

8-29-2013

## Haas v. State Appellant's Brief Dckt. 40998

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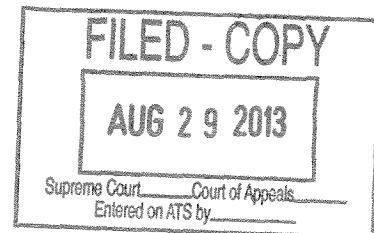
Appellant

IN THE SUPREME COURT OF THE STATE OF IDAHO

JAMES T HAAS, )  
 )  
 Appellant, )  
 )  
 vs. )  
 )  
 State of Idaho (Tim Wenger), )  
 )  
 Respondent. )  
 )

Case No. 40 998-2013  
INFORMAL PRO SE  
APPELLANT'S BRIEF

Appeal from the District Court of the FIRST Judicial District  
for Kootenai County.  
The Honorable John R Stegner, District Judge presiding.



## ISSUES PRESENTED ON APPEAL

Argument 1 The appellant was denied effective counsel at trial, appeals and post-conviction under US Supreme Court *Martinez v Ryan* 6th Amendment claims

Argument 2 Did counsel forgo post-conviction to reduce sentence which was not reduced knowing the Commission would not release Appellant upon completion of his fix sentence? 5th and 6th Amendment claims.

Argument 3 Trial counsel failed to file a timely appeal when instructed to and court records show's petitioner informed his counsel to file a timely appeal

Argument 4 Trial counsel was told by petitioner to take plea agreement and failed to take it, saying "We'll win this case?" And counsel guaranteed 'he'd win to "sit down and shut up." 6th Amend.

Argument 5 Court went beyond recommended sentence by prosecutor and the court gave appellant a very harsh sentence given the victim was almost 18 years old, which is cruel and unusual punishment under the 8th Amendment.

## STATEMENT OF THE CASE

### A. Introduction

### B. Statement of Facts and Course of Proceedings

On July 13, 2012, petitioner filed his petition and affidavit for Post Conviction Relief under the United State ~~Supreme~~ Court Martinez vs Ryan 132 Supreme Court 1309 (2012). claiming counsel advised petitioner to forego post-conviction and received a reduction of sentence and still doing a hard sentence. (Knowing the Parole Commission rarely grants parole). and appeals counsel not addressing issues on appeal to the Court of Appeals. That trial court was ineffective for not taking the plea agreement (told to "shot up and sit down," given the highly prejudicial case when dealing with any type of sex crime). That the court went beyond the recommended sentence by prosecutor in a plea agreement of 3 years fixed + 10 years indeterminate sentence, given the court reduced fixed sentence, where the Commission would never reduce the indeterminate sentence and used this reduction as a ruse to forego post-conviction relief. Counsel for petitioner said he wasn't paid enough to pursue post-conviction relief or address the misgiving.

on January 25, 2013 the state filed a motion for Summary Dismissal claiming barred by the one-year statute of Limitation, No affidavit was filed.

on February 1, 2013, the district court judge filed an order Granting permission to proceed without payment of Court fees, but denied petitioner counsel saying "A court may dismiss a petition on its own initiative based on untimeliness if there is no material fact." Then dismisses the case as untimely with addressing the issues (FACTS if not disputed are true).

on February 27, 2013, the petitioner filed a Reply Motion Opposing Dismissal that the "Post-convictions were filed in a timely manner and given (ineffective) counsel on them, and got play in his Rule 35 if dismissed post-conviction where the settlement came with consequences in that the court took time off the fixed portion, possibly knowing the Commission would not grant relief on the indeterminate end... Only initial post-convictions have to be filed in a timely manner, successive petitions have to have merit. (This case has merit). And the state had a chance to address the merits claimed herein. And Submitted (which so far Idaho hasn't or wants to address) the United States Supreme Court under *Martinez vs Ryan* 132 S Ct 1309 (2012), who "noticed the plight of inmates not getting their cases heard on their merits. That not only must be granted counsel but must be granted effective counsel in post conviction proceedings. And counsel's deficit performance to get time lowered on the fix portion of sentence but not get relief knowing the Commission does not, as in this case, give any time off the indeterminate sentence on a sexual battery of a 17 year old (almost 18 by statute). And counsel's deficit performance at trial to perform an appeal on the "life" sentence... where there is not a rape, violence, threats or even intercourse... previous proceedings... Attorneys hired by the state to "Sweep this under the rug" ... long sentences of 25 years which

are usually given to those who commit murder... like this case where there was no rape, violence, injury, threats or even intercourse are given "life". And the court under Martinez, supra the petition like Martinez, filed a successive petition for post-conviction relief and got his case heard on the merits, including <sup>here</sup> counsel not taking a deal when appellant knew you don't need corroboration, witnesses, dates or DNA to convict and juries would side with caution and convict an innocent person if there's a chance, even a slim chance he might be guilty.

on March 12, 2013 The state responded without addressing the merits in an documents with no page numbers (2 pages) says am barred for not raising issues in original, supplemental or amended complaints wouldn't that have been counsel's job? And now argues res judicata?

on April 1, 2013 The appellant filed a Sur-Reply, that the state "in their answer makes cursory defenses without addressing the issues. That unless denied, addressed or argued by the respondent the claims herein must be considered true." Again explained Martinez, supra was not given counsel or given effective counsel at trial, appeals, post-conviction and Rule 33 Hearings. Saying prisoners are all-equipped to deal with Constitutional claims and rely on Counsel who if they don't effectively adjudicate the prisoner's claims are barred from addressing the issues"... Which is shown in their brief Answer and even briefer Reply... "don't take time to even argue res judicata or how US Supreme Court in Martinez, supra doesn't apply. And listed issues of merit on how Martinez, supra doesn't apply.

Now the court goes to bat for the respondents' brief 2 page Motion for Summary Dismissal and 2 page un-numbered respondents Response to Petitioner's Reply and Motion Opposing Summary Dismissal in a 5 page order ~~DISMISSING~~ <sup>DISMISSING</sup> Petition for Post-Conviction Relief filed April 10, 2013. And the court did ~~analyze~~ (2) two issues and tries to dismiss appellant's argument as moot. When this court wanted to dismiss the petition without waiting for a reply from the state, And says "this court <sup>HAS</sup> the power to dismiss frivolous post-conviction petitions without any action from the state. And without addressing the issues says "argument to the contrary is without merit." And says "Heas's argument is now moot in that the state filed a response." Why doesn't this court want to address this argument? And says "Heas has not provided a sufficient reason why his ineffective assistance of counsel claims were (pick one or the other) not asserted or inadequately raised in his his first two petitions." Case in point admittedly 'inadequately raised in his first two petitions.' First argues but don't apply appellant's argument of statute of limitation. But goes into say correctly "why ~~his~~ claims of ineffective assistance of counsel were not adequately raised in either of his earlier petitions. And says a "result of Heas's failure to explain (goes to ineffective counsel and here no counsel) a justification for his successive claims." And that's where ~~the~~ United States Martinez v Ryan, SUPA comes in.

## ARGUMENT 1

A. Introduction The appellant was denied effective counsel at trial, appeals and post-conviction under US Supreme Court *Martinez v Ryan*, supra 6th Amendment claims

B. Argument The district court dismisses this petition saying the appellant has not provided a sufficient reason why his ineffective assistance claims were not asserted or inadequately raised. And will address this case like the US Supreme Court under *Martinez vs Ryan*, which so far this court has not addressed. Even in a recent decision by the court in *Sanchez vs Idaho*, Docket # 40579 - 2013 avoids discussing *Martinez v Ryan*. were it says "A prisoner's inability to present a claim of trial error is of particular concern when the claim is one of ineffective assistance of counsel. The right to the effective assistance of counsel is a bedrock principle in our justice system... the right to counsel is the foundation of our adversary system... the defendant requires the guiding hand of counsel at every step in the proceedings against him... thus, there are sound reasons for deferring consideration of ineffective - assistance - of - trial - counsel outside the direct appeal process... (cause of actions, claims and issues) are "under-taken without counsel or effective counsel." And like *MARTINEZ*, who had filed 2 post-convictions given counsel that were not effective.



## Argument 2

A. Introduction: Did counsel forego post conviction to reduce sentence, which was not reduced knowing the Commission would not release Appellant upon completion of his fix sentence? 5<sup>th</sup> and 6<sup>th</sup> Amendment chies.

B. Argument: September 17, 1999 petitioner filed a Rule 35 after filing a petition for post-conviction Relief on August 22, 2001 and counsel had petitioner dismiss the post-conviction if the court took 2 years off his fixed sentence. which was a ruse to get petitioner to forego the numerous issues knowing the Commission never releases those charged or convicted of sex crimes upon finishing fixed sentences, then would time bar his post-conviction. which shows it not for counsel's ineffectiveness in this ruse with the district court to forego his post-conviction issues under Grist or Es trade involving an allegation of sexual misconduct with a child should be treated differently than any other type of case is no longer controlling authority. And was promised relief by counsel, which if the parole commission had released and granted parole upon finishing his fixed sentence then there would be no problem, but once the petitioner was not even considered for parole then no relief was granted by the court and promised by counsel. Olivia Craven and the parole commission are known for not releasing any one on their fixed sentences. Now 7 years later part his fix sentence proves there was no reduction at sentence and the courts know this and should have reduced indeterminate time.

### Argument 3

A. Introduction: Trial Counsel failed to file a timely appeal when instructed to and court records shows petitioner informed his counsel to file a timely Appeal. 6<sup>th</sup> Amendment.

B. Argument: Trial Counsel failed to file a timely Appeal dealing with issues at trial including when the court sent jury out where the prosecutor offered a 3 Fixed 10 year indeterminate plea deal, besides other issues. And the court record reflects this, yet ignores this issue when this court says in a memorandum decision on petition for post-conviction relief CV-10-1109 on April 18, 2011 says at page 9 "(1) that even though Mr. Heas made a timely request for appeal." Such an appeal was never filed to argue Estrada §43 Idaho 558 and Gust 147 Idaho 49. And "filed an Inmate Request Form (hereinafter 'kite'), wherein he expressly indicated his desire to exercise his right to appeal." Now when the trial court admits this and now says its an issue without merit actually shows Trials counsel was not only ineffective in this issue but in other issues presented. Now if the petitioner had not proven his attempts to get this appealed in a timely manner then this court would not believe him, But now that he proves this its saying "has not provided a sufficient reason... were not asserted or inadequately raised in his first two Petitions." Why? Ineffective Counsel for not when directed (was a court record) to file a timely Appeal.

#### Argument 4

A. Trial counsel was told by petitioner to take plea agreement and failed to take it, saying "Will win this case?" And counsel guaranteed he'd win to "sit down and shut up" 6<sup>th</sup> Amendment

B. Courts, attorneys and those charged with a sex crime know its easy to convict even innocent persons of sex crimes. The courts allow the prosecutors to line bad acts / allegations never charged with to say "he touched me" you don't need corroboration, witnesses or even a date. Any year will do. There's even a person who proved his innocence on a state instituted polygraph examination and the courts ignore this. So when the prosecutor offered a plea, where the judge took a recess to take up the prosecutor's offer, where they offered a 3 Fixed 10 year indeterminate. But counsel refused the offer. And the public defendant told the (Appellant)-defendant to sit down and shut up that he was going to win this case. And like argument (number 3) sent a letter of his mental condition, emotional state and asking counsel to get this over with. And asked the court for help against his attorney. And the court later based on this found cause / merit for ineffective assistance of counsel, but only offered time off on the Rule 35 if will dismiss his post-conviction, then found out (not part of the negotiations) the court took 2 years off the fixed knowing this means nothing to the Parole Commission. So like argument #3, the court record shows this letter sent to the judge and court to show continue ineffective counsel.

## ARGUMENT 5

A. Court went beyond recommended sentence by prosecutor and the court gave appellant a very harsh sentence given the victim was almost 18 years old, which is cruel and unusual punishment under the 8th Amendment.

B. Before 1992, 16 years olds were considered legal age of consent. And Males and Females under 19 years old can be charged as adults for crimes. After 1992, anyone having any type of sexual contact, whether inappropriate sexual contact, intercourse or rape are all considered the same. You can get life! The punishments do not fit the crimes. In one instance (see more) guys plead guilty to their first criminal charge of Level Conduct and get 5 life without parole. Before the Unified Sentencing act the only people doing over 20 years had to kill somebody when Idaho's prison population was less than 1,500. And inappropriate sexual battery got a 25 year sentence. Sexual Battery of a Seventeen year old! Twenty-five years! The court thought he was doing petitioner <sup>a favor</sup> to stop bringing issues to post-conviction relief by taking a couple fixed years off the fix. And counsel was ineffective in coaxing the petitioner to drop his post-conviction which leads to successive post-convictions with successive ineffective counsels. And a harsh sentence.

~~sent~~



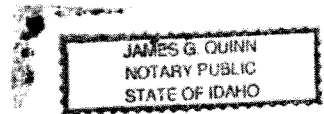
CONCLUSION

Therefore, appellant respectfully requests that this court [what court should do].

The appellant be remanded consistent with the plea agreement offered by the prosecutor to 13 years total sentence on the one count of sexual battery of a 17 year old minor and rule on the merits of the claims presented since counsels appointed through out the trial and appeals and ineffective assist and no counsel and apply Martinez vs Ryan's ruling in this matter or any other relief the court can grant.

Sworn and Subscribed this 27<sup>th</sup> day  
August 2013

James G. Quinn  
Commission Expires: 8/27/13



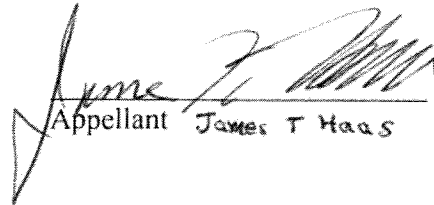
Respectfully submitted this 27 day of August, 2013

James T. Haas  
Appellant James T Haas

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the 27 day of August, 2013 I mailed a true and correct copy of the APPELLANT'S BRIEF via prison mail system for processing to the United States mail system, postage prepaid, addressed to:

Deputy Attorney General  
Criminal Division  
P.O. Box 83720  
Boise, ID 83720-0010

  
Appellant James T Haas

original + 6 copies:

Clerk of the Supreme Court

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