

3. Petitioner's petition for a writ of *habeas corpus* is **DENIED**; and
4. No probable cause exists to issue a certificate of appealability.²

The Clerk of Court is directed to mark this matter **CLOSED**.

BY THE COURT:

/s/ Nitza I. Quiñones Alejandro
NITZA I. QUIÑONES ALEJANDRO
Judge, United States District Court

counsel by showing, *inter alia*, that counsel at the initial-review collateral proceeding was also ineffective, and that the underlying claim of ineffective assistance at trial is “substantial.” *Martinez*, 566 U.S. at 13-14. Petitioner fails to make such a showing. Instead, in his objections, he argues that the ineffectiveness of the Prothonotary of the Pennsylvania Superior Court in getting the briefing order to him caused his default, and that the Prothonotary's failure “likens to that of Counsel failing to file a brief.” This argument is legally insufficient.

Notably, it was the Magistrate Judge who raised *Martinez*, *sua sponte*, but found that *Martinez* was inapplicable because Petitioner does not argue in the Petition that the ineffectiveness of PCRA counsel caused the default, and because his ineffective-assistance claims were heard by the PCRA court. *See Cox v. Horn*, 757 F.3d 113, 118 (3d Cir. 2014) (noting that *Martinez* may be applicable only in cases where, absent an excusal of the default, “no court – state or federal – would ever review the defendant's ineffective assistance claims.”). This Court agrees with the Magistrate Judge. In addition, *Martinez* has not been extended to allegations that *a court* allegedly provided ineffective assistance. Therefore, Petitioner's objection based on the Pennsylvania Superior Court's alleged ineffectiveness is without merit and overruled. This Court further agrees with the Magistrate Judge's conclusions that Petitioner failed to establish cause for the default and prejudice from it, or show a fundamental miscarriage of justice. *See Holloway v. Horn*, 355 F.3d 707, 715 n.3 (3d Cir. 2004) (noting that a federal court may consider the merits of a procedurally defaulted claim only if “the petitioner establishes ‘cause and prejudice’ or a ‘fundamental miscarriage of justice’ to excuse the default.”) (quoting *Coleman v. Thompson*, 501 U.S. 722, 750 (1991)). For the reasons noted, this Court finds that the claims in the Petition are unexhausted and procedurally defaulted.

² A district court may issue a certificate of appealability only upon “a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c). A petitioner must “demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong.” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000); *Lambert v. Blackwell*, 387 F.3d 210, 230 (3d Cir. 2004). For the reasons set forth, this Court concludes that no probable cause exists to issue such a certificate in this action because Petitioner has not made a substantial showing of the denial of any constitutional right. Petitioner has not demonstrated that reasonable jurists would find this Court's assessment “debatable or wrong.” *Slack*, 529 U.S. at 484. Accordingly, there is no basis for the issuance of a certificate of appealability.