

No. 18-9546
IN THE SUPREME COURT OF THE UNITED STATES

EVERETT CHARLES WILLS, II,
Petitioner,

v.

DARREL VANNOY, WARDEN,
Respondent.

**REPLY IN SUPPORT OF
MOTION TO FILE AMENDED PETITION
FOR A WRIT OF CERTIORARI**

Respondent has opposed Wills' motion to file an amended petition for a writ of certiorari. Wills' motion and the amended petition demonstrate the errors in Section I of Respondent's opposition. *See* Mot. 4-8 (explaining why amendment would be in the interests of justice); Amended Pet. 6-7, 10 n.5 (explaining that, for purposes of *McCoy*, defendant must make objection clear *to counsel*, and in any event, Wills tried to bring his objection to the attention of the court).

Respondent has raised a novel argument in Section II. Respondent asserts that Wills' motion "amounts to an unauthorized second or successive habeas corpus application" in that it "provides new grounds for relief." Opp. 5, 7 (quotation marks and footnote omitted).¹ "Because AEDPA places a jurisdictional bar on successive

¹ Respondent also asserts that Wills' amended petition should be recharacterized as a successive habeas petition because it "attacks the lower courts' resolution of his habeas claim on the merits." Opp. 7. But any unsuccessful habeas petitioner seeking this Court's review attacks the lower courts' resolution of his claim on the merits.

habeas petitions,” Respondent continues, “the Court is without power to grant Wills’ motion.” Opp. 6.

The premise of Respondent’s argument is incorrect. As Respondent itself concedes, Wills “raised issues implicating *McCoy v. Louisiana*[, 138 S. Ct. 1500 (2018),] in the district court.” Opp. 7 n.7. Specifically, in his memorandum in support of his federal habeas petition, filed before this Court decided *McCoy*, Wills invoked the fundamental, autonomy-based Sixth Amendment principles that animated *McCoy*. *See, e.g.*, *Wills v. Vannoy*, No. 5:17-cv-753, Dkt. 1-3 at 20 (W.D. La.) (“[A]n attorney may not admit his client’s guilt which is contrary to his client’s earlier entered plea of “not guilty.”” Even if Mr. Goins believed it tactically wise to stipulate to a particular element of a charge or to issues of proof, he cannot stipulate to facts that amount to the functional equivalent of a guilty plea.” (quoting *Wiley v. Sowders*, 647 F.2d 642, 649 (6th Cir. 1981)) (brackets in original)). Then, after *McCoy* issued, he filed objections to the magistrate judge’s report and recommendation specifically relying on that decision. *See* Dkt. 20 at 1-3.

Accordingly, the amended petition does not “provide[] new grounds for relief” beyond those presented to the district court. To be sure, it articulates issues beyond those in the original petition for certiorari. But the relevant question for whether the amended petition rests on “new grounds” relative to Wills’ federal habeas petition requires a comparison to his filings in the district court, not in this Court.²

² Respondent is also incorrect to suggest that Wills “argue[s] that *McCoy* announced a new rule to hurdle AEDPA’s jurisdictional bar.” Opp. 6 n.5. There is no second or successive petition, so no jurisdictional bar to “hurdle.”

There is no jurisdictional bar to Wills' motion, in AEDPA or otherwise. We respectfully submit that the motion should be granted.

Respectfully submitted.



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DECEMBER 3, 2019

CERTIFICATE OF SERVICE

I, Seth P. Waxman, a member of the bar of this Court, hereby certify that on this 3rd day of December, 2019, all parties required to be served have been served a copy of the Reply in Support of Motion to File Amended Petition for a Writ of Certiorari in this matter by overnight courier at the address listed below:

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