

Supreme Court

No. 2022-232-M.P.

Richard Paiva :
v. :
State of Rhode Island. :

ORDER

The petition for writ of certiorari, as prayed, is denied.

This matter shall be closed.

Entered as an Order of this Court this *13th* day of *October 2023*.

By Order,

/s/ Meredith A. Benoit
Clerk

STATE OF RHODE ISLAND

PROVIDENCE, SC.

SUPERIOR COURT

RICHARD PAIVA

VS.

PM/2022-00557

STATE OF RHODE ISLAND

JUDGMENT

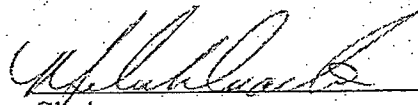
For the reasons set forth by this Court in its Bench Decision on June 30, 2022, denying petitioner Richard Paiva's Postconviction Relief Application after a hearing, Judgment is hereby entered in favor of the State of Rhode Island in this case.

ENTER:

BY ORDER:



Robert D. Krause
Associate Justice


Clerk 6-30-22

Dated: June 30, 2022

cc: Glenn Sparr, Esq.
Judy Davis, Esq.

STATE OF RHODE ISLAND

PROVIDENCE, Sc.

SUPERIOR COURT

RICHARD PAIVA

VS.

STATE OF RHODE ISLAND

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PM-2022-00557

HEARD BEFORE

THE HONORABLE JUSTICE ROBERT D. KRAUSE

ON JUNE 30, 2022

APPEARANCES:

GLENN SPARR, ESQUIRE FOR THE PETITIONER
JUDY DAVIS, ASSISTANT ATTORNEY
GENERAL..... FOR THE STATE

ELLEN McNAMARA, RPR
COURT REPORTER

C E R T I F I C A T I O N

I, Ellen McNamara, hereby certify that the succeeding pages, 1 through 15, are a true and accurate transcript of my stenographic notes, produced to the best of my ability, with all parties complying with Executive Order 20-52, No. 9, issued by the Governor of the State of Rhode Island on July 3, 2020, requiring face masks.

McNamara

ELLEN MCNAMARA, RPR
Court Reporter

Thursday, June 30, 2022

MORNING SESSION

(Due to Executive Order 20-52, No. 9, issued by the Governor of the State of Rhode Island on July 3, 2020, all persons must wear cloth mask coverings in public. The following is a transcription of my steno notes taken in accordance with said Executive Order.)

THE CLERK: Your Honor, the matter before the Court, PM-2022-00557, Richard Paiva versus the State of Rhode Island.

Mr. Paiva, would you please state your name for the record?

THE PETITIONER: Richard Paiva.

THE CLERK: Your date of birth?

THE PETITIONER: 10-10-72.

THE CLERK: Your address?

THE PETITIONER: At the ACI.

THE CLERK: Thank you.

Counsel, please identify yourselves for the record, starting with the State, please.

MS. DAVIS: Judy Davis, for the State.

MR. SPARR: Good morning, Your Honor. Attorney Glenn Sparr, on behalf of Mr. Paiva.

THE CLERK: The matter is before the Court for a post-conviction relief.

1 MR. SPARR: Judge, if I can just start. I apologize
2 if the Court was going to speak.

3 Mr. Paiva has indicated to me this morning that he
4 would like to proceed pro se in this matter. I don't
5 know the Court's position on that. I did tell him that
6 the Court was aware in prior filings, as well as his
7 recent filings of his two recent motions of the Court, I
8 don't know if the Court would like to address him on the
9 representation issue. I'll leave it entirely up to the
10 Court.

11 THE COURT: Mr. Paiva, you have a problem with
12 letting Mr. Sparr represent you?

13 THE PETITIONER: Yes, Your Honor.

14 THE COURT: Why?

15 THE PETITIONER: I've asked him several times to
16 file a motion to transfer the case to my sentencing
17 judge, and the motion to transfer the case has never been
18 filed.

19 THE COURT: What else?

20 THE PETITIONER: I've also asked him if I could have
21 some input into the -- into the objection before he filed
22 it, and I had no input before --

23 THE COURT: The input into what objection?

24 THE PETITIONER: The objection to the motion to
25 dismiss.

1 THE COURT: That's why we are here, Mr. Paiva, to
2 hear whether or not there is a basis to grant the motion
3 to dismiss, or whether there is a basis to grant your
4 application for post-conviction relief. We're going to
5 talk about the objection. That's not going to be an
6 issue. You can worry not about that.

7 Are those your only two issues?

8 THE PETITIONER: Yeah. I was going to ask the Court
9 if I could file my own objection pro se.

10 THE COURT: What kind of an objection?

11 THE PETITIONER: A more detailed objection.

12 THE COURT: More detailed than what the Rhode Island
13 Supreme Court may have offered?

14 THE PETITIONER: A stronger argument than just a
15 one-page objection.

16 THE COURT: A stronger argument to upset the ruling
17 of the Rhode Island Supreme Court; is that what you want
18 to do?

19 THE PETITIONER: No. I found another Supreme Court
20 ruling that overruled the one that the State presented
21 that -- that's not in Mr. Sparr's objection.

22 THE COURT: What ruling is that, Mr. Paiva?

23 THE PETITIONER: Well, the State cited
24 State v. Miguel, and their position is that the Rhode
25 Island Supreme Court has limited the interest of justice

1 exception to only two issues, actual innocence and newly
2 discovered evidence.

3 THE COURT: Okay. We can talk about that until the
4 sun comes up, or down, depending upon what time of day it
5 is.

6 What else have you got?

7 THE PETITIONER: And two years later, 2009, the
8 Rhode Island Supreme Court actually came up with --

9 THE COURT REPORTER: Came up with what? I can't
10 hear you. Came up with what?

11 MR. SPARR: Ferrell v. Wall.

12 THE PETITIONER: And the Rhode Island Supreme Court
13 commented in that case that the interest of justice
14 exception has never definitively been undefined and
15 limited in any sense.

16 THE COURT: I will address that, too.

17 THE PETITIONER: Excuse me?

18 THE COURT: I will address that, as to the interests
19 of justice. I will speak to you about that as well.

20 Are those the only two things?

21 THE PETITIONER: I just -- I just wanted to write a
22 more detailed --

23 THE COURT: You're not going to get more time to
24 write a more detailed brief. I will speak to you about
25 your concerns about the interest of justice. It's a

1 losing argument, but I'll tell you why in a minute.
2 We'll start with Mattatall and move on from there. But
3 it's quite beyond that.

4 And as far as your request that the case be
5 transferred to the sentencing judge? Is that what you
6 want?

7 THE PETITIONER: Yes, Your Honor.

8 THE COURT: Who was the sentencing judge?

9 THE PETITIONER: Judge Darigan.

10 THE COURT: No longer works here. He retired.

11 THE PETITIONER: He came out of retirement.

12 THE COURT: No, he didn't come out of retirement.
13 He comes out if the Chief Justice of the Rhode Island
14 Supreme Court lets him come out. And right now he's not
15 signed up to come out. He's retired. He's on a beach
16 somewhere.

17 THE PETITIONER: He's in Kent County doing
18 post-convictions.

19 THE COURT: He's not doing this case. He's assigned
20 elsewhere. He's not in Providence. And he's not doing
21 this case. This case was assigned to me. This isn't
22 even your first post-conviction relief application, is
23 it?

24 THE PETITIONER: It's the first one that's going
25 forward on the merits. The other one I withdrew. It

1 never went forward.

2 THE COURT: So, yes, you did, because Judge Lanphear
3 entered a judgment in it.

4 THE PETITIONER: That one got converted -- it got
5 withdrawn and converted to a motion for -- I filed that
6 motion -- the filed the post-conviction and it got
7 converted -- it got withdrawn and converted to a
8 motion -- it would be on the record. It was a motion --
9 it got converted to something else, but that never went
10 forward on the merit. So that didn't count as my first
11 post-conviction. It got withdrawn and it was converted
12 to a motion -- I forget what they called it. I was
13 trying to get somebody --

14 THE COURT: Don't bother. I have a copy of Judge
15 Lanphear's judgment, it reads as follows: "The motion
16 for post-conviction relief is withdrawn."

17 THE PETITIONER: Yeah, it was withdrawn.

18 THE COURT: Okay. So we'll put that aside. Okay?

19 THE PETITIONER: Yeah. Yes, sir.

20 THE COURT: Now we'll deal with your problems that
21 you are raising at this point. Okay?

22 THE PETITIONER: Yes.

23 MR. SPARR: Judge, may I, just for the record, so
24 it's abundantly clear, just to address one thing my
25 client has addressed. He had -- I had represented

1 Mr. Paiva on one of the previous post-convictions that
2 was withdrawn, and then he subsequently filed this.

3 There was no need for me to file a motion to transfer the
4 case because Mr. Paiva has filed three other motions and,
5 quite frankly, I didn't file it because it's already been
6 filed. So there was really no need for me to file my
7 motion. He and I discussed it. I told him that I would
8 make the argument. But I didn't file a motion in my hand
9 because the motion has already been filed with the Court,
10 it's up on the 4th, motion to transfer the case to Judge
11 Darigan.

12 THE COURT: The motion to transfer the case is
13 denied. Period. End of story, Mr. Paiva. This case
14 stays with me on my desk. It's been assigned to me from
15 day one. It stays here. Besides which, I tried this
16 case.

17 Right?

18 THE PETITIONER: Okay. I mean, okay.

19 THE COURT: Who tried the case?

20 THE PETITIONER: Excuse me?

21 THE COURT: You went to trial in this case?

22 THE PETITIONER: No, sir.

23 THE COURT: This was a plea?

24 THE PETITIONER: Yes, sir.

25 THE COURT: Okay. Judge Darigan took the plea?

1 THE PETITIONER: Yes, sir.

2 THE COURT: The case was assigned to me. I don't
3 transfer cases. When the case was assigned to me, Judge
4 Darigan had been retired. He comes back sporadically.
5 The case stays right here on my desk. It's not being
6 transferred anywhere. The request is denied.

7 Your motion or your concern about the State's
8 objection that the exception that Ms. Davis put in her
9 paper to dismiss, citing the Miguel case, she writes,
10 "The Rhode Island Supreme Court has suggested that this
11 exception, the interest of justice exception is only
12 applicable in cases where there is actual innocence or
13 newly-discovered evidence."

14 We don't even have to get there. The Rhode Island
15 Supreme Court has kicked your case out twice. The very
16 issue that you have raised in your post-conviction relief
17 has been addressed by the Rhode Island Supreme Court.
18 You didn't like that decision so you asked them to
19 reconsider it, didn't you?

20 THE PETITIONER: One time it went in front of them
21 and in my post-conviction -- that's the whole point of my
22 post-conviction --

23 THE COURT: Answer my question. You asked them to
24 reconsider their decision, didn't you?

25 THE PETITIONER: In my argument with the Supreme

1 Court --

2 THE COURT: You want to see your own handwriting?
3 I'll show it to you.

4 THE PETITIONER: Yes, I brought the issue to the
5 Supreme Court. Yes.

6 THE COURT: You asked them to reconsider their
7 ruling, didn't you?

8 THE PETITIONER: Yes.

9 THE COURT: And they said no, didn't they?

10 THE PETITIONER: The clerk did, yes.

11 THE COURT: No. The clerk did it on behalf of the
12 Court. The Court said no. The Court ordered that
13 request denied. So you already had two bites at the
14 apple upstairs on this issue, didn't you? Right?

15 THE PETITIONER: If that's the way you want to put
16 it, yeah.

17 THE COURT: How would you like to put it? You had
18 more than two?

19 THE PETITIONER: I'm asking for -- under the
20 interest of justice exception, I'm asking to look at it
21 because it's an illegal sentence.

22 THE COURT: You want me to tell the Supreme Court
23 that they made a mistake in your case, right?

24 THE PETITIONER: If you were to look -- if you were
25 to take a look at the merits of my case, I'm asking you

1 to take a look at it. Yes, Your Honor.

2 THE COURT: The merits of your case have already
3 been decided, twice. The Supreme Court said no once and
4 they said no again. And now you want me to tell the
5 Supreme Court that they made a mistake.

6 THE PETITIONER: I'm just asking you to take a look
7 at it because my post-conviction. I'm alleging that that
8 decision was an erroneous decision.

9 THE COURT: And you asked them to take a look at it
10 and they said no.

11 THE PETITIONER: And under the interest of justice
12 exception, if you find that an illegal sentence -- an
13 allegation of an illegal sentence, you would be able to
14 look at it. I'm just asking you to look at it, that's
15 all. I'm not asking you to find that it's an illegal
16 sentence. I'm just asking you to take a look at it under
17 the interest of justice exception.

18 I'm just saying that an illegal sentence should be
19 an exception under the interest of justice exception.
20 Just like somebody arguing actual innocence, I'm saying
21 an illegal sentence is -- somebody shouldn't do an
22 illegal sentence. Just like somebody shouldn't do --
23 somebody shouldn't serve time in prison that's actually
24 innocent. I'm saying somebody shouldn't serve an illegal
25 sentence, that's like the same -- should be in the same

1 category of the interest of justice exception.

2 THE COURT: But the State says to you, Mr. Paiva,
3 that you did not receive an illegal sentence because the
4 Supreme Court has twice said it wasn't illegal.

5 THE PETITIONER: And I'm alleging in my
6 post-conviction that that was an erroneous decision.

7 THE COURT: Well, I'm very sorry, Mr. Paiva, I have
8 no ability to tell the Supreme Court that they made a
9 mistake.

10 MR. SPARR: Judge, I think, if I may. I think
11 what -- what I put in my objection and what I argue is
12 that there is a lot of truth to the argument that the
13 State makes, but where I differ, and where I think
14 Mr. Paiva differs is that there is a carved-out -- there
15 are a few carved-out exceptions to the rule, one of them
16 is interest of justice.

17 Mr. Paiva, whether -- whether the Court, Your Honor,
18 or the Supreme Court ultimately find that it is or is not
19 an illegal sentence is an issue to be determined in his
20 eyes. Nothing can do more in the interest of justice
21 than an illegal sentence, which is why I analogize it to
22 Rule 35. There is -- Rule 35, the language says, an
23 illegal sentence can be corrected at any time. Forget
24 about the 120-day filing requirement or day since the
25 sentence is effectuated.

1 So the argument that I make on his behalf, and I
2 have discussed with him, is an illegal sentence is
3 analogized to an actual innocence claim and therefore
4 there can be nothing more in the interest of justice than
5 an illegal sentence. Whether it's an illegal sentence or
6 not is not the issue necessarily for today. The issue
7 today is the State's motion, and nothing could be more in
8 the interest of justice than this Court correcting an
9 illegal sentence.

10 THE COURT: I will hear from the State.

11 Sit down, gentlemen.

12 MS. DAVIS: Your Honor, I -- the State does not have
13 a lot to add to what the Court has already suggested.

14 Mr. Paiva basically filed a motion to correct a
15 sentence, which was the issue that went before the
16 Supreme Court, which they held that the sentence was
17 completely appropriate, that he was ordered to a 15-year
18 habitual offender sentence and he shall serve ten years
19 of that.

20 At the hearing before Judge Matos, which I just took
21 a look at, which petitioner provided in his initial
22 pleading, which was heard in 2017 before Judge Matos, the
23 Court suggested that Mr. Paiva filed the motion to
24 correct sentence claiming that that was an improper
25 sentence set by Judge Darigan, that indicated that he

1 will not be parolable under the appropriate statute, to
2 which Mr. Paiva said, Correct. The Court said, Is there
3 anything else you want to say? He said, No. He denied
4 the motion.

5 Basically said, The docket clearly states that the
6 defendant entered a plea of nolo contendere as a habitual
7 offender on 9/23/2010. Judge Darigan sentenced him as a
8 nonparolable habitual offender, which is appropriate
9 under the applicable statute, Section 12-19-21(b), which
10 specifically states that the Court shall order a
11 defendant to serve a minimum number of years of the
12 sentence before he or she becomes eligible for parole.
13 Motion denied.

14 Mr. Paiva objected to that, said that that was, you
15 know, not the case that said there was no date set for
16 parole. When, in fact, the Court -- Judge Matos said
17 yes, there was. Ten-year sentence nonparolable, the
18 additional five years can be paroled from.

19 So there's nothing in his application for
20 post-conviction relief which argues anything differently
21 than what was already heard by the Supreme Court in this
22 case. And by the post-conviction relief statute, under
23 10-9.18, the doctrine *res judicata* controls, in that an
24 issue that has already been decided cannot be raised once
25 again. And that is exactly what Mr. Paiva is trying to

1 do, and we would suggest that it is barred by that
2 doctrine and should be dismissed.

3 THE COURT: The doctrine *res judicata* forecloses
4 your arguments in their entirety, Mr. Paiva.

5 See Barros v. State, 180 A.3d 823, 831-832, Rhode Island
6 Supreme Court, 2018, Hall v. State, 60 A.3d 928, 931-932,
7 Rhode Island Supreme Court 2013, noting that 10-9.1-8,
8 which is the post-conviction relief statute, codifies the
9 doctrine of *res judicata* to PCR petitions and bars the
10 relitigation of any issue that has been or should have
11 been -- may I emphasize, Mr. Paiva, the language "should
12 have been" litigated in a prior proceeding, including a
13 direct appeal.

14 See State v. Burke, 876 A.2d 1109, Page 1113, Rhode
15 Island Supreme Court, 2005, *Res judicata* bars parties who
16 have had their day in court from adjudicating issues that
17 either were already decided or should have been raised in
18 a previous action. And in Martinez v. State, 128 A.3d
19 395, Page 396, Rhode Island Supreme Court, 2015, the
20 Supreme Court said, "Our jurisprudence on this issue is
21 quite firm."

22 Furthermore, a PCR applicant is rarely permitted to
23 assert an otherwise estopped ground for relief, and,
24 "only if it is in the interest of justice," Hall, 60 A.3d
25 991 to 932, quoting Ferrell, 971, A.2d 615, 621 (2009).

1 And see Mattatall, 947 A.2d 905, noting that the interest
2 of justice exemption in the statute is a "very limited
3 and narrow exception in this otherwise absolute bar to
4 raising claims which were finally adjudicated or not so
5 raised."

6 Your arguments fail to surmount that high bar. The
7 Supreme Court in its decision, State v. Paiva, reported
8 at 200 A.3d 665, (2019), absolutely takes care of the
9 proceedings that are before the Court today. They made
10 it quite clear that the sentence that was imposed was
11 absolutely proper under the statute.

12 The application for post-conviction relief is
13 denied. The defendant is remanded. Judgment shall enter
14 in favor of the State.

15 The defendant shall be remanded into custody.

16 (Proceedings adjourned at 11:31 a.m.)
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