

22-5323

No. _____

FILED
AUG 03 2022

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SUPREME COURT U.S.

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

Douglas Stephenson — PETITIONER
(Your Name)

vs.

Robert Gilmore, et al. — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO
The United States
Court of Appeals for the Third Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Douglas Stephenson
(Your Name)

286 woodland Dr. - P.O. Box 945
(Address)

Merrionville, Pa. 16239
(City, State, Zip Code)

814-621-2110
(Phone Number)

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QUESTION(S) PRESENTED

Whether the legal holding in
MARTINEZ V. BRYAN, 566 U.S. 132 S.Ct.
1309, 182 L.Ed. 2d 272, (2012),
relative to P.C.R.A. counsel
ineffectiveness during an initial
review collateral proceeding being
allowable to invoke the cause of
prejudice exception to overcome
procedural default of a federal
constitution claim that remained
unexhausted within the state
court system should be extended
to include P.C.R.A. counsel
ineffectiveness during the Appeal
in a collateral proceeding?

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

1. Robert Gilmore
2. The District Attorney of the County of Allegheny
3. the Attorney General of the State of Pennsylvania

RELATED CASES

Stephenson v. Gilmore, et al., No. 2:18-cv-1329, U.S. District Court for the Western District of Pennsylvania. Judgment entered. March 1, 2022.

Stephenson v. Superintendent Greene et al., No. 21-2407 U.S. Court of Appeals for the Third Circuit. Entry of Judgment March 1st 2022.

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Denying Petition for Rehearing*

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TABLE OF AUTHORITIES CITED

CASES

PAGE NUMBER

Martinez v. Ryan, 566 U.S. 1, 132 S.Ct. 1309,
182 L.Ed.2d 272, (2012).

Commonwealth v. Grant, 572 Pa. 48, 813
A.2d 726, 2002 Pa. L. 1110, 3148

STATUTES AND RULES

28 U.S.C. § 2254

Pa. R. Crim. P. 907

Pennsylvania's Post Conviction Relief Act
("P.C.R.A."), 42 Pa. Cons. Stat. § 9541 et seq.

OTHER

IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

The opinion of the United States district court appears at Appendix B to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

JURISDICTION

For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was March 1st 2022.

No petition for rehearing was timely filed in my case.

A timely petition for rehearing was denied by the United States Court of Appeals on the following date: March 17th 2022, and a copy of the order denying rehearing appears at Appendix 3.

An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

For cases from **state courts**:

The date on which the highest state court decided my case was _____. A copy of that decision appears at Appendix _____.

A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

28 U.S.C. § 2254 (a), (3), and (c)

Rule 2 (c) of the Rules Governing
Section 2254 Cases.

42 P.A. Cons. Stat. § 9545 (3) (3)

28 U.S.C. § 2244 (d) (2) (A)

STATEMENT OF THE CASE

On March 31st 2014 Petitioner filed a pro se P.C.B.A petition. The trial P.C.B.A court appointed Attorney Thomas N. Farrell, who amended P.C.B.A petition, raising what he believed to be five meritorious claims.

On May 2nd 2016 at P.C.B.A evidentiary hearing where all claims were denied.

On June 5th 2017 P.C.B.A Attorney filed an appeal with the Superior Court, Pa., but only raising 3 of the 5 initial claims raised. The Superior Court denied said claims.

On December 21st 2017 P.C.B.A Attorney filed a Petition for Allowance of Appeal to the Supreme Court, Pa., raising the same claims, petition was denied.

Thereafter Petitioner proceeding
pro se filed a timely Petition for
a writ of Habeas Corpus. #2254,
raising numerous claims.

Respondents assert in their Answer that
the court must deny as procedurally
defective any claim that Petitioner
did not raise to the Pennsylvania
Superior Court.

Petitioner filed Reply, acknowledge that
most of his claims are procedurally
defective, due to P.C.B.A Attorney's
negligence and such claims, under the
rule of Martinez v. Lytle, 566 U.S. 1 (2012)

REASONS FOR GRANTING THE PETITION

The Martinez rule, "applies only to Attorney error causing procedural default during initial review collateral proceeding, not collateral appeal."

which is well understood.

In Petitioner's case P.C.R.A. counsel raised five meritorious claims, but failed to preserve claims to be considered on collateral appeal.

The Martinez rule held that in states like Pennsylvania, a defendant may not litigate ineffective assistance of trial counsel claims must be raised in a P.C.R.A. proceeding. See, Commonwealth v. Grant, 813 A.2d 726 (Pa. 2002).

Also in Pennsylvania, the Appellate Procedure is not adequate to

Vindicate a Petitioner's right to adequate performance by P.C.R.A counsel. See Pa. R. Crim. P. 907.

The one year time bar would prevent a Petitioner from upholding his right to effective P.C.R.A counsel in a timely petition, as it would be impossible to file a serial petition given that a Petitioner's first P.C.R.A petition would not be disposed of before the expiration of the one year time limitation.

Petitioner has been denied fair process and the opportunity to comply with the State's procedures, due to Attorney's deficient performance when he failed to exhaust claims through the appellate review process, not allowing the exhaustion requirement to be satisfied, per 28 U.S.C. § 2254, resulting in Petitioner's claims being deemed procedurally defaulted.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

D. Stephens

Date: August 2, 2022