

No. 19-6949

In The
Supreme Court of the United States

James Russell Royal

Petitioner,

v.

Commonwealth of Virginia,

Respondent,

On Petition for a Writ of Certiorari
to the Supreme Court of Virginia

ORIGINAL

FILED

NOV 21 2019

OFFICE OF THE CLERK
SUPREME COURT, U.S.

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Is McCoy v. Louisiana, 138 S.Ct.1500(2018) a watershed rule of criminal procedure which must be applied retroactively on collateral review?

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 judgment is the subject of this petition is as follows:

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APPENDIX A A Supreme Court of Virginia Order Denying Review.

TABLE OF AUTHORITIES

CASES:

Gideon v. Wainright, 372 U.S.355 (1963).
McCoy v. Louisanna, 138 S.Ct.1500 (2018).
Teague v. Lane, 589 U.S.288, 311 (1989).
Whorton v. Bockting, 549 U.S.406 (2007).

CONSTITUTIONS AND STATUTES

U.S. Constitutional 6th Amendment.

U.S. Constitutional 14th Amendment.

STATEMENT OF THE CASE

Petitioner filed a writ of habeas corpus on April 9, 2019. The Supreme Court of Virginia denied the petition because the Court was of the opinion that Petitioner had knowledge of the claim at the time he filed his first petition on July 25, 2005. Also the Court was of the opinion that the petition was not timely as it was not filed one year from April 29, 2005, the final disposition of Petitioner's direct appeal.

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 judgment below.

OPINIONS BELOW

For cases from federal courts:

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

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

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

reported at _____; or,
 has been designated for publication but is 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 is unpublished.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 A to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

reported at _____; or,
 has been designated for publication but is 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 _____.

[] No petition for rehearing was timely filed in my case.

[] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ___A_____.

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 August 30, 2019. A copy of that decision appears at Appendix A.

[] A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ___A_____.

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

REASON FOR GRANTING THE WRIT

This Court grant this writ because McCoy v. Louisiana, 138 S. Ct. 1500(2018), is a watershed rule that must be applied retroactively on collateral review. This case presents a question of national importance. Since McCoy has been decided there have been many defendant's across the Country that have attempted to have McCoy applied retroactively.

There is no dispute that the McCoy decision is new law. However, Courts have been flooded with litigation in order to decide the question of retroactivity. The lower Court decision in this case was erroneous because the Court did not recognize that McCoy is watershed rule. This Court must decide this issue to end the question of whether McCoy is retroactive. A decision that in the long run would save the Country an untold amount of resources and time. (See argument enclosed)

ARGUMENTS

On May 14, 2018, the United States Supreme Court established a new right for criminal defendant's in *McCoy v. Louisiana*, 138 S. ct. 1500 (2018). The Court held that "where 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 ".*Id.* There is no doubt that this is a new right and is recognized by the Supreme Court of the United States. The Supreme Court also held that because this error is structural there is no need to prove prejudice.

Retroactive On Collateral Review

Petitioner's conviction become final 10 years ago which means a new rule generally would not apply to Petitioner retroactively on collateral review. The United States Supreme Court held however that there are two exceptions. The Supreme Court adopted the reasoning that the second exception is reserved for "watershed rules of criminal procedure". see *Teague v. Lane*, 589 U.S. 288, 311 1989, In Whorton v. Bockting, 549 U.S. 406 (2007). the Supreme Court noted that Gideon v. Wainright, 372 U.S. 355 (1963) is the only case that the Court has identified as failing under the watershed exception because when an indigent defendant charged with a felony is denied representation the risk of an unreliable verdict is intolerably high.*Id*

Petitioner argue that if the denial of counsel in Gideon, runs the risk of an unreliable verdict, then surely counsel overriding a defendant's pursuit of an acquittal runs the risk of an unreliable verdict, especially if that pursuit of an acquittal involves asserting his innocence. Asserting innocence is just as important if not more important than having representation for trial. Therefore, under the second Teague exception McCoy is a watershed rule because it implicates "the fundamental fairness and accuracy of the criminal proceeding" and is necessary to prevent" an impermissibly large risk of an inaccurate conviction".

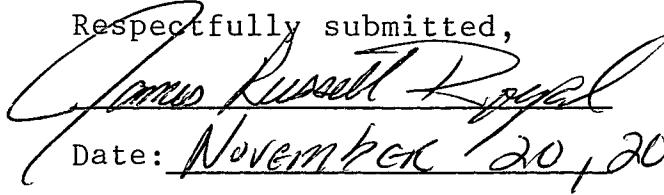
Petitioner made counsel aware before the day of trial that he wished to present a alibi defense and testify on his own behalf. (See Exhibit - A, affidavit of petitioner) Petitioner also made the Court aware on the day of trial that he wished to present alibi witnesses. (See Exhibit - B, affidavit of witnesses) Instead, like defense counsel in McCoy, defense counsel in this case decided to override petitioner's alibi defense and asked the jury to believe the Commonwealth's main witness. (See Exhibit - C, Trial Transcript pages 83-85 in closing argument).

On the day of trial defense counsel overruled Petitioner's alibi defense. Petitioner's rights was violated before the capital murder indictment was amended. (See Exhibit - D, Transcript proceeding pages 1 thru 9) Defense counsel's conduct is similar to counsel's conduct in McCoy case. The only question is whether the decision in McCoy is a watershed rule? If this Court determines that McCoy is a watershed rule, the Petitioner did not have to argue this claim within one year of April 29, 2005.

CONCLUSION

Petitioner respectfully prays that this Court grant certiorari and remand the case back to the Supreme Court of Virginia. The petition for a writ of certiorari should be granted.

Respectfully submitted,



James Russell Royal

Date: November 20, 2019