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ATTORNEY FOR PETITIONER SAMUEL VILLEGAS LOPEZ

IN THE SUPERIOR COURT OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

STATE OF ARIZONA)	
)	No. CR0000-163419
Respondent,)	
)	SUPPLEMENT TO PETITION
v.)	FOR POSTCONVICTION RELIEF
)	
SAMUEL VILLEGAS LOPEZ)	
)	
Petitioner.)	
_____)	

COMES NOW, Samuel Lopez, and offers this following supplemental argument in support of his Petition for Post-Conviction Relief.

1. On March 20, 2012, the United States Supreme Court issued its decision in *Martinez v. Ryan*, Case No. 10-1001. In that case, the Court held, for the first time, that counsel in initial-review collateral proceedings who fail to perform consistent with professional norms and as a result of negligence, inadvertence, or ignorance fail to raise claims of ineffective assistance of trial counsel are themselves ineffective and the prisoner may be excused from failing to raise such claims at an earlier time.

2. To be sure, the decision in *Martinez*, a case arising from Arizona, dealt with the federal question of what constitutes cause for purposes of procedural bar analysis in federal habeas, but the logic of *Martinez* should apply with equal force to the Arizona Rules of Preclusion.

3. The concerns expressed in *Martinez* are manifest in this case. The Court wrote, “When an attorney errs in initial-review collateral proceedings, it is likely that no state court at any level will hear the prisoner’s claim.” *Id.*, Slip Op. at 7. The Court observed further, “And if counsel’s errors in an initial-review collateral proceeding do not establish cause to excuse the procedural default in a federal habeas proceeding, no court will review the prisoner’s claims.” *Id.* Such a result, the Court concluded is inequitable.

4. That is exactly what happened here. Contract counsel appointed to represent Mr. Lopez in his capital postconviction proceedings had never handled a capital case before. He did not know how to investigate or prepare such a case. And in fact, he did not even attempt to conduct the most basic sort of investigation required in such a case. Inexplicably, and seemingly as the result of ego or concern over losing his contract with the county, the appointed contract counsel spurned the volunteer assistance of experienced counsel who had in just three months amassed over 1500 pages of social history documents, and who had drafted pleadings that would have preserved for federal review the very claim of ineffective assistance of counsel presented here.

5. It is no defense to say that such motions would not be granted. As the Supreme Court wrote: “Effective trial counsel preserves claims to be considered on appeal ... and in federal habeas proceedings.” *Id.* at 9 (internal citations omitted).

6. Mr. Lopez has provided this Court with ample evidence establishing that appointed contract counsel in this case utterly failed to abide by the longstanding prevailing professional norms. He acted in direct defiance of his client’s expressed wishes, documented in this court, that his lawyer follow the advice of the project lawyers. Worse, he undermined Lopez’s claim by representing, falsely as it turns out, that Mr. Lopez’s family had refused to sign affidavits. In fact, contract postconviction counsel never met or spoke to Lopez’s family.

7. To be sure, Mr. Lopez’s family members have suffered terrible hardships and legal troubles. But that four of the nine children born to Mrs. Lopez end up in prison, and that the others struggle to survive every day as the result of the terrible trauma and scars born of the torture they experienced at the hands of their violent, mentally ill father, is not only rich, but important, mitigation. A lawyer faced with a client whose family isn’t knocking down his door, has a duty to ask why and then to go and investigate and discover the reasons for the family’s reticence. What he would have found had he investigated is a terribly poor and fractured family who suffer daily from their wounds and resulting mental illnesses. He would have found a family, all of whom were born on American soil, but who never really felt like this was their home. He would have found a family who does not believe that the American judicial system can help them or cares about what they have to say. It is the lawyer’s job to first investigate and find those facts

and then bring that battered, broken and isolated family to the attention of the court and to tell their important story.

8. That did not happen here and it was not the fault of Mr. Lopez who is “unlearned in the law.” See *Martinez*, at 9. Claims of ineffective assistance of trial counsel require investigation and the gathering of evidence which “while confined a prisoner is in no position to develop[.]” *Id.* Lopez’s counsel plainly failed to conduct that investigation in “the first designated proceeding for a prisoner to raise a claim of ineffective assistance of counsel at trial.” *Id.*, p. 8. As the Supreme Court concluded in *Martinez*, *supra*:

Without the help of an adequate attorney, a prisoner will have [] difficulties vindicating a substantial ineffective-assistance-of-trial- counsel claim. Claims of ineffective assistance at trial often require investigative work and an understanding of trial strategy. When the issue cannot be raised on direct review, moreover, a prisoner asserting an ineffective-assistance-of-trial-counsel claim in an initial-review collateral proceeding cannot rely on a court opinion or on the prior work of an attorney addressing that claim. *Halbert [v. Michigan]*, 545 U.S. 605, 619 (2005)]. To present a claim of ineffective assistance at trial in accordance with the State’s procedures, then, a prisoner likely needs an effective attorney.

Id., p. 9. Lopez, like *Martinez*, had no aid from “an adequate attorney.” As Lopez explained in his petition and in his reply to Respondent’s response, appointed postconviction counsel Doyle entirely failed in his duties to competently represent Lopez in these key proceedings. As a result, the Arizona District Court ruled Lopez’s meritorious ineffective trial counsel claims that were discovered following an investigation that Doyle should

have, but like Martinez's counsel, failed to conduct, were procedurally defaulted, and as a result have never been adjudicated.

9. Lopez has shown that his ineffective trial counsel claims are substantial, and his postconviction counsel utterly failed to provide him effective representation during those important proceedings—"the first occasion" Lopez had "to raise a claim of ineffective assistance at trial." *Martinez, supra*, p. 5. Based on the facts presented in his petition, and here, Doyle's gross ineffectiveness in Lopez's postconviction proceedings established cause to allow Lopez to overcome his earlier procedural default. *Id.*, p. 10, 14.

WHEREFORE, for all the foregoing reasons, Mr. Lopez requests this Court to grant him an evidentiary hearing on the issues presented in his Petition for Post-Conviction Relief and his defense to the State's allegation of preclusion; to set aside his unconstitutional sentence; and order any other relief that this Court deems equitable and just.

Respectfully submitted this 21st day of March, 2012.

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Copy of the foregoing
emailed this 21st day of
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