

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

STATE OF DELAWARE,

v.

ALAN T. BROOKS,

Defendant.

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ID# 86002026DI

Date Submitted: March 11, 2013

Date Decided: June 11, 2013

OPINION

*Upon Consideration of
Defendant's Motion for Postconviction Relief: **DENIED***

Joseph Grubb, Deputy Attorney General, Delaware Department of Justice, 820 N. French Street, Wilmington, DE, 19801, Attorney for the State.

Alan T. Brooks, *Pro Se*

JURDEN, J.

I. Introduction

In March of 1987 Defendant, Brooks, was found guilty of Murder in the First degree, Robbery in the First Degree, Attempted Robbery in the First Degree, Kidnapping in the Second Degree, two counts of Conspiracy in the Second Degree, and Possession of a Deadly Weapon During the Commission of a Felony. The Delaware Supreme Court affirmed Brooks' convictions on direct appeal¹ and the denial of Brooks' first motion for postconviction relief.² This is Defendant's sixth motion for postconviction relief.³ Defendant maintains that the United States Supreme Court in *Martinez v. Ryan*⁴ recognized a retroactively applicable right to the effective assistance of counsel on a first motion for postconviction relief that asserts the ineffectiveness of trial counsel and recognized cause to avoid procedural default on subsequent motions that assert the ineffectiveness of counsel on the first motion for postconviction relief.⁵ Accordingly, Defendant argues that it was improper to procedurally bar his first motion for postconviction relief, which asserted ineffective assistance of trial counsel, because counsel was not appointed and because it was the ineffectiveness of retained counsel that caused the motion to be untimely filed.⁶

II. Discussion

Pursuant to Rule 61, petitioners have one year after their judgment of conviction is final to file a motion for postconviction relief or, when asserting a retroactively applicable right, one year after the recognition of that right by the Delaware Supreme Court or the United States

¹ *Skinner v. State*, 575 A.2d 1108 (Del. 1990).

² *Brooks v. State*, 637 A.2d 825 (Del. 1994) (TABLE).

³ *Brooks v. State*, 787 A.2d 100 (Del. 2001) (TABLE) (affirming Superior Court's denial of Defendant's second motion for postconviction relief); *State v. Brooks*, 2007 WL 3105883 (Del. Super. Oct. 23, 2007) (denying third motion); *Brooks v. State*, 996 A.2d 793 (Del. 2010) (TABLE) (affirming denial of fourth); *Brooks v. State*, 53 A.3d 301 (Del. 2012) (TABLE) (affirming denial of fifth).

⁴ 132 S. Ct. 1309 (2012).

⁵ "Mem. of Law," Docket Item ("D.I.") 160.

⁶ *Id.*

Supreme Court.⁷ Defendant avers that *Martinez* recognized a retroactive right, but *Martinez* establishes only that “ineffective assistance in an initial-review collateral proceeding on a claim of ineffective assistance at trial may provide cause for [excusing] procedural default in a federal habeas proceeding.”⁸ The Court declined to discuss whether there is an exception to the general rule that there is no constitutional right to counsel in collateral proceedings,⁹ deciding the case on equitable grounds.¹⁰ Because the United States Supreme Court did not recognize a retroactively applicable right in *Martinez*, Defendant cannot establish timeliness based on a right newly recognized in *Martinez*.¹¹ Brooks’ motion was filed more than one year after the final judgment of conviction.¹² Therefore the motion is time barred,¹³ unless an exception applies under Rule 61(i)(5).¹⁴

The time bar does not apply to petitioners who can make “a colorable claim that there was a miscarriage of justice because of a constitutional violation.”¹⁵ Brooks claims a constitutional violation, but *Martinez* does not substantiate that claim because *Martinez* only supplies cause to avoid procedural bars in federal habeas proceedings, it does not recognize a constitutional right.¹⁶ Therefore, Defendant has not made a colorable claim, and the time bar applies.

⁷ Super. Ct. Crim. R. 61(i)(1).

⁸ 132 S.Ct. at 1315.

⁹ *Id.*

¹⁰ *Id.* at 1319-20.

¹¹ *See, e.g., State v. Smith*, 2012 WL 5577827, at *1 (Del. Super. 2012) (rejecting the argument that *Martinez* recognizes a retroactively applicable right and applying the time bar of Rule 61(i)(1)), *aff’d*, 53 A.3d 303 (Del. 2012) (TABLE); *State v. Travis*, 2013 WL 1195332 (Del. Super. Mar. 25, 2013) (same); *State v. Desmond*, 2013 WL 1090965, at *2-3 (Del. Super. Jan. 7, 2013) (same).

¹² Defendant’s judgment of conviction was final more than twenty years ago. The Delaware Supreme Court affirmed his convictions on direct appeal on May 11, 1990, *Skinner*, 575 A.2d at 1127, and the mandate from that affirmation was filed on July 3, 1990, Mandate, D.I. 60. *See* Super. Ct. Crim. R. 61(m)(2) (A judgment for conviction is final under Rule 61 “when the Supreme Court issues a mandate or order finally determining the case on direct review.”).

¹³ Super. Ct. Crim. R. 61(i)(1).

¹⁴ Super. Ct. Crim. R. 61(i)(5).

¹⁵ *Id.*

¹⁶ *Martinez*, 132 S.Ct. at 1319-20.

Furthermore, Defendant's motion is barred by prior adjudication. Rule 61(i)(4) states: "[a]ny ground for relief that was formerly adjudicated. . . is thereafter barred, unless reconsideration of the claim is warranted in the interest of justice."¹⁷ Brooks maintains that his first motion for postconviction relief was procedurally barred because of counsel's failure to timely file a motion.¹⁸ Defendant however previously made this argument in his first motion for postconviction relief,¹⁹ which was denied by this Court²⁰ and affirmed by the Supreme Court.²¹ Unless reconsideration of this claim "is warranted in the interest of justice," the motion is barred as formerly adjudicated.²²

For a claim to qualify for adjudication under the "interest of justice" exception to Rule 61(i)(4), "a movant must show that subsequent legal developments have revealed that the trial court lacked the authority to convict or punish him,"²³ or that there have been important factual developments.²⁴ Here, Defendant claims that a legal development, *Martinez*, entitles him to relief. However, *Martinez* cannot provide Brooks with a basis for relief because it applies only to federal habeas proceedings and not state postconviction relief motions.²⁵ Additionally, the Delaware Supreme Court has amended the Superior Court Criminal Rules to provide for the non-discretionary appointment of counsel for indigent defendants only on their first postconviction proceedings.²⁶ This change applies only on or after May 6, 2013.²⁷ Because *Martinez* does not

¹⁷ Super. Ct. Crim. R. 61(i)(4).

¹⁸ Mot. for Postconviction Relief, D.I. 159.

¹⁹ Mot. for Postconviction Relief, D.I. 61.

²⁰ *Brooks*, 637 A.2d at *1.

²¹ *Id.*

²² Super. Ct. Crim. R. 61(i)(4).

²³ *Flamer v. State*, 585 A.2d 736, 746 (Del. 1990).

²⁴ *See Weedon v. State*, 750 A.2d 521, 527-28 (Del. 2000) (granting an evidentiary hearing on a first motion for postconviction relief on the issue of admissibility of evidence based on recantation of multiple key witnesses, supported by additional affidavits).

²⁵ *See Martinez*, 132 S.Ct. at 1319-20 (explaining that the Court's equitable ruling does not require states to appoint counsel in initial review collateral proceedings).

²⁶ Order Amending Super. Ct. Crim. R. 61(e).

²⁷ *Id.*

establish a constitutional right to effective assistance of counsel on postconviction motions, Defendant's motion cannot substantiate a claim that "the trial court lacked the authority to convict or punish him." Furthermore, Defendant does not allege any new factual developments sufficient to warrant consideration on that basis.²⁸ Therefore, it is not in the interest of justice to permit reconsideration of Defendant's claims.

III. Conclusion

Martinez v. Ryan does not recognize a constitutional right to counsel in initial review postconviction proceedings. Therefore, Defendant's claim to relief under Rule 61 is untimely under Rule 61(i)(1) and barred by prior adjudication under Rule 61(i)(4). Therefore, the Defendant's motion for postconviction relief is **DENIED**.

IS IT SO ORDERED.

Jan R. Jurden, Judge

²⁸ Compare Mot. for Postconviction Relief, D.I. 159 (reasserting the ineffectiveness of counsel at trial and on Defendant's first motion for postconviction relief as the facts supporting the motion); "Mem. of Law," D.I. 160 (realleging, that counsel deliberately failed to file a timely postconviction motion on Defendant's behalf), *with Weedon*, 750 A.2d at 527-28 (explaining that the only witnesses who testified that Defendant disclosed his marital communications had seemingly credibly recanted and an evidentiary hearing on the issue was warranted in the "interest of justice").