

Case Background on Barry Jones
Shinn v. Ramirez & Jones, 20-1009 (SCOTUS OT 2021)

Barry Jones has spent decades on Arizona's death row despite compelling evidence of his innocence and two GOP-appointed federal judges authoring opinions concluding that the evidence against him is so weak that he must be released or retried. The unreliable evidence supporting his conviction resulted from a combination of shoddy defense lawyering, myopic police work, junk science, and unreliable eyewitnesses. Two federal courts have now granted him habeas corpus relief, and the State of Arizona is appealing to the Supreme Court to preserve his capital sentence.

After Mr. Jones's state-appointed trial lawyer failed to do even the most basic investigation necessary to assess the reliability of the evidence against him, his state-appointed postconviction lawyer similarly fell short. The postconviction lawyer failed to argue that Mr. Jones's trial lawyer was ineffective. Neither lawyer appointed by the Arizona courts conducted any investigation, and the prosecution's readily questionable version of events went virtually unchallenged.

It was only when the case entered federal court at the federal habeas corpus stage that Mr. Jones's new lawyers investigated the case, discovering substantial medical, forensic, and lay witness evidence that had been available all along establishing his innocence. Jones argued in federal court that his trial lawyer should have investigated and presented the evidence of his innocence, and that the lawyer's failure to do so violated Mr. Jones's Sixth Amendment right to effective assistance of counsel.

Mr. Jones's case was initially dismissed by the federal habeas court on the ground that he had failed to first present his claim asserting the ineffectiveness of his trial lawyer in state postconviction proceedings. The district court refused to consider Jones's new evidence of innocence, all because of the neglect of his state postconviction counsel in failing to develop it in state court.

Then in 2012, the United States Supreme Court held in *Martinez v. Ryan* that federal courts can consider a claim charging ineffective assistance of trial counsel—even if the claim was not first presented in state postconviction

proceedings—so long as the failure to raise the claim in state court was the result of ineffective assistance of state postconviction counsel.

Martinez meant that the district court had erred in previously dismissing Mr. Jones’s habeas claim. Applying *Martinez*, the Republican-appointed federal habeas judge held an evidentiary hearing to determine whether Mr. Jones’s state postconviction counsel was ineffective and, if so, whether that ineffectiveness prejudiced Mr. Jones. The court answered in Mr. Jones’s favor on both questions and allowed him to pursue his claims of trial counsel’s ineffectiveness. On the basis of the evidence developed regarding Mr. Jones’s innocence, the court vacated Mr. Jones’s conviction. A unanimous panel of the Ninth Circuit affirmed in relevant part, agreeing that given the ineffectiveness of counsel that denied him a fair trial and given the strong evidence supporting his innocence, Mr. Jones’s murder conviction must be overturned.

The State of Arizona then sought Supreme Court review. The Supreme Court granted certiorari in this case and that of another Arizona prisoner, David Ramirez. The case will likely be set for a consolidated oral argument in early November. The Court will consider whether the federal habeas court was permitted to consider the evidence undermining the prosecution’s case against Mr. Jones or whether that evidence instead was blocked by a provision of the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA).

The provision at issue, 28 U.S.C. § 2254(e)(2), bars a federal court from considering evidence at the habeas stage if the prisoner “failed to develop” it in state court. This language has long been understood to cover only those cases in which a prisoner was *at fault* for not presenting the evidence in state court. *Martinez* itself recognized, however, that a prisoner who received ineffective representation both at trial and on state review was not at fault and was “in no position to develop” the evidence supporting his claim that trial counsel was ineffective. *Martinez*, 566 U.S. at 12. Accordingly, all of the federal courts of appeals to consider the issue have, like the Ninth Circuit in Mr. Jones’s case, deemed section 2254(e)(2) inapplicable to claims that satisfy *Martinez*, where there was ineffective counsel both at trial and on review in state court.

If the Supreme Court rules against Mr. Jones, prisoners who received ineffective counsel in both rounds of state court proceedings will be barred from having a federal court consider evidence demonstrating innocence and other serious constitutional errors in their cases.

The issue before the Supreme Court may seem technical, but the case has potentially devastating ramifications for prisoners across the country. In essence, this case presents the question whether a state prisoner who has the misfortune of having both an ineffective trial lawyer and an ineffective postconviction lawyer (appointed to investigate trial counsel's mistakes) is barred from having a federal court consider the evidence those lawyers neglected to find, no matter how compelling the evidence or how egregious counsel's errors. The rule Arizona asks the Court to adopt would gut the rule established in *Martinez*, allowing convictions like Mr. Jones's to be virtually unchallengeable and creating a serious risk that innocent people will remain in prison and could be executed.

The federal district court found substantial evidence of Mr. Jones's innocence that his trial and postconviction lawyers failed to investigate, including:

- Medical and forensic evidence that trial counsel could and should have discovered showing that all of the victim's injuries were sustained before the narrow window of time the state's case against Mr. Jones required. (District Court decision pp.63-66)
- Compelling impeachment evidence that trial counsel should have used against the state's medical examiner to challenge his testimony, including his own pretrial statements that the victim's injuries predated the time the state said she was alone with Mr. Jones. (District Court opinion pp.71-72)
- Evidence that "[t]he police investigation was colored by a rush to judgment and a lack of due diligence and thorough professional investigation," resulting in law enforcement's failure to investigate several alternate – and more likely – suspects. (District Court opinion p.76)

The police rushed to judgment against Mr. Jones after Rachel Gray's tragic death

On May 2, 1994, four-year-old Rachel Gray died. Her body showed signs of both physical and sexual abuse.

Rachel's mother, Angela Gray, had been living in Mr. Jones's trailer with her three children for a few weeks. Angela had a history of abusing her children; there were reports that Rachel's older siblings had abused her physically and sexually; and Angela's ex-boyfriend had been suspected of sexual abusing the kids. (District Court opinion pp. 43-46) Nevertheless, the police immediately arrested Mr. Jones and conducted an investigation laser-focused on supporting charges against him. Mr. Jones was convicted of felony murder and sentenced to death.

The prosecutors' case against Mr. Jones turned on its theory that he had been alone with Rachel during a three-hour window on May 1, 1994, during which they contended all of her injuries occurred. Mr. Jones's trial lawyer did virtually nothing to challenge that theory. However, as the federal district court explained in granting habeas corpus relief, "there were several significant red flags that should have objectively and reasonably alerted counsel to the need to investigate the medical evidence regarding the timing of Rachel's injuries." (District Court decision p.62)

Mr. Jones's ineffective state-appointed trial and postconviction lawyers failed to investigate and present a wealth of available evidence supporting his innocence.

Mr. Jones's trial lawyer did almost nothing to investigate the prosecution's case, despite the fact that the evidence was circumstantial and Mr. Jones maintained his innocence throughout the proceedings. Then, at the state postconviction stage, when Mr. Jones's lawyer should have done the investigation trial counsel failed to do and should have asserted trial counsel's ineffectiveness as grounds for relief, the postconviction lawyer himself failed to investigate the weaknesses in the state's case or argue that the trial lawyer should have done so. It was only years later, when the case reached federal court, that new counsel adequately investigated the case and found what was available all along to support Mr. Jones's unwavering claim of innocence.

Martinez enabled Mr. Jones to raise trial counsel's ineffectiveness in federal court.

In *Martinez v. Ryan*, 566 U.S. 1 (2012), the Supreme Court held that if, as in Arizona, the prisoner's first opportunity to raise trial counsel's ineffectiveness is at the state postconviction stage, and postconviction counsel ineffectively fails to assert a substantial claim of trial counsel's errors, then that claim is not barred from federal habeas review. *Martinez* stands as a vanguard assuring that a substantial claim demonstrating that a prisoner was denied his Sixth Amendment right to effective trial counsel will be heard.

Here, the federal district court found that Mr. Jones's postconviction counsel ineffectively failed to raise substantial claims that his trial counsel was ineffective for not investigating and challenging the State's case against him. (District Court Opinion p.85-86) "It is difficult to justify [counsel's] decision to forego any investigation into the State's strongest evidence of guilt," the court concluded. (*Id.* p.87) Thus, the court found, *Martinez* allowed consideration of the merits of Mr. Jones's otherwise defaulted claims.

Based on the evidence state-court counsel should have discovered and presented, the federal habeas court vacated Mr. Jones's wrongful conviction.

The federal district court held an evidentiary hearing at which Mr. Jones presented evidence that was readily available at the time of his trial. Rachel's death was a tragedy, and it was clear that someone grievously mistreated her. But there was ample available evidence supporting "the possibility that others harmed Rachel" (District Court opinion at 63), including her mother, her brother, her sister, her mother's ex-boyfriend, and neighbor children.

Medical and forensic evidence that was readily available strongly indicated that none of Rachel's injuries were sustained during the time she was alone with Mr. Jones on May 1, 1994. Some may have occurred days or weeks earlier, even before she began living at Mr. Jones's home, and the fatal wound had to have occurred considerably before prosecutors claimed Mr. Jones inflicted it. In addition to offering independent expert evidence of these facts, trial counsel also could have impeached the State's medical examiner with his own earlier

statements that Rachel's injuries were sustained earlier than the prosecution's theory required.

The district court concluded: "All of these circumstances would have indicated to any reasonable attorney that a medical investigation into the timing of Rachel's injuries was necessary, but counsel in this case failed to conduct a reasonable investigation." (District Court decision p.64) The same circumstances should have led counsel to investigate the bloodstain evidence on which the State relied to claim Mr. Jones had raped and assaulted Rachel in his van the day before she died and to impeach the State's expert with his earlier statements undermining the prosecution's medical timeline. (District Court decision p.66, 74).

The district court also concluded that counsel's errors affected the outcome of the trial. "The new evidence presented in these proceedings undermines considerably the confidence in the outcome of the trial court proceedings. Had counsel conducted an adequate investigation of the medical, physical, and eyewitness testimony, he could have presented an extremely different evidentiary picture than that shown to the jury at [Mr. Jones's] trial." (District Court opinion p.73)

The district court noted that "the police investigation was colored by a rush to judgment and a lack of due diligence and thorough professional investigation." (District Court opinion p.76) An effective lawyer could have and would have "brought this to the jury's attention, casting further doubt on the strength of the State's case" against Mr. Jones. (*Id.*) Thus, "there is a reasonable probability that absent counsel's failure to investigate and offer evidence regarding the timeline of Rachel's injuries, at least one reasonable juror would have had a reasonable doubt as to [Mr. Jones's] guilt." (*Id.*)

Arizona seeks to effectively nullify *Martinez* by barring consideration of new evidence.

The State of Arizona appealed the grant of relief to Mr. Jones, arguing that the district court should not have considered new evidence supporting Mr. Jones's claims even if *Martinez* permitted federal review of those claims. According to the State, the lack of development of the facts supporting his claims in state court (a failure that resulted from the very ineffectiveness of his state postconviction

lawyer that triggered *Martinez's* narrow exception) should be attributed to Mr. Jones and should bar the federal court from considering new evidence under a provision of AEDPA, 28 U.S.C. § 2254(e)(2).

The Ninth Circuit disagreed. In *Jones v. Shinn*, 943 F.3d 1211,1221 (9th Cir. 2019), it held that “*Martinez's* procedural-default exception applies to merits review, allowing federal habeas courts to consider evidence not previously presented to the state court.” A contrary rule, the Ninth Circuit explained, would be illogical and undermine *Martinez's* purpose of ensuring that prisoners have a fair opportunity to vindicate their right to effective assistance of trial counsel.

On the State's petition, the Supreme Court granted certiorari to consider whether section 2254(e)(2) prevents a federal court from considering new evidence in support of claims that satisfy *Martinez's* procedural-default exception. The case was an unusual candidate for Supreme Court review, because every federal appellate courts to address this issue had agreed that section 2254(e)(2) did not prevent the courts from considering new evidence in this situation.

Mr. Jones argues that interpreting section 2254(e)(2) to prevent him from introducing evidence in federal court would effectively overrule *Martinez*. “Almost by definition, and as *Martinez* itself recognized, presenting [a] trial counsel claim after its default is excused will require introducing evidence beyond the state court record. A prisoner who received ineffective postconviction representation was ‘in no position to develop’ the evidence bearing on the claim in state court proceedings. [*Martinez*, 566 U.S.] at 12. And by their nature, ‘[i]neffective assistance claims often depend on evidence outside the trial record,’ *id.* at 13, and ‘often require investigative work,’ *id.* at 11.” (BIO p.1)

For these reasons, applying section 2254(e)(2) to block the presentation of new evidence in a case that satisfies *Martinez* would lead to absurd and unfair results. Indeed, the very basis for allowing Mr. Jones to pass through the *Martinez* door was his postconviction counsel's failure to investigate, develop, and present the evidence that he is innocent of the crime for which he faces execution. Applying 2254(e)(2) to prevent him from presenting that evidence in federal court would both nullify *Martinez* and allow Mr. Jones's wrongful conviction – and grievous constitutional errors in many other prisoners' cases – to go unremedied.