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

STATE OF DELAWARE,	)	
	)	
v.	)	ID#: 9607012102
	)	
DONALD F. BASS,	)	
Defendant.	)	

## **ORDER**

## **Upon Defendant's Fourth Motion for Postconviction Relief** – **SUMMARILY DISMISSED**

- 1. In his fourth motion for postconviction relief under Superior Court Criminal Rule 61, filed March 15, 2013, Defendant again raises his previously litigated claims. This time, however, Defendant also argues that "the State didn't appoint counsel on the initial review collateral proceeding." Presumably, that concisely phrased claim was prompted by *Martinez v. Ryan*.<sup>1</sup>
- 2. As explained below, *Martinez* is generally not helpful in State court proceedings. This case presents an additional twist because Defendant, at his insistence, represented himself at trial. Accordingly, for this defendant, an ineffective

<sup>&</sup>lt;sup>1</sup> 566 U.S. —, 132 S.Ct. 1309 (2012).

assistance of counsel claim is impossible.

- 3. Assuming that Defendant could somehow argue ineffectiveness of nonexistent trial counsel, *Martinez* would not be helpful as mentioned above. By its terms, *Martinez* concerns the standard of review in federal *habeas corpus* proceedings.<sup>2</sup> *Martinez* does not apply to state court proceedings.<sup>3</sup> Moreover, *Martinez* is expressly non-retroactive.<sup>4</sup>
- 4. For the detailed reasons set-out in its earlier decisions,<sup>5</sup> the court remains satisfied that the interests of justice do not require reconsideration of Defendant's claims.

<sup>&</sup>lt;sup>2</sup> 566 U.S. at —, 132 S.Ct. at 1320 ("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.").

<sup>&</sup>lt;sup>3</sup> *Id.*; accord, State v. Smith, 2012 WL 5577827, at \*1 (Del. Super. June 14, 2012) (Graves, J.), aff'd, 53 A.3d 303 (Del. 2012) (TABLE); State v. Finn, 2012 WL 2905101, at \*2 (Del. Super. July 17, 2012) (Parkins, J.) ("Martinez did not change Delaware's longstanding rule that defendants are not entitled postconviction relief counsel."); State v. Rodgers, 2012 WL 3834908, \*2 (Del. Super. Aug. 30, 2012) (Parkins, J.); State v. Desmond, 2013 WL 1090965, at \*3 (Del. Super. Feb. 26, 2013) (Cooch, R.J.).

<sup>&</sup>lt;sup>4</sup> 566 U.S. at —, 132 S.Ct. at 1319-20.

<sup>&</sup>lt;sup>5</sup> See State v. Bass, 2001 WL 1628476 (Del. Super. Oct. 17, 2001) (Silverman, J.), appeal dismissed, 788 A.2d 130 (Del. 2001) (TABLE); State v. Bass, 2004 WL 396372 (Del. Super. Feb. 27, 2004) (Silverman, J.), aff'd, 852 A.2d 907 (Del. 2004) (TABLE); State v. Bass, 2009 WL 2852574 (Del. Super. June 30, 2009) (Silverman, J.), aff'd, 996 A.2d 793 (Del. 2010) (TABLE).

For the foregoing reasons, after preliminarily review of the motion and the record,<sup>6</sup> Defendant's fourth motion for postconviction is **SUMMARILY DISMISSED**. <sup>7</sup> The Prothonotary **SHALL** notify Defendant.<sup>8</sup>

## IT IS SO ORDERED.

Date: _	April 22, 2013	/s/ Fred S. Silverman
	1 /	Judge

cc: Prothonotary (criminal)
Joseph S. Grubb, Deputy Attorney General
Donald Bass

<sup>&</sup>lt;sup>6</sup> Super. Ct. Crim. R. 61(d).

<sup>&</sup>lt;sup>7</sup> Super. Ct. Crim. R. 61(d)(4).

<sup>&</sup>lt;sup>8</sup> *Id*.