

COPY

**JAMES S. THOMSON**  
Attorney and Counselor at Law

April 19, 2012

California Supreme Court  
ATTN: Frederick K. Ohlrich  
Clerk of the Supreme Court  
350 McAllister Street  
San Francisco, CA 94102

SUPREME COURT  
FILED

APR 20 2012

Frederick K. Ohlrich Clerk

Deputy

**Re: Oral Argument, May 1, 2012; Supplemental Authorities Letter; In re Reno, Case No. S124660.**

Dear Mr. Ohlrich,

On behalf of petitioner, Reno, the undersigned directs the Court's attention to authorities issued after the filing of the supplement to petitioner's traverse (November 18, 2011), which bear on resolution of the proceedings in the above referenced case.

***Maples v. Thomas* (January 18, 2012) 565 U.S. \_\_\_, 132 S.Ct. 912.**

In *Maples v. Thomas*, the Supreme Court found that counsel's abandonment of a client is cause in federal court to excuse procedural bars to claims denied in state court pursuant to purportedly independent and adequate state grounds. *Maples, supra*, 132 S.Ct. at 917 ("Abandoned by counsel, Maples was left unrepresented at a critical time for his state post-conviction petition, and he lacked a clue of any need to protect himself *pro se*. In these circumstances, no just system would lay the default at Maples' death-cell door."). That is because "under agency principles, a client cannot be charged with the acts or omissions of an attorney who has abandoned him." *Id.*, at 926. In so finding, the Supreme Court held that abandonment of counsel is cause for excusal of procedural bars in federal court because it is an "extraordinary circumstances beyond [a petitioner's] control." *Id.*, at 924.

The Supreme Court's holding in *Maples* supports petitioner's argument that he has set forth sufficient proof his former counsel was ineffective to excuse any procedural bars to his claims. *See* Petition, at 18-21; Traverse, at 31-35; and Supplement to Traverse, at 3-5. *Maples* demonstrates that proof of cause based on abandonment of counsel requires a showing of an "extraordinary circumstance" beyond the petitioner's control. *Maples, supra*, 132 S.Ct. at 926; *see also In re Sanders* (1999) 21 Cal.4th 697, 722 ("A bare allegation that prior counsel abandoned him or her, without more, will be insufficient for a habeas corpus petitioner to carry this burden."). This standard is more stringent than the standard employed for proof of ineffective assistance of counsel. *Compare Maples, supra*, 132 S.Ct. at 926; *with Strickland v. Washington* (1984) 466 U.S. 668, 695-96. Thus, the allegations in petitioner's petition, traverse,

supplement to the traverse, and supporting exhibits, sufficiently set forth a *prima facie* case for relief from procedural bars based on prior counsel's ineffective performance in Reno's case.

***Martinez v. Ryan* (March 20, 2012) 566 U.S. \_\_\_, \_\_\_ S.Ct. \_\_\_, 2012 WL 912950.**

In petitioner Martinez' initial post-conviction collateral proceeding, counsel failed to raise potentially meritorious claims. *Martinez, supra*, 2012 WL 912950, at \*4. A year and a half later, Martinez retained post-conviction counsel who identified several claims of ineffective assistance of trial counsel. *Ibid.* Those claims were raised in a successive state petition and denied by the Arizona state court because, "the theory went, [Martinez] should have asserted the claims of ineffective assistance of trial counsel in his first notice for postconviction relief." *Ibid.*

Martinez sought review of his defaulted claims in federal court. *Ibid.* The federal court declined to review his claims pursuant to the state's purportedly independent and adequate bars. *Id.*, at 5. The Court of Appeals affirmed, relying on "general statements in [*Coleman v. Thompson*, 501 U.S. 722, 753–754 (1991)] that, absent a right to counsel in a collateral proceeding, an attorney's errors in the proceeding do not establish cause for a procedural default." *Martinez, supra*, 2012 WL 912950, at \*5.

The Supreme Court reversed the Court of Appeals' decision. *Martinez, supra*, 2012 WL 912950, at \*11. The Court held that a state's procedural default will not bar a federal habeas court from hearing a substantial claim "if, in the initial-review collateral proceeding, there was no counsel or counsel in that proceeding was ineffective." *Ibid.* *Martinez* thus "qualifie[d] *Coleman* by recognizing a narrow exception: Inadequate assistance of counsel at initial-review collateral proceedings may establish cause for a prisoner's procedural default of a claim of ineffective assistance at trial." *Id.*, at \*5.

In California, as in Arizona, the appropriate forum for raising claims of ineffective assistance of counsel is a habeas corpus proceeding. *See People v. Mendoza Tello* (1997) 15 Cal.4th 264, 266-267 (holding that a claim of ineffective assistance "is more appropriately decided in a habeas corpus proceeding."); *see also People v. Pope* (1979) 23 Cal.3d 412, 426-27 n. 17. In fact, a claim of ineffective assistance of trial counsel will be procedurally denied when raised on direct appeal in California. *See People v. Memro* (Reno) (1995) 11 Cal.4th 786, 819 ("[n]othing in the record indicates that counsel lacked a plausible, tactical reason for asking these individuals few or no follow-up questions.") (quoting *People v. Tuilaepa* (1992) 4 Cal.4th 569, 587).

*Martinez* supports petitioner's assertion that this Court should excuse procedural bars in his case due to the ineffective assistance of his former post-conviction counsel. *Compare* Petition, at 18-19; Traverse, at 70-99; and Supplement to the Traverse 3-5; *with Martinez, supra*, WL 912950, at \*5 ("[i]nadequate assistance of counsel at initial-review collateral proceedings may establish cause for a prisoner's procedural default of a claim of ineffective assistance at trial."). Petitioner has demonstrated that his former counsel performed ineffectively in not identifying and developing potentially meritorious claims. *See* Traverse Exhibit L, at 146 (Declaration of Thomas Nolan). This Court should follow *Martinez* and excuse procedural bars

to petitioner's claims accordingly. See *In re Clark* (1993) 5 Cal.4th 770, 780 ("If, therefore, counsel failed to afford adequate representation in a prior habeas corpus application, that failure may be offered in explanation and justification of the need to file another petition.").

**Cox v. Chappelle (March 19, 2012) EDCA Case No. 2:04-cv-00065 MCE CKD, Civil Docket ("Doc") Report # 113).**

In conjunction with this letter, petitioner has filed a supplement to his traverse discussing the Attorney General's exhaustion position in *Cox v. Chappelle*, EDCA Case No. 2:04-cv-00065 MCE. The Attorney General argued that without filing identical comprehensive petitions with this Court and the United States District Court for the Central District of California, petitioner risked forfeiture of his petition and cumulative error claims as unexhausted. See *Rose v. Lundy* (1982) 455 U.S. 509; and *Wooten v. Kirkland* (2008) 540 F.3d 1019. The Attorney General's exhaustion arguments in *Cox* demonstrate why petitioner has not committed an abuse of the writ in filing a comprehensive petition with this Court. See Petition, at 23; Traverse Exhibit M, at 156-57 (Declaration of Wes Van Winkle); and Supplement to the Traverse, at 4-5.

**Conclusion.**

In conclusion, petitioner respectfully submits that the above referenced authorities support the issuance of a writ of habeas corpus in his case.

Sincerely,



JAMES S. THOMSON  
PETER GIANNINI

Attorneys for Petitioner  
RENO

**DECLARATION OF SERVICE**

Re: *In re Reno*

Case No: S124660

I, the undersigned, declare as follows:

I am a citizen of the United States, over the age of 18 years and not a party to the within action; my place of employment and business address is 819 Delaware Street, Berkeley, CA 94710.

On April 20, 2012, I served the attached **ORAL ARGUMENT, MAY 1, 2012; SUPPLEMENTAL AUTHORITIES LETTER; IN RE RENO, CASE NO. S124660**, by placing a true copy thereof in an envelope addressed to the person(s) named below at the address(es) shown, and by sealing and depositing said envelope in the United States Mail at Berkeley, California, with postage thereon fully prepaid. There is delivery service by United States Mail at each of the places so addressed, for there is regular communication by mail between the place of mailing and each of the places so addressed.

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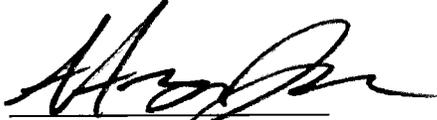
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I declare under penalty of perjury that the foregoing is true and correct.

Signed on April 20, 2012 at Berkeley, California.

  
AARON JONES