

NONPRECEDENTIAL DISPOSITION
To be cited only in accordance with FED. R. APP. P. 32.1

United States Court of Appeals
For the Seventh Circuit
Chicago, Illinois 60604

Submitted May 18, 2025
Decided May 18, 2025

Before

DIANE S. SYKES, *Chief Judge*

FRANK H. EASTERBROOK, *Circuit Judge*

CANDACE JACKSON-AKIWUMI, *Circuit Judge*

No. 25-1852

BENJAMIN RITCHIE,
Petitioner-Appellant,

v.

RON NEAL,
Respondent-Appellee.

Appeal from the United States District
Court for the Southern District of Indiana,
Indianapolis Division.

No. 1:08-cv-00503-RLY-MJD

Richard L. Young,
Judge.

ORDER

In September 2000 Benjamin Ritchie shot and killed police officer William Toney in Beech Grove, Indiana. In 2002 an Indiana jury convicted Ritchie of murder and unanimously recommended imposition of the death penalty. The trial judge imposed a sentence of death, and the Indiana Supreme Court affirmed the judgment on direct appeal. *Ritchie v. Indiana*, 809 N.E.2d 258 (Ind. 2004), *cert. denied*, 546 U.S. 828 (2005). With the assistance of new counsel, Ritchie sought postconviction review in state court; the trial judge denied relief and the Indiana Supreme Court affirmed. *Ritchie v. Indiana*, 875 N.E.2d 706 (Ind. 2007).

In 2008 Ritchie petitioned for federal habeas review under 28 U.S.C. § 2254, with the assistance of the same attorneys who had represented him in state postconviction proceedings. The district court denied relief in 2014. Ritchie moved to alter or amend the judgment, *see* FED. R. CIV. P. 59(e), but the judge denied the motion and declined to issue a certificate of appealability, *see* 28 U.S.C. § 2253(c). We likewise denied a certificate of appealability. *Ritchie v. Neal*, No. 15-1925 (Feb. 24, 2016), and the Supreme Court denied certiorari. *Ritchie v. Neal*, 581 U.S. 920 (2017). That concluded Ritchie's § 2254 proceedings.

In mid-September 2024—seven years later—Ritchie's attorneys returned to the district court and moved to withdraw, advising the judge that counsel from the Capital Habeas Unit of the Federal Community Defender Office in the Eastern District of Pennsylvania would be requesting appointment as Ritchie's counsel. The judge granted the withdrawal motions. On October 4, 2024, counsel from the Federal Defender's Capital Habeas Unit in Philadelphia sought appointment to represent Ritchie in any further habeas litigation. The judge granted that motion on October 10, 2024.

On November 1 Ritchie's state public defender filed a motion in the state supreme court seeking leave to file a successive postconviction petition. On April 15, 2025, the Indiana Supreme Court denied the motion and granted Indiana's motion to set an execution date; the court set an execution date of May 20, 2025, at sunrise. *Ritchie v. Indiana*, 254 N.E.3d 1064 (Ind. 2025).

On May 7, 2025—three weeks later and less than two weeks before the scheduled execution date—Ritchie's counsel filed a motion under Rule 60(b)(6) of the Federal Rules of Civil Procedure seeking to reopen the final judgment in the § 2254 case. The motion centered on new claims of ineffective assistance of trial counsel and sought to pursue these claims under the exception to procedural default established in *Martinez v. Ryan*, 566 U.S. 1 (2012), and *Trevino v. Thaler*, 569 U.S. 413 (2013). Eight years ago, we held that the *Martinez-Trevino* doctrine is available to Indiana prisoners seeking to litigate procedurally defaulted claims in § 2254 proceedings. *See Brown v. Brown*, 847 F.3d 502, 517 (7th Cir. 2017). As grounds for relief under Rule 60(b)(6), counsel argued that Ritchie's prior federal habeas attorneys could not have been expected to raise a *Martinez-Trevino*-type argument in his initial § 2254 petition because they had a conflict of interest. More specifically, they argued that because Ritchie's prior federal habeas counsel had represented him in state postconviction proceedings, they were burdened by a conflict of interest and could not be expected to argue their own ineffectiveness, a predicate for the *Martinez-Trevino* exception to procedural default.

Together with their Rule 60(b)(6) motion, counsel filed an emergency motion to stay the execution. The judge set an expedited briefing schedule on the motion to stay; briefing was completed at noon Eastern Time on May 15. On May 17 the judge issued a comprehensive and thoughtful decision denying the stay motion.

An applicant for a stay must establish the following elements: (1) a strong showing that he is likely to succeed on the merits; (2) irreparable injury in the absence of a stay; (3) the issuance of a stay will not substantially injure other parties; and (4) the public interest favors a stay. *Nken v. Holder*, 556 U.S. 418, 434 (2009). The judge's decision turned on the first factor. He concluded that the Rule 60(b)(6) motion was unlikely to succeed because it was untimely. *Ritchie v. Neal*, 1:08-cv-00503 (S.D. Ind. May 17, 2025). As relevant here, a Rule 60(b) motion must be filed "within a reasonable time." FED. R. CIV. P. 60(c)(1).

Drawing on the reasoning of *Clark v. Davis*, 850 F.3d 770 (5th Cir. 2017), a materially similar case, the judge determined that the starting point for evaluating the timeliness of Ritchie's Rule 60(b)(6) motion was February 1, 2017—the date on which we issued our decision in *Brown* holding that the *Martinez-Trevino* doctrine is available to Indiana prisoners. Alternatively, the judge said the "reasonable time" clock might have started on April 17, 2017, when the Supreme Court denied certiorari in Ritchie's federal § 2254 case. Either way, the Rule 60(b)(6) motion—filed more than eight years later—was "extremely belated." The judge also addressed the alternative argument that the "reasonable time" limit should be measured from October 2024, when Ritchie's new federal habeas counsel stepped in. Even under that more recent start date, the judge held that the Rule 60(b)(6) motion was untimely because the seven-month filing delay was not reasonable. Ritchie's state public defender had raised essentially the same arguments in November 2024 in his petition in the state supreme court seeking leave to file a successive postconviction motion. Under the circumstances nothing prevented Ritchie's federal habeas counsel from filing the Rule 60(b)(6) motion in the § 2254 case more promptly.

Ritchie appealed, and we expedited briefing. The parties filed their briefs, and Ritchie moved for leave to file a reply brief. We grant the motion and accept the reply.

We review the district court's decision denying a stay deferentially, for abuse of discretion. *Bourgeois v. Watson*, 977 F.3d 620, 628 (7th Cir. 2020) (citation omitted). We find no abuse of discretion. The judge determined that the Rule 60(b)(6) motion was unlikely to succeed because it was untimely under any possible starting point for the

rule’s “reasonable time” requirement—even the starting point most favorable to Ritchie. That ruling was sound, and we have nothing to add to the district judge’s careful analysis. Accordingly, we affirm the district court’s judgment.

AFFIRMED

JACKSON-AKIWUMI, *Circuit Judge*, dissenting. Our Constitution and laws entitle Ritchie to habeas lawyers who are conflict-free and represent him through “all available post-conviction process, together with applications for stays of execution” until a court grants a motion to withdraw. 18 U.S.C. § 3599(e); *see also Christeson v. Roper*, 574 U.S. 373, 377 (2015); *McFarland v. Scott*, 512 U.S. 849, 859 (1994). Ritchie’s circumstances satisfy the definition of a conflict under our caselaw, and his prior two lawyers admit they didn’t even discuss the conflict with each other or him. *See Christeson*, 574 U.S. at 377 (“A significant conflict of interest arises when an attorney’s interest in avoiding damage to his own reputation is at odds with his client’s strongest argument.” (cleaned)); *cf. Griffin v. McVicar*, 84 F.3d 880, 887, 890 (7th Cir. 1996) (identifying a conflict of interest where counsel could not “advanc[e] plausible arguments” even where those arguments were “unpromising”). When an execution is imminent, we owe a “correspondingly greater degree of scrutiny” to the condemned, the victims, and the public to ensure an error-free round of federal habeas review. *California v. Ramos*, 463 U.S. 992, 998–99 (1983); *cf. Lonchar v. Thomas*, 517 U.S. 314, 324 (1996).

The district court denied Ritchie’s motion to stay his execution pending the consideration of his Rule 60(b)(6) motion for relief from judgment. Although we afford this decision great deference, “a factual or legal error may alone be sufficient to establish that the court abused its discretion.” *Mays v. Dart*, 974 F.3d 810, 818 (7th Cir. 2020) (cleaned). I would find the district court abused its discretion in three ways.

First, the district court erred in treating a habeas petitioner represented by conflicted counsel as pro se. As the district court sees it, Ritchie was obligated to uncover and address the conflict and potential excuse for procedural default in his case. But this was not a self-evident, uncomplicated legal question. And Ritchie, a petitioner on death row with cognitive limitations, had no reason to know he was not being adequately represented. In fact, his conflicted counsel assured him that they would continue to protect his interests. Were we to adopt the district court’s logic, Rule 60(b) would never be available to petitioners with conflicted counsel, so long as the conflict lasts long enough. This logic is at odds with Supreme Court precedent and the practice of supplementing or replacing counsel to remedy such conflicts. *See Christeson*, 574 U.S. at 375, 380 (allowing for the appointment of conflict-free counsel to file a Rule 60(b)(6) motion seven years past the statute of limitations because the motion could be timely and meritorious); *see also Mendoza v. Stephens*, 783 F.3d 203, 203 (5th Cir. 2015); *Juniper v. Davis*, 737 F.3d 288, 290 (4th Cir. 2013) (“[Q]ualified and independent counsel is *ethically required* without regard to whether the underlying motion identifies a ‘substantial’ ineffective assistance claim under *Martinez*.”).

Second, the district court committed factual and legal error in determining that Ritchie's new counsel was not reasonably timely in filing Ritchie's Rule 60(b)(6) motion. To start, his new counsel took *less* than seven months to file the motion, not seven or eight as the district court found. While there is no bright line as to what constitutes reasonable timeliness, less than seven months is well under the one-year timeframe Rule 60 contemplates for other motions. FED. R. CIV. P. 60(c). There is, however, a "mandatory right to qualified legal counsel" in habeas proceedings. *Christeson*, 574 U.S. at 377. The district court would have us supplant the right to qualified counsel, reasoning that newly appointed counsel could have filed much earlier by relying on the same claims Ritchie's state counsel advanced before the Indiana Supreme Court. Rather than clone state counsel's work, Ritchie's new counsel was tasked with conducting an *independent* review of Ritchie's case to assert his strongest and final case in federal court. New counsel's timeline was not only reasonably timely, but akin to the number of months Ritchie's state counsel needed for their own efforts. The single case the district court cited in support of its conclusion is also inapposite. *See Tamayo v. Stephens*, 740 F.3d 986, 990–91 (5th Cir. 2014) (involving a filing by the *same* counsel eight months after a change in decisional law, as opposed to newly appointed, conflict-free counsel reviewing for the first time a death penalty case dating back 22 years).

Third, the district court erred in narrowly focusing on promoting finality and the State's interest in executing Ritchie—although the State was able to wait seven years to seek a death warrant—over the irreparable injury the court identified (death) and the public interest in habeas proceedings untainted by error. The Supreme Court has identified Rule 60(b) as a provision whose "whole purpose is to make an exception to finality," and one with "an unquestionably valid role to play in habeas cases." *Gonzalez v. Crosby*, 545 U.S. 524, 529, 534 (2005). The point one of my colleagues on this panel made in writing for our court in a non-habeas case 40 years ago has equal force here: "A court ought not let the interests of finality lead it to decline to afford the sort of review Rule 60(b) authorizes." *Metlyn Realty Corp. v. Esmark, Inc.*, 763 F.2d 826, 831 (7th Cir. 1985).

As a final thought, this was not, as the State proposes, an eleventh-hour attempt to delay execution. After all, the Indiana Supreme Court did not set Ritchie's execution date until mid-April. Seeing how divided that court was, Ritchie is simply requesting that at least one court review the merits of his claims before he is killed.

For these reasons, and for additional reasons Ritchie identifies in his briefs on appeal, on this record I would find that he meets the requirements for a stay of his execution as outlined in *Nken v. Holder*, 556 U.S. 418, 433–34 (2009). I respectfully dissent.