

CAPITAL CASE

No. 20-6929

**IN THE
SUPREME COURT OF THE UNITED STATES**

STEPHEN HUGUELEY,

Petitioner,

v.

TONY MAYS, Warden,

Respondent.

**ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**

PETITION FOR REHEARING

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Stephen Hugueley petitions this Court for rehearing of the denial of his Petition for Writ of Certiorari in light of the recent grant of certiorari in *Shinn v. Ramirez*, No. 20-1009, 2021 WL 1951793, at *1 (U.S. May 17, 2021) (order granting certiorari).¹ The issue presented *Ramirez* case is substantially similar that which was presented in Mr. Hugueley’s petition for certiorari. Mr. Hugueley respectfully moves this Court to grant his petition and hold his petition pending a decision in *Shinn v. Ramirez*.

Mr. Hugueley’s petition for writ of certiorari argues that post-conviction counsel rendered ineffective assistance of counsel by defaulting material facts relating to his constitutional claim that he was incompetent to stand trial. Like Mr. Ramirez, he argued that the equitable rule announced in *Martinez v. Ryan*, 566 U.S. 1 (2012) was applicable to his case and permitted the Court to examine the merits (including defaulted facts) of his ineffective assistance of counsel claim. The Sixth Circuit, like the district court before it and without the benefit of an evidentiary hearing, held that *Martinez* was only applicable when “post-conviction counsel . . . fail[ed] to ever raise a prisoner’s ineffective-assistance-of-trial-counsel claim, not [when] the claim would be raised but ultimately be underdeveloped.” *Hugueley v. Mays*, 964 F.3d 489, 499 (6th Cir. 2020). The Sixth Circuit then took this rationale a step further, holding that “post-conviction counsel could not have been ineffective by

¹ Mr. Hugueley’s petition for certiorari was denied just nearly two months prior to the Court granting certiorari in *Shinn v. Ramirez*. See *Shinn v. Ramirez*, No. 20-1009, 2021 WL 1951793, at *1 (U.S. May 17, 2021) (order granting certiorari); *Hugueley v. Mays*, No. 20-6929, 2021 WL 1163802, at *1 (U.S. Mar. 29, 2021) (order denying certiorari).

not raising one theory of relief that could have possibly underpinned his ineffective-assistance-of-trial-counsel claim.” *Id.* at 501 n.4. The courts below thus held that the exception in *Martinez* was only applicable when post-conviction counsel failed to plead a claim altogether regardless of how poorly or ham-handedly the claim was presented. *Id.* at 499. Implicit in that ruling is the suggestion that 28 U.S.C. 2254 (e)(2) is a separate and distinct bar left undisturbed by *Martinez*.

Mr. Hugueley’s petition expressly relies on *Jones v. Shinn*, 943 F.3d 1211 (9th Cir. 2019) and *Jones v. Ryan*, 327 F. Supp. 3d 1157, 1166 (D. Ariz. 2018), the cases now pending before the Court, for the proposition that “other circuits have recognized that deficient representation that results in procedural default may constitute cause pursuant to *Martinez*—even if it occurs after the petition is filed.” *Hugueley v. Mays*, No. 20-6929, at 12 (U.S. Jan. 19, 2021) (Petition for Certiorari). The tension between 28 U.S.C. § 2254(e)(2) and *Martinez*’s equitable exception that is the subject of the cases before the Court presumes the antecedent question: that the equitable exception outlined in *Martinez* applies to claims that were pled but underdeveloped by post-conviction counsel.

The court below in *Ramirez* held that the petitioner was “entitled to evidentiary development to litigate the merits of his ineffective assistance of trial counsel claim, as he was precluded from such development because of his post-conviction counsel’s ineffective representation.” *Ramirez v. Ryan*, 937 F.3d 1230, 1248 (9th Cir. 2019). Were this Court to affirm the decision of the Ninth Circuit there would be obvious implications to Mr. Hugueley’s case. The district court denied Mr.

Hugueley's motion for an evidentiary hearing to establish post-conviction counsel's ineffective assistance and any rule defining the scope of relief under *Martinez* would control his case.

The Ninth Circuit's decisions in *Jones* and *Ramirez* were a direct outgrowth of the circuit's *Martinez* caselaw that recognizes two independent but interrelated principles. First, the Ninth Circuit recognizes that a petitioner may invoke *Martinez*'s equitable exception when post-conviction counsel raises but fails to competent prove and litigate a claim. *See, e.g., Dickens v. Ryan*, 740 F.3d 1302, 1320 (9th Cir. 2014) (en banc). Second, the circuit recognizes that "it makes little sense to apply § 2254(e)(2)" to claims defaulted due to the ineffective assistance of post-conviction counsel. *Detrich v. Ryan*, 740 F.3d 1237, 1247 (9th Cir. 2013) (en banc). Taken together, these two principles animate the concerns that gave rise to this Court's *Martinez* doctrine. This Court's decision in *Shinn v. Ramirez* has the potential to reshape and clarify the scope of *Martinez* in other circuits. Given the extensive overlap between the issues presented in Mr. Hugueley's petition and the issues in *Shinn v. Ramirez* it is sensible for this Court to hold Mr. Hugueley's petition during the pendency of that case.

Respectfully Submitted,



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CERTIFICATE

I certify that the foregoing petition for rehearing is restricted to grounds set forth in Rule 12.2 and is presented in good faith and not for delay.



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CERTIFICATE OF SERVICE

I certify that the foregoing petition for rehearing was served via first-class mail upon counsel for Respondent, Richard D. Douglas, Office of the Attorney General, 425 Fifth Avenue North, Nashville, Tennessee 37243 this 27 day of May, 2021



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