

**UNPUBLISHED**

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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**No. 12-6392**

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JUAN RODRIGUEZ,

Petitioner - Appellant,

v.

ANTHONY PADULA, Warden Lee Correctional Institution,

Respondent - Appellee.

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Appeal from the United States District Court for the District of South Carolina, at Rock Hill. R. Bryan Harwell, District Judge. (0:11-cv-01297-RBH)

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Submitted: September 11, 2012      Decided: September 28, 2012

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Before SHEDD, KEENAN, and WYNN, Circuit Judges.

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Vacated and remanded by unpublished per curiam opinion.

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Jeremy A. Thompson, LAW OFFICE OF JEREMY A. THOMPSON, LLC, Columbia, South Carolina, for Appellant. Melody Jane Brown, Assistant Attorney General, Donald John Zelenka, Deputy Assistant Attorney General, Columbia, South Carolina, for Appellee.

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Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Juan Rodriguez seeks to appeal the district court's order adopting in part the magistrate judge's recommendation and denying relief on his 28 U.S.C. § 2254 (2006) petition.

The district court ruled that Rodriguez's claim under Roe v. Flores-Ortega, 528 U.S. 470 (2000), was procedurally barred from federal habeas review and that "[a]ny alleged error by PCR counsel [was] insufficient to serve as cause to excuse [the] default as Petitioner does not have a constitutional right to PCR counsel." We grant a certificate of appealability on the issue of whether the district court erred in its procedural default rulings, vacate the rulings, and remand to the district court for reconsideration in light of Martinez v. Ryan, 132 S. Ct. 1309 (2012). We grant leave to proceed in forma pauperis.

We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

VACATED AND REMANDED