



IN THE SUPREME COURT OF THE STATE OF DELAWARE

HOLMES V. STATE,)
)
 Defendant-Below,)
 Appellant.)
 v.)
) NO. 350, 2012
)
 STATE OF DELAWARE)
 Plaintiff-Below,)
 Appellee.)

REPLY TO THE STATE'S ANSWERING SUPPLEMENTAL MEMORANDUM

Because the judge abused her discretion and denied Holmes' request for counsel without any analysis whatsoever, the State is required to base its argument that Holmes was not entitled to counsel on an assumption that the judge denied his motion after she found no good cause to appoint counsel because Holmes' underlying claims were without merit.¹ The State also erroneously suggests that Holmes was not entitled to counsel in his post conviction proceedings because the State, (his opposing party), has found no "indicat[ion] that [he] would have been granted any relief if he had been appointed counsel to assist in his post conviction proceedings."² This is the type of argument rejected in *Douglas v. California*.³

In *Douglas*, the Court reviewed the procedure in California for the appointment of counsel to indigents on direct appeal.

¹ State's Ans.Memo. at 7.

² *Id.*

³ 372 U.S. 353, 357-358 (1963).

At the time, the appellate court was required to go through the record and "determine whether it would be of advantage to the defendant or helpful to the appellate court to have counsel appointed."⁴ The Court concluded that this procedure was "lacking that equality demanded by the Fourteenth Amendment" because a defendant who could afford an attorney "enjoys the benefit of counsel's examination into the record, research of the law, and marshaling of arguments on his behalf, while the indigent, "[...] has only the right to a meaningless ritual" particularly "where the record is unclear or the errors are hidden[.]"⁵

In finding a state constitutional right to counsel in post conviction proceedings, the Alaska Supreme Court relied upon a concern similar to that expressed in *Douglas*.⁶ That court recognized that collateral proceedings involve an effort "to have a sentence vacated or set aside under the criminal rules[.]"⁷ It then noted that in such proceedings a defendant has a right to hire counsel. Accordingly, to ensure meaningful post conviction proceedings for all defendants, the court held that a defendant "without funds to hire counsel for the hearing has the right to have counsel appointed."⁸

⁴ *Id.* at 355 (internal quotations omitted).

⁵ *Id.* at 357-358.

⁶ *Grinols v. State*, 74 P.3d 889, 894 (Alaska 2003).

⁷ *Id.*

⁸ *Id.* at 892.

Here, ignoring the spirit of *Martinez*,⁹ the State seeks to have Delaware's case-by-case approach solidified. Should that occur, Delaware courts will continue to ensure that some defendants will have "all [their] substantial claims [] presented fully and professionally in [their] first state collateral proceeding[]"¹⁰ while other defendants will not. Thus, in light of the right to counsel provided in the Delaware Constitution and the rationale underlying the decision in *Martinez*, this Court must conclude that it will not tolerate such disparity in initial review collateral proceedings.

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⁹ "Claims of ineffective assistance at trial often require investigative work and an understanding of trial strategy. When the issue cannot be raised on direct review, moreover, a prisoner asserting an ineffective assistance of trial counsel claim in an initial review collateral proceeding cannot rely on a court opinion or the prior work of an attorney addressing that claim. To present a claim of ineffective assistance at trial in accordance with the State's procedures, then, a prisoner likely needs an effective attorney." *Martinez v. Ryan*, 132 S.Ct. 1309, 1317 (2012).

¹⁰ *Murray v. Giarrratano*, 492 U.S. 1, 26-27 (1989) (STEVENS, J. dissenting).