



IN THE SUPREME COURT OF THE STATE OF DELAWARE

DARNELL MARTIN,)
)
 Defendant Below,)
 Appellant,)
) No. 112, 2021
 v.)
)
 STATE OF DELAWARE,)
)
 Plaintiff Below,)
 Appellee.)

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

APPELLANT'S REPLY BRIEF

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ARGUMENT

CLAIM I. THE SUPERIOR COURT ERRED IN DIMISSING MR. MARTIN'S MOTION FOR POSTCONVICTION RELIEF AFTER MR. MARTIN COMPLETED HIS PROBATIONARY SENTENCE BECAUSE APPELLANT, WHO WAS PARDONED FOR ALL OF HIS PRIOR CONVICTIONS SIX YEARS EARLIER, LOST CONSTITUTIONAL AND CIVIL RIGHTS AND SUFFERED COLLATERAL LEGAL CONSEQUENCES AS A RESULT OF WHAT WAS ESSENTIALLY A FIRST-TIME FELONY CONVICTION.

In its Answering Brief, the State concedes that the Superior Court failed to both provide Mr. Martin an opportunity to address the issue of collateral consequences and consider the effect of his pardon on his standing to seek postconviction relief, but nevertheless argues that Appellant has failed to provide “specific evidence of burdens or disabilities related to his specific circumstances.”¹ What the State ignores, however, is that by failing to seek the parties’ positions as to dismissal due to standing, the Superior Court foreclosed Mr. Martin from developing a record as to the particularized burdens he has suffered as a result of his status as, in essence, a first-time felon due to the instant conviction. The State cannot equitably attempt to ratify the Superior Court’s holding by pointing to the ramifications of the trial court’s decision as support for its argument.

The bulk of the State’s argument seeks to diminish the significance of the rights lost and burdens suffered by Mr. Martin as a result of his conviction, seeking

¹ Ans. Br. 11-12.

to convince this Court that definite collateral consequences are merely presumed—not actual—legal consequences.² The State misapprehends and misapplies the authorities upon which it relies, however, and its argument is consequently unavailing.

Appellee’s argument that Mr. Martin has not suffered any collateral legal disabilities or burdens begins with a discussion of *Gural v. State*.³ The State briefly acknowledges the distinction between the instant case and *Gural*—that the outcome hinged on the *Gural* defendant’s prior convictions, given that the challenged conviction did not cause the defendant to lose any rights he had not already lost—but fails to discuss the significance of Mr. Martin’s pardon in the context of *Gural*.⁴ Instead, the State cites to *Spencer v. Kemna*, a case out of the Supreme Court of the United States, for the proposition that “although the Court had been presuming collateral consequences in certain instances, the practice of presuming such consequences ‘sits uncomfortably besides the long-settled principle that standing cannot be inferred argumentatively from averments in the pleadings but rather must affirmatively appear in the record.’”⁵ A close reading of

² See Ans. Br. 11-13.

³ Ans. Br. at 10-11 (discussing *Gural v. State*, 251 A.2d 344 (Del. 1969)).

⁴ Ans. Br. at 11.

⁵ Ans. Br. at 11 (quoting *Spencer v. Kenma*, 523 U.S. 1, 10 (1998)).

Spencer, however, makes clear that Mr. Martin is not asking this Court to presume collateral consequences, but rather has clearly identified legal burdens he has suffered in accordance with the expectations of the Supreme Court.

Preliminarily, it is important to note that the *Spencer* defendant was not attacking his original convictions, which he conceded were lawful.⁶ Instead, he claimed that his parole status was wrongly terminated.⁷ Thus, the petitioner was required to show collateral consequences of his parole revocation, *not* his convictions.⁸ It is that context in which the Court assessed its history of presuming collateral convictions where a wrongful conviction occurred.⁹

The *Spencer* Court observed that in its initial *habeas corpus* cases, it “required collateral consequences of conviction to be specifically identified.”¹⁰ To satisfy that standard, a petitioner needed to demonstrate “concrete disadvantages or disabilities that had in fact occurred . . . or were imposed as a matter of law (such as deprivation of the right . . . to hold office, to serve on a jury, or to engage in

⁶ *Spencer*, 523 U.S. at 8.

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

certain businesses.”¹¹ The *Spencer* Court pointed to its decision in *Carafas v. LaVallee* as an example of where a defendant satisfied this “fastidious approach to collateral consequences.”¹² In *Carafas*, the Court ruled the petitioner’s *habeas* matter was not moot, despite having concluded his sentence, because as a “consequence of his conviction, he cannot engage in certain businesses; he cannot serve as an official of a labor union for a specified period of time; he cannot vote in any election held in New York State; he cannot serve as a juror.”¹³

The Court eventually began to abandon the requirement that showings of loss of civil rights and liberties be concrete, however, ruling in *Pollard v. United States* that the “possibility of consequences collateral to the imposition of sentence [was] sufficiently substantial to justify our dealing with the merits.”¹⁴ “Thereafter, and in summary fashion, [the Supreme Court] proceeded to accept the most generalized and hypothetical of consequences as sufficient to avoid mootness in challenges to conviction.”¹⁵ Ultimately, because the *Spencer* defendant was challenging the legality of a revocation of parole, the Court declined to presume

¹¹ *Id.*

¹² *Id.* at 8-9.

¹³ *Id.* at 9 (quoting *Carafas v. LaVallee*, 391 U.S. 234, 237 (1968)).

¹⁴ *Id.* (discussing *Pollard v. United States*, 352 U.S. 354 (1957)).

¹⁵ *Id.* at 10 (citing *Evitts v. Lucey*, 469 U.S. 387 (1985)).

that he suffered collateral consequences.¹⁶ The Court also ruled that the injuries alleged by the defendant as a result of his parole termination—that the revocation could be used against him in future parole proceedings; to increase his sentence in future sentence proceedings; to impeach him should he appear as a witness or litigant in a future criminal or civil proceeding; or could be used against him directly under the Federal Rules of Evidence—were speculative and insufficient to overcome the mootness issue.¹⁷

Mr. Martin would not have had difficulty overcoming the mootness issue before the *Spencer* Court. He has specifically identified “concrete disadvantages or disabilities that had in fact occurred . . . or that were imposed as a matter of law” such as the loss of his right to serve on a jury and to engage in certain businesses.¹⁸ That alone is sufficient to satisfy the case-or-controversy requirement under *Spencer*.¹⁹ The same should hold true here under *Gural*.

The State next relies upon a bevy of federal cases dealing with writs of *coram nobis* in an attempt to analogize the writ to a postconviction proceeding

¹⁶ *Id.* at 14.

¹⁷ *Id.* at 14-15.

¹⁸ *Id.* at 8; *see* Op. Br. at 18.

¹⁹ *Id.*

under Superior Court Criminal Rule 61.²⁰ The State’s reliance on such cases is misplaced. “[T]he writ of error *coram nobis* is a highly unusual remedy, available only to correct grave injustices in a narrow range of cases where no more conventional remedy is applicable.”²¹ The Supreme Court of the United States has described the writ as an “extraordinary remedy” that should be granted “only under circumstances compelling such action to achieve justice.”²² The Court has stated that it is “difficult to conceive of a situation in a federal criminal case today where [a writ of *coram nobis*] would be necessary or appropriate.”²³

While a writ of *coram nobis* is another mechanism to collaterally attack a conviction, unlike a Delaware postconviction proceeding or federal *habeas corpus* actions, a petitioner may *institute* an action seeking such a writ only after his sentence has been fully served.²⁴ Thus, “the interests in favor of revisiting the judgment are even less than in the *habeas* context.”²⁵ In order for such a writ to be awarded, a petitioner must demonstrate four factors: “(1) he suffers continuing

²⁰ Ans. Br. at 12-13.

²¹ *United States v. Riedl*, 496 F.3d 1003, 1005 (9th Cir. 2007).

²² *United States v. Morgan*, 465 U.S. 502, 511 (1954).

²³ *Carlisle v. United States*, 517 U.S. 416, 429 (1996).

²⁴ *See United States v. Babalola*, 248 Fed. Appx. 409, 411-12 (3d Cir. 2007).

²⁵ *Id.* at 411.

consequences of the conviction, (2) no remedy was available at the time of trial, (3) sound reasons exist for failing to seek relief earlier, and (4) the trial contained errors of the most fundamental kind.”²⁶ This differs dramatically from the *Gural* collateral consequence rule, where a defendant need only show that he suffers legal disabilities or burdens as a result of his conviction to overcome mootness upon completion of his sentence.²⁷

The State objects to Mr. Martin’s inability to serve on a jury as a collateral consequence of the instant conviction.²⁸ In so doing, the State tries to narrow the scope of collateral consequences, in effect making it nigh impossible for any defendant to demonstrate the existence of such a legal disability or burden. This Court has ruled that a collateral consequence is merely “one that is not related to the length or nature of the sentence imposed on the basis of the plea.”²⁹ Loss of the right to serve on a jury is such a consequence.³⁰

²⁶ *Salahuddin v. United States*, 2018 WL 5342766 at *3 (D.N.J. 2018).

²⁷ *Gural*, 251 A.2d at 344-45.

²⁸ *Id.* at 12-13.

²⁹ *Barkley v. State*, 724 A.2d 558, 560 (Del. 1999).

³⁰ Mr. Martin maintains that the additional rights he has lost and legal disabilities he suffered as a result of his conviction, as discussed in his Opening Brief, also satisfy the *Gural* test. *See Op. Br.* at 18.

Appellee also attempts to argue that Mr. Martin has not suffered a collateral consequence vis-à-vis his lost right to serve as a juror because Appellant has not claimed “to have pursued jury service and been denied.”³¹ Yet, no Delaware citizen can *pursue* jury service, as prospective jurors receive a summons to report for jury duty only after being randomly selected from an electronic database of names of individuals who are not disqualified from jury service.³² Convicted felons who have not had their civil rights restored are disqualified from jury service, and thus would not receive such a summons.³³ That Mr. Martin has not “sought out” jury service—which is contrary to how the jury system in Delaware operates—when he is aware that, as a convicted felon, he cannot serve on a jury cannot be held against him.

The *Gural* test is not a rigorous one. The *Gural* defendant was not able to demonstrate that his case had not become moot upon satisfaction of his sentence because he was a felon prior to the conviction at issue and consequently lost no rights as a result of his most recent conviction.³⁴ Mr. Martin received a pardon from the Governor, wiping away his prior convictions and restoring all of his

³¹ Ans. Br. at 12.

³² 10 Del. C. § 4510(a)-(b); *see also* 10 Del. C. § 4503(7).

³³ 10 Del. C. § 4509(b)(6).

³⁴ *Gural*, 251 A.2d 344, 345 (Del. 1969).

previously-lost civil liberties.³⁵ Appellant lost those rights again upon the instant conviction. That fact distinguishes him from the *Gural* defendant and satisfies the collateral consequence rule adopted by this Court.

Finally, the State devotes a significant portion of its argument to the underlying merits of the postconviction claim raised by Mr. Martin in the Superior Court.³⁶ The Superior Court did not consider Mr. Martin's claim of ineffective assistance of counsel on its merits, but rather dismissed the motion for postconviction relief on procedural grounds for lack of standing.³⁷ Where the Superior Court has not considered a claim in the first instance, this Court generally will not address it for the first time on appeal.³⁸ Moreover, Mr. Martin is not seeking a decision from this Court which ultimately grants him postconviction relief; instead, Appellant prays that this Court reverse the Superior Court's dismissal of his motion and remand the matter for a decision on the merits. Thus, analysis of the underlying postconviction claim at this time is unnecessary.

³⁵ See *State v. Skinner*, 632 A.2d 82, 86 (Del. 1993) (finding that a pardon even without expungement of the pardoned charges is "clearly significant in that it restores civil rights that may have been lost").

³⁶ Ans. Br. at 14-16.

³⁷ See generally *State v. Martin*, 2021 WL 1030348 (Del. Super. Ct. Mar. 17, 2021).

³⁸ See, e.g., *Batson v. State*, 2011 WL 3585477 at *1 (Del. Supr. Aug. 15, 2011).

CONCLUSION

For the reasons stated in his Opening Brief and herein, Mr. Martin respectfully requests that this Honorable Court reverse the judgment of the Superior Court.

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