

# United States Court of Appeals for the Fifth Circuit

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No. 25-30705  
Summary Calendar

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United States Court of Appeals  
Fifth Circuit  
**FILED**  
September 25, 2026

Lyle W. Cayce  
Clerk

ZANNIE NEAL,

*Petitioner—Appellant,*

*versus*

DARREL VANNOY, *Warden, Louisiana State Penitentiary,*

*Respondent—Appellee.*

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Appeal from the United States District Court  
for the Eastern District of Louisiana  
USDC No. 2:25-CV-2000

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Before WILLETT, DUNCAN, and ENGELHARDT, *Circuit Judges.*

PER CURIAM:\*

Zannie Neal, Louisiana prisoner #392609, appeals the district court's order treating his habeas application as an unauthorized second or successive application and transferring it to this court. We AFFIRM.

Neal's application raises two claims of ineffective assistance of counsel (IAC). He says his trial counsel should have used a serology report

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\* This opinion is not designated for publication. *See* 5TH CIR. R. 47.5.

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to impeach his co-defendant, and should have requested DNA testing that might have yielded exonerating evidence.<sup>1</sup>

A habeas application “is successive when it 1) raises a claim challenging the petitioner’s conviction or sentence that was or could have been raised in an earlier petition; or 2) otherwise constitutes an abuse of the writ.” *Leal Garcia v. Quarterman*, 573 F.3d 214, 220 (5th Cir. 2009) (quoting *In re Cain*, 137 F.3d 234, 235 (5th Cir. 1998)). A prisoner “may bring a new claim only if it falls within one of two narrow categories—roughly speaking, if it relies on a new and retroactive rule of constitutional law or if it alleges previously undiscoverable facts that would establish his innocence.” *Banister v. Davis*, 590 U.S. 504, 509 (2020). Neal concedes that he did not raise these IAC claims in his first application,<sup>2</sup> but offers two reasons why they should still be considered.

First, Neal does not contend that the DNA evidence was previously undiscoverable. He says only that he first learned it might be exculpatory in 2022, and that he omitted these IAC claims from his first state habeas proceeding because they were not yet ripe. From that, he argues that he *could not* have presented the claims in his first federal application.<sup>3</sup> The Supreme

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<sup>1</sup> In 2019, one of Neal’s co-defendants “received preliminary findings” that DNA testing of certain evidence could produce exonerating results. In 2022, a federal district court granted that co-defendant habeas relief “based on the exhausted ineffective of assistance of counsel claim.”

<sup>2</sup> Neal’s first federal application raised several IAC claims, all of which were denied on the merits. *See Neal v. Cain*, No. CIV.A. 06-8714, 2012 WL 730223, at \*16–24 (E.D. La. Feb. 14, 2012), *report and recommendation adopted*, No. CIV.A. 06-8714, 2012 WL 730440 (E.D. La. Mar. 6, 2012).

<sup>3</sup> As Neal observes, a federal court would have deemed those claims “procedurally barred” because he had not exhausted them in state court. *See Ogan v. Cockrell*, 297 F.3d 349, 356 (5th Cir. 2002) (explaining that unexhausted claims “will be considered

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Court has rejected that reasoning as a way around the bar against successive applications. *See Burton v. Stewart*, 549 U.S. 147, 154 (2007) (a petitioner may not “later assert that a subsequent petition is not ‘second or successive’ precisely because his new claims were unexhausted at the time he filed his first petition”).

Second, Neal argues that his IAC claims were not ripe until the Supreme Court decided *Martinez v. Ryan*, 566 U.S. 1 (2012). *Martinez* held that “a procedural default will not bar a federal habeas court from hearing a substantial claim of ineffective assistance at trial if, in the initial-review collateral proceeding, there was no counsel or counsel in that proceeding was ineffective.” *Id.* at 17. But Neal’s habeas petition does not allege that he lacked counsel in his initial state habeas proceeding or that his state habeas counsel was ineffective for failing to raise these claims; his petition claims only that trial counsel was ineffective. So *Martinez*’s exception does not apply. And even if it did, *Martinez* would not permit Neal to bring them in a second or successive federal application. *See In re Hensley*, 836 F.3d 504, 507 (5th Cir. 2016) (per curiam); *In re Sepulvado*, 707 F.3d 550, 555–56 (5th Cir. 2013). Neal thus cannot rely on *Martinez* to raise these new IAC claims. He provides no other reason to consider them.

The transfer order is AFFIRMED.

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procedurally defaulted and will not be regarded as a bases for granting federal habeas relief”).