

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE**  
**IN AND FOR NEW CASTLE COUNTY**

STATE OF DELAWARE	)	
	)	I.D. No. 0202014548
v.	)	
	)	
CORRIE JOYNER	)	
	)	
Defendant	)	

Submitted: April 6, 2014  
Decided: June 6, 2014

Upon Defendant’s Second Motion for Post-conviction Relief.  
**DENIED.**

**ORDER**

Morgan T. Zurn, Esquire, Deputy Attorney General, Department of Justice,  
Wilmington, Delaware, Attorney for the State.

Corrie Joyner, Smyrna, Delaware, *pro se*.

COOCH, R.J.

This 6<sup>th</sup> day of June 2014, upon consideration of Defendant’s Second Motion for Post-conviction Relief, it appears to the Court that:

1. Defendant Corrie Joyner (“Defendant”) filed this Second Motion for Post-conviction Relief on September 12, 2013, based on Defendant’s apparent belief that he was entitled to an attorney, at the public’s expense, to assist him in his first motion for post-conviction relief.<sup>1</sup> Defendant fired several shots and killed his friend, as a result of a disagreement over a video game.<sup>2</sup> Following a jury trial, Defendant

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<sup>1</sup> Def.’s Memo. of L. in Support of Rule 61 Mot. for Post-Conviction Relief at 1.

<sup>2</sup> St.’s Response at 1.

was sentenced to life imprisonment for the murder conviction and three years for the firearm conviction.<sup>3</sup>

2. Defendant voluntarily dismissed his direct appeal.<sup>4</sup>
3. Defendant's first Motion for Post-conviction Relief was summarily dismissed in part and denied in part on August 7, 2006.<sup>5</sup> That motion alleged his counsel was ineffective because (1) during the pre-trial stages counsel failed to investigate witnesses, failed to alert the Court of his psychiatric history, failed to facilitate a comprehensive psychiatric examination prior to trial, failed to submit a motion for an affirmative defense based on his psychiatric records, and failed to raise adequate issues at the suppression hearing; and (2) during the trial, counsel failed to call critical witnesses to the stand, and failed to require the prosecution's case to survive the crucible of meaningful adversarial testing.<sup>6</sup> The Court found Defendant's claims were unsupported and conclusory. As a result, the Court summarily dismissed all claims, with the exception of trial counsel's alleged failure to investigate Defendant's psychological history.<sup>7</sup> The Court found that claim to be without merit, however.<sup>8</sup> Additionally, the Court found Defendant failed to meet his burden of establishing both prongs under *Strickland v. Washington*.<sup>9</sup> Defendant appealed this Court's decision but the Delaware Supreme Court dismissed his appeal as untimely.<sup>10</sup>
4. In August 2007, Defendant filed an application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254, and raised various ineffective assistance of counsel claims. The Court ultimately determined that the petition was untimely, and dismissed the application.
5. Defendant's current Motion for Post-conviction Relief asserts one ground:
  - i. "A defendant in [a] state criminal case who is prohibited from raising on direct appeal any claim of ineffective

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<sup>3</sup> *Id.*

<sup>4</sup> *See Joyner v. Phelps*, 557 F.Supp.2d 477, 479 (D.Del. 2008) ("... in September 2003, petitioner voluntarily moved to dismiss his appeal with prejudice.").

<sup>5</sup> *State v. Joyner*, 2006 WL 2270937 (Del. Super. Aug. 7, 2006).

<sup>6</sup> *Id.* at \*1.

<sup>7</sup> *Id.* at \*2.

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

<sup>9</sup> 466 U.S. 668 (1984).

<sup>10</sup> *Joyner v. State*, 2007 WL 2270937 (Del. May 4, 2007).

assistance of trial counsel, but who has a right to raise such a claim in a first post conviction proceeding, has a constitutional right to the appointment of counsel on his first post conviction with respect to [an] ineffective assistance of trial counsel claim.”<sup>11</sup>

6. Under the Delaware Superior Court Rules of Criminal Procedure, a Motion for Post-conviction Relief can be barred for time limitations, repetitive motions, procedural defaults, and former adjudications.<sup>12</sup> Motions exceed time limitations if they are filed more than one year after the conviction is finalized or they assert a newly recognized, retroactively applied right more than one year after it is first recognized.<sup>13</sup> A motion is considered repetitive and therefore barred if it asserts any ground for relief “not asserted in a prior post-conviction proceeding.”<sup>14</sup> Repetitive motions are only considered if it is “warranted in the interest of justice.”<sup>15</sup> Grounds for relief “not asserted in the proceedings leading to the judgment of conviction” are barred as procedural default unless movant can show “cause for relief” and “prejudice from [the] violation.”<sup>16</sup> Grounds for relief formerly adjudicated in the case, including “proceedings leading to the judgment of conviction, in an appeal, in a post-conviction proceeding, or in a federal habeas corpus hearing” are barred.<sup>17</sup> Former adjudications are only reconsidered if “warranted in the interest of justice.”<sup>18</sup>
7. Before addressing the merits of Defendant’s Second Motion for Post-conviction Relief, the court must first apply the procedural bars of Superior Court Criminal Rule 61(i).<sup>19</sup> If a procedural bar exists, then the Court will not consider the merits of the post-conviction claim.<sup>20</sup>
8. The Defendant’s claim is procedurally barred pursuant to Rule 61(i)(1). It is raised more than one year after Defendant’s conviction was finalized, following the Delaware Supreme Court’s Order dismissing his appeal from his conviction on May 4, 2007. Defendant argues that his claim is not time-barred because he relies

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<sup>11</sup> Def.’s Memo. at 1.

<sup>12</sup> Super. Ct. Crim. R. 61(i).

<sup>13</sup> Super. Ct. Crim. R. 61(i)(1).

<sup>14</sup> Super. Ct. Crim. R. 61(i)(2).

<sup>15</sup> *Id.*

<sup>16</sup> Super. Ct. Crim. R. 61(i)(3).

<sup>17</sup> Super. Ct. Crim. R. 61(i)(4).

<sup>18</sup> *Id.*

<sup>19</sup> *Younger v. State*, 580 A.2d 552, 554 (Del. 1990).

<sup>20</sup> *Id.*

on a newly recognized right established by *Martinez v. Ryan*.<sup>21</sup> Defendant's reliance on *Martinez* is misplaced. The holding in *Martinez* "permits a federal court to review a 'substantial' ineffective assistance of counsel claim on federal habeas review."<sup>22</sup> It does not apply to state court proceedings.<sup>23</sup> *Martinez* "did not create a new right such as to qualify as means of relief from the procedural bar of Rule 61(i)(1). Further, since *Martinez* did not establish a new constitutional right, it cannot be applied retroactively."<sup>24</sup>

9. Additionally, Defendant's claim is barred under other sections of Rule 61(i), as it is being asserted here for the first time. This ground is repetitive under Rule 61(i)(2), having not been discussed in his prior Motion for Post-conviction Relief. The claim is also considered barred under the theory of Rule 61(i)(3) procedural default. The claim was "not asserted in the proceeding leading to the judgment of conviction" and Defendant has failed to show, "cause for relief" and "prejudice from [the] violation."<sup>25</sup> Additionally, as the State contends in its Response, Defendant's motion is not cognizable under Rule 61(a)(1) as it does not attack his conviction.<sup>26</sup> Of importance also is the fact that Defendant expressly requested to proceed *pro se* on any future post-conviction relief motions.<sup>27</sup> A subsequent rule 61 motion for post-conviction relief cannot be used to attack a previous rule 61 motion.<sup>28</sup>
10. This Court finds the "interests of justice"<sup>29</sup> do not require any of the above procedural bars to be reversed.

Therefore, Defendant's Second Motion for Post-conviction Relief is **DENIED**.

**IT IS SO ORDERED.**

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<sup>21</sup> 132 S.Ct. 1309 (2012).

<sup>22</sup> *Morrisey v. State*, 2013 WL 2722142, at \*2 (Del. June 11, 2013).

<sup>23</sup> *State v. Desmond*, 2013 WL 1090965, at \*3 (Del. Super. Feb. 26, 2013); *State v. Rodgers*, 2012 WL 3834908, \*2 (Del. Super. Aug. 30, 2012); *State v. Finn*, 2012 WL 2905101, at \*2 (Del. Super. July 17, 2012) ("*Martinez* does not change Delaware's longstanding rule that defendants are not entitled post-conviction relief counsel."); *State v. Smith*, 2012 WL 5577827, at \*1 (Del. Super. June 14, 2012), *aff'd*, 53 A.3d 303 (Del. 2012) (TABLE).

<sup>24</sup> *State v. Travis*, 2013 WL 1196332, at \*3 (Del. Super. Mar. 25, 2013), *aff'd sub nom.*, *Anderson v. State*, 69 A.3d 370 (Del. 2013) and *aff'd*, 69 A.3d 372 (Del. 2013).

<sup>25</sup> Super. Ct. Crim. R. 61(i)(3).

<sup>26</sup> See Super. Ct. Crim. R. 61(a)(1); *Floyd v. State*, 1992 WL 183086, at \*1 (Del. July 13, 1992).

<sup>27</sup> See *Joyner*, 2006 WL 2270937, at \*2, n.2 ("Prior to sentencing, Joyner submitted a letter to the Court requesting dismissal of counsel and the opportunity to proceed *pro se* at sentencing but determined that the decision of whether to permit Joyner to proceed *pro se* on appeal should be left to the discretion of the Supreme Court. . . .")

<sup>28</sup> Super. Ct. Crim. R. 61(a)(1).

<sup>29</sup> Super. Ct. Crim. R. 61(i)(2)&(4).

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Richard R. Cooch, R.J.

oc: Prothonotary  
cc: Investigative Services  
John Edinger, Esquire