NO. 20-6322

ORIGINAL

IN THE SUPREME COURT OF THE UNITED STATES

GEORGE A CHRISTIAN, JR -- PETITIONER

vs.

THE STATE OF OKLAHOMA -- RESPONDENT (S)

PETITION FOR WRIT OF CERTIORARI

APPEAL FROM OKLAHOMA COURT OF CRIMINAL APPEALS, CASE NO. CF-2002-968

GEORGE A. CHRISTIAN, JR.

(Your Name)

P.O. Box 260

(Address)

Lexington OK 73051

(City, State, Zip Code)

(Phone Number)

QUESTION PRESENTED

Whether the State's denial of the post-conviction relief establish cause for any procedural default to be excused and considered on this issue anew in light of *Martinez.*

PARTIES TO THE PROCEEDING

Petitioner, *pro se*:

George A. Christian Jr. # 276900, P.O. Box 260, Lexington, OK, 73051.

For Respondents: The State of Oklahoma,

Jennifer M. Hinsperger Assistant District Attorney, 320 Robert S. Kerr Ave. Ste 505, Oklahoma City, OK 73102.

OPINION BELOW

The following opinions and orders below are pertinent here, all of which are unpublished: [1] First Application for Post-Conviction Relief was filed on (7/29/19) district court denied (APCR) on (4/27/20), the OCCA affirmed the district court's denial of Petitioner's application for post-conviction relief. *See Christian v. State*, PC-2020-376 (July 17th, 2020).

JURISDICTION

The District Court of Oklahoma and the Oklahoma Court of Criminal Appeals denied petitioner Application for Post-Conviction Relief on a claim of Ineffective Assistance of Trial Counsel in light of ***Martinez v. Ryan***, 132 S.Ct. 1309 (March 20, 2012), pursuant to 28 U.S.C. § 1257(a), the United States Supreme Court has jurisdiction by U.S. Sup.Ct. Rules 10(c) and 13(1) on certiorari, to review a denial of a Post-Conviction Claim denied by a state's highest court any procedural default to be excused and considered on this issue anew in light of *Martinez.*

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CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The right of a state prisoner to seek certiorari is guaranteed in 28 U.S.C § 2254. The standard for relief under "AEDPA" is set forth in 28 U.S.C. § 2254(d)(1).

United States Constitution, Amendment XIV.

Okla. Const Art, II §§ 6 and 7

STATEMENT OF THE CASE

COMES NOW, George A. Christian, the Petitioner is a layman in law appearing and proceeding pro se[1] moves the court for an Order vacating and setting aside the judgment entered in this action and all subsequent proceedings thereon, and to vacate under ***Martinez v. Ryan***, 132 S.Ct. 1309 (March 20, 2012), pursuant to and in accord with the applicable provisions of **Rule 10 is** grounds for relief on certiorari and just terms, the court may relieve a party or its legal representative from a denial of a Application for Post-Conviction Relief, final judgment, order, or proceeding entered in this action on [July 17th, 2020], denying him relief on certain claims contained in the petition for the following reasons separate but equal ***Plessy v. Ferguson*** 163 U.S. 537 16 S.Ct. 1138 (1896) ***Brown v. Board of Ed. of Topeka Shawnee Kan***. 347 U.S. 483 74 S.Ct. 686 (1954) anew in light of ***Martinez***. The court must first determine if the defendant is competent through interrogation of the defendant and counsel regarding past and present mental state, as well as observation of the defendant's demeanor before the court. ***Boykin v. Alabama*** 395 U.S. 238 (1969)The guilty plea not intelligent, the court must also advise the defendant of

[1] **Haines v. Kerner**, 404 U.S. 519 (1972) holding a Pro se litigant's pleadings are to be construed liberally and held to a less stringent standard than formal pleadings drafted by lawyers. In **Hall v. Bellmon**, 935 F.2d 1106, 1110 (10th Cir. 1991) the Court stated "we believe this [Haines pro se litigant] means that if the court can reasonably read the pleadings to state a valid [Certiorari civil action] claim on which the plaintiff could prevail, it should do so despite the plaintiff's failure to cite proper legal authority, his confusion with various legal theories, his poor syntax and sentence construction or his unfamiliarity with pleading requirements. Id....and the Plaintiff whose factual allegations are close to stating a claim but are missing some important element that may not have occurred to him, should be allowed to amend his complaint.

the nature and consequences of the guilty plea, this should include advising the defendant of the right to trial counsel, the right to a jury trial, the right to confront witnesses, the privilege against self incrimination, and the range of punishment for the crime charged. ***Simpson v. State***, 2010 OK CR 6, 53, 230 P.3d 888, 905-06 this court reviews the application along with supporting affidavits to see if it contains sufficient evidence to show this court by clear and convincing evidence that there is a strong possibility trial counsel was ineffective for failing to utilize or identify the complained evidence. *See* Rule 3.11(B)(3)(b) *Rules of the Oklahoma Court of Criminal Appeals* Title 22, Ch.18, App (2017). See ***United States v. Maez***, 915 F.2d 1466, 1468 (10th Cir. 1990), cert denied, 498 U.S. 1104, 111 S.Ct. 1005, 112 L.Ed.2d 1087 (1991)(for a plea to be valid it "must be based on the defendants intelligent conclusion that the record before the judge contains strong evidence of actual guilt) ***United States v. Pollard***, 959 F.2d 1011, 1021 (D.C.Cir) cert denied, 506 U.S. 915, 113 S.Ct. 322, 121 L.ED 242 (1992). ***North Carolina v. Alford,*** 400 U.S. 25 (1970) (Guilty pleas individual states may refuse to accept guilty pleas that accompany protestations of innocence) ***Lafler v. Cooper*** 566 U.S. 156 132 S.Ct 1376, 182 L.Ed 2d 398 (2012) was requiring the prosecution to "reoffer the plea proposal" his understanding though was poisoned by his counsel's ineffective assistance and his plea was therefore not knowing and voluntary, and because the defendant was not advised to the elements of the charge, and so the plea was not "intelligent" counsel did not provide the defendant with reasonably competent advice ***Missouri V. Frye*** 132 S.Ct. 1399 (2012). The court must first determine if the defendant is competent through interrogation of the defendant and counsel regarding past and present mental state, as well as observation of the defendant's demeanor before the court. ***Boykin v. Alabama*** 395 U.S. 238 (1969) The guilty plea not intelligent, the court must also advise the defendant of the nature and consequences of the guilty plea, this should include advising the

defendant of the right to trial counsel, the right to a jury trial, the right to confront witnesses, the privilege against self incrimination, and the range of punishment for the crime charged. In order to demonstrate ineffective assistance of counsel, a petitioner must make two showings: (1) counsel's performance was so seriously deficient that representation fell below an objective standard of reasonableness and was not within the range of competence demanded of attorneys in criminal cases; and (2) but for counsel's unprofessional errors, there is a reasonable probability that the result of the proceeding would be different ***Strickland v. Washington, 466 U.S. 668, 687-88, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674 (1984)***, In order to satisfy the prejudice requirement of *Strickland* in the context of a guilty plea, a petitioner must show that, but for the error of counsel, he would not have pled guilty and would have instead insisted on going to trial. ***Hill v. Lockhart***, 474 U.S. 52, 59, 106 S. Ct. 366,370, 88 L.Ed. 2d 203 (1985); ***Lozoya v. State*, 932 P.2d 22, 31 (Okl.Cr. 1996)**. Failure to disclose evidence is a violation of ***Brady v. Maryland***, 373 U.S. 83, 83 S.Ct. 1194, 10 L. Ed 2d 215 (1963).It is the burden of the party claiming that the evidence has been withheld to show that the evidence was in, fact, withheld," ***Van Woudenberg v. State***, 942 P.2d 224, 227 (Okl.Cr. 1997). The ultimate fact that there was never a fire at all, and or no attempted fire and Juanita Brown testified to those facts and there were no fire investigator reports to prove arson, the first responders incident reports was exculpatory evidence within the meaning of *Brady* that actually exists and that the district attorney's office has in their possession these reports to prove that such evidence exists and was improperly withheld by the prosecutor's, this claim overcomes the presumption of regularity in court proceedings. In reference to this claim ***Napue v. Illinois***, 360 U.S. 264 (1959) may suggest that there is prosecutorial misconduct in failing to correct false or misleading testimony. Included in tis principle, is the presumption that prosecutors, as officers of the court, do not suborn perjury

or otherwise allow false testimony to go uncorrected. ***Cargle v. State***, 947 P.2d 584, 589 (Okl.Cr. 1997); ***Hatch v. State***, 924 P.2d 284, 295-96 (Okl.Cr. 1996). In order to obtain relief upon such an allegation, Petitioner bears the burden of establishing that (1) false or misleading testimony was presented, (2) that the prosecutor knowingly used such testimony and (3) that the testimony was material to guilt or innocence. ***Omalza v. State***, 911 P.2d 286, 307 (Okl.Cr. 1995). When a criminal defendant has been wrongfully advise to plead guilty to a crime he did not commit and is actually innocent, ***Mabry v. Johnson*** 467 U.S. 504 (1984) guilty plea coerced, the state should not be allowed to convict innocent people by any means to satisfy a conviction rate due to ineffective assistance of counsel and prosecutorial misconduct. However, for this reason alone his counsel made error so serious that counsel was not functioning as counsel guaranteed a defendant by the Sixth Amendment and that counsel's deficiencies were prejudicial to his defense the trial court made one or more decisions which were based on an objectively unreasonable determination of the facts and/or an unreasonable application of clearly established law *Strickland.* Juanita Brown testified in preliminary hearing to all the crimes that the state has charged in the information to CF-2002-0968, on October 15th, 2001 by clear and convincing evidence that Mr. George A. Christian Jr. is ***actually innocent*** of all the crimes charged in the information and that he did in fact never set any fire or attempt to set any fire. Count 1. Fourth degree Arson, Count 2. Endangering human life during the commission of Arson, was based on systemic racism, had the defendant been white he would have been only charged with destruction of private property. Represented by Attorney Kenneth Watson at preliminary hearing on 4/29/02 by Judge Hill, and court reporter Raquel Mathis. Lou Keel targeted Mr. Christian based on a prior conviction in 1999 where he again based on systemic racism over charged the defendant and forced him to plead guilty to a crime he did not commit for five years

probation which is the beginning of his wrongful conviction. However, represented by Attorney Kenneth Watson at pre-trial and trial and later during the plea agreement, that resulted in 3 yrs probation, Asst. District Attorney Lou Keel has evidence held by the State to prove this claim to exonerate Mr. Christian of this crime. Counsel has a duty to make sure there is sufficient information here from which the district court could conclude it was not sending an innocent man to prison See *Maez.* Mr. George A. Christian Jr., did not voluntary, knowing, and intelligently agree to the plea of guilty to the fourth degree arson crime as charged on June 24th 2003 before Judge Susan Braggs due to the facts that he did not voluntary, knowing, and intelligently understand what was being told to him at that time, However Kenneth Watson told him he was going home and not to prison if he signed the plea agreement after failing to conduct a reasonable pre-trial investigation. ***Strickland v. Washington, 466 U.S. 668, 687-88, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674 (1984)***

Petitioner *pro se*, George A. Christian Jr., was found guilty of count 1) Arson in the fourth degree; of a Felony on June 9th 2003 in case #**CRF-02-968**, following a plea of guilty, on June 24th 2003, on December 2nd, 2005 the state filed an application to revoke suspended sentence, on September 8th 2006 Mr. Christian entered a blind plea, the Honorable Jerry D. Bass accepted the plea and continued the matter for sentencing, on February 26th, 2007, Judge Bass revoked Petitioner's suspended sentence in full after it had been completed June 24th 2006, the Court of Criminal Appeals affirmed Appellant's conviction. After OCCA affirmed the conviction, the petitioner appealed the United States Supreme Court.

REASON FOR GRANTING WRIT

Argument

However, the certiorari for relief from this court to reconsider its prior ruling on procedural default under *Martinez* is properly brought under Federal Rule of Civil Procedure 10(c), now that the Supreme Court has established that ineffective assistance of post-conviction counsel, while not amounting to a separate Sixth Amendment claim, can nevertheless establish cause for the default, this Court should reconsider its ruling and permit Christian to present evidence to support his claim that there was cause for default. This court held, as did the Tenth Circuit, that the claim of ineffective assistance during the combined post-conviction and appealing proceedings were properly defaulted under the state default rule established ***Paz v. State***, 852 P.2d 1355, 1357 (1993). However, the Supreme Court in *Martinez* has shown that this rule, requiring as it does that the petitioner himself be able to recognize potential errors in the post-conviction process, must be reconsidered as a valid rule of procedural default. Without the help of an adequate attorney, a prisoner will have similar difficulties vindicating a substantial ineffective-assistance-of-counsel claim. Claims of ineffective assistance at trial often require investigative work and understanding of trial strategy. When the issue cannot be raised on direct review, moreover, a prisoner asserting an ineffective-assistance-of-counsel claim in an initial-review collateral proceeding cannot rely on a court opinion or paper work of an attorney addressing that claim. ***Halbert,*** 545 U.S., at 619, 125 S.Ct. 2582, 162 L.Ed. 2d 552. To present a claim of ineffective assistance at trial in accordance with the state's procedures, then, a prisoner likely needs an effective attorney.

The same would be true if the State did not appoint an attorney to assist the prisoner in the initial-review collateral proceeding. The prisoner, unlearned in the law, may not comply with th

State's procedural rules or may misapprehend the substantive details of federal constitutional law. Cf., e.g., id., at 620-621, 125 S.Ct. 2582, 162 L. Ed. 2d 552 (describing the educational background og the prison population). While confined to prison, the prisoner is in no position to develop the evidentiary basis for a claim of ineffective assistance, which often turns on evidence outside the trial record *Martinez,* 132 S.Ct. at 1317.

In this case, because of the failures relating to trial counsel's acts and omissions were not fully developed in the state court proceedings. These claims include issues regarding the presentation of evidence at both the guilt and penalty phase. For example, trial counsel employed no defense to the fact that there was no fire and no experts prior to trial that a fire would have been the end results and did not present potentially significant expert evidence regarding the crime scene. In addition, neither trial counsel challenged the erroneous charges on the presumption of innocence, reasonable doubt and alibi. While the District Court held that the service of the sentence has been completed in Oklahoma County Case No. CF-2002-968, and fully discharged, OCCA agreed with ruling. ***Lackawanna County Dist. Attorney v. Coss*** 532 U.S. 394 121 S.Ct 1567 (2001). which shows that the petitioner is currently "in custody," on a conviction which had been enhanced by expired conviction. *See* ***Gamble v. Parsons*** 898 F.2d 117 (10th Cir 1990).

Under OCCA **Rules 3.11(B)(3)(b)** When a allegation of ineffective assistance of trial counsel is predicated upon an allegation of failure of trial counsel to properly utilize available evidence or adequately investigate to identify evidence which could have been made available during the course of the trial, and a proposition of error alleging ineffective assistance of trial counsel is raised in the brief-in-chief of Appellant, appellate counsel may submit an application for an evidentiary hearing, together with affidavits setting out those items alleged to constitute

ineffective assistance of trial counsel. The proposition of error relating to ineffective assistance of trial counsel can be predicated on either allegations arising from the record or outside the record or a combination thereof. See ***Dewberry v. State***, 1998 OK CR 10, 954 P.2d 774. This court will utilize the following procedure in adjudicating applications regarding ineffective assistance of trial counsel based on evidence not in the record:

This court should have found reversible error on the merits of the instructional claims and denying relief on the ineffective assistance of counsel claims on procedural grounds, it is appropriate for the Court to now permit reconsideration of the claims in this case based upon *Martinez*. The Ninth Circuit has vacated the judgment of the district court and remanded for consideration of previously defaulted claims in light of Martinez, and directed the district court to afford the petitioner an evidentiary hearing "if the district court determines that one is warranted." *See,* ***Lopez v. Ryan****, No. 09-99028,* Order Dated April 26th, 2012.

Mr. Christian seeks similar relief in this case, to permit this Court to reconsider its prior denial of the petition on procedural default grounds. The rules for when a prisoner may establish cause to excuse a procedural default are elaborated in the exercise of the Court's discretion. ***McCleskey v. Zant***, 499 U.S. 467, 490, 111 S.Ct. 1454, 113 L.E$d2d 517 (1991); see also ***Coleman****, supra*, at 730-731, 111 S.Ct. 2546; Sykes, 433 U.S., at 83, 97 S.Ct. 2497; ***Reed v. Ross***, 468 U.S. 1, 9, 104 S.Ct. 2901, 82 L.Ed.2d 1 (1984); ***Fay v. Noia***, 372 U.S. 391, 430, 83 S.Ct. 822, 9 L.Ed.2d 837 (1963), overrule in part by ***Sykes,*** *supra*. These rules reflect an equitable judgment that only where a prisoner is impeded or obstructed in complying with the State's established procedures will a federal habeas court excuse the prisoner from the usual sanction of default. See, e.g., ***Strickler v. Greene***, 527 U.S. 263, 289, 119 S.Ct. 1936, 144 L.Ed.2d 286 (1999); ***Reed,*** *supra*, at 16, 104 S.Ct. 2901. Allowing a federal habeas court to hear

a claim of ineffective assistance of trial counsel when an attorney's errors (or the absence of an attorney) caused a procedural default in an initial-review collateral proceeding, if undertaken without counsel or with ineffective counsel, may not have been sufficient to ensure that proper consideration was given to a substantial claim. From this it follows that, when a State requires a prisoner to raise an ineffective-assistance-of-trial-counsel claim in a collateral proceeding, a prisoner may establish cause for a default of an ineffective-assistance claim in two circumstances. The first is where the state courts did not appoint counsel in the initial-review collateral proceeding for a claim of ineffective assistance at trial. The second is where appointed counsel in the initial-review collateral proceeding, where the claim should have been raised, was ineffective under the standards of ***Strickland v. Washington***, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984).

Under established Supreme Court jurisprudence "[f]ederal habeas courts reviewing the constitutionality of a state prisoner's conviction and sentence are guided by rules, [including]... the doctrine of procedural default, under which a federal court will not review the merits of claims, including constitutional claims, that a state court declined to hear because the prisoner failed to abide by a state procedural rule." Id. at 1316, and accordingly as a matter of first impression, the court held that ineffective assistance of counsel at initial review collateral proceedings may establish cause for a prisoner's procedural default of a claim of ineffective assistance of counsel at initial review collateral proceedings may establish cause for a default, a petitioner would be required to establish (1) that his initial review post-conviction lawyer (which in this instance would be direct review appellate attorney on direct appeal that was appointed by the same office that the trial attorney was appointed from) was ineffective under the standard of ***Strickland v. Washington***, 466 U.S. 668 (1984), and (2) that "the underlying ineffective-

assistance of trial counsel claim is a substantial one, which is to say that the prisoner must demonstrate that the claim has some merit. *Id.* at 1318-1319. With respect to this latter requirement to establish that the underlying ineffective assistance claim is substantial, the court cited to the minimal showing needed for a certificate of appealability to issue. *Id.* It follows for all the reason that the Supreme Court's ruling in *Martinez* applies to Mr. Christian's habeas corpus proceeding. Martinez provides a road map for Christian to show cause that will excuse his direct review attorney failures to bring or develop the factual basis of claims concerning the ineffective assistance of trial counsel. In Oklahoma direct review is "the first occasion [at which] to raise a claim of ineffective assistance of counsel at trial. *Martinez,* 132 S.Ct. at 1315. See IC § 19-2719.

Christian is barred from developing in the federal court proceedings any of his claims that trial counsel provided ineffective assistance of counsel because of the application of the the existing rules of procedural default. As a result of the district court ruling in 1996, he was un able to develop the full evidentiary basis for these claims or seek an evidentiary hearing in federal court under pre-AEDPA standard, as set forth in ***Townsend v. Sain,*** 372 U.S. 293 (1963). Now that the Supreme Court has established that ineffective assistance of post-conviction counsel, while not amounting to a separate Sixth Amendment claim, can nevertheless establish cause for the default, this Court should reconsider its prior ruling and permit Christian to present evidence to support his claim that there was cause for default.

Christian should be permitted to engage in further discovery on the issue of post-conviction counsel's representation during the state consolidated collateral review and appeal proceedings. For example, a review of the state proceedings on post-conviction demonstrates that counsel appears to have engaged no investigators or experts. Certiorari is the proper method for applying ***Martinez v. Ryan*** in the case the United States Supreme Court issued a opinion in

Martinez v. Ryan, 132 S.Ct. 1309 (March 20, 2012), In Martinez, the Court qualified its holding in ***Coleman v. Thompson***, 501 U.S. 722 (1991), which held that an attorney's errors in post-conviction proceeding typically do not qualify as cause to excuse a default, by recognizing an exception which had not been squarely addressed in *Coleman:* "Inadequate assistance of counsel at initial-review collateral proceedings may establish cause for a prisoner's default of a claim of ineffective assistance at trial." Id. 1315.

Petitioner's Federal and State Constitutional rights to due process of law has been violated and should be granted relief on certiorari pursuant to Rules 14 and 10(c) a state court or a United States court of appeals has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court and the Federals Rules of Appellate Procedure were violated to the U.S. Constitutions Fifth, Sixth, and Fourteenth Amendments and Okla. Const. Art. II §7, Okla. Const. Art. II §21.

In this case Mr. Christian's counsel failed to utilize the available evidence to raise the ineffective assistance of trial counsel claim or the Brady claim ***Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984) Napue v. Illinois***, 360 U.S. 264 (1959) Here counsel was ineffective for two reasons: 1) failing to properly utilize available evidence or adequately investigate to identify evidence which could have been available during the course of trial and 2) failing to question any of her witnesses she subpoenaed to direct questioning during trial especially the key witness Juantia Brown, which may suggest that there is ineffective assistance of trial counsel along with prosecutorial misconduct in failing to correct perjury or false testimony. A finding of "cause" that excuses procedural default under *Martinez* is appropriate where "(1) the claim of ineffective assistance of trial counsel' was a 'substantial' claim; (2) the cause consisted of there being 'no counsel' or only 'ineffective' counsel during the

state collateral review proceeding; (3) the state collateral review proceeding was the 'initial' review proceeding in respect to the 'ineffective-assistance-of trial-counsel claim'; and (4) state law *requires* that an 'ineffective assistance of trial counsel [claim] ... be raised in a initial-review collateral proceeding.' ***Trevino v. Thaler***, 569 U.S. 413, 423, 133 S.Ct. 1911, 185 L.Ed.2d 1044 (2013)(quoting ***Martinez,*** 566 U.S. at 17, 132 S.Ct. 1309). A claim of ineffective assistance of trial counsel when an attorney's errors (or the absence of an attorney) caused a procedural default in initial-review collateral proceeding acknowledges as an equitable matter, that the initial-review collateral proceeding, if undertaken without counsel or with ineffective counsel, may not have been sufficient to ensure that proper consideration was given to a substantial claim. 566 U.S. at 14 132 S.Ct. at 1318, 182 L.Ed.2d at 285-86, The district court denied first post-conviction on April 27th 2020, upon the grounds that the judgment and sentence of the courts has long been satisfied, the judgment is at end, and the court was wihthout jurisdiction to modify, suspend, or otherwise alter the judgment. In support thereof the case of ***Tracy v. State***, 24 Okl.Cr 144, 145, 216 P. 941 This contention was also supported in the case of ***Hall v. State***, Okl.Cr.1957, 306 P.2d 361, 362, an Oklahoma case wherein the court said:

"Satisfaction of the judgment and sentence in a criminal case puts and end to the court's power over the criminal judgment."

In the present case the defendant has served his time, satisfied the judgment and sentence of the trial court and the case is at an end. Trial court is without jurisdiction to grant relief after the judgment had been satisfied. The petitioner was barred form raising insufficiency of evidence to the first degree arson claims as basis for federal habeas relief of "actual innocence" see ***Haley v. Cockrell*** 306 F.3d 257 (5th Cir.2002) to extend the actual innocence exception to procedural

default of constitutional claims challenging non-capitol sentencing error. ***Haley v. Dretke*** 541 U.S. 386 124 S.Ct. 1847 158 L.Ed.2d 659 (2004).

However, as finding in favor of the applicant. See 22 O.S.§ 1085 his request for an appeal out of time should not be barred by the doctrine of laches during to his excusable sixteen-year delay of a miscarriage of justice seeking relief See ***Thomas v. State,*** 1995 OK CR 47, 15, 903 P.2d 328, 330; ***Paxton v. State***, 1995 OK CR 46, ¶ 8, 903 P.2d 325, 327. The ineffective of assistance of counsel claim on appeal should be considered See Rule 2.1, *Rules of the Oklahoma Court of Criminal Appeals,* Title 22, Ch.18, App (2020); ***Dixon v. State*** 2010 OK CR 3, ¶ 5, 228 P.3d 531 532. An assertion of this error waives the bar of 22 O.S. § 1086 and resjudicata, and any argument by the state that is barred. The petitioner's rights to appeal is dependant upon the ability to prove he/she was denied an appeal through no fault of his/her own. See ***Blades v. State***, 2005 OK CR 1, 107 P.2d 607; See also ***Smith v. State***, 1980 OK CR 43, 611 P.2d 276. Thus, making applicable under Title 22 O.S. § 1080, subsections (a), (d), and (f), a petitioner's right for this reason alone his counsel made error so serious that counsel was not functioning as counsel guaranteed a defendant by the Sixth Amendment and that counsel's deficiencies were predicable to his defense the trial court made one or more decisions which were based on an objectively unreasonable determination of the facts and/or an unreasonable application of clearly established law *Strickland.* ***Logan v. State*** 2013 OK Cr 2, ¶ 3, 293 P.3d 969, 973; ***Stevens v. State*** 2018 OK CR 11, ¶ 15, 422 P.3d 741, 746.

This Judgment should be vacated for the district court to reconsider the denial of Mr. Christian's application for post-conviction relief petition in light of ***Martinez v. Ryan***, 132 S. Ct. 1309 (2011), an intervening Supreme Court decision which appears to affect Mr. Christian's guilt-and penalty-phase ineffective assistance of counsel claims. Specifically, the district court

should address: (1) the ineffective assistance of counsel claims previously found procedurally defaulted; and (2) how *Martinez* applies to claims of ineffective assistance of counsel who failed to develop a factual record during the initial post-conviction relief proceedings; and should afford Christian an evidentiary hearing if the district court determines that one is warranted. The district court should enter a new judgment. Previous to *Martinez*, district and appellate federal courts universally understood the Supreme Court's decision in ***Coleman v. Thompson***, 501 U.S. 722 (1991), to hold that the negligence of a prisoner's post-conviction lawyer would not qualify as cause to excuse such a procedural default. ***Smith v. Baldwin***, 510 F.3d 1127, 1146-1147 (9th Cir. 2007) (under Coleman, attorney ineffectiveness in the post-conviction process is not considered cause for the purpose of excusing the procedural default at that stage); ***Bonin v. Calderon,*** 77 F.3d 1155, 1159 (9th Cir. 1996). See ***Harper v. Virginia Dept. of Taxation***, 509 U.S. 86, 90, 96 (1993) ("[W]e hold that this Court's application of a rule of federal law to the parties before the Court every court to give retroactive effect to that decision.") Martinez provides a road map for Mr. Christian to show cause that will excuse his post- conviction attorney's failure to bring or develop the factual basis of claims concerning the ineffectiveness of his trial counsel. Therefore, this Court must determine whether the failures of the post-conviction counsel establish cause for any procedural default and consider this issue anew in light of *Martinez*.

Mr. Christian "is in custody in violation of the Constitution or laws or treaties of the United States." See U.S.C. § 2254(a), and the "cause for the default and actual prejudice as a result of the alleged violation of federal law" or that a "fundamental miscarriage of justice" will result from dismissal of the claim. ***Coleman v. Thompson***, 501 U.S. 722, 750 (1991). absence the effectiveness of counsel on post-conviction the ineffectiveness of counsel claim has been

exhausted and meritorious. See ***Rodriguez v. Carpenter***, 916 F.3d 885, 904-905 (10th Cir. 2019).The cause standard requires a petitioner to "show that some objective factor external to the defense impeded ... efforts to comply with the state's procedural rules." ***Murray v. Carrier***, 477 U.S. 478, 488 (1986). Factors supporting "cause" include previously unavailable evidence, a change in the law, and interference by state officials. *Id.* The "fundamental miscarriage of justice" exception only applies where petitioner proffers evidence of actual innocence. ***McCleskey v. Zant***, 499 U.S. 467, 494 (1991). Petitioner has stated and that the issues raised are debatable among jurist, that could resolve the issues differently, or that the questions deserve encouragement to further proceedings. ***Buck v. Davis***, No. 15-8049, 2017 WL 685534, at *11 (Feb. 22, 2017) (quoting ***Miller-El v. Corkrell,*** 537 U.S. 322, 336-38 (2003)); ***Slack v. McDaniel,*** 529 U.S. 473, 483-84 (2000) a jurists could debate whether (or, for that matter, agree that) claim(s) issuable for COA. The state of Oklahoma has violated appellant's due process rights, and Appellant have exhausted administrative remedies and exhausted judicial remedies, and his original Post-Conviction falls under *Martinez for review of certiorari.*

CONCLUSION

For these reasons, it is respectfully requested that this Court grant relief for Certiorari and order full briefing, reverse the judgment barring the Application for Post-Conviction Relief to CF-2002-968 and remand the matter to the district court for an evidentiary hearing, and /or grant the writ requested for appeal purpose.

George A. Christian Jr.
Pro-se