STATE OF RHODE ISLAND

PROVIDENCE, SC. **SUPERIOR COURT**

(FILED: January 21, 2025)

SANTO JENSEN	:	
Petitioner,	:	
	:	
v.	:	**C.A. No. PM-2022-02358**
	:	
STATE OF RHODE ISLAND	:	
Respondent.	:	

DECISION

TAFT-CARTER, J. Before this Court for decision is Petitioner Santo Jensen's Application for Postconviction Relief. (Pl.'s Postconviction Mem. (Pl.'s Mem.) 1.) The State moves to dismiss the application for postconviction relief on the grounds of *res judicata*, (State's Mot. to Dismiss Pet'r's Postconviction Relief (State's Mot.) 1), and Petitioner objects (Pet'r's Obj. State's Mot. to Dismiss (Pl.'s Obj.) 1.) Jurisdiction is pursuant to G.L. 1956 § 10-9.1-2.

I

Facts and Travel[1]

On April 16, 2013, Petitioner entered a plea of nolo contendere in P1-2010-3268A, to one count of first degree child molestation, one count of burglary, and one count of breaking and entering a dwelling when the resident is on the premises. (Tr.12:22-22:16, Apr. 16, 2013.) Petitioner was sentenced to thirty-five years at the Adult Correctional Institutions, eighteen years to serve, and seventeen years suspended, with probation; a no-contact order; sexual offender

[1] The issue before the Court is whether Petitioner's Application for Postconviction Relief is procedurally proper; as such, the facts will address the timeline, rather than the merits, of this action. For further information about the underlying charges, *see State v. Jensen*, P1-2010-3268A.

counseling while incarcerated and upon release; lifetime sex offender registration; and GPS monitoring. *Id.* at 23:17-24:2.

Petitioner filed a Rule 35 motion to vacate his conviction on October 25, 2018, arguing that his sentence under G.L. 1956 § 11-37-8.1 was unconstitutional. *State v. Jensen*, No. P1-2010-3268A, Dec. 12, 2018, Rodgers, J. The Court (Rodgers, J.) converted the motion to an application for postconviction relief and Petitioner was directed to file a memorandum in support of the application. *Id.* Thereafter, on March 9, 2019, Petitioner filed a memorandum in support of his application for postconviction relief. *See* Mem. Supp. Def.'s Appl. Postconviction Relief, PM-2019-0428. The State objected. The Court heard arguments on the matter. On June 24, 2019, Petitioner's application for postconviction relief was dismissed with prejudice. *Jensen v. State*, No. PM-2019-0428, June 24, 2019, Rodgers, J.

Thereafter, on April 27, 2022, Petitioner filed the present application for postconviction relief. In the current application, Petitioner seeks relief on the basis that his nolo contendere plea was not knowing and voluntary because he "was not informed prior to his plea that [he] would be subject to Parole Supervision for life." (Pl.'s Mem. 2.) The State answered the application for postconviction relief on the merits on May 24, 2023. (State's Mem. Supp. Obj. PCR.) The State filed a motion to dismiss on December 3, 2024, arguing that the issues Petitioner raises are barred by the doctrine of *res judicata.* (State's Mot. 3.) Petitioner objected to the State's Motion to Dismiss on January 2, 2025. (Pl.'s Obj.) The Court now renders its decision.

II

Standard of Review

In Rhode Island, "[p]ost-conviction relief is available to a defendant convicted of a crime who contends that his [or her] original conviction or sentence violated rights that the state or

federal constitutions secured to him [or her.]" *Otero v. State*, 996 A.2d 667, 670 (R.I. 2010) (internal quotation omitted); *see also* §§ 10-9.1-1 to 10-9.1-12. Generally, a petitioner for postconviction relief must raise all grounds for relief in the original or supplemented petition—otherwise, those claims are considered waived. Section 10-9.1-8. "[A]n applicant for postconviction relief must bear 'the burden of proving, by a preponderance of the evidence, that [postconviction] relief is warranted' in his or her case." *Hazard v. State*, 64 A.3d 749, 756 (R.I. 2013) (quoting *Anderson v. State*, 45 A.3d 594, 601 (R.I. 2012)).

III

Analysis

Petitioner argues that he is entitled to postconviction relief because his plea was not made knowingly and voluntarily. (Pl.'s Mem. 2.) Petitioner claims that "[t]he undisputed facts are that [Petitioner] was not informed prior to his plea that [he] would be subject to Parole Supervision for life." *Id.* The State objects on procedural grounds, contending that "Petitioner has already had an opportunity to raise this issue in his filings with this Court and with the Supreme Court" and failed to do so. (State's Mot. 2.) Therefore, the State asserts that the doctrine of *res judicata* is applicable here and bars the litigating of this issue as it could have been raised by the Petitioner in his prior application for postconviction relief. *Id.* at 3.

Res Judicata

"[The] [*r*]*es judicata* [doctrine] bars the relitigation of any issue that could have been litigated in a prior proceeding, including a direct appeal, that resulted in a final judgment between the same parties, or those in privity with them." *Taylor v. Wall*, 821 A.2d 685, 688 (R.I. 2003) (internal citations omitted). The Legislature addresses the issue of *res judicata* as it applies to applications for postconviction relief in § 10-9.1-8, which states:

> "All grounds for relief available to an applicant at the time he or she commences a proceeding under this chapter **must be raised in his or her original, or a supplemental or amended, application**. Any ground finally adjudicated or not so raised, or knowingly, voluntarily and intelligently waived in the proceeding that resulted in the conviction or sentence or in any other proceeding the applicant has taken to secure relief, may not be the basis for a subsequent application, unless the court finds that in the interest of justice the applicant should be permitted to assert such a ground for relief." Section 10-9.1-8 (emphasis added).

Furthermore, our Supreme Court has confirmed that "§ 10-9.1-8 'codifies the doctrine of *res judicata* as applied to petitions for post-conviction relief,'" and explained that "in the interest of justice" is a narrow exception that refers to two specific circumstances adopted in *Pailin v. Vose*. *Taylor*, 821 A.2d at 688, 689 (internal quotation omitted) (citing *Pailin v. Vose*, 603 A.2d 738, 742 (R.I. 1992)).

In the present application for postconviction relief, Petitioner asserts that his 2013 nolo contendere plea was not knowing and voluntary. (Pl.'s Mem. 2.) Petitioner failed to move for relief on these grounds in his 2019 application and now relies on rationale from the subsequently decided *Furlong* decision to support this new argument. *See* Mem. Supp. Def.'s Appl. Postconviction Relief, PM-2019-0428; *Furlong v. State*, No. KM-2018-0320, July 3, 2019, Taft-Carter, J. Petitioner argues that he should be permitted to litigate the knowing and voluntary issue now because he could not have raised it in his 2013 postconviction-relief application because "the community supervision issue was not generally known until the *Furlong* decision published the fact." (Pet'r's Obj. 1.) This argument fails because Petitioner was not prevented from raising the issue in his initial application for postconviction relief, and he may not benefit from a subsequently decided decision now. *Pailin*, 603 A.2d at 740.

In *Pailin*, our Supreme Court considered whether a petitioner seeking postconviction relief—on the grounds that his waiver of a twelve-person jury was invalid—could benefit from a

subsequent decision holding that a separate writing is required for a defendant to waive the right to a jury trial. *Id*. There, the Court adopted the United States Supreme Court's *Teague* test, holding that "[a] defendant is entitled to retroactive application of a subsequent beneficial ruling only if the ruling falls within one of *Teague*'s two narrowly construed constructions." *Id.* at 742 (*citing Teague v. Lane*, 489 U.S. 288 (1989)). The Court summarized the two exceptions as follows:

> "The first exception applies to rules that place an entire category of primary conduct beyond the reach of the criminal law or that prohibit imposition of a certain type of punishment for a class of defendants because of their status or offense. . . . The second exception applies to new watershed rules of criminal procedure that are necessary to the fundamental fairness of the criminal proceeding. . . . Under the second exception a new rule must not only improve the factfinding procedures at trial but it must also 'alter our understanding of the *bedrock procedural elements*' essential to the fairness of a proceeding.'" *Id.* at 741 (citing *Teague*, 489 U.S. at 311 and *Sawyer v. Smith*, 497 U.S. 227, 242 (1990)).

There, the *Teague* exceptions were not dispositive because the Court found that the subsequent decision on which petitioner relied did not create new law, but it applied the test anyway. *Id*. at 740. Ultimately, the Court determined that the *State v. DiStefano* 593 A.2d 1351 (R.I. 1991) holding, requiring a Rule 23 waiver to be in writing, did not fall under either *Teague* exception as it did not "create a watershed rule of criminal procedure that enhances accuracy and is necessary to the fundamental fairness of a criminal proceeding." *Id.* at 742. For that reason, the Court dismissed petitioner's petition for collateral review. *Id.*

Teague Exceptions

Here, Petitioner contends that "he should not be faulted for not raising the [*Furlong*] issue" in his 2019 application for postconviction relief "because that issue was not then generally known." (Pl.'s Obj. 1.) Whether an issue is "generally known" at the time a party files an

application for postconviction relief is not the standard used to determine whether grounds for postconviction relief have been waived. *See* § 10-9.1-8 *Waiver of or failure to assert claims*. Rather, the inquiry is whether the subsequent decision Petitioner relies on created a new rule of criminal procedure, and if it did, whether that new rule falls into one of the narrow *Teague* exceptions. *See Pailin*, 603 A.2d at 741- 42.

Furlong did not create a new law of criminal procedure. In *Furlong*, the petitioner pled nolo contendere to two counts of second degree child molestation and was sentenced to twenty years at the Adult Correctional Institutions, fifteen years to serve, five years suspended, with probation, sex offender registration, sexual abuse counseling, and a no-contact order. *Furlong*, No. KM-2018-0320, July 3, 2019 at 2. As he neared the end of his sentence, the petitioner became aware of a community supervision requirement upon release and thereafter submitted an application for postconviction relief arguing that his plea was not knowing and voluntary because he was not informed of the community supervision requirement before the plea. *Id.* at 4-5. In that instance, the Court found that the community supervision requirement was a direct consequence of the petitioner's conviction and vacated the plea because it was not knowing and voluntary. *Id.* at 22. In doing so—like in *Pailin*, 603 A.2d at 740, where the Court determined that the *State v. DiStefano*, 593 A.2d 1351 (R.I. 1991) decision "was not a departure from existing law; rather, it was merely an affirmation [of existing law]"—the Court's *Furlong* ruling did not create a new rule, but merely reaffirmed that guilty or nolo contendere pleas must be made knowingly and voluntarily. *Id.* Under that set of facts, the Court found that the petitioner's plea was deficient. *Id.*

Even assuming *arguendo* that the *Furlong* ruling did create a new law of criminal procedure, Petitioner has not shown that the law falls into one of the two *Teague* exceptions so

that he may benefit from it. The first exception is plainly inapplicable, as the holding in *Furlong* does not exempt an entire category of conduct from the reach of the criminal law or prohibit a certain type of punishment. *Furlong*, KM-2018-0320, July 3, 2019 at 22. Furthermore, it cannot be said that the holding alters our understanding of the bedrock procedural elements of criminal law. *Id.*; *see Sawyer,* 497 U.S. at 242-43 (holding that a subsequent decision intended to preserve the fairness and accuracy of capital sentencing did not fall under the second exception to the doctrine of *res judicata*); *Taylor*, 821 A.2d 689 (where the Court found that a decision clarifying the exception to the right to face-to-face confrontation under the Sixth Amendment with respect to child sex abuse victims did not fall under the second exception to the doctrine of *res judicata*).

The fact that Petitioner, here, did not pursue a novel challenge to his conviction in his 2019 application for postconviction relief does not mean that the issue could not have been raised. Indeed, the community supervision law, under which Petitioner was sentenced, has not been altered since 2006. *See* G.L. 1956 § 13-8-30 as enacted by P.L. 2006, ch. 207, § 5, eff. June 28, 2006. Here, Petitioner did not raise the issue of the knowing and voluntary plea at his original hearing for postconviction relief, as is required by §10-9.1-8. In addition, Petitioner has not demonstrated that the subsequent ruling on which he relies falls under a *Teague* exception. Therefore, the issue is waived. Section 10-9.1-8.

IV

Conclusion

For the above stated reasons, the State's Motion to Dismiss is GRANTED, and Petitioner's Application for Postconviction Relief is DENIED. Counsel shall submit the appropriate order for entry.

RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE:	**Santo Jensen v. State of Rhode Island**
CASE NO:	**PM-2022-02358**
COURT:	**Providence County Superior Court**
DATE DECISION FILED:	**January 21, 2025**
JUSTICE/MAGISTRATE:	**Taft-Carter, J.**
ATTORNEYS:	
For Plaintiff:	**James T. McCormick, Esq.**
For Defendant:	**Mark J. Trovato, Esq.**