

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC.

SUPERIOR COURT

[FILED: July 7, 2015]

DAYMON B. JONES,  
Petitioner,

V.

STATE OF RHODE ISLAND,  
Respondent.

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P.M. No. 2015-1053  
(P2/2013-169)

**DECISION**

**LANPHEAR, J.** This matter is before the Court pursuant to Daymon B. Jones’ (Petitioner or Mr. Jones) “Motion to Vacate Plea Agreement,” which, according to Petitioner’s correspondence, is intended to serve as his “post-conviction relief (PCR) application” following the submission of a plea of nolo contendere for sexual offenses committed in 2011. Petitioner contends that an inherent conflict of interest within the Office of the Public Defender renders the plea agreement resolving State v. Daymon Jones, Case No. P2/2013-0169A, entered September 3, 2013, constitutionally impermissible under the Fifth, Sixth, and Fourteenth Amendments of the United States Constitution and requests this Court to vacate the plea agreement and renew plea negotiations. Jurisdiction is pursuant to G.L. 1956 §§ 10-9.1-1, et seq.

**I**

**Facts & Travel**

This case arises out of a series of interactions between the Petitioner and the Office of the Public Defender beginning with Petitioner’s first application for post-conviction relief, PM-2007-0344, filed with this Court on or about November 6, 2007. In that matter, currently on appeal before our Supreme Court, Petitioner alleges that the Office of the Public Defender

provided ineffective assistance during plea negotiations stemming from a 2003 sexual assault charge.

Since filing his first post-conviction relief application, Petitioner has been represented by court-appointed counsel on a number of occasions. The Office of the Public Defender provided free legal services to Petitioner in at least three matters implicated here: P2/2013-0619A, P2/2011-0273A, and N2/2013-0215A. In each case, the Public Defender negotiated plea agreements in return for suspended sentences; and, in each case, the sentencing Court found that Mr. Jones entered his pleas knowingly, willingly, and voluntarily. After Mr. Jones' plea in P2/2013-0169A, Mr. Jones was classified as a level II sex offender and required to comply with certain reporting conditions beginning in September 2013. In March 2014, Mr. Jones was found in violation of the terms of his sentence for failure to register his residence. The suspension was lifted, and Petitioner became incarcerated in state facilities.

Now, Mr. Jones applies to this Court for post-conviction relief under the theory that any representation rendered to the Petitioner by the Office of the Public Defender after 2007 was inherently tainted by a conflict of interest stemming from his initial allegation of ineffective assistance of counsel. Beginning in March 2014, Petitioner sent letters to this Court, including a document entitled "Motion to Vacate" and "Motion to Dismiss Violation Hearing." The document cited no authority to support his inherent conflict claim. These strongly worded "motions" challenged Petitioner's incarceration and requested a hearing before a justice of the Superior Court. A status hearing was held before Justice Vogel on May 7, 2015, during which Petitioner discussed his legal objectives with the Court. Following the hearing, Petitioner filed a document entitled "Motion to Vacate Plea Agreement" on April 15, 2015. This time, Petitioner cited § 10-9.1-1, Rhode Island's post-conviction relief statute, as grounds for his motion.

Representing himself, Petitioner has clarified that the motion filed under the title “Motion to Vacate Plea Agreement” should be treated by this Court as a “Motion for Post-Conviction Relief,” and is intended to supersede all other motions. He has written:

“[t]he ‘Motion to Vacate Plea Agreement’ serves as my post-conviction (PCR) application. This motion supersedes the Magistrate McBurney denile [sic] of the ‘Motion To Vacate’ and ‘Motion to Dismiss Violation Hearing’ motions I sought to have reviewed by a full justice. This is not a difficult matter and should not be made to be.” (Pet’r’s Letter, May 10, 2015.)

He further clarified:

“[p]rior to my post-conviction, I filed a ‘Motion to Vacate’ and ‘Motion to Dismiss Violation Hearing’ which I explained to Justice Vogel that I no longer have interest in pursuing. Because of one of [my] letters to Presiding Justice Gibney, I was before Justice Vogel to explain that in which I seek. She understood my only interest is in P2/13-0169A and its illegal plea agreement.” (Pet’r’s Letter, May 22, 2015.)

Moreover, in a letter to the Presiding Justice dated May 27, 2015, Petitioner stated,

“I no longer have any interest in the motion denial of Magistrate McBurney. Instead, I seek Post-Conviction Relief (PCR) as it relates simply to the above stated case number [P2-2013-0169A] (which is illegal in nature and was subsequently violated).” (Pet’r’s Letter, May 27, 2015.)

This matter was given case number PM-2015-1053, and the Court heard Petitioner’s Motion on June 4, 2015. At that hearing, Petitioner appeared without counsel, by his own insistence, and argued only the conflict of interest position. No evidence was submitted. This Court now decides Petitioner’s “Motion to Vacate Plea Agreement” under the law of post-conviction relief.

## II

### Standard of Review

In Rhode Island, “[p]ursuant to the provisions of G.L.1956 § 10–9.1–1, ‘the remedy of postconviction relief is available to any person who has been convicted of a crime and who thereafter alleges either that the conviction violated the applicant’s constitutional rights or that the existence of newly discovered material facts requires vacation of the conviction in the interest of justice.’” DeCiantis v. State, 24 A.3d 557, 569 (R.I. 2011) (quoting Page v. State, 995 A.2d 934, 942 (R.I. 2010)); Brown v. State, 32 A.3d 901, 907 (R.I. 2011). “An applicant for postconviction relief bears the burden of proving, by a preponderance of the evidence, that such relief is warranted in his or her case.” DeCiantis, 24 A.3d at 569; Larnegar v. Wall, 918 A.2d 850, 855 (R.I. 2007). “Once a defendant has entered a plea of guilty or of *nolo contendere* and sentence has been imposed, any issue relating to the validity of the plea must be raised by way of postconviction relief.” State v. Desir, 766 A.2d 374 (R.I. 2001) (citing State v. Dufresne, 436 A.2d 720, 722 (R.I. 1981)).

“[A]pplications for postconviction relief [are] civil in nature.” Ferrell v. A.T. Wall, 889 A.2d 177, 184 (R.I. 2005) (quoting Quimette v. Moran, 541 A.2d 855, 856 (R.I. 1988)). As such “[a]ll rules and statutes applicable in civil proceedings shall apply.” Ferrell, 899 A.2d at 184.

## III

### Analysis

At a hearing before this Court on June 4, 2014, Petitioner presented the bare allegation that, because he alleged ineffective assistance of counsel against the Office of the Public Defender in a previously related motion for post-conviction relief, the Office of the Public Defender acted improperly when it represented the Petitioner in the matter giving rise to this

action. He claims that this inherent conflict of interest rendered his plea of nolo contendere, per se, unconstitutional, and asks this Court to vacate the plea and to reinstate plea negotiations. However, our Supreme Court has explicitly held that ineffective assistance allegations involving previous counsel within the same or related matters do not constitute an actionable conflict per se. Instead, a defendant must show both an actual conflict and a subsequent harm or impairment to prove a constitutional violation.

In Simpson v. State, 769 A.2d 1257, 1265 (R.I. 2001), the client made incriminating statements which impaired his defense, and he subsequently alleged that his public defender's admonishments constituted ineffective assistance of counsel. Id. at 1260-61. The first public defender recused himself from the case, and a second public defender was appointed from the same office. The second public defender refused the client's request to seek suppression of the incriminating testimony, and the client was convicted of sexual assault. On appeal, the client argued that the second public defender did not properly represent the client's interests due to his relationship with the first defender and his office. Id. at 1261.

The Court held that "the mere 'possibility' of a conflict of interest is not enough to impugn a criminal conviction under the Sixth Amendment and rejected the contention that a criminal defendant is entitled to a reversal of his or her conviction whenever he or she makes 'some showing of a possible conflict of interest or prejudice, however remote.'" Id. at 1267. Instead, our Courts require the defendant to demonstrate that the conflicted attorney "'actively represented conflicting interests' and that 'an actual conflict of interest adversely affected his lawyer's performance.'" Id. The Simpson Court reasoned:

It is far from axiomatic that a public defender would have *per se* divided loyalties between protecting the reputation of his or her office or that of a colleague and between serving his or her client.

\* \* \*

It is simply not enough for a defendant to argue that merely because the attorneys are from the same public defender's office that they have a *potential* for a conflict of interest. That fact alone will not automatically trigger the violation of a defendant's Sixth Amendment right to effective assistance of counsel. Id. at 1268.

This Court finds that the risk posed by any potential conflict in this matter is significantly less than that in Simpson because here, counsel was not asked to argue the incompetence of other attorneys within the office in the same matter. Instead, the Office of the Public Defender provided reasonable legal services in light of Petitioner's continuing need for representation. Moreover, Petitioner expressed no dissatisfaction with his plea until he failed to register and was set to appear before this Court as a violator. At the hearing, Mr. Jones rested his motion on his own and did not submit any evidence that the conflict, such as it exists, was "actual" within the meaning of the governing case law or that it impaired his attorney from properly representing his interests in plea negotiations.<sup>1</sup> Petitioner cannot point this Court to any unrealized objective, and never denied committing the underlying infraction and never raised a question of reasonable doubt as to his guilt.<sup>2</sup>

Accordingly, the Court takes no issue with the professional conduct of Petitioner's counsel from the Office of the Public Defender, and concludes that Petitioner has failed to meet

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<sup>1</sup> Petitioner failed to establish that any Assistant Public Defender knew of the office's representation of Mr. Jones in the past, or of any potential conflict, if there was one.

<sup>2</sup> Mr. Jones only sought to vacate his sentence after he pled (in September 2013); he was classified as a sex offender (2013), and later found to be a violator. His public defender had been appointed in March 2013, and there were six court appearances scheduled before his plea, giving him plenty of opportunity to discuss any alleged conflict and raise it with the Court. He was presented as a violator several times after his plea, and a public defender assisted him in this action in at least ten scheduled appearances in this criminal action. While the doctrine of laches may bar recovery (see Santos v. State, 91 A.3d 341 (R.I. 2014)), the Court need not address the issue as the case is resolved on other grounds.

his burden of proving by a preponderance of the evidence that postconviction relief is warranted as a matter of law.

#### **IV**

#### **Conclusion**

For the foregoing reasons, this Court hereby denies Petitioner's request for post-conviction relief. Judgment shall enter for the State of Rhode Island on all claims.



**RHODE ISLAND SUPERIOR COURT**

*Decision Addendum Sheet*

**TITLE OF CASE:** Daymon B. Jones v. State of Rhode Island

**CASE NO:** PM No. 2015-1053 (P2/2013-169)

**COURT:** Providence County Superior Court

**DATE DECISION FILED:** July 7, 2015

**JUSTICE/MAGISTRATE:** Lanphear, J.

**ATTORNEYS:**

For Plaintiff: Daymon B. Jones, *pro se*

For Defendant: Alison DeCosta, Esq.