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

)	
STATE OF DELAWARE)	
)	
v.)	ID#: 0210013335A
)	
BRYAN L. DAWKINS,)	
Defendant.)	

Submitted: March 20, 2013 Decided: April 3, 2013

ORDER

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

1. This is one of the slew of motions precipitated by *Martinez v*. *Ryan*.¹ Yet again, Defendant alleges ineffective assistance of counsel. This time, Defendant contends that his motion is not procedurally barred² because the court did not appoint counsel to represent him on his first motion for postconviction relief, and under *Martinez* he is now entitled to a second, court-appointed lawyer to challenge his first, court-appointed counsel's competence.

¹ 566 U.S. —, 132 S.Ct. 1309 (2012).

² See Super. Ct. Crim. R. 61(i).

- 2. By its terms, *Martinez* concerns the standard of review in federal *habeas corpus* proceedings.³ *Martinez* does not apply to state court proceedings.⁴ Moreover, *Martinez* is expressly non-retroactive.⁵
- 3. Other than the motion's *Martinez v. Ryan* claim, it has been fully litigated, twice. Thus, the motion is time-barred⁶ and procedurally defaulted.⁷
- 4. For the detailed reasons set-out in its earlier decisions,⁸ the court remains satisfied that the interest of justice does not require reconsideration of Defendant's claim. As the court has already explained, Defendant's original, court-appointed counsel did as good, or better, than Defendant could have reasonably

³ 566 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.").

⁴ *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.).

⁵ 566 U.S. at —, 132 S.Ct. at 1319-20.

⁶ Super. Ct. Crim. R. 61(i)(1).

⁷ Super. Ct. Crim. R. 61(i)(3).

⁸ State v. Dawkins, 2007 WL 959519 (Del. Super. Mar. 28, 2007) (Silverman, J.), after remand, State v. Dawkins, 2008 WL 741487, at *1 (Del. Super. Mar. 19, 2008) (Silverman, J.) ("... Defendant's trial counsel obtained the best verdict Defendant could have reasonably hoped for."), aff'd, 954 A.2d 910 (Del. 2008, reh'g denied en banc, July 7, 2008).

expected. Appointing another lawyer, at taxpayer expense, to try and rebut the general presumption and the specific finding that Defendant's court-appointed trial counsel was effective is pointless and extravagant.

For the foregoing reasons, after preliminarily review of the motion and record, Defendant's third motion for postconviction relief, based on *Martinez v*.

Ryan, is **SUMMARILY DISMISSED**. The Prothonotary **SHALL** notify Defendant. Defendant.

IT IS SO ORDERED.

/s/ Fred S. Silverman
Judge

oc: Prothonotary (Criminal Division)

pc: James V. Apostolico, Deputy Attorney General

Bryan L. Dawkins, Defendant

⁹ Super. Ct. Crim. R. 61(d).

¹⁰ Super. Ct. Crim. R. 61(d)(4).

¹¹ *Id*.