Court.

10. When Mr. Taylor was convicted and when the mandate was issued, the time limit was three years from when the conviction was final (date of issuance of mandate).

Subsequently, however, Rule 61(i)(1) was amended to require a postconviction motion to be filed within one year after the conviction became final. This now means in the case of the establishment of a “new right,” a defendant whose action is otherwise time barred has one year to file the motion from the date the new right was established.¹⁵ Since *Martinez v. Ryan* was issued on March 20, 2012, the Motion, first filed on or about March 18, 2013 (as amended on April 18, 2013 and May 6, 2013), appears to be filed timely.

11. Rule 61(i)(1) uses the phrase a “retroactively applicable right that is newly recognized after the judgment of conviction is final, more than one year after the right is first recognized by the...United States Supreme Court.” While no Delaware court has interpreted what kind of “rights” are encompassed within the word “right” in Rule 61(i)(1), common sense dictates that it be a *constitutional right*.¹⁶

¹⁵ *State v. Travis*, 2009 WL 5928077, *rev'd on other grounds*, 2 A.3d 75, 2010 WL 2854133 (Del. 2010)(TABLE).

¹⁶ The Court notes that in *Chao v. State*, 931 A.2d 1000 (Del. 2007), *rev'd on other grounds*, *Claudio v. State*, 958 A.2d 846 (Del. 2008), the Supreme Court did not first indicate that before consideration of a motion for postconviction relief is to be undertaken, any applicable bars to relief must first be examined. It did not address or cite Rule 61(i)(1) either as a bar or how there is a means of relief from that bar. It plucked the phrase “interest of justice” from Rule 61(i)(2), which it neither cited nor quoted, as a means of allowing Chao to present her claim which was otherwise procedurally barred. The retroactive application to an otherwise procedurally barred claim did

12. As *Martinez* makes abundantly clear, the United States Supreme Court very openly and deliberately made the point that a new constitutional right was not being established.¹⁷ Further, the context of *Martinez's* holding is important. The issue was whether 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. The Supreme Court addressed the issue in as limited a way it could.¹⁸ Its holding, therefore, is limited only to that narrow procedural situation under federal law concerning *habeas corpus*. This cannot qualify as a “new right” under Rule 61(i)(1).

13. In *State v. Smith*,¹⁹ this Court held that *Martinez* did not create a new constitutional right to have effective counsel at the initial postconviction proceedings in order to raise claims of ineffective assistance of counsel claims against trial counsel. The Court in *Smith* recognized that *Martinez* removes a procedural bar in federal habeas proceedings. That decision was affirmed on appeal.²⁰

14. The Ninth Circuit has ruled that, “*Martinez* cannot form the basis for an application for a second or successive motion because it did not announce a new rule of constitutional law.”²¹ In *Adams v. Thaler*, the Fifth Circuit said *Martinez's* rule was narrow and an equitable exception and hardly extraordinary.²²

not involve a “new right” but the application of a statutory re-interpretation which had reversed years of precedent. *Williams v. State*, 818 A.2d 906 (Del. 2003).

¹⁷ See *Martinez*, 132 S.Ct. at 1318-20. Note, however, Justice Scalia disagrees in dissent and sees the majority's ruling as establishing a constitutional right. *Id.* at 1321.

¹⁸ *Martinez*, 132 S. Ct. at 1320.

¹⁹ 2012 WL 5577827 (Del. Super. June 14, 2012).

²⁰ *State v. Smith*, 53 A.3d 303, 2012 WL 3870567 (Del. 2012)(Table).

²¹ *Buenrostro v. U.S.*, 697 F.3d 1137, 1139 (9th Cir. 2012); accord *Gamboa-Victoria v. U.S.*, 2012 WL 5449999 (M.D.Fla. Nov. 7, 2012); *Vogt v. Coleman*, 2012 WL 2930871 (W.D.Pa. July 18, 2012); *Brown v. Kerestes*, 2012 WL 7007794 (E.D.Pa. Dec, 28, 2012).

²² 679 F.3d 312, 320 (5th Cir. 2012).

15. To this Court's knowledge, all courts that have addressed the issue have held that *Martinez* did not create a new right such as to qualify as means of relief from the procedural bar of Rule 61(i)(1). Further, since *Martinez* did not establish a new constitutional right, it cannot be applied retroactively. "There is no indication in *Martinez* that it was to be applied retroactively."²³ The concepts of retroactive application and "new right" are linked under Rule 61(i)(1). Retroactive application is permissible under the Rule only if the right is new.

16. Additionally, *Martinez* does not provide relief from the repetitive motion bar of Rule 61(i)(2). Mr. Taylor's Motion is clearly repetitive and barred. The first means of relief from that bar is where reconsideration is warranted in the "interest of justice."²⁴ Mr. Taylor states he has claims of ineffective assistance. Mr. Taylor makes the same complaints about trial and appellate counsel that he has made on numerous occasions in his prior postconviction motions. Whatever complaints Mr. Taylor has, the Court has thoroughly examined these complaints in the three previous postconviction relief motions. As such, there is nothing here that hints at a need to reconsider in the "interest of justice."

17. Mr. Taylor's additional claims are barred by Rule 61(b)(1) as untimely. Mr. Taylor's claims are additionally barred by Rule 61(i)(2) as repetitive. This Court addressed identical claims in its decision on Mr. Taylor's first motion for postconviction relief in 1994. In the same decision, the Court concluded that even if Mr. Taylor's claims were not procedurally barred by Rule 61(i)(3), they fail substantively because his trial counsel's conduct did not fall below reasonable professional standards. Consequently, Mr. Taylor cannot demonstrate cause for relief from Rule 61's procedural bars under either Rule 61 or *Martinez v. Ryan*.

²³ *Lebron v. Terrell*, 2013 WL 443598, at *5 (D.R.I. Feb. 5, 2013); accord *Brown v. Kerestes*, 2013 WL 444672 (E.D. Pa. Feb. 6, 2013).

²⁴ Super. Ct. Crim. R. 61(i)(2).

18. For the reasons stated, Mr. Taylor's Motion for Postconviction Relief is **SUMMARILY DISMISSED**, as it plainly appears from the Motion and the record that Mr. Taylor is not entitled relief.

IT IS SO ORDERED.

Eric M. Davis
Judge