

23-6007

No. _____

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IN THE
SUPREME COURT OF THE UNITED STATES

Daniel A. Rocha — PETITIONER
(Your Name)

vs.

State of Florida — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

The United States Court of Appeals for the Eleventh Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Daniel A. Rocha
(Your Name)

216 S.E. Corrections Way
(Address)

Lake City, Florida 32025
(City, State, Zip Code)

W/A
(Phone Number)

QUESTION(S) PRESENTED

Does *Douglas v. California*, 372 U.S. 353 (1963), and its progeny, require a state court to advise an indigent defendant of the procedural rules and time limitations governing claims of ineffective assistance of trial counsel in states that require these claims to be raised in an initial-review collateral proceeding?¹

Whether the U.S. Appeals Court's order denying Rocha a COA on Ground One based on his failure to exhaust remedies is in conflict with § 2254(b)(1)(A), (c); and *O'Sullivan v. Boerckel*, 526 U.S. 838 (1999), and whether that conflict is such a departure by a lower court, as to call for an exercise of this Court's supervisory power?

Whether the U.S. Appeals Court's order denying Rocha a COA on Grounds Two-Eight based on his ineffective-assistance claims having no merit is in conflict with *Martinez v. Ryan*, 566 U.S. 1 (2012), and 28 U.S.C. § 2254(d)(1), (2), and whether that conflict is such a departure by a lower court, as to call for an exercise of this Court's supervisory power?²

¹ Rocha believes this is a case of first impression that affects the constitutional rights of thousands of indigent defendants in many states and that the issue should be settled by this Court.

² In Rocha's habeas petition, he raised in Grounds One and Two the same underlying claim. In Ground One, the claim is framed as a federal due process claim. In Ground Two, it is framed as an ineffective-assistance claim. The court's order denying Rocha a COA stated that Ground One is a federal due process claim not ruled on the merits and unexhausted, and that Ground Two is a state law claim ruled on the merits and exhausted. The U.S. Appeals Court's order denying Rocha a COA is an oxymoron.

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:

RELATED CASES

Rocha v. Sec'y Dep't of Corr., No. 8:16-cv-523-TPB-SPF, U.S. District Court for the Middle District of Florida. Judgment entered Mar. 7, 2023

Rocha v. Sec'y Dep't of Corr., No 23-11109-C, U.S. Court of Appeal for the Eleventh Circuit. Judgment entered Sep 6, 2023

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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 September 6, 2023.

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: _____, 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. § 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

The due process clause of the Fourteenth Amendment

28 U.S.C. § 2254 (b)

28 U.S.C. § 2254 (c)

28 U.S.C. § 2254 (d)(1)

28 U.S.C. § 2254 (d)(2)

STATEMENT OF THE CASE

In 1998, the State of Florida charged Rocha with murder in the first degree as a principal (Count I) and conspiracy to commit murder in the first degree (Count II).

In 1999, Rocha proceeded to a jury trial and the jury convicted him on Count I as charged and of a lesser-included offense of conspiracy to commit third degree murder on Count II. Rocha's trial counsel filed a motion for new trial and argued that the verdict form was improper and that the jury convicted Rocha for a crime on which it was not instructed. Following a hearing on the motion, the trial judge entered a judgment on Count II for the lesser-included offense of conspiracy to commit aggravated battery. The state court sentenced Rocha to life imprisonment on Count I and a consecutive sentence of 13.4 months imprisonment on Count II.

In 2015, the state court resentenced Rocha to 13.4 months imprisonment consecutive to the life sentence on Count I.

On March 4, 2016, Rocha filed a petition for writ of habeas corpus under 28 U.S.C. § 2254, raising eight grounds for relief.

On March 7, 2023, the District Court issued its order denying the petition for writ of habeas corpus. Rocha appealed and sought an issuance of Certificate of Appealability from the U.S. Court of Appeals.

On September 6, 2023, the U.S. Court of Appeals denied Rocha a Certificate of Appealability, holding in pertinent part:

As to Claim 1, Rocha attempted to raise an identical federal due process claim in a *pro se* brief on direct appeal. However, the state appellate court struck that brief without reaching the merits, and Rocha did not reassert the federal due process claim in a later, supplemental

appellate brief. Thus, he failed to show to the district court “that some objective factor external to the defense impeded the effort to raise the claim properly in state court.” *Wright v. Hopper*, 169 F.3d 695, 703 (11th Cir. 1999). Rather, it appears as though he simply elected not to re-raise the claim after the state appellate court struck his initial brief. Therefore, no COA is warranted on Claim 1.

As to Rocha’s ineffective-assistance claim, a review of the record confirms the district court’s finding—Rocha raised each of the underlying arguments as claims of trial court error at various points throughout his extensive post-conviction proceedings. Each of those claims was denied on the merits, meaning that, even if counsel was deficient in failing to further press each of the issues, Rocha could not demonstrate any prejudice because the claims still would have been denied, regardless of whether he framed the issues as trial court errors or ineffective assistance of counsel. *See Bradshaw v. Richey*, 546 U.S. 74, 76 (2005) (“a state court’s interpretation of state law...binds a federal court sitting in habeas corpus”). Thus, Rocha failed to show that his ineffective-assistance claims had some merit that would warrant the excusal of his procedural default. *See Martinez v. Ryan*, 566 U.S. 1, 13-14 (2012). Therefore, no COA is warranted on Claims 2-8 because Rocha failed to establish any exception to the procedural default of those claims. *See Slack*, 529 U.S. at 484.

(Appellate Court’s Order at 3-4)

REASONS FOR GRANTING THE PETITION

QUESTION ONE

Does *Douglas v. California*, 372 U.S. 353 (1963), and its progeny, require a state court to advise an indigent defendant of the procedural rules and time limitations governing claims of ineffective assistance of trial counsel in states that require these claims to be raised in an initial-review collateral proceeding?

In Ground Eight of the habeas petition, Rocha challenged his counsel's effectiveness for failing to object when the trial court imposed its sentence without advising him of the state's procedural rules and time limitations governing ineffective-assistance claims.

The District Court's order denying Ground Eight, stated that: "Rocha fails to show that his claim of ineffective assistance of counsel is "substantial" under *Martinez*. The United States Constitution does not require a state court to advise a criminal defendant of post-conviction remedies which may be available to him, and Rocha cites no authority to the contrary." [Doc. 49 Order at p. 25] The appellate court in its denial of Rocha's COA made no mention of Ground Eight.

In Rocha's habeas petition, he cited *Douglas v. California*, 372 U.S. 353 (1963), in which this Court held that all convicted defendants have the right to appointed counsel on direct appeal. As a necessary consequence of *Douglas*, state courts have an obligation to instruct all convicted defendants: (1) that they have a right to a direct appeal; (2) that they have a right to be appointed counsel for that appeal, if they cannot afford one; and (3) the state's time limitations governing the appeal.

The above instruction is designed as a safeguard to protect a convicted defendant's right to appeal an unconstitutional trial, to include the constitutional right to the effective assistance of counsel at trial. However, after this Court issued *Douglas*, Florida deliberately moved claims of ineffective-assistance outside of the direct appeal process and into a postconviction collateral proceeding. As a result, Florida courts provide no instruction to convicted defendants on their right to raise ineffective-assistance claims or on the rules that govern them. This means that a Florida inmate must receive the proper instruction in a timely manner from fellow inmates on a procedure they might not even know exists, negating the very purpose behind the procedural safeguards put in place since *Douglas*.

Rocha, who is indigent, not from Florida, unlearned in law, and transferred to Texas shortly after he received his sentence and held there throughout his entire direct appeal process, had no inmate in Texas instruct him on Florida's rules governing ineffective-assistance claims. Had he been instructed by the court on the rules governing them—to include his right to request appointed counsel—he would have done so, while in Texas, and his ineffective-assistance claims would have been properly raised and timely filed.

Wherefore, Rocha asserts that states, that require ineffective-assistance claims to be raised in an initial-review collateral proceeding, have a constitutional duty, based on *Douglas*, and its progeny, to advising defendants of the procedural rules and time limitations governing these claims. The U.S. Appeals Court and the U.S. District Court has decided this important question of federal law affecting many states that has not been, but should be, settled by this Court.

QUESTION TWO

Whether the U.S. Appeals Court's order denying Rocha a COA on Ground One based on his failure to exhaust remedies is in conflict with § 2254(b)(1)(A), (c); and *O'Sullivan v. Boerckel*, 526 U.S. 838 (1999), and whether that conflict is such a departure by a lower court, as to call for an exercise of this Court's supervisory power?

In Ground One of Rocha's habeas petition, he challenged his 13.4-month sentence for the conspiracy to commit aggravated battery as violating his federal right to due process, for four reasons: (1) the sentence does not reflect the jury's actual verdict of conspiracy to commit third degree murder; (2) the court, not the jury, found each element of the reduced offense of conspiracy to commit aggravated battery; (3) neither the conspiracy nor the aggravated battery took place within Florida's territorial jurisdiction; and (4) the sentence is for a crime not charged.

In denying Rocha's application for an issuance of a Certificate of Appealability, the U.S. Appeals Court stated:

As to Claim 1, Rocha attempted to raise an identical federal due process claim in a *pro se* brief on direct appeal. However, the state appellate court struck that brief without reaching the merits, and Rocha did not reassert the federal due process claim in a later, supplemental appellate brief. Thus, he failed to show to the district court "that some objective factor external to the defense impeded the effort to raise the claim properly in state court." *Wright v. Hopper*, 169 F.3d 695, 703 (11th Cir. 1999). Rather, it appears as though he simply elected not to re-raise the claim after the state appellate court struck his initial brief. Therefore, no COA is warranted on Claim 1.

(Appellate Court's Order at 3)

In order to comply with the exhaustion requirements in 28 U.S.C. § 2254(b)(1)(A), this Court has held that a state prisoner must: (1) alert the state

court to the federal nature of his claim; and (2) give the state court one full opportunity to resolve the federal claim by invoking one complete round of the state's established appellate review process. *O'Sullivan v. Boerckel*, 526 U.S. 838, 845 (1999); and *Picard v. Connor*, 404 U.S. 270, 278 (1971). The state court must have the first opportunity to review and correct any alleged violation of a federal right. *Baldwin v. Reese*, 541 U.S. 27, 29 (2004).

Question Two comes down to whether or not Rocha exhausted state remedies when he (1) objected at the resentencing based on his federal claim; and (2) by filing a *pro se* brief in the state appellate court raising the same federal claim after counsel filed an *Anders* brief.

Rocha asserts that he did exhaust state remedies giving the state courts one full opportunity to resolve his federal claim. At resentencing, the state court denied Rocha's federal due process objections. On appeal from resentencing, appointed appellate counsel filed an *Anders* brief. This gave Rocha an opportunity to file a *pro se* brief, to which he did, raising his federal due process claim. The state appellate court then struck the *Anders* brief, Rocha's *pro se* brief, and ordered appellate counsel to file a brief on a different claim. When Rocha filed his *pro se* brief raising his federal claim, he fairly presented his federal claim to the state courts, in that, he gave each court one full opportunity to resolve his federal claim.

Rocha further asserts that the state appellate court took it upon itself to strike his federal claim. And nothing in *Anders*, in federal law, or in state law permits, authorizes, or requires Rocha to "re-raise" his federal claim, after it was struck. Contrary to the U.S. Appeals Court's order, Rocha procedurally could not re-raise his

federal claim in a supplemental appellate brief, or in a motion for rehearing, both are prohibited because Rocha, at the time, had counsel representing him. *See Duke v. State*, 578 So. 2d 744, 746 (Fla. 1st DCA 1991) (refusing to allow a defendant who is represented by counsel on direct appeal to file a *pro se* motion for rehearing).

Wherefore, the U.S. Appeals Court's order denying Rocha a COA on Ground One based on his failure to exhaust remedies is in conflict with § 2254(b)(1)(A), (c); and *O'Sullivan v. Boerckel*, 526 U.S. 838 (1999), and that conflict is such a departure by a lower court, as to call for an exercise of this Court's supervisory power.

QUESTION THREE

Whether the U.S. Appeals Court's order denying Rocha a COA on Grounds Two-Eight based on his ineffective-assistance claims having no merit is in conflict with *Martinez v. Ryan*, 566 U.S. 1 (2012), and 28 U.S.C. § 2254(d)(1), (2), and whether that conflict is such a departure by a lower court, as to call for an exercise of this Court's supervisory power?

This Court has held that there is no constitutional right to counsel in a state postconviction proceeding, and the absence of, or ineffective assistance of, state postconviction counsel generally cannot establish cause to excuse a procedural default. *Coleman v. Thompson*, 501 U.S. 722, 752-54 (1991). However, in *Martinez*, this Court established a limited exception to this general rule, that only applies to ineffective-assistance claims. This Court held that inadequate assistance of counsel or the lack of counsel at the initial-review collateral proceedings "may establish cause for a prisoner's procedural default of a claim of ineffective assistance at trial." *Martinez*, 566 U.S. at 14. The *Martinez* exception requires the ineffective-assistance

claim to be a “substantial” one, which is to say that a petitioner must demonstrate that the claim has “some merit.” *Martinez*, at 14.

In Grounds Two through Eight, Rocha raised seven unexhausted ineffective-assistance claims relying on the *Martinez* exception. In denying Rocha’s application for an issuance of a Certificate of Appealability, the U.S. Appeals Court stated that the claims underlying his ineffective-assistance claims are state law claims “denied on the merits.” Therefore “Rocha failed to show that his ineffective-assistance claims had some merit that would warrant the excusal of his procedural default.” (Appellate Court’s Order at 3-4)

As Rocha stated in his habeas petition, the state courts have procedurally denied every claim he has raised. The reason for this is that the federal authorities, shortly after he received his sentence, transferred him to Texas. He was held in Texas throughout his entire direct appeal process. After returning to the State of Florida’s custody, Rocha received his trial transcripts in 2010, years after the state’s time limit expired for raising ineffective-assistance claims. This is the reason every claim Rocha raised in state court was either denied as *untimely* or dismissed as *unauthorized*.

Contrary to the U.S. Appeals Court’s order denying Rocha a COA, there has *never* been an adjudication on the merits of any of the claims underlying the ineffective-assistance claims raised in Rocha’s habeas petition. Therefore, it is a legal impossibility to determine whether or not a claim has some merit if no state or federal court has ever addressed the merits of that claim. Additionally, the U.S. Appeals Court categorized the underlying claims in Grounds Two through Eight as being state law claims. This is in direct conflict with the order denying Ground One.

In Rocha's habeas petition, he raised in Grounds One and Two the same underlying claim. In Ground One, the claim is framed as a federal due process claim. In Ground Two, it is framed as an ineffective-assistance claim. The U.S. Appeals Court's order stated that Ground One is a federal due process claim not ruled on the merits and unexhausted. Then it stated that Ground Two is a state law claim ruled on the merits and exhausted. The U.S. Appeals Court's order denying Rocha a COA is an oxymoron. Furthermore, had a state court adjudicated any of these claims on the merits, the order of denial would have had to be based on the state court's decision: (1) *not* being contrary to, or an unreasonable application of, clearly established federal law, as determined by the Supreme Court, or (2) *not* being based on an unreasonable determination of the facts in light of the evidence presented in the state court proceeding. See 28 U.S.C. § 2254(d)(1), (2). The U.S. District Court made no such findings, nor could it.

And finally, if the U.S. Appeals Court is correct, in that, Grounds Two through Eight are not substantial claims based solely on procedural denials, then it has effectively negated the *Martinez* exception.

Wherefore, the U.S. Appeals Court's order denying Rocha a COA on Grounds Two through Eight based on his ineffective-assistance claims having no merit is in conflict with *Martinez v. Ryan*, 566 U.S. 1 (2012), and 28 U.S.C. § 2254(d)(1), (2), and that conflict is such a departure by a lower court, as to call for an exercise of this Court's supervisory power.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Daniel A. Reichen

Date: October 27, 2023