

IN THE SUPREME COURT OF THE STATE OF DELAWARE

CARLOS ORTIZ,	§
	§
Defendant Below,	§ No. 590, 2018
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware
	§
STATE OF DELAWARE,	§ Cr. ID No. 0208005710 (S)
	§
Plaintiff Below,	§
Appellee.	§

Submitted: December 26, 2018

Decided: February 1, 2019

Before **STRINE**, Chief Justice; **VALIHURA** and **TRAYNOR**, Justices.

ORDER

After careful consideration of the appellant Carlos Ortiz's opening brief, the appellee's motion to affirm,¹ and the record on appeal, we conclude that the Superior Court's denial of Ortiz's tenth motion for postconviction relief should be affirmed. Although Ortiz had until January 15, 2007 (not February 15, 2004 as the Superior Court stated) to file a timely motion for postconviction relief,² he filed his tenth motion on October 15, 2018, more than eleven years too late. Ortiz's motion was

¹ Ortiz's request for permission to respond to the motion to affirm is denied. Under Supreme Court Rule 25(a)(iii), no response to a motion to affirm is permitted unless requested by the Court. The Court did not request a response to the motion to affirm and finds no good cause to permit a response in this case.

² See *Ortiz v. State*, 2015 WL 4738026, at *1 (Del. Super. Ct. Aug. 5, 2015) (recognizing that convictions that became final before July 1, 2005 were subject to three-year limitation, Ortiz's convictions became final on January 15, 2004, and Ortiz had until January 15, 2007 to file a timely postconviction motion), *aff'd*, *Ortiz v. State*, 2015 WL 6783158 (Del. Nov. 5, 2015).

SUPERIOR COURT
OF THE
STATE OF DELAWARE

E. SCOTT BRADLEY
JUDGE

SUSSEX COUNTY COURTHOUSE
1 THE CIRCLE, SUITE 2
GEORGETOWN, DELAWARE 19947
TELEPHONE (302) 856-5256

May 18, 2018

STATE MAIL – N443

Carlos Ortiz
SBI No. 00485068
James T. Vaughn Correctional Center
1181 Paddock Road
Smyrna, DE 19977

RE: State of Delaware v. Carlos Ortiz
Def. ID No. 0208005710

Dear Mr. Ortiz:

This is my decision on your Ninth Motion for Postconviction Relief. You allege (1) that you have a retroactive constitutional right to have counsel represent you on your initial postconviction relief motion, and (2) that there is newly discovered evidence concerning your innocence¹. When reviewing a motion for postconviction relief, this Court must first consider the procedural requirements before addressing any substantive issues.² Superior Court Criminal Rule 61 provides that a motion for postconviction relief may not be filed more than one year after the

¹ You allege that a correctional officer has evidence of your innocence. I addressed and denied this exact allegations in one of your prior motions for postconviction relief. Therefore, I will not revisit this repetitive allegation.

² *Younger v. State*, 580 A.2d 552, 554 (Del. 1990).

judgment of conviction is final.³ For purposes of your motion, your convictions became final 30 days after the Delaware Supreme Court affirmed your convictions on January 15, 2004. Therefore, your last day to file your postconviction relief motion was on February 15, 2004. You filed this Motion for Postconviction Relief on May 14, 2018, which is over fourteen years after the cut-off date. Thus, your Motion for Postconviction Relief is time-barred.

Rule 61(i)(5) states that the bars to relief “shall not apply either to a claim that the court lacked jurisdiction or to a claim that satisfies the pleading requirements of subparagraphs (2)(i) or (2)(ii) of subdivision (d) of this rule.” Rule 61(d)(2)(i) states that a movant needs to plead “with particularity that new evidence exists that creates a strong inference that the movant is actually innocent in fact of the acts underlying the charges of which he is convicted.” Rule 61(d)(2)(ii) states that a movant needs to plead “with particularity a claim that a new rule of constitutional law, made retroactive to cases on collateral review by the United States Supreme Court or the Delaware Supreme Court, applies to the movant’s case and renders the conviction or death sentence invalid.” You have not raised any facts that would entitle you to the benefit of these procedural bars.

³ Your Motion for Postconviction Relief falls under the current version which went into effect on June 4, 2014.

You have attempted to circumvent the procedural bars to your motion by arguing that *Martinez v. Ryan*⁴ created a retroactive constitutional right to have counsel represent you on your initial postconviction motion. You are wrong. The holding in *Martinez* is limited to federal habeas review. It does not grant a constitutional right to have counsel on postconviction matters.⁵ Therefore, I have denied your Ninth Motion for Postconviction Relief.

IT IS SO ORDERED.

Very truly yours,



E. Scott Bradley

cc: Counsel
Prothonotary

⁴ 132 S.C.T. 1309 (2012).

⁵ *State v. Smith*, 2012 WL 5577827 (Del. Super. June 14, 2102) (“*Martinez v. Ryan* holds that if there was no attorney representing you at your initial postconviction proceeding, or if you had an attorney but that attorney was ineffective for failing to attack trial counsel’s effectiveness, then a federal habeas court will not procedurally bar you from pursuing a claim of ineffectiveness of counsel in the federal courts.”), *aff’d*, 2012 WL 3870567 (Del. 2012)(TABLE).