No. 19-6137

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

William Widmyer ----- PETITIONER

vs.

Fourth Circuit Court of Appeals ---RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Fourth Circuit Court of Appeals
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR A WRIT OF CERTIORARI

William Widmyer
Mt. Olive Correctional Complex and Jail
One Mountainside Way
Mt. Olive, WV 25185

QUESTION(S) PRESENTED

1. Were the Petitioner's Constitutional Amendment Rights violated when Petitioner's Police interview was used in trial although Petitioner requested Counsel before the police interview was conducted without counsel present and after the Miranda Rights were read to Petitioner?

2. Were the Petitioner's Constitutional Amendment Rights violated when Petitioner wanted to "wait and talk to a lawyer" before interviewing with any police but the Northern District Court of West Virginia stated that ""wait...talk to a lawyer" was not a clear indication of his desire to obtain the assistance of counsel" and the Fourth Circuit Court of Appeals upheld the decision? What statement constitutes the request for an attorney?

3. Were the Petitioner's Constitutional Amendment Rights violated when Petitioner's trial counsel told the jury he was guilty of murder without the Petitioner's consent and against the Petitioner's approval, in fact frustrated the Petitioner.

LIST OF PARTIES

☒ All parties appear in the caption of the case on the cover page.

☐ All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgement is the subject of this petition is as follows:

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TABLE OF AUTHORITIES CITED

CASES PAGE NUMBER

IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgement below.

OPINIONS BELOW

☒ For cases from **federal courts:**

The opinion of the United States court of appeals appears at Appendix **B** to the petition and is

☐ reported at [**enter site code here**]; or,
☐ has been designated for publication but not yet reported; or
☒ is unpublished.

The opinion of the United States district court appears at Appendix **C** to the petition and is

☐ reported at [**enter site code here**]; or,
☐ has been designated for publication but not yet reported; or
☒ is unpublished.

☒ For cases from **state courts:**

The opinion of the highest state court to review the merits appears at Appendix **E** to the petition is

☐ reported at [**enter site code here**]; or,
☐ has been designated for publication but not yet reported; or,
☒ is unpublished.

The opinion of the [**enter any other tier court here**] court appears at Appendix ___ to the petition and is

☐ reported at [**enter site code here**]; or,
☐ has been designated for publication but not yet reported; or,
☐ is unpublished.

JURISDICTION

☒ For cases from **federal courts:**

The date on which the United States Court of Appeals decided my case was **March 12, 2019**.

☐ No petition for rehearing was timely filed in my case.

☒ A timely petition for a rehearing was denied by the United States Court of Appeals on the following date: **April 16, 2019**, and a copy of the Order denying rehearing appears at Appendix **A**.

☒ An extension of time to file the petition for a writ of certiorari was granted to and including **September 13, 2019** on **July 12, 2019**. in Application No. **19A46**

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

☐ For cases from **state courts:**

The date on which the highest state court decided my case was [**enter date here.**]
A copy of that decision appears at Appendix ___.

☐ A timely petition for rehearing was thereafter denied on the following date: [**enter date here**], and a copy of the Order denting rehearing appears at Appendix ___.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including [**enter date here**] on [**enter date here**] in Application No. [**enter application no. here.**]

The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

AMENDMENT 5

Criminal actions-Provisions concerning-Due process of law and just compensation clauses.

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

AMENDMENT 6

Rights of the accused.

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

AMENDMENT 8

Bail-Punishment.

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

AMENDMENT 14

Section 1. [Citizens of the United States.]

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any

person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

West Virginia Constitution, Article III

STATEMENT OF THE CASE

On January 20, 1990, Petitioner William Widmyer was indicted in Jefferson County, West Virginia on six (6) separate counts: (1) murder in the first degree; (2) malicious assault; (3) destruction of property; (4) breaking and entering; (5) petit larceny; and (6) possessing any vehicle knowing it to be stolen.

On July 22, 1999, following a two (2) day jury trial, Petitioner was convicted of all counts as contained in the indictment. On August 30, 1999, the circuit court held a sentencing hearing and sentenced Petitioner to the penitentiary for consecutive sentences of life without mercy on Count 1; not less than two (2) years nor more than ten (10) years on Count 2; One (1) year on Count 3; not less than one (1) year nor more than ten (10) years on Count 4; one (1) year on Count 5; and not less than one (1) year nor more than five (5) years on Count 6.

The West Virginia Supreme Court refused the Direct Appeal on November 1, 2000. Subsequently, a Writ of Habeas Corpus was filed on February 16, 2001 in the lower Court but was denied on January 3, 2006 without a hearing. On February 6, 2006, the lower Court appointed Counsel to appeal the denial to the West Virginia Supreme Court. On September 4, 2009, Counsel filed a motion to file an appeal out time, seeking to appeal the denial of the Writ of Habeas Corpus nearly four (4) years late. Although the motion was granted, once again, the West Virginia Supreme Court refused to review the appeal on February 11, 2010.

Petitioner filed a Federal § 2254 Writ of Habeas Corpus on May 27, 2010. In the October 20, 2010 Report and Recommendation, the Magistrate Judge recommended that the Court deny and dismiss the Petition as untimely. The Court rejected that

recommendation on February 23, 2011, concluding that the Petitioner was entitled to equitable tolling of the statute of limitations and that his Petition had been timely filed. The Court further found that, while timely, the Petition included claims for relief not previously presented to the lower Court. Thereby, the § 2254 Petition was stayed until the Petitioner returned to the lower Court and exhausted his claims.

On January 26, 2013, the Petitioner filed his second State Habeas Petition. Ultimately, after an evidentiary hearing[1] on the express issue of whether the "Losh List" was filed properly on the first habeas, the lower Court denied the second Writ of Habeas Corpus. No other issues were allowed to be addressed, specifically the issue of the request for an attorney during interrogation. On May 15, 2015, the West Virginia Supreme Court affirmed the lower Court's decision by memorandum.

On December 10, 2013, the Northern District Federal Court mistakenly dismissed the petition without prejudice and ordered the case be removed from the active docket. On June 4, 2015, Petitioner filed a second Federal § 2254 petition and indicated that all of his State remedies were fully exhausted. Thereby, on November 17, 2016, the Court vacated its "Order Dismissing Petition Without Prejudice" and ordered the Clerk of Court to reopen the case.

On February 7, 2018, a second Report and Recommendation was filed. The conclusion was that the Petitioner had procedurally defaulted eight (8) of his fourteen (14) claims. The remaining six (6) claims were considered as lacking merit. The questions above pertain to two (2) of the claims within the six (6) claims that were

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[1] Petitioner **DID NOT** have an Evidentiary Hearing on the first habeas.

considered as lacking merit. Thereby, on March 28, 2018, a "Memorandum Opinion and Order Adopting Report and Recommendation" was issued.

Subsequently, on March 12, 2019, the Fourth Circuit Court of Appeals denied the Motion for a Certificate of Appealability. On April 16, 2019, the motion for rehearing to the Fourth Circuit Court of Appeals was denied by ORDER. The mandate was issued on April 24, 2019. An Extension of Time motion to file a Certiorari was granted by this Court until September 13, 2019. This Certiorari follows.

Petitioner now comes to this Court with an issue of the use of a Police interview in trial although Petitioner had asked multiple times for an attorney; and on the issue of Defense Counsel declaring the Petitioner guilty against the Petitioner's will and approval.

In the first issues (the use of a Police interview after Miranda Rights were given although Counsel was requested multiple times), the Petitioner's Constitutional Rights were severely violated. The truth of the matter is the Petitioner turned himself into the Shenandoah County Sheriff's Department in Virginia.

The Petitioner was handcuffed and placed him in an interrogation room. After a few minutes, it was told to the Petitioner that there was an out-of-state warrant for his arrest. Thereby, the Petitioner was "mirandized" and taken before Magistrate Earle E. Van Valkenburgh.

At that time, the Petitioner requested an attorney but was denied. The Virginia officers stated that if the Petitioner obtained an attorney, he would be taken to a Virginia jail for sixty (60) days and none of that time would count towards the time he would receive in West Virginia.

The Virginia officers proceeded to instruct the Petitioner that it would be better for him not to have an attorney but rather waive extradition and go back to West Virginia where his time would count and he could be closer to his family. Thereby, the Petitioner signed the Miranda form and waived the right to an attorney. The Petitioner was very confused and was obeying what the Virginia Police officers were instructing the Petitioner to do.

Upon arriving back to the Sheriff's office, the Virginia officers immediately began interrogating and once again, mirandized the Petitioner. Again, the Petitioner requested an attorney but was denied once again by the officers.

Officer Thomas was taking notes while they stated they knew the Petitioner "was in trouble in West Virginia but all [they] wanted to do was to ask questions about any crimes committed in Virginia." The Petitioner replied that there were no crimes committed in Virginia. The officers proceeded to ask about the "gun" which they said they were worried about it being in Virginia. Although the Petitioner replied that the gun was not in Virginia, they brought out a map and suggested that they would not know for sure unless they looked at a map. At this point, Officer Thomas suggested using a tape recorder. Sgt. Lindamood stopped asking about the gun and asked the Petitioner if it was okay to ask questions about any crimes in Virginia and assist in securing the gun so "no one gets hurt."

A tape recorder was procured and the rest of the interview was then recorded. Both officers continued to ask the location of the gun. Sgt. Lindamood made the statement "uh, because there's some things that happened in West Virginia that you said you'd rather not go into that you wanted to..." Petitioner interposed "wait." Sgt.

Lindamood continued "wait until they press charges on you over there." Petitioner again interposed "talk to a lawyer." Petitioner did not want to speak to the West Virginia officers before speaking to an attorney.

After the short interview ended regarding the location of the gun, the officers said that the West Virginia officers were present and wanted to talk. Again, the Petitioner reiterated his desire not to speak to the West Virginia officers until a lawyer is present. Both officers exclaimed that they would tell the West Virginia officers that the Petitioner did not want to speak to them until a lawyer is present. They left.

Both officers returned and said that the West Virginia officers "really wanted to talk to [Petitioner]." Again, the Petitioner said he did not want to speak to them until a lawyer was present. Again, they left.

Both officers again returned. This time, the officers stood on each side of the Petitioner with their hands on both shoulders of the Petitioner, squeezing and pushing downward into the chair. With the forceful actions, they said "the West Virginia officers are here and they ***really want*** to talk to [the Petitioner]." (with emphasis)

The Petitioner replied, out of fear, "Yes, I guess I could answer a few of their questions." The Virginia officers said "that is what we thought." They left to get the West Virginia officers.

Trial transcripts reveals there was a twenty (20) minute delay between the interview of the Virginia officers and the West Virginia officers. This was the time the above transpired. After an investigation, attorney Kratovil believed the case would be overturned. (See Appendix F). No hearing, however, was granted or transpired to prove this claim.

Out of fear of being beaten, the Petitioner spoke to the West Virginia officers

although Petitioner repeatedly requested an attorney. Petitioner is willing to agree to a polygraph on the above statement.

In regards to the second issue, Counsel declaring the guilt of the Petitioner in front of the jury without the approval, consent, and will of the Petitioner, is revealed in the trial transcripts. This is in direct violation of the recently decided Supreme Court case on Counsel pleading the Defendant guilty.

The Petitioner discussed with Counsel prior to trial about how to plead. The Petitioner wanted to plead Not Guilty and Counsel agreed. Counsel actually suggested to plead Not Guilty because the Petitioner "would spend the rest of [his] life in prison." It was agreed and the Petitioner stated adamantly he did not want to plead guilty to any of the charges. Counsel, however, changed their strategy, against the Petitioner's wishes and approval by pleading the Petitioner guilty in front of the jury.

Although the Petitioner is acting *pro se* and does not have the knowledge to present just what this Court desires, it is these two (2) issues the Petitioner requests this Court's assistance.

REASON FOR GRANTING THE PETITION

In summary, the Petitioner asserts just a couple of reasons why this Court should Grant the Petition and then will discuss it in more detail following:

1. There are conflicts among Federal Appellate Courts;

2. There is a flagrant and/or egregious abuse of justice in the lower Courts.

Cullen v. Pinholster, 563 U.S. 170, 181 (2011), Federal Habeas relief "shall not be granted . . . unless the adjudication (1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, or (2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding." In the instant case, both prongs of the above case was violated. Petitioner will attempt to show, with this Court's assistance, that the Federal Court as well as the lower Courts were wrong on their decision of the two (2) claims presented before them. The first was that the Petitioner requested multiple times an attorney before speaking to the Police, however, the Police kept prodding and pressuring and eventually coerced the Petitioner into giving information that was ultimately used against him in trial. The second issue was that Petitioner's Counsel, over top the Petitioner's objection and approval, told the jury he was guilty.

The Fourth Circuit Court of Appeals erred in not following their own rulings. In ***Richmond v. Polk***, 375 F.3d 309, 335 (4th Cir. 2004) ([p]riciples of comity and respect for state court judgment preclude federal courts from granting habeas relief to state prisoners for constitutional errors committed in state court absent a showing that the

error 'had a substantial and injurious effect or influence in determining the jury's verdict.'"

Both prongs of ***Cullen v. Pinholster***, supra, are met within the instant case. Both issues brought before this Court "had a substantial and injurious effect or influence in determining the jury's verdict."

1. Issue dealing with the request of an attorney during Police Interrogation

U.S. Magistrate Seibert determined that on September 19, 1998, law enforcement officials in Shenandoah County, VA, advised petitioner of his ***Miranda*** rights at 10:46 a.m. Sgt. Lindamood interviewed Petitioner "regarding offenses unrelated to the charges which were eventually filed in West Virginia," (Doc. 105, 02/07/18, p. 25). Sgt. Lindamood clearly understood Petitioner's desire to remain silent until he spoke to an attorney regarding any crimes he had committed in West Virginia. After Virginia authorities gave Petitioner the ***Miranda*** rights, Sgt. Lindamood acknowledged that "because there are some things that happened in West Virginia that you said you'd rather not go into that you want to ... wait till they pressed charges on you over there." (ECF 88-7 at 7) Petitioner interposed "wait...talk to a lawyer." (Doc. 105, 02/07/18). This assertion was unequivocal and unambiguous.[2]

It was obvious to Sgt. Lindamood that Petitioner would not discuss any conduct attributed to him by law enforcement officials in West Virginia until he spoke to an attorney. In West Virginia, any one arraigned on criminal charges, (i.e., wait till they

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[2] ***McNeil v. Wisconsin***, 501 U.S. 171, 177-79, 115 L. Ed. 158, 111 S. Ct. 2204 (1991)(Statement must reasonably be construed to "express a desire for the assistance of an attorney in dealing with custodial interrogation by the police.");*U.S. v. Graves*, 2014 U.S. App. LEXIS 617 (4th Cir., 2014).

press charges) is entitled to the assistance of counsel.[3] The Sixth Amendment right to counsel is triggered at or after the time that judicial proceedings have been initiated whether by way of formal charge, preliminary hearing, indictment, or arraignment.[4] The Fifth Amendment right to counsel was created in ***Miranda v. Arizona***, 384 U.S. 436 (1966) as an adjunct to a defendant's right against self-incrimination. This Fifth Amendment right to counsel is triggered when a defendant is taken into custody by law enforcement officials who desire to interrogate him.[5]

As stated in the Statement of the Case, Petitioner feared for his well-being due to the prodding by the Virginia officers for the Petitioner to speak to the West Virginia officers. Although the Petitioner again and again requested an attorney, the interrogation did not stop. Thereby, what the Petitioner ultimately stated was used against him in trial.

If after requesting counsel, as Petitioner did on November 19, 1998, and the

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[3] ***Smith v. Illinois***, 469 U.S. 91, 93-94, 83 L. Ed. 2d 488, 105 S. Ct. 490 (1994); The Supreme Court reversed and held that a suspect's responses to subsequent interrogation may not be used to cast doubt on the clarity of the previous unambiguous request for counsel, 469 U.S. at 98 - 100.

[4] ***Kansas v. Ventris***, 556 U.S. 586, 129 S. Ct. 1841, 173 L. Ed. 2d 801 (2009)(6th Amendment right to counsel extends to having counsel present at various pretrial "critical" interactions between defendant and State, including deliberate elicitation by law enforcement officers of statements pertaining to charge); ***U. S. v. Cronic***, 466 U.S. 648, 659, 104 S. Ct. 2039, 2047, 80 L. Ed. 2d 657 (1984); *U.S. v. Hornsby*, 666 F. 2d 296 (4th Cir., 2012); *State v. Williams*, 226 W. Va. 626, 704 S. E. 2d 418 (2010).

[5] ***Kansas v. Ventris***, 129 S. Ct. 1841, 173 L. Ed. 2d 801 (2009)(The Supreme Court concluded that its "opinions under the 6th Amendment as under the 5th, have held that the right covers pretrial interrogations to ensure that police manipulation does not render counsel entirely impotent-depriving the defendant of 'effective representation by counsel at the only stage where legal aid and advice would help him," 556 U.S. 586, 129 S. Ct. 1841, 1845, 173 L. Ed. 2d 801(2009)].

accused recants his request, the law imposes a substantial burden on the State to prove his wavier of his right to counsel. Two (2) conditions must be met for a recantation of a request for counsel to be effective: (1) the accused must initiate the conversation; and (2) the accused must knowingly and intelligently waiver the right to counsel, *State v. Vilela*, 792 S. E. 2d 22 (W. Va., 2016). In this case, Officer Thomas[6] and Sgt. Lindamood with the two members of the Ranson Police Department initiated the post-invocation conversation.[7]

In 2015, a federal appellate court concluded that a defendant's question to the interrogating officers, i.e., "There wouldn't be any possible way that I could have a - a lawyer present while we do this"," combined with his follow-up statement "that's what my dad asked me to ask you guys, uh, give me a lawyer," constituted "an unambiguous request for counsel, which should have cut off further questioning."[8] The Court granted relief to the Petitioner. In the instant case at hand, the Federal Court declared[9] the request "wait...talk to a lawyer" to be ambiguous. If an Evidentiary hearing would have

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[6] In ***Maine v. Moulton***, the Court held the "knowing exploitation by the State of an opportunity to confront the accused without counsel being present is as much a breach of the State's obligation not to circumvent the right to the assistance of counsel as is the intentional creation of such an opportunity,"474 U.S. 159, 176, 106 S. Ct. 477, 88 L. Ed. 2d 481 (1985).

[7] ***Montejo v. Louisiana***, 556 U.S. 778, 129 S. Ct. 1841, 173 L. Ed. 2d 801 (2009)(6th Amendment guarantees defendant's right to have counsel present at all critical stages of criminal proceedings. Interrogation by the State is such stage.)

[8] ***Sessoms v. Grounds***, 776 F. 3d 615 (9th Cir.)(en banc), *cert.* denied, 136 S. Ct. 80 (2015)(The en banc court held that the California Court of Appeal's conclusion that Sessoms did not make an unequivocal or unambiguous request as required under ***Davis v. U.S.***, 512 U.S. 452, 114 S. Ct. 2350, 129 L. Ed. 2d 362 (1994) was an unreasonable application of Supreme Court precedent as it existed at the time of the Court of Appeal's determination.

[9] The West Virginia Supreme Court refused the appeals on this ground and the lower Court did not grant an Evidentiary hearing.

been granted in the lower Court on the first habeas, the officers would have most definitely testified to the fact the Petitioner requested an attorney. Appendix F shows the attorney, after an investigation, knew the case would have been overturned based solely on the fact that Petitioner requested Counsel multiple times.

It cannot be controverted that the Petitioner requested, multiple times, an attorney to be present before speaking to the West Virginia officers. Again and again, the request was denied and the interrogation became physical. The Petitioner signed a waiver for the presence of an attorney not only out of fear of bodily harm but also by the cunning and deceptive actions of the officers.

This Court should GRANT Certiorari on this issue in the name of justice for the flagrant and egregious abuse of justice in the lower Courts.

2. Counsel instructing the jury that the Petitioner was guilty

The Petitioner was served an egregious miscarriage of justice not only on all the other grounds but more so on this ground. On May 14, 2018, this Court decided ***McCoy v. Louisiana***, 138 S. Ct. 1500, 200 L.Ed.2d 821 which came after the Petitioner's Report and Recommendation, filed on February 7, 2018, and the Memorandum Opinion and Order Adopting Report and Recommendation, filed on March 28, 2018.

The Petitioner's case is an exact "structural" error as in ***McCoy***, supra. Before trial, Counsel discussed the case with the Petitioner. Counsel told the Petitioner that if he pleaded guilty then he would spend the rest of his life in prison. The Petitioner told Counsel expressly that he wanted to plead Not Guilty. During trial, however, Counsel,

against the wishes and approval of the Petitioner, declared to the jury that the Petitioner was guilty of the crime of which he had been indicted. Petitioner vociferously insisted on pleading Not Guilty and adamantly objected to any admission of guilt, especially to the indictment.

Defendant McCoy's Counsel, during guilt phase, told the jury the Defendant "committed three murders." His Counsel's strategy was to concede that McCoy committed the murders but argue that McCoy's mental state prevented him from forming the specific intent necessary for a first-degree murder conviction. Over McCoy's repeated objection, Counsel told the jury the Defendant was the killer and that he (Counsel) "took [the] burden off of [the prosecutor]" on the issue of guilt.

In the instant case at hand, the Petitioner (Defendant) Widmyer's Counsel, over the repeated objection, told the jury the Petitioner was guilty in the opening and closing arguments. The Petitioner, again, adamantly did not want to be pled guilty. Counsel, as in McCoy, decided on his own that the Petitioner's mental state prevented him from forming the specific intent necessary for a first-degree murder conviction.

This Court stated in McCoy "[t]he Sixth Amendment guarantees to each criminal defendant "the Assistance of Counsel for his defense." The defendant does not surrender control entirely to counsel, for the Sixth Amendment, in "grant[ing] to the accused personally the right to make his defense" "speaks of the 'assistance' of counsel, and an assistant, however expert, is still an assistant."" Again, "[w]hen a client makes it plain that the objective of "his defense" is to maintain innocence of the charged criminal acts and pursue an acquittal, his lawyer must abide by that objective and may not override it by conceding guilt."

In the instant case, as stated in McCoy, the Petitioner's autonomy, not Counsel's competence, is the issue. "Violation of a defendant's Sixth Amendment-secured autonomy has been ranked "structural" error; when present, such an error is not subject to harmless-error review."

Due to the fact that McCoy was decided two (2) months after the Petitioner's case was decided by the Northern District Court of West Virginia and the fact the Petitioner had this case in Court already at the time of the McCoy decision, this Court needs to intervene and GRANT the Petition.

3. The Federal Court said the request for an attorney was ambiguous.

There is a conflict amongst Federal Courts of Appeal. While some would declare the statement "wait...talk to a lawyer" as ambiguous, others would declare that this statement is a clear indication, especially when the Petitioner requested an attorney multiple times, is a clear and distinct request for an attorney.

While this Court has held that, for purposes of the requirement that custodial interrogation must cease upon the interrogee's request for counsel, an ambiguous or equivocal reference to an attorney does not qualify as such a request. The problem lies within interpretation of what statement is considered ambiguous.

In the instant case, the Petitioner requested an attorney multiple times and was even denied his request for an attorney. However, the Courts used the one statement "wait...talk to a lawyer" as the ambiguous statement, although multiple other statements were declared by the Petitioner.

4. It is not ambiguous for the Petitioner to state that he wanted to speak to a lawyer before talking to the West Virginia officers.

When a reader would review the complete record at its face, it is obvious the Petitioner requested an attorney multiple times. The Petitioner wanted a lawyer present before speaking to the West Virginia officers. It cannot be construed as ambiguous when reviewing the complete record.

The various Federal Courts has defined ambiguous too largely and broad. Unless a Petitioner would state emphatically that he is not going to talk anymore without the presence of a lawyer, which would view him as being unaccommodating and would go against him in Court, then any statement can and most likely be considered ambiguous.

5. The West Virginia Courts did not allow testimony of the fact the Petitioner requested an attorney multiple times.

The West Virginia lower Court did not allow an Evidentiary hearing to allow the Police officers to testify to the fact the Petitioner had asked multiple times for an attorney. If an Evidentiary hearing would have been held and the Police officers testified, they would have stated on the record that the Petitioner requested an attorney more than just the statement "wait...talk to a lawyer."

After an investigation, attorney Kratovil knew beyond a doubt that the "[a]uthorities took [Petitioner's] confession after he had requested counsel on the charges that they questioned him about. The transcript of the tape and the tape itself shows an unequivocal request for counsel." See Appendix F. However, the lower Court did not allow an Evidentiary hearing to prove this claim and the upper Courts said it was an ambiguous statement.

CONCLUSION

The petition for a writ of certiorari should be granted for the reasons set forth above. The Petitioner is acting *pro se*. With time constraints and the limited knowledge of research, the Petitioner has found that many Federal Courts would have acknowledged the statement "wait...talk to a lawyer" as unambiguous in addition to the fact that the Petitioner requested an attorney multiple times.

In regards to the pleading of guilty to the jury, this Court should grant this Petition as well. While the Petitioner was in the Court system process, *McCoy* was being discussed by this Court. However, the Petitioner's case was decided just before McCoy was decided by this Court. The structural error is exact. Counsel and the Petitioner agreed prior to trial to plead Not Guilty all the way through trial and take the risk. Counsel, however, without the approval or wishes of the Petitioner, pled the Petitioner guilty in front of the jury during opening and closing remarks.

On this claim alone, this Petition should be GRANTED.

Respectfully submitted,

William Widmyer

William Widmyer

Date: Sept. 12, 2019

VERIFICATION

I, **William Widmyer**, Petitioner, do swear and attest the Facts and Statements contained herein are True and Correct to the Best of my Knowledge and Belief. As to those Statements based upon information of others, of Facts represented by others or founded upon their testimonies, I believe same to be True and Correct and do so represent to this Court the same as True and Correct and True in Representation as believed by me under penalty of perjury. All information in this Petition is set forth thereby as Truth. All documents represented and set forth are True and accurate so presented. The Document has been sent to the parties listed on the Certificate of Service by placing the documents in the institutional mail system on the **12th** day of **September, 2019**. It is so Sworn.

Respectfully Sworn and Attested

Date: September 12, 2019

William Widmyer

William Widmyer, *pro se.*

STATE OF WEST VIRGINIA:

COUNTY OF FAYETTE, TO WIT:

Taken, SUBSCRIBED AND SWORN BEFORE ME, A Notary Public in and for the County of **Fayette** and the State of West Virginia on the **12th** day of **September, 2019**.

Affix Seal Below:

A Sargent

Notary Signature

OFFICIAL SEAL
NOTARY PUBLIC
STATE OF WEST VIRGINIA
Aaron Sargent
Mount Olive Correctional Complex & Jail
1 Mountainside Way
Mount Olive, WV 25185
My Commission Expires Dec. 13, 2023

Notary Seal