

IN THE SUPREME COURT OF THE STATE OF DELAWARE

NORMAN E. MORRISEY,	§	
	§	No. 632, 2012
Defendant Below,	§	
Appellant,	§	Court Below—Superior Court
	§	of the State of Delaware in and
v.	§	for New Castle County
	§	
STATE OF DELAWARE,	§	
	§	
Plaintiff Below,	§	Cr. ID No. 91006237DI
Appellee.	§	

Submitted: March 22, 2013

Decided: June 11, 2013

Before **STEELE**, Chief Justice, **JACOBS** and **RIDGELY**, Justices.

**O R D E R**

This 11<sup>th</sup> day of June 2013, upon consideration of the parties' briefs and the Superior Court record, it appears to the Court that:

(1) The appellant, Norman E. Morrisey ("Morrisey"), filed this appeal from the Superior Court's November 2, 2012 denial of his third motion for postconviction relief under Superior Court Criminal Rule 61. We conclude there is no merit to the appeal and affirm the Superior Court's judgment.

(2) Morrisey was indicted in 1991 on twelve counts of Unlawful Sexual Intercourse in the First Degree ("USI") and other offenses. The USI charges arose from two incidents in May and June 1991 when Morrisey was

alleged to have forced two different couples, with what appeared to be a handgun, to accompany him to isolated locations, disrobe, and perform sex acts.

(3) Morrissey’s criminal liability for the USI charges was predicated on the “innocent intermediary” provision of title 11, section 271(1) of the Delaware Code.<sup>1</sup> In a “motion to dismiss or merge,” which was denied by the Superior Court, Morrissey sought dismissal of the USI charges on the basis that criminal liability for USI could not be predicated upon the conduct of an innocent intermediary (hereinafter “the § 271 claim”). In the alternative, Morrissey sought merger of the USI charges based upon constitutional principles of multiplicity (hereinafter “the multiplicity claim”).

(4) Following his 1992 jury trial, Morrissey was convicted on the twelve counts of USI as well as other charges and was sentenced to a total of 180 years in prison. On direct appeal, Morrissey argued both the § 271 claim and the multiplicity claim. We rejected Morrissey’s arguments and affirmed his conviction.<sup>2</sup>

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<sup>1</sup> See Del. Code Ann. tit. 11, § 271(1) (2010) (providing that a person is guilty of an offense committed by another person when, acting with the state of mind that is sufficient for commission of the offense, the person causes an innocent person to engage in conduct constituting the offense).

<sup>2</sup> *Morrissey v. State*, 620 A.2d 207 (Del. 1993).

(5) In his first motion for postconviction relief, filed in November 1993, Morrissey claimed that his convictions on the twelve counts USI violated double jeopardy and were not supported by “sufficient identification evidence.” By order dated December 3, 1993, the Superior Court denied the motion on the basis that the double jeopardy claim was a reiteration of the formerly adjudicated multiplicity claim, and that the insufficient evidence claim was procedurally defaulted and without merit.<sup>3</sup> Morrissey’s appeal from that decision was dismissed as untimely filed.<sup>4</sup>

(6) In his second postconviction motion, filed in February 2010, Morrissey again raised the § 271 claim. By order dated March 10, 2010, the Superior Court denied the motion as procedurally barred. By Order dated August 10, 2010, we affirmed the Superior Court judgment, noting that in our reported Opinion on direct appeal, the Court had “engaged in an extensive analysis of the statutory language in determining that [section 271(1)] was properly applied to establish Morrissey’s guilt.”<sup>5</sup>

(7) In September 2012, Morrissey filed his third motion for postconviction relief. In that motion and now in this appeal from its denial, Morrissey claims that the separate sentences imposed for the USI convictions

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<sup>3</sup> *State v. Morrissey*, 1993 WL 1617677 (Del. Super. Ct.).

<sup>4</sup> *Morrissey v. State*, 1994 WL 91159 (Del. March 3, 1994).

<sup>5</sup> *Morrissey v. State*, 2010 WL 3181333 (Del. Aug. 11, 2010).

violated double jeopardy, and that his trial counsel was ineffective when representing him on the § 271 claim. Morrissey further asserts that the retroactive application of *Martinez v. Ryan*, a recent United States Supreme Court decision, requires that we consider the merit of his claim that his trial counsel was ineffective when representing him on the § 271 claim.<sup>6</sup>

(8) We reject Morris' assertion that, under *Martinez v. Ryan*, we are required to consider the merit of his ineffective assistance of counsel claim. *Martinez v. Ryan* permits a federal court to review a "substantial" ineffective assistance of counsel claim on federal habeas review.<sup>7</sup> It has no apparent application or relevance in this case.

(9) Having carefully considered the parties' briefs on appeal, we conclude that the Superior Court's denial of Morrissey's third postconviction motion should be affirmed. It is clear to the Court that Morrissey's claims of ineffective assistance of counsel and double jeopardy in sentencing are based upon the § 271 claim and the multiplicity claim, both of which received substantive resolution twenty years ago on direct appeal. Those claims continue to be barred as untimely, repetitive, and formerly adjudicated, and their reconsideration is neither required nor warranted "in

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<sup>6</sup> *Martinez v. Ryan*, 132 S. Ct. 1309 (2012).

<sup>7</sup> *Id.* at 1318-19.

the interest of justice,” because of “a miscarriage of justice,” or on the basis of a newly-recognized “retroactively applicable right.”<sup>8</sup>

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Henry duPont Ridgely  
Justice

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<sup>8</sup> See Del. Super. Ct. Crim. R. 61(i)(1) (listing procedural bars to postconviction relief and exceptions to those bars).