

SUPERIOR COURT
OF THE
STATE OF DELAWARE

T. HENLEY GRAVES
RESIDENT JUDGE

SUSSEX COUNTY COURTHOUSE
1 THE CIRCLE, SUITE 2
GEORGETOWN, DE 19947
(302) 856-5257

February 25, 2013

N440 State Mail
Augustus H. Evans, Jr.
James T. Vaughn Correctional Center
1181 Paddock Road
Smyrna, Delaware 19977

Re: State v. Augustus Evans
Case No. 0609011528A
Motion for Post Conviction Relief (R-2)

Dear Mr. Evans:

On February 19, 2013, you filed your second Motion for Postconviction Relief pursuant to Superior Court Criminal Rule 61 ("Rule 61").

Your motion is procedurally barred pursuant to Rule 61(i)(1) in that you filed the motion four years after the Delaware Supreme Court affirmed your conviction.¹ Your motion is also denied because it is repetitive pursuant to Rule 61(i)(2). Your first Motion for Postconviction Relief was denied by the Supreme Court in November of 2009.²

You attempt to circumvent the procedural bars to your motion by arguing that the

¹ *Evans v. State*, 2009 WL 367728 (Del.), 968 A.2d 491 (Del. 2009) (TABLE).

² *Evans v. State*, 2009 WL 3656085 (Del.), 985 A.2d 390 (Del.) (TABLE) (rehearing denied Dec. 16, 2009).

recent United States Supreme Court decision *Martinez v. Ryan*³ created a retroactive constitutional right to have counsel represent you on your initial postconviction motion.

³ 132 S. Ct. 1309 (2012).

You are mistaken. The holding in *Martinez* is limited to federal habeas review. It does not grant a constitutional right to have counsel on postconviction matters.⁴

Therefore, your present motion is procedurally barred.

IT IS SO ORDERED.

Very truly yours,

/s/ T. Henley Graves

Enclosures

oc: Prothonotary

cc: Department of Justice

⁴ *State v. Smith*, 2012 WL 5577827 (Del. Super.) (“*Martinez v. Ryan* holds that if there was no attorney representing you at your initial post-conviction proceeding, or if you had an attorney but that attorney was ineffective for failing to attack trial counsel’s effectiveness, then a federal habeas court will not procedurally bar you from pursuing a claim of ineffectiveness of counsel in the federal courts.”), *aff’d*, 2012 WL 3870567 (Del.), 53 A.2d 303 (Del. 2012) (TABLE). I have enclosed copies of these decisions herewith.

2012 WL 5577827

Only the Westlaw citation is currently available.

UNPUBLISHED OPINION. CHECK COURT RULES BEFORE CITING.

Superior Court of Delaware,
Sussex County.

Re: STATE

v.

Walter L. SMITH.

No. 0105019765. | June 14, 2012.

Attorneys and Law Firms

Walter L. Smith, Smyrna, DE.

Opinion .

T. HENLEY GRAVES, Resident Judge.

*1 Dear Mr. Smith:

On May 30, 2012, the Court received your fourth Motion for Post-Conviction Relief, pursuant to Superior Court Rule 61 ("Rule 61"). It is procedurally barred for the reasons stated below.

HISTORY

Following a jury trial you were convicted of Attempted Rape in the First Degree, Assault in the First Degree, Burglary in the First Degree, and Wearing a Disguise during a Felony. You were sentenced to thirty-six years of level V incarceration. On the direct appeal and in three subsequent post-conviction motions your efforts to overturn your convictions have failed. A summary of your efforts is contained in the last Supreme Court affirmation of your third post-conviction motion. *Smith v. State*, 2010 WL 2169490 (Del.), 996 A.2d 794 (Del.2010) (TABLE).

In the present motion you rely on *Martinez v. Ryan*, 132 S.Ct. 1309 (2012) to support your present claim that the United States Supreme Court has now created a new and retroactive constitutional right to have an attorney at your initial post-conviction proceeding in order to pursue a claim that your trial counsel was ineffective. You argue that *Martinez v. Ryan* trumps the Court's rules and state case law as to this issue.

The short answer is that you are wrong. *Martinez v. Ryan* does break new ground, but it does not provide a constitutional right to have effective counsel at the initial post-conviction proceedings in order to raise an ineffective assistance of counsel claim against trial counsel.

Martinez v. Ryan holds that if there was no attorney representing you at your initial post-conviction proceeding, or if you had an attorney but that attorney was ineffective for failing to attack trial counsel's effectiveness, then a federal habeas court will not procedurally bar you from pursuing a claim of ineffectiveness of trial counsel in the federal courts.

As afore-stated, this decision breaks new ground, but it is limited to its holding and that holding potentially removes a procedural bar in a federal *habeas* review of your claim.

Therefore, the procedural bars of Rule 61(i)(1), (2), and (4) require that your present motion be denied.

SO ORDERED.

Very truly yours,

T. Henley Graves

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Unpublished Disposition
53 A.3d 303 (Table)
(The decision of the Court is referenced in the Atlantic
Reporter in a "Table of Decisions Without Published Opinions.")
Supreme Court of Delaware.

Walter L. SMITH, Defendant Below—Appellant,
v.
STATE of Delaware, Plaintiff Below—Appellee.

No. 344, 2012. | Submitted: Aug. 27, 2012. | Decided: Sept. 6, 2012.

Court Below—Superior Court of the State of Delaware, in and for Sussex County, Cr. ID 0105019765.

Before HOLLAND, BERGER, and JACOBS, Justices.

Opinion

ORDER

CAROLYN BERGER, Justice.

*1 This 6th day of September 2012, after careful consideration of the opening brief and the State's motion to affirm, we find it manifest that the judgment below should be affirmed on the basis of the Superior Court's well-reasoned decision dated June 14, 2012. The Superior Court did not err in concluding that appellant's fourth motion for postconviction relief was procedurally barred and that appellant had failed to overcome the procedural hurdles.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is AFFIRMED.

Parallel Citations

2012 WL 3870567 (Del.Supr.)