

March-16-2013

RECEIVED

MAY 17 2013

S.C. Supreme Court

The Honorable Daniel E. Shearouse
Clerk, Supreme Court of
South Carolina,
PO Box, 11330
Columbia, S.C. 29211.

RE: The State of South Carolina, Respondent,
v. Jason Kelly, case no. 12-CP-21-2333, Appellant.

Dear Mr Shearouse:

Enclosed for filing is a notice of appeal in the above case. Also enclosed are the following:

- 1) Request ordering all copies of the transcripts [and/or] motions of the proceedings in the lower court.
- 2) Explanation to why judgment of the lower court was improper, and copy of the order which is to be challenged on appeal.
- 3) Proof of service of the notice of appeal on respondent

Attn. (Note)

Honorable Mrs Shearouse,

Do to the fact of my very limited ability to have access to the law library, legal materials, etc, the copy of the order that is to be challenged is the only copy I have, so if possible, can you please send me back a copy. And do to my limited knowledge and understanding of law, rules and court procedures, if I was suppose to send a copy of this information to anybody else, can you please assist me with the sending ~~of~~ copies? It would be greatly appreciated. Thank you for your time and patience.

Sincerely,
Kara Kelly

PS Can you let me know if I am within the time limitation for asking for my filings of the lower courts proceedings? And if not, how long do I have to move forward with my Appeal proceedings?
Thank you once again.

The State of South Carolina
In the Court of Appeals
[In the Supreme Court]

Appeal from Florence County
Court of Common Pleas

Craig D. Brown, 12th Judicial Circuit
Judge

Case NO: 12-CP-21-2333

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MAY 17 2013

S.C. Supreme Court

State of South Carolina — Respondent,

v.

Jason Melly — Appellant.

Notice of Appeal

Jason Melly wishes to appeal the order [judgment]
of the Honorable Craig D. Brown, dated April, 23, 2013.
Appellant received written notice of entry of this order
on April, 25, 2013 (via) institutional mail at Turberville Corr.
Institution.

Jason Melly

STATE OF SOUTH CAROLINA
In the Court of Appeals
[In the Supreme Court]

Appeal From Florence County
Court of Common Pleas

Craig D. Brown, 12th Judicial Circuit
Judge

Case No. 12-CP-21-2333

State of South Carolina ——— Respondent,

v.

Jason Kelly ——— Appellant.

Proof of Service

I certify that I have served the Notice of Appeal, letter requesting transcripts and paper work of the proceedings in the lower court; Explanation as to why judgement of lower court was improper ~~to~~ the Clerk of Court of Florence County, Honorable Connie Keel-Sheerin, and the Clerk of Court of the Supreme Court, Honorable Daniel E. Shearouse, by way of United States Mail, on 5/16/13

SWORN to and subscribed before
me this 16th day of May, 2013.
Carlye White (L.S.)
Notary Public

My Commission Expires: 4-27-2016.

s Jason Kelly

RECEIVED

MAY 17 2013

S.C. Supreme Court

The Honorable Connie Reel-Sheerin,
Clerk of Court

City County Complex
180 N. Irby St. AASC-E
Florence, S.C. 29501

RE: The State of South Carolina, Respondent,
V. Jason Kelly, Appellant, Case NO: 12-CP-21-2333

Letter of Request

Dear Honorable Connie Reel-Sheerin,

I am writing this letter of Request, requesting all transcripts of the proceedings in the lower court, involving the case above numbered, 12-CP-21-2333. For this is needed for me to be able to move forward with my appeal.

Thank you for your time and patience.

Sincerely,
Jason Kelly

STATE OF SOUTH CAROLINA
County of Florence

Case NO: 02-CP-21-2333

Jason Kelly, Appellant,

v.

Explanation Required By Rule
243(c)

State of South Carolina,
Respondent.

This matter is before this Court by way of an application for post-conviction relief (P.C.R.) filed August 31, 2012. The Respondent, State of South Carolina, filed its return and motion to dismiss on October 8, 2012, moving to dismiss the case with prejudice on the grounds that the P.C.R. application was successive and filed beyond the Statute of limitations. The Respondents, then issued a conditional order of dismissal which was served upon Applicant on November 9, 2012. Applicant objected to summary dismissal in a written response to the conditional order of dismissal, relying upon Martinez v. Ryan, 132 S.Ct. 1309 (2012). The respondents then issued a final order of dismissal citing the inapplicability of Martinez to Applicant's case. The instant "Rule 59(c) Motion to Alter or Amend Judgment" was filed by Applicant on December 21, 2012. In the motion, Applicant argues that the final order of dismissal fails to fully and sufficiently address Applicant's claim.

In support of Applicant's Martinez arguments, Applicant claims his P.C.R. Counsel was ineffective, that he "did not bring up numerous, creditable and colorable issues surrounding the claim of ineffective assistance of trial counsel,..." Applicant then lists five separately numbered claims against his P.C.R. Counsel arising out of the representation at Applicant's P.C.R.

The respondents then affirmed the findings and conclusions in the conditional and Final Orders of Dismissal and concludes that, Martinez is inapplicable in this case, and that Martinez found a federal court may find "cause" to excuse a federal procedural default of a claim if the petitioner establishes, (1) post relief counsel was ineffective, and (2) "that the underlying ineffective-assistance-at-trial claim is substantial."

Respondents went on further to say that, "while Martinez may represent a significant development in federal habeas corpus law, it has no utility to this case with respect to post-conviction relief in South Carolina state courts," in which Appellant sees differently.

Even though, true, that the ruling of Martinez is in a federal setting, the ruling of Martinez brought forth a newly created liberty interest ruling on an "obvious truth" and recognizing that a P.C.R. Counsel can be, in some cases, ineffective. Also, that in Martinez, it recognizes that Coleman recognized an attorney's errors during an appeal on direct review may provide cause to excuse a procedural default; for the attorney appointed by the state to pursue the direct appeal is ineffective, the prisoner has been denied fair process and the opportunity to comply with the state's procedures and obtain an adjudication on the merits of his claims. It also goes further to say that, "without the help of an adequate attorney, a prisoner will have similar difficulties vindicating a substantial ineffective-assistance-of-trial-counsel claim. 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!

It is understood that the Martinez decision was made in the federal arena and not the state, but that doesn't limit the state to look over or review the ground fact of the whole matter, that this decision was made because it was seen that a P.C.R Counsel was deemed to be ineffective by the United States Supreme Court. Thus, if this truth is seen by the Supreme Court, then surely, the same truth can be seen by the state as well. So, in the way of Common Justice, if a state appointed P.C.R Counsel can be proven to be ineffective under the Strickland prongs, then surely, that can be a reason of "Sufficient Reason" why issues were not raised, or not raised correctly in the original P.C.R proceeding, thus allowing another P.C.R hearing to follow fair process.

In addition, do to the fact that Martinez is a new ruled upon case that was not available to Appellant in his original P.C.R proceeding and that Appellant relied on Martinez within the year of its decision, Appellant's application should not be deemed successive or time barred.

Conclusion

Thus, do to this fact, I ask that this court to please grant my appeal and any other relief this court deems necessary.

Respectfully Submitted,
Jason Kelly

Jason Kelly #287190
Turberville Correctional Institution
S.M.4 #126
P.O. Box 252
Turberville, S.C. 29162

STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE)

IN THE COURT OF COMMON PLEAS

Jason Kelly, 287190,

FILED

12-CP-21-2333

Applicant,

2013 APR 23 PM 3:07

v.

CONNIE RZEL-SHEARIN
CCCP & G.S.
FLORENCE COUNTY, SC

State of South Carolina,

ORDER DENYING RULE 59(E) MOTION

Respondent.

This matter is before this Court by way of an application for post-conviction relief (PCR) filed August 31, 2012. The Respondent State of South Carolina filed its return and motion to dismiss on October 8, 2012, moving to dismiss the case with prejudice on the grounds that the PCR application was successive and filed beyond the statute of limitations. This Court reviewed the pleadings and attachments of both parties and found the State's motion well taken and that the application should be dismissed. This Court then issued a Conditional Order of Dismissal which was served upon Applicant on 9 November, 2012,

Applicant objected to summary dismissal in a written response to the Conditional Order of Dismissal, relying upon Martinez v. Ryan, 132 S.Ct. 1309 (2012). This Court then issued a Final Order of Dismissal citing the inapplicability of Martinez to Applicant's case. The instant "Rule 59(e) Motion to Alter or Amend Judgment" was filed on December 21, 2012. In the Motion, Applicant once again argues that the Final Order of Dismissal fails to fully and sufficiently address his claim that Martinez is retroactive.

In support of his Martinez arguments, Applicant claims his PCR counsel was ineffective, that he "did not bring up numerous, creditable and colorable issues surrounding the claim of ineffective assistance of trial counsel,..." Applicant then lists five separately numbered claims against his PCR counsel arising out of the representation at Applicant's PCR.

CERTIFIED: A TRUE COPY

Connie Rzel-Shearin

CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

This Court hereby affirms the findings and conclusions in the Conditional and Final Orders of Dismissal and concludes that these Orders sufficiently address the relevant issues.

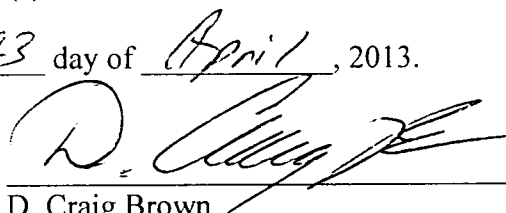
Martinez is inapplicable in this case. Martinez found a federal court may find "cause" to excuse a federal procedural default of a claim if the petitioner establishes (1) post relief counsel was ineffective, and (2) "that the underlying ineffective-assistance-at-trial claim is substantial. Martinez, at 1312.

The Martinez court reaffirmed that an applicant does not have a constitutional right to effective assistance of post-conviction relief counsel and further noted it was not requiring states even provide counsel for collateral proceedings.

Martinez established an equitable rule to remove a procedural bar and allow **federal habeas review** where due to PCR counsel's errors, a claim of ineffective assistance of trial counsel was not presented in state court. While Martinez may represent a significant development in federal habeas corpus law, it has no utility to this case with respect to post-conviction relief in South Carolina state courts.¹

Accordingly, the Applicant's Rule 59(e) Motion is **DENIED**.

AND, IT IS SO ORDERED this 23 day of April, 2013.

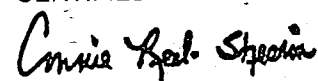

D. Craig Brown
Presiding Judge
12th Judicial Circuit

Florence, South Carolina

FILED
2013 APR 23 PM 3:07
CONNIE REEL-SHEARIN
CCJP & GS
FLORENCE COUNTY, SC

¹ See Commonwealth v. Saunders 60 A.2d 162, 165 (Penn. 2013).

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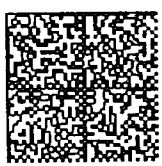
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

Jason Kelly # 289190
Turbeville Correctional Institution
S.M.U # 126
P.O. Box 252
Turbeville, S.C, 29162

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*The Honorable David E. Shearouse
Clerk of Court
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