

NON-PRECEDENTIAL DECISION – SEE SUPERIOR COURT I.O.P 65.37

COMMONWEALTH OF PENNSYLVANIA, : IN THE SUPERIOR COURT OF
: PENNSYLVANIA
Appellee :
: v. :
: MAURICE WOODARD, :
Appellant : No. 1082 WDA 2012

Appeal from the PCRA Order May 31, 2012,
Court of Common Pleas, Erie County,
Criminal Division at No. CP-25-CR-0001825-2004

BEFORE: FORD ELLIOTT, P.J.E, BOWES and DONOHUE, JJ.

MEMORANDUM BY DONOHUE, J.: Filed: January 25, 2013

Appellant, Maurice Woodard (“Woodard”), appeals from the order dated May 31, 2012, denying his fourth petition for relief pursuant to the Post Conviction Relief Act, 42 Pa. C.S.A. §§ 9541-46 (“PCRA”). Woodard contends that the decision of the United States Supreme Court in *Martinez v. Ryan*, 132 S.Ct. 1309 (2012), entitles him to PCRA relief. We disagree, and accordingly affirm the order of the PCRA court.

This Court summarized the relevant factual and procedural background of this case in connection with Woodard’s third PCRA petition:

In February of 2004, [Woodard] and his co-defendant were arrested in connection with an armed burglary at the home of an acquaintance. At the time of the burglary, three people were present in the home – James Allen, Kelly Phillips, and Ruth Ranson. Mr. Allen and Ms. Phillips identified [Woodard] as one of the perpetrators of that burglary and testified against him at his trial.

[Woodard's] defense was misidentification. At the close of the trial, the jury found him guilty of multiple counts of burglary, robbery, simple assault, terroristic threats, and criminal conspiracy. He was sentenced on December 2, 2004, to an aggregate term of 18 to 36 years' imprisonment. He did not file a direct appeal and, thus, his judgment of sentence became final on January 1, 2005. **See** 42 Pa.C.S. § 9545(b)(3) (judgment of sentence becomes final at the conclusion of direct review or the expiration of the time for seeking the review); Pa.R.A.P. 903(a) (notice of appeal to Superior Court must be filed within 30 days after the entry of the order from which the appeal is taken).

On March 21, 2005, [Woodard] filed a timely, counseled PCRA petition averring that his trial counsel had rendered ineffective assistance. A hearing was conducted, after which the PCRA court denied his petition on July 18, 2005. [Woodard] filed a timely notice of appeal. On July 21, 2006, we affirmed the order denying him relief, and his petition for allowance of appeal to the Supreme Court was denied on March 21, 2007. **Commonwealth v. Woodard**, 909 A.2d 890 (Pa. Super. 2006) (unpublished memorandum), *appeal denied*, 919 A.2d 957 (Pa. 2007).

On July 30, 2007, [Woodard], acting *pro se*, filed a second petition for post-conviction relief alleging that he possessed after-discovered evidence in the form of an affidavit by James Allen in which Mr. Allen recanted his trial testimony and stated that he did not know who committed the armed burglary. On July 31, 2007, the PCRA court entered an order denying [Woodard's] petition. [Woodard] filed a timely *pro se* notice of appeal. On February 19, 2008, we affirmed the PCRA court's order, concluding that [Woodard's] petition was untimely and that he failed to meet any of the exceptions to the PCRA timeliness requirements. **Commonwealth v. Woodard**, 951 A.2d 1220 (Pa. Super. 2008) (unpublished memorandum).

On July 7, 2011, [Woodard], again proceeding *pro se*, filed his third PCRA petition, which forms the basis of the instant appeal. In that petition, [Woodard] claimed that at the time of his trial, the Commonwealth withheld evidence that James Allen and Kelly Phillips had prior *crimen falsi* convictions that could have been used by [Woodard] to impeach their credibility. This withholding of evidence, [Woodard] averred, violated the dictates of ***Brady v. Maryland***, 373 U.S. 83 (1963). [Woodard] further contended that he did not discover the *crimen falsi* convictions of these two witnesses until May 3, 2011, and, thus, his untimely petition met the after-discovered evidence exception of the PCRA. However, the PCRA court disagreed and, on July 11, 2011, it denied [Woodard's] petition without a hearing. [Woodard] filed a timely notice of appeal.

Commonwealth v. Woodard, 1201 WDA 2011 at 1-3 (Pa. Super., January 5, 2012) (unpublished memorandum).

In an unpublished memorandum dated January 5, 2012, this Court affirmed the PCRA court's dismissal of Woodard's third PCRA petition. In particular, we concluded that Woodard's discovery of the Commonwealth's alleged ***Brady*** violation did not satisfy the PCRA's after-discovered evidence exception. The *crimen falsi* convictions at issue were matters of public record, and thus the Commonwealth had no discovery obligation to disclose them to Woodard. ***Id.*** at 5 (quoting ***Commonwealth v. Grant***, 572 Pa. 48, 55, 813 A.2d 726, 730 (2002) ("no ***Brady*** violation occurs where the parties had equal access to the information or if the defendant knew or could have uncovered such evidence with reasonable diligence"). Moreover, there was

no evidence of record to indicate that Woodard had requested any such information from the Commonwealth. *Id.* In the absence of a **Brady** violation, Woodard's third PCRA petition was patently untimely.

On March 20, 2012, the U.S. Supreme Court issued its **Martinez** decision, and on May 23, 2012, Woodard filed another *pro se* PCRA petition, his fourth. By order dated May 31, 2012, the PCRA court denied the petition. On appeal, Woodard raises the following issue for our consideration and determination:

Whether the PCRA court erred by concluding that [Woodard] did not meet any exceptions under 42 Pa.C.S.A. § 9545, due to the U.S. Supreme Court decision in **Martinez v. Ryan**, concluding for the first time that defendants could raise counsel's ineffectiveness in the initial PCRA stage.

Woodard's Brief at 5.

Martinez involved an appeal by an Arizona defendant from a denial of his federal habeas petition. In Arizona (as in Pennsylvania), defendants may not raise claims of ineffective assistance of trial counsel on direct appeal, and instead may do so only in an initial collateral proceeding. On federal habeas review, Martinez argued that he received ineffective assistance at trial, and that his appellate counsel was ineffective for failing to raise trial counsel's failures in his initial state collateral proceeding. The federal district court denied the habeas petition, concluding that Arizona's rules regarding

the filing of ineffectiveness claims constituted an adequate and independent state-law ground barring federal habeas review.

The Court of Appeals for the Ninth Circuit affirmed, but the Supreme Court reversed. ***Martinez v. Ryan***, 132 S.Ct. 1309 (2012). In so doing, the Court first explained the federal doctrine of “procedural default”:

Federal habeas courts reviewing the constitutionality of a state prisoner's conviction and sentence are guided by rules designed to ensure that state-court judgments are accorded the finality and respect necessary to preserve the integrity of legal proceedings within our system of federalism. These rules include the doctrine of procedural default, under which a federal court will not review the merits of claims, including constitutional claims, that a state court declined to hear because the prisoner failed to abide by a state procedural rule. ***See, e.g., Coleman, supra***, at 747–748, 111 S.Ct. 2546; ***Sykes, supra***, at 84–85, 97 S.Ct. 2497. A state court's invocation of a procedural rule to deny a prisoner's claims precludes federal review of the claims if, among other requisites, the state procedural rule is a nonfederal ground adequate to support the judgment and the rule is firmly established and consistently followed. ***See, e.g., Walker v. Martin***, 562 U.S. ___, ___, 131 S.Ct. 1120, 1127–1128, 179 L.Ed.2d 62 (2011); ***Beard v. Kindler***, 558 U.S. ___, ___, 130 S.Ct. 612, 617–618, 175 L.Ed.2d 417 (2009). The doctrine barring procedurally defaulted claims from being heard is not without exceptions. A prisoner may obtain federal review of a defaulted claim by showing cause for the default and prejudice from a violation of federal law. ***See Coleman***, 501 U.S., at 750, 111 S.Ct. 2546. There is no dispute that Arizona's procedural bar on successive petitions is an independent and adequate state ground. *Thus, a federal court can hear Martinez's ineffective-assistance claim only if he can establish cause to excuse the procedural default.*

Id. at 1316 (emphasis added).

While prior precedent had held generally that “[n]egligence on the part of a prisoner’s post-conviction attorney does not qualify as ‘cause’” to excuse a procedural default, *Maples v. Thomas*, 132 S.Ct. 912, 922 (2012), the Court in *Martinez* concluded that an exception exists when the post-conviction attorney’s ineffectiveness occurred at “the first designated proceeding for a prisoner to raise a claim of ineffectiveness at trial.” *Martinez*, 132 S.Ct. at 1317. Because Arizona procedural law does not permit such claims to be raised on direct appeal, the collateral proceeding “is in many ways the equivalent of a prisoner’s direct appeal as to the ineffectiveness claim.” *Id.* In this unique situation, cause to excuse the procedural default does exist, since “the initial-review collateral proceeding, if undertaken without counsel, or with ineffective counsel, may not have been sufficient to ensure that proper consideration was given to a substantial claim.” *Id.* at 1318. For these reasons, the Court held as follows:

Where, under state law, claims of ineffective assistance of trial counsel must be raised in an initial-review collateral proceeding, a procedural default will not bar a federal habeas court from hearing a substantial claim of ineffective assistance at trial if, in the initial-review collateral proceeding, there was no counsel or counsel in that proceeding was ineffective.

Id. at 1319.

The potential applicability of the **Martinez** decision to the present case is unclear, and Woodard's *pro se* appellate brief does little to rectify this confusion. The decision in **Martinez** clearly affects the rights of defendants filing habeas petitions in federal courts, but does not appear to have any effect on the availability of PCRA relief in Pennsylvania state proceedings. In his appellate brief, Woodard points out that in our decision denying his third PCRA petition, we essentially placed the blame on his trial counsel for failing to obtain information about relevant *crimen falsi* crimes, and on appellate PCRA counsel for failing to raise trial counsel's ineffectiveness in this regard in his first PCRA petition. Woodard's Brief at 9. Even assuming *arguendo* that this is true, any ineffective assistance of counsel claims (even if now asserted, which they are not) would be untimely. Moreover, and more importantly for present purposes, the U.S. Supreme Court's decision in **Martinez** would have no effect on his ability to assert such claims in Pennsylvania state courts under the PCRA, and therefore provides no support for an exception to the PCRA's timeliness requirements. 42 Pa. C.S.A. § 9545(b). **See Commonwealth v. Saunders**, __ A.3d __, 2013 WL 150811 at *3 (Pa. Super., January 15, 2013) ("While **Martinez** represents a significant development in federal habeas corpus law, it is of no moment with respect to the way Pennsylvania courts apply the plain language of the time bar set forth in section 9545(b)(1) of the PCRA.").

Accordingly, Woodard's fourth PCRA petition is untimely and the PCRA court did not err in dismissing it.

Order affirmed.