

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE**

STATE OF DELAWARE,                     )  
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                          Plaintiff,        )  
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ENRIQUE MAYMI,                        )  
  )  
  )  
                          Defendant.     )

Cr. ID. No. 87001255DI

Date submitted: June 17, 2016

Date decided: October 3, 2016

**COMMISSIONER'S REPORT AND RECOMMENDATION ON  
DEFENDANT'S MOTION FOR APPOINTMENT OF COUNSEL AND  
MOTION FOR POSTCONVICTION RELIEF**

Enrique Maymi, *pro se*

**MANNING, Commissioner**

This 3<sup>rd</sup> day of October 2016, upon consideration of defendant Enrique Maymi's Motion for Postconviction Relief<sup>1</sup> ("Motion") and Motion for Appointment of Counsel,<sup>2</sup> I find and recommend the following:

### **Procedural History**

On November 11, 1987, following a jury trial, Maymi and his co-defendant, Carmelo J. Claudio, were sentenced to life without the possibility of parole for the charge of Murder in the First Degree. They were also both convicted of Attempted Murder and other associated charges. On January 22, 1991, their convictions were upheld by the Delaware Supreme Court on direct appeal.<sup>3</sup> On July 12, 2007, Maymi and Claudio filed separate motions for postconviction relief in the Superior Court. On October 30, 2007, the Superior Court appointed counsel to represent Maymi on his pending motion for postconviction relief.<sup>4</sup> Appointed counsel filed an amended motion on March 14, 2008. The Superior Court denied Maymi's motion for postconviction relief on April 1, 2008.

With the assistance of counsel, Maymi appealed the Superior Court's denial of his postconviction motion to the Delaware Supreme Court. On October 8, 2008,

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<sup>1</sup> D.I. 57.

<sup>2</sup> D.I. 58.

<sup>3</sup> *Claudio & Maymi v. State*, 585 A.2d 1278 (Del. 1991).

<sup>4</sup> D.I. 49.

the Supreme Court denied Maymi's appeal and upheld his conviction.<sup>5</sup> Maymi then filed a second motion for postconviction relief in the Superior Court on May 18, 2016. Maymi's second motion for postconviction relief was referred to the undersigned Commissioner on June 1, 2016.<sup>6</sup>

The facts surrounding Maymi's crimes are not relevant to deciding his claim and need not be recited again here. Based upon my review of Maymi's Motion, I do not see the need for an evidentiary hearing, nor further briefing. The arguments made by Maymi in his Motions can be fully addressed with the factual record created by the pleadings and information currently available in the Court's file.

Maymi's claim for postconviction relief, quoted verbatim, is as follows:

Claim / Argument 1: Maymi's former attorney was ineffective under *Strickland v. Washington* in failing to request jury instruction for lesser-included offenses as the [State] was seeking the Death Penalty.

### **Legal Standard**

To prevail on an ineffective assistance of counsel claim, a defendant must meet the two-pronged *Strickland* test by showing that: (1) counsel performed at a level "below an objective standard of reasonableness" and that, (2) the deficient

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<sup>5</sup> D.I. 56.

<sup>6</sup> Although I received Maymi's Motion shortly after June 1, 2016, I did not receive the case file from archives until June 17, 2016.

performance prejudiced the defense.<sup>7</sup> The first prong requires the defendant to show by a preponderance of the evidence that defense counsel was not reasonably competent, while the second prong requires the defendant to show that there is a reasonable probability that, but for defense counsel's unprofessional errors, the outcome of the proceedings would have been different.<sup>8</sup>

When a court examines a claim of ineffective assistance of counsel, it may address either prong first; where one prong is not met, the claim may be rejected without contemplating the other prong. In considering post-trial attacks on counsel, *Strickland* cautions that trial counsel's performance should be reviewed from his or her perspective at the time decisions were being made.<sup>9</sup> A fair assessment of attorney performance requires that every effort be made to eliminate the distorting efforts of hindsight.

Most germane to Maymi's claim, the procedural requirements of Rule 61 must be satisfied before a reviewing court will consider the merits of any argument.<sup>10</sup>

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<sup>7</sup> *Strickland v. Washington*, 466 U.S. 668, 687-88, 694 (1984).

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *See Younger v. State*, 580 A.2d 552, 554 (Del. 1990).

### Analysis

This is Maymi's second postconviction motion. This Motion was filed more than 25 years after Maymi's conviction became final. Therefore, Maymi's Motion is procedurally barred as both repetitive and untimely under Rule 61(i)(1) and (2). Additionally, Maymi could have raised his claim in his first postconviction motion in 2007, but did not, making it procedurally barred under Rule 61(i)(3)

However, Maymi can overcome these procedural bars if he can satisfy the requirements of Rule 61(i)(5). Section (i)(5) requires Maymi to satisfy the pleading requirements of subparagraphs (2)(i) or (2)(ii) of subdivision (d) of Rule 61. In plain English, the merits of Maymi's claim can—and will only—be addressed if he pleads with particularity that new evidence exists that creates a strong inference that he is actually innocent, or he pleads with particularity a new rule of constitutional law that is retroactive and would render his conviction invalid. In this case, Maymi's Motion does neither, making his claim procedurally barred.

In his Motion, Maymi argues that he received ineffective assistance of counsel because his attorney did not request that the jury be instructed on lesser included offenses—Maymi argues that this is “new evidence.” Maymi cites to *Beck v. Alabama*, 100 S.Ct. 2382 (1980) in support of his position.

Maymi's reliance on *Beck* is misplaced. In *Beck*, the United States Supreme Court struck down Alabama's statutory prohibition on lesser included offenses in capital murder cases as a violation of Due Process.<sup>11</sup> Delaware has no such prohibition.<sup>12</sup> In Delaware, a trial court may instruct the jury on lesser included offenses if there is a factual basis in the record and one of the parties makes the request. *Beck* does not constitute "new evidence," nor is it a new right retroactive to Maymi's case that would invalidate his conviction.

### **Appointment of Counsel**

Maymi's motion for appointment of counsel should also be denied. Maymi argues that he is entitled to counsel under the United States Supreme Court ruling in *Martinez v. Ryan*.<sup>13</sup> In *Martinez*, the Court held that, when under state law, ineffective assistance of counsel claims must be raised for the first time in collateral proceedings, a procedural default will not bar a federal habeas court from hearing those claims if, in the collateral proceeding, there was no counsel or counsel in that proceeding was ineffective.<sup>14</sup>

*Martinez* is inapplicable to Maymi's Motion for a number of reasons: (1) *Martinez* only applies to federal habeas petitions, (2) Maymi was in fact appointed

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<sup>11</sup> See *Beck v. Alabama*, 477 U.S. 625, 627 (1980).

<sup>12</sup> See generally *Capano v. State*, 781 A.2d 556, 633 (Del. 2001).

<sup>13</sup> 132 S.Ct. 1309 (2012).

<sup>14</sup> *Id.*

counsel for his first collateral proceeding under State law and, (3) Maymi has never alleged that counsel for his first Rule 61 was ineffective.

Finally, Maymi has not satisfied the procedural requirements of Rule 61(e)(4) for appointment of counsel for a second or subsequent postconviction motion. Maymi's motion does not meet the pleading requirements of subparagraphs (2)(i) or (2)(ii) of subdivision (d) of Rule 61. To wit: Maymi does not plead with particularity that new evidence exists that creates a strong inference that he is in fact innocent, nor does he plead with particularity a new rule of constitutional law that is retroactive and would render his conviction invalid.

### **Conclusion**

For the foregoing reasons, Maymi's Motions are procedurally barred and should be DENIED.

**IT IS SO RECOMMENDED.**

  
BRADLEY V. MANNING,  
Commissioner

oc: Prothonotary  
cc: Defendant