CAPITAL CASE

No. 20-

IN THE

Supreme Court of the United States

BOBBY LEE HAMPTON,

Petitioner,

v.

DARREL VANNOY, WARDEN

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE FIRST JUDICIAL DISTRICT COURT OF CADDO PARISH, LOUISIANA

PETITION FOR A WRIT OF CERTIORARI

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CAPITAL CASE

QUESTION PRESENTED

In 2018, this Court held in *McCoy* v. *Louisiana*, 138 S. Ct. 1500, that "a defendant has the right to insist that counsel refrain from admitting guilt even when counsel's experienced-based view is that confessing guilt offers the defendant the best chance to avoid the death penalty," *id.* at 1505. Prior to this Court deciding *McCoy*, a Louisiana jury convicted petitioner Bobby Hampton following a trial in which Hampton's lawyers admitted Hampton's guilt, even though Hampton expressed to his lawyers his desire that they maintain his innocence. In the decision below, a Louisiana trial court denied Hampton post-conviction relief on the ground that *McCoy* did not apply retroactively on collateral review to cases, like Hampton's, which had become final before this Court decided *McCoy*.

The question presented in this petition is whether either of the exceptions to this Court's general rule that "new constitutional rules of criminal procedure will not be applicable to those cases which have become final before the new rules are announced," *Teague* v. *Lane*, 489 U.S. 288, 310 (1989) (plurality op.), applies to *McCoy*.

RELATED PROCEEDINGS

Hampton v. *Vannoy*, No. 2020-KD-00390 (La.) (application for supervisory writ denied Dec. 8, 2020).

Hampton v. *Vannoy*, No. 176,627 (La. Dist. Ct.) (successive application for post-conviction relief denied Feb. 3, 2020).

Hampton v. *Cain*, 5:12-cv-02646 (W.D. La.) (stay granted May 14, 2019).

Hampton v. *Cain*, No. 11-11137 (U.S.) (petition for writ of certiorari denied Nov. 26, 2012; petition for rehearing denied Jan. 7, 2013).

State ex rel. Hampton v. *Cain*, No. 2012-KP-0725 (La.) (writ denied Apr. 11, 2012)

State ex rel. Hampton v. *Cain*, No. 2011-KP-1935 (La.) (writ application denied Mar. 23, 2012).

State ex rel. Hampton v. *Cain*, No. 2011-KP-1796 (La.) (writ application denied Mar. 23, 2012).

State ex rel. Hampton v. *Cain*, No. 2011-KP-1478 (La.) (writ application denied Mar. 23, 2012).

State ex rel. Hampton v. *Cain*, No. 2010-KP-0768 (La.) (applications for stay and supervisory writ denied Apr. 14, 2010; application for reconsideration not considered Apr. 30, 2010).

State of Louisiana v. *Bobby Hampton*, No. 176,627-C (La. Dist. Ct.) (amended petition for post-conviction relief denied in part May 8, 2009 and in remaining part on May 19, 2011).

State ex rel. Hampton v. *State*, No. 2000-KP-2523 (La.) (application for supervisory writ granted in part and denied in part Aug. 31, 2001).

State v. *Hampton*, No. 176,627(C) (La. Dist. Ct.) (shell petition denied July 27, 2000).

Hampton v. *Louisiana*, No. 99-6151 (U.S.) (petition for certiorari denied Nov. 15, 1999; petition for rehearing denied Jan. 10, 2000).

State v. *Hampton*, No. 98-KA-0331 (La.) (conviction and sentence affirmed Apr. 23, 1999; petition for rehearing denied June 18, 1999).

State v. *Hampton*, No. 176,627(C) (La. Dist. Ct.) (conviction and death sentence rendered May 28, 1997).

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Bobby Lee Hampton respectfully petitions for a writ of certiorari to review the judgment of the First Judicial District Court of Caddo Parish, Louisiana.

INTRODUCTION

Bobby Hampton was sentenced to death following a guilty verdict at a trial in which his attorney told the jury that Hampton was guilty of a crime even after Hampton had adamantly maintained his innocence. In 2018, this Court held in *McCoy* v. *Louisiana*, 138 S. Ct. 1500, that a trial conducted in similar circumstances violated the Constitution. "[A] defendant has the right to insist that counsel refrain from admitting guilt," the Court concluded, "even when counsel's experienced-

based view is that confessing guilt offers the defendant the best chance to avoid the death penalty." *Id.* at 1505. Such an admission, the Court explained, "[v]iolat[es] … a defendant's Sixth Amendment-secured autonomy." *Id.* at 1511. Under the rule of *McCoy*, Hampton should not have been forced to undergo a trial in which his own lawyer served as a second prosecutor advocating his guilt to the jury.

Notwithstanding this Court's clear holding, Hampton has been unable to avail himself of the benefit of *McCoy*. Instead, the decision below reasoned that because Hampton's conviction became final before this Court decided *McCoy*, that decision is inapplicable retroactively on collateral review. That holding, which squarely addressed a recurring question of law, was error. And this Court's review is necessary to ensure that defendants in courts across the country, federal and state, are assured the Sixth Amendment protections that rest at the center of America's adversarial criminal justice system.

When this Court announces a new rule of constitutional law, that decision is ordinarily not retroactively applicable to cases on collateral review. This general rule of non-retroactivity is subject to two exceptions: if the rule is substantive, or if the rule is a watershed rule of criminal procedure. *McCoy* satisfies both exceptions. The substantive exception applies when a rule removes a class of individuals from the State's ability to punish and, following *McCoy*, the State may not punish defendants whose lawyers admit their guilt to the jury even after the defendant adamantly directs defense counsel not to deploy that strategy. Alternatively, *McCoy* satisfies the watershed exception because the autonomy right *McCoy* protects is vital to preservation of the adversarial process that sits at the core of accu-

rate determinations of guilt, the *McCoy* right is universally applicable, and multiple other rights of criminal defendants depend on the protection of a defendant's Sixth Amendment autonomy.

Hampton presented these arguments in Louisiana state court, but, over the dissent of three justices, his application for relief was denied. This case presents an ideal vehicle to establish *McCoy*'s retroactivity because that issue was squarely addressed below, and this case lacks the various obstacles to direct review that are often present in the federal habeas context. Review is necessary to ensure that *McCoy*'s safeguarding of criminal defendants' autonomy is not unduly circumscribed.

OPINIONS BELOW

The order of the Supreme Court of Louisiana denying Hampton's application for a supervisory writ (App. 7a; App. 9a) is unpublished but available at 306 So. 3d 430. The ruling of the district court denying Hampton's successive application for post-conviction relief (App. 1a-5a) is unpublished.

JURISDICTION

The Supreme Court of Louisiana denied Hampton's application for a supervisory writ on December 8, 2020. On March 19, 2020, this Court extended the deadline to file any certiorari petition due on or after that date to 150 days. This Court has jurisdiction under 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISIONS INVOLVED

The Sixth Amendment to the U.S. Constitution provides in relevant part:

> In all criminal prosecutions, the accused shall enjoy the right … to have the Assistance of Counsel for his defense.

The Fourteenth Amendment to the U.S. Constitution provides in relevant part:

> [N]or shall any State deprive any person of life, liberty, or property, without due process of law.

STATEMENT OF THE CASE

A. Factual Background And Initial Proceedings

1. Bobby Hampton was indicted on September 28, 1995, for the first-degree murder of Philip Russell Coleman, a capital offense. *State* v. *Hampton*, 750 So. 2d 867, 872 (La. 1999). According to the State, Hampton and two others robbed a liquor store, and during the course of that robbery, Hampton shot Coleman, a store employee. *See id.* at 872-873, 881.

Alan Golden and Kurt Goins represented Hampton at trial. WAA-A p.3.[1] Prior to trial, the State offered Hampton the opportunity to plead guilty to second-degree murder in return for a life sentence. *Id.* at p.2. Hampton's lawyers strongly encouraged Hampton to accept this offer. WAA-C Ex. 11 ¶ 4. Hampton's mother and mitigation investigator also sought to convince him to take the plea. WAA-C Ex. 10 ¶ 6. Other members of the defense team did so as well. Dkt. 25-26

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[1] When Hampton filed an application for a supervisory writ to the Louisiana Supreme Court in this case, *infra* p.13, he attached multiple appendices to that application. Citations to "WAA-__ __" refer to "Writ Application Appendix-{Specific Appendix} {Pin cite}." For example, the citation to "WAA-A p.3" refers to page 3 of Appendix A to Hampton's supervisory writ application.

at PageID# 18304.[2] Hampton, however, refused. WAA-C Ex. 10 ¶ 6. Instead, he "maintained his innocence during the entirety of the proceedings." *Id.* Hampton repeatedly "denied all involvement" in Coleman's death, or even with the robbery of the liquor store, Dkt. 25-26 at PageID# 18219, and made unequivocally clear that "he wasn't going to plead to something that he didn't do," *id.* at PageID# 18168.

2. The State kept its plea offer open until the start of trial. Dkt. 25-26 at PageID# 18220. In the presence of the trial judge, the State reiterated the offer, and the trial judge not only urged Hampton to accept the plea, but granted Hampton's counsel one more opportunity to attempt to change Hampton's mind. *Id.* That offer was unsuccessful, and the case proceeded to trial. *Id.*

In Golden's view, "the State had a 'very, very strong case to establish that [Hampton] was a participant' in the robbery." WAA-A p.2. Given this view, Golden and Goins feared their "credibility would suffer at the penalty phase if [they] advanced an innocence defense at the guilt phase." WAA-C Ex. 11 ¶ 3. Notwithstanding their client's instructions, therefore, they "decided that [they] would concede guilt to [Hampton's] involvement in the … robbery but would contest the State's evidence that [Hampton] was the shooter." *Id.* Such an admission would effectively acknowledge that Hampton was guilty of second-degree murder, a crime which can be demonstrated merely by proof that a human being was killed "[w]hen the offender is engaged in the perpetration of … armed robbery." La. Rev. Stat.

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[2] Citations to "Dkt. ___" refer to docket entries in *Hampton* v. *Cain*, No. 5:12-cv-02646-EEF-KK (W.D. La.), Hampton's pending federal habeas proceeding, *infra* pp.8-11.

§ 14:30.1(A)(2). Golden viewed this admission of guilt as "a strategic decision that [he and Goins] were entitled to make as the attorneys on the case," regardless of the fact that he "knew that … [Hampton] refused to plead guilty to second degree murder, and … maintained his innocence." WAA-C Ex. 11 ¶ 4.

As lead guilt phase counsel, WAA-C Ex. 11 ¶ 2, Golden implemented his strategy. In his opening statement, he told the jurors that defense counsel did not "contest" that Hampton "was one of three people that took part in the robbery." Dkt. 25-13 at PageID# 15007. Golden also asserted that Hampton "lied about his whereabouts" and was "going to make up a false alibi." *Id.* at PageID# 15009-15010

At closing, Golden again reiterated Hampton's role in the robbery, reminding the jury that "[a]t the beginning of this case … I admitted to [the jury] that … Hampton[] was one of the three robbers." Dkt. 25-14 at PageID# 15322. Golden continued:

> Point One. Bobby was present and participated in the robbery. No dispute there. … Bobby was armed with a handgun. … He did point it at [one victim]. He did order him about. He did take money; he did buy a car. He … did give a false alibi. I told you that from the very beginning. He did all that. What does that prove? False alibi, money, proves, yeah, he was involved with the robbery. Nothing more, nothing less. … What was Bobby's intent here? It was to commit a robbery.

Id. at PageID# 15323-15330. Golden's closing further "grant[ed]" that "[t]here is evidence to show that [Hampton] participated in this robbery." *Id.* at PageID# 15331. And because "killing did occur during the robbery," Golden expressly told the jury that

"second degree murder could be a verdict that [it] could return." *Id.*

The jury nevertheless convicted Hampton of first-degree murder and sentenced him to death. *Hampton*, 750 So. 2d at 876. The Louisiana Supreme Court affirmed this judgment "for all purposes," *id.* at 892, and this Court denied Hampton's petition for certiorari on direct appeal, *Hampton* v. *Louisiana*, 528 U.S. 1007 (1999).

B. Collateral Review Proceedings

1. Following the conclusion of his direct appeals, Hampton sought collateral relief in the Louisiana courts. He filed a shell application for post-conviction relief on April 28, 2000, which the trial court denied three months later without providing counsel adequate time to amend the petition as required by state law. WAA-A at p.1. The Louisiana Supreme Court vacated that denial and "directed" the trial court "to give [Hampton's] counsel reasonable opportunity to prepare and litigate expeditiously an application for post-conviction relief." *State ex rel. Hampton* v. *State*, 795 So. 2d 1198 (La. 2001).

On remand, Hampton filed an amended post-conviction application. Among other asserted grounds for relief, Hampton argued that his counsel's admission of guilt to second-degree murder—notwithstanding his insistence on maintaining his innocence and his rejection of a plea to that very charge—violated his Sixth Amendment rights. Dkt. 25-19 at PageID# 16452. In support of this claim, Hampton cited both this Court's seminal ineffective assistance of counsel cases—*Strickland* v. *Washington*, 466 U.S. 668 (1984), and *United States* v. *Cronic*, 466 U.S. 648 (1984)—and three

cases—*Brookhart* v. *Janis*, 384 U.S. 1 (1966), *Boykin* v. *Alabama*, 395 U.S. 238 (1969), and *Faretta* v. *California*, 422 U.S. 806 (1975)—which emphasized a defendant's autonomy to make certain decisions fundamental to a criminal trial. Dkt. 25-19 at PageID# 16452-16453, 16457-16459.

Following an evidentiary hearing on several of Hampton's claims, including his Sixth Amendment claim, the Louisiana trial court denied relief. WAA-A at pp.1, 3. As to the Sixth Amendment claim, the court applied the ineffective-assistance-of-counsel framework, observing that under *Strickland* "great deference is given on review to counsel's judgments, tactical decisions, and trial strategies," and citing this Court's opinion in *Florida* v. *Nixon*, 543 U.S. 175 (2004), as "conclud[ing] that counsel has latitude to act in the defendant's best interest based on counsel's reasonable professional opinion, looking to both the guilt and penalty phases of a trial." The court held "that [Hampton's] trial counsel, in light of the evidence against their client, used reasonable strategy and professional judgment in conceding [Hampton's] guilt to the armed robbery in order to focus on proving [Hampton] lacked the proper intent to warrant imposition of the death penalty." WAA-A at pp.2-3.

Hampton unsuccessfully sought review before the Louisiana Supreme Court and this Court. *See State ex rel. Hampton* v. *Cain*, 82 So. 3d 1241 (La. 2012); *Hampton* v. *Cain*, 568 U.S. 1026 (2012) (denying certiorari); *Hampton* v. *Cain*, 568 U.S. 1116 (2013) (denying rehearing).

2. Hampton next timely sought a writ of habeas corpus in federal court under 28 U.S.C. § 2254. He filed his initial habeas petition in the U.S. District Court for

the Western District of Louisiana on October 4, 2012, and, three weeks later, he filed an amended petition. Dkts. 1, 10. Both filings reprised Hampton's Sixth Amendment claim challenging his counsel's admission of his guilt of second-degree murder. *Id.* Hampton also continued to argue that the admission of guilt contravened not just *Strickland* and *Cronic*, but also *Brookhart*, *Boykin*, and *Faretta*. *See* Dkt. 10 at PageID# 11509-11529.

a. While Hampton's federal petition was pending, this Court decided *McCoy* v. *Louisiana*, 138 S. Ct. 1500 (2018). Robert McCoy was convicted and sentenced to death for the killing of three relatives. *Id.* at 1507. Before trial, McCoy's attorney, Larry English, advised McCoy that the evidence was overwhelming and that he planned to admit McCoy's guilt in hopes of avoiding a death sentence. *See id.* at 1506. McCoy opposed that approach and told English to assert his innocence. *See id.* Nonetheless, English told the jury that McCoy had killed the three victims. *See id.* McCoy testified in his own defense, "maintaining his innocence and pressing an alibi difficult to fathom." *Id.* at 1507.

This Court reversed McCoy's convictions. It held that a defendant has the right to insist that counsel not admit guilt, regardless of counsel's view of how best to protect the defendant's interests. 138 S. Ct. at 1505. Whether to admit guilt is a question not of strategy but of the client's fundamental objectives, and it is therefore a decision reserved for the client. The Court explained:

> With individual liberty—and, in capital cases, life—at stake, it is the defendant's prerogative, not counsel's, to decide on the objective of his defense: to admit guilt in the hope of gaining mercy at the

> sentencing stage, or to maintain his innocence, leaving it to the State to prove his guilt beyond a reasonable doubt. …
>
> Trial management is the lawyer's province. … Some decisions, however, are reserved for the client—notably whether to plead guilty, waive the right to a jury trial, testify in one's own behalf, and forgo an appeal. Autonomy to decide that the objective of the defense is to assert innocence belongs in this latter category. Just as a defendant may steadfastly refuse to plead guilty in the face of overwhelming evidence against her, or reject the assistance of legal counsel despite the defendant's own inexperience and lack of professional qualifications, so may she insist on maintaining her innocence at the guilt phase of a capital trial. These are not strategic choices about how best to *achieve* a client's objective; they are choices about what the client's objectives in fact *are*.

Id. at 1505, 1508 (citation omitted).[3]

Because the admission of guilt over a defendant's objection "blocks the defendant's right to make the fundamental choices about his own defense," and because "the effects of the admission would be immeasur-

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[3] The Court distinguished *Nixon*, in which defense counsel had proposed admitting guilt at trial in the hopes of avoiding a death sentence and the defendant had neither objected nor affirmatively consented, *see* 543 U.S. at 178. "If a client *declines to participate* in his defense, then an attorney may permissibly guide the defense pursuant to the strategy she believes to be in the defendant's best interest. Presented with *express statements* of the client's will to maintain innocence, however, counsel may not steer the ship the other way." *McCoy*, 138 S. Ct. at 1509 (emphasis added).

able," the Court concluded that the error is structural, automatically requiring a new trial. *McCoy*, 138 S. Ct. at 1511.

b. Following this Court's decision in *McCoy* and the submission of supplemental briefing by the parties, the magistrate judge to whom Hampton's petition had been referred issued a Report and Recommendation, which recommended that the petition be denied in its entirety. Dkt. 72 at 1. As to Hampton's Sixth Amendment claim, the magistrate judge bypassed "determin[ing] if *McCoy*'s holding was clearly established from its antecedents," reasoning instead that Hampton "failed to develop any evidence that he expressly objected to counsel's strategy." *Id.* at 28. The magistrate judge accordingly evaluated Golden's admission of guilt to second-degree murder under the *Strickland* ineffective assistance of counsel standard, and concluded that—given the evidence in the case, "and the opening created through … conflicting [witness] statements on the identity of the shooter"—Hampton "fail[ed] to show that trial counsel performed deficiently based on the options left open to him." *Id.* at 29-30.

Hampton subsequently filed a motion to stay his federal habeas proceeding and hold it in abeyance while he returned to state court to exhaust a claim that *McCoy* entitled him to post-conviction relief. *See* Dkt. 75. Hampton explained to the federal habeas court that this motion was filed out of an abundance of caution in the event the federal court disagreed with his position that *McCoy* did not announce a new rule; if the court were to reject that argument, a new claim based on *McCoy* would be unexhausted, and thus ineligible as a basis for federal habeas relief, 28 U.S.C. § 2254(b)(1). *See* Dkt. 75-1 at 8-9. The district court granted the motion. Dkt. 76.

C. Proceedings Below

On May 14, 2019, Hampton filed a successive application for post-conviction relief in Louisiana district court. App. 1a. The State objected to Hampton's application on the ground that *McCoy* does not apply retroactively to cases, such as Hampton's, which were final prior to this Court issuing the *McCoy* decision. App. 2a.

The Louisiana district court denied Hampton's successive application on February 3, 2020. App. 1a. The court assumed, for purposes of resolving the State's objection, that *McCoy* was factually applicable to Hampton's case. App. 1a n.1. As such, the court reasoned, "[t]he only question to be decided … is whether or not *McCoy* is to be applied retroactively." App. 2a.

The district court answered that question by applying the framework for retroactivity this Court established in *Teague* v. *Lane*, 489 U.S. 288 (1989). App. 2a. Under *Teague*, the district court explained, only two categories of new rules of criminal law apply retroactively: "(1) rules forbidding punishment of certain primary conduct or prohibiting a certain category of punishment for a class of defendants because of their status or offense; [or] (2) watershed rules of criminal procedure implicating the fundamental fairness and accuracy of the criminal proceeding." *Id.* In the court's view, "*McCoy* simply does not fit either exception." *Id.* The first exception was inapplicable, the court explained, because that "exception is limited to cases involving a class of defendants … or those being punished for conduct no longer punishable," and Hampton belonged in neither of these categories. App. 3a.

The court next turned to the watershed exception. It began its analysis by quoting this Court's admonition in *Beard* v. *Banks*, 542 U.S. 406 (2004), that "[i]n providing guidance as to what might fall within this exception, [it] ha[s] repeatedly referred to the rule of *Gideon* v. *Wainwright*, [372 U.S. 335 (1963)], (right to counsel), *and only to this rule*." App. 3a-4a (emphasis added by trial court). The court asserted that "the right of a defendant to overrule his counsel on trial strategy cannot be equated to his basic right to counsel" because while "[h]aving a lawyer clearly can be central to a determination of guilt or innocence, … it is highly doubtful allowing a defendant to make such a critical decision over advice of counsel would have that effect." App. 4a. In a footnote, the court elaborated that it was "concerned *McCoy* might lead to less favorable verdicts for more defendants," a result unlike *Gideon*, which, the court hypothesized, "[s]urely … has led to many not guilty verdicts and verdicts more favorable to defendants." App. 4a n.3. Finally, the court asserted that unlike *Gideon*, "*McCoy* cannot be said to have altered our understanding of the bedrock procedural elements essential to the fairness of a proceeding." App. 4a-5a.

Hampton sought a supervisory writ from the Louisiana Supreme Court. App. 7a. That court denied Hampton's application on December 8, 2020. *Id.* Three justices noted that they would have granted and docketed the application. *Id.* One of those three, Justice Crichton, wrote that he "would grant and docket this application for full consideration by this Court in order to address the retroactivity of *McCoy v. Louisiana*." App. 9a.

REASONS FOR GRANTING THE PETITION

The Louisiana district court's holding that *McCoy* v. *Louisiana*, 138 S. Ct. 1500 (2018), does not fall within either *Teague* v. *Lane*, 489 U.S. 288 (1989), exception erroneously answered an important and recurring question of law. Certiorari is warranted because this case is an ideal vehicle to correct the flawed reasoning of the decision below, and to offer guidance to lower courts going forward. In the alternative, this Court should hold this petition pending resolution of *Edwards* v. *Vannoy*, No. 19-5807.

I. THE DECISION BELOW IS WRONG

In denying Hampton's application for post-conviction relief, the Louisiana district court misapplied the framework this Court announced in *Teague* to determine whether *McCoy* applied in Hampton's collateral review proceeding. Certiorari is warranted to correct that error and explain to state and federal courts around the country how *Teague* should be applied to *McCoy* violations.

"Under *Teague*, as a general matter, 'new constitutional rules of criminal procedure will not be applicable to those cases which have become final before the new rules are announced.'" *Welch* v. *United States*, 136 S. Ct. 1257, 1264 (2016). That general rule aside, "*Teague* and its progeny recognize two categories of decisions that fall outside this general bar on retroactivity for procedural rules." *Id.* "First, courts must give retroactive effect to new substantive rules of constitutional law. … Second, courts must give retroactive effect to new 'watershed rules of criminal procedure implicating the fundamental fairness and accuracy of the criminal

proceeding.'" *Montgomery* v. *Louisiana*, 577 U.S. 190, 198 (2016). *McCoy* satisfies both exceptions.[4]

A. *McCoy* Announced A Substantive Rule

McCoy announced a "substantive rule[] of constitutional law" that fits within the first exception to *Teague*'s general principle of non-retroactivity for new rules, *Montgomery*, 577 U.S. at 198. The Louisiana district court wrongly held otherwise in a single paragraph of conclusory reasoning, App. 3a.

1. Substantive rules "set forth categorical constitutional guarantees that place certain criminal laws and punishments altogether beyond the State's power to impose." *Montgomery*, 577 U.S. at 201. As this Court has explained, a substantive rule under *Teague* may extend a categorical guarantee to defendants on the basis of either conduct or status. *Id.* at 198. Thus, rules restricting the State's ability to punish "a particular class of persons" qualify as substantive, even if the conduct in question is generally still proscribed. *Saffle* v. *Parks*, 494 U.S. 484, 495 (1990).

McCoy reflects a categorical guarantee of "the defendant's right to make the fundamental choices about his own defense," in particular the "[a]utonomy to decide that the objective of the defense is to assert inno-

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[4] Again, Hampton sought a successive application for post-conviction relief out of an abundance of caution, in case the federal habeas court was to rule that *McCoy* is a new rule. *Supra* p.11. Hampton's position remains that he "may … avail [him]self of the [*McCoy*] decision on collateral review" because that case merely "appl[ied] a settled rule," *Chaidez* v. *United States*, 568 U.S. 342, 347 (2013). The *Teague* exceptions are alternative bases for holding *McCoy* applicable to Hampton in collateral proceedings, and only these alternative bases are at issue in this petition.

cence." 138 S. Ct. at 1508, 1511. It ensures this right by carving out a specific class of defendants defined by a shared status: those whose explicit opposition to their counsel's admission of their guilt was disregarded. Its holding recognizes that such defendants merit distinct constitutional protection from conviction and punishment by the State. If a defendant has insisted on maintaining his innocence and objected to his counsel's contrary strategy, and yet his counsel has nonetheless admitted the client's guilt over his objection, the defendant may not be punished until he is afforded the opportunity to maintain his innocence at a new trial. *See id.* at 1511 (holding that the error was structural and that the defendant must therefore "be accorded a new trial without any need to first show prejudice"). Thus, the only way the State may punish a member of the *McCoy*-protected class is to remove the defendant from the class by vindicating his right to determine the objective of his defense. In other words, defendants in the class recognized by *McCoy* cannot be convicted or punished until they receive trials in which *they* (not their lawyers) set the fundamental objective of their defense.

Although the constitutional protection articulated in *McCoy* is framed as a right accorded to defendants, its functional guarantee is freedom from punishment in conjunction with deprivation of that right. And because "the function of the rule" "determine[s] whether [it] is substantive or procedural," *Welch*, 136 S. Ct. at 1265, the change *McCoy* effectuates is a change of substantive law, *i.e.*, a change to the scope of the State's power to punish.

McCoy alters the scope of the State's authority in at least two ways. First, in cases (like Hampton's) in which the defendant is represented by a public defender,

McCoy prevents the State from interfering with defendants' autonomy rights directly via a State appointee overriding the defendant's wishes and instead admitting the defendant's guilt. *Cf. Faretta* v. *California*, 422 U.S. 806, 807 (1975) ("a State [may not] hale a person into its criminal courts and there force a lawyer upon him, even when he insists that he wants to conduct his own defense"). In other words, the State, through a public defender, may not admit a defendant's guilt to the jury over that defendant's express objection, and if the public defender nonetheless does so, the State cannot punish that defendant.

Second, *McCoy* alters the State's punitive power by restricting the power of the courts. In situations in which retained counsel commits *McCoy* error, the court, as part of the State, may not enter a judgment convicting or sentencing that defendant. *Cf. Lakeside* v. *Oregon*, 435 U.S. 333, 341-342 (1978) ("It is the judge, not counsel, who has the ultimate responsibility for the conduct of a fair and lawful trial."). The functional effect of *McCoy*, therefore, is to alter the scope of the State's power to punish. The autonomy right *McCoy* explicates carves out a particular class of persons from the scope of the State's power to convict and sentence. As such, *McCoy* is substantive under *Teague* and applicable retroactively.

2. The fact that procedural elements may be necessary to secure protection of the autonomy right articulated in *McCoy* does not render that right procedural for purposes of *Teague*. In some instances, "a substantive change in the law must be attended by a procedure that enables a prisoner to show that he falls within the category of persons whom the law may no longer punish." *Montgomery*, 577 U.S. at 210. In other words, the application of certain substantive rules may

necessarily have a procedural effect because, without affecting trial procedure, a criminal defendant would be unable to exercise the substantive right.

Atkins v. *Virginia*, 536 U.S. 304 (2002), is such an example. There, the Supreme Court held that the execution of intellectually disabled defendants violated the Eighth Amendment. *Id.* at 321. To enforce this right, the Court "le[ft] to the State[s] the task of developing appropriate ways to enforce the constitutional restrictions upon [their] execution of sentences." *Id.* at 317 (first brackets added). The implication, of course, was that defendants had a *procedural* right to a determination of whether they were intellectually disabled. But this procedural element did not alter the fact that *Atkins*, because it removed all intellectually disabled defendants from the class of people eligible for the death penalty, was a substantive holding retroactive on collateral review. *See Montgomery*, 577 U.S. at 210.

Montgomery underscored this point when it held that *Miller* v. *Alabama*, 567 U.S. 460 (2012), announced a new substantive rule—specifically "that mandatory life without parole for those under the age of 18 at the time of their crimes violates the Eighth Amendment's prohibition on 'cruel and unusual punishments,'" *id.* at 465. The fact that *Miller* "ha[d] a procedural component," namely its requirement that "a sentence … consider a juvenile offender's youth and attendant characteristics before determining that life without parole is a proportionate sentence," did not negate its substantive character; any change to trial procedure was merely an ancillary development facilitating the protection of its substantive guarantee. *Montgomery*, 577 U.S. at 208-210. As with *Atkins* and *Miller*, *McCoy* affects trial procedure only insofar as necessary to effectuate its substantive guarantee. If a defendant tells counsel that

she wishes to contest guilt, that is the course counsel must then pursue. Any second-order procedural consequences (*i.e.*, a colloquy between the judge, defendant, and counsel to determine whether an objection was raised, or the replacement of counsel who fail to abide by the defendant's chosen objective) do not undermine the conclusion that *McCoy* announced a substantive rule of constitutional law.

3. The Louisiana district court held that the first *Teague* exception was inapplicable because the class of individuals protected by *McCoy* "is not … a clearly defined class" like the one protected by *Miller*. App. 3a. But the example of a "clearly defined class" the court reasoned was sufficient to qualify as a substantive rule—"all juvenile offenders," a class purportedly "clearly defined … based on age," *id.*—was not the class protected by *Miller*. As this Court has explained on multiple occasions, "*Miller* … did not bar a punishment for all juvenile offenders." *Montgomery*, 577 U.S. at 209; *see Miller*, 567 U.S. at 479 ("[W]e do not consider [the] argument that the Eighth Amendment requires a categorical bar on life without parole for juveniles, or at least for those 14 and younger."); *Jones* v. *Mississippi*, 141 S. Ct. 1307, 1316 (2021) ("But *Miller* did not … impose a categorical bar against life without parole for murderers under 18."). The class of defendants actually shielded by *Miller* from life without the possibility of parole was all juveniles sentenced under a mandatory scheme, i.e., one where "the sentencer [lacks] discretion to impose a lesser punishment." *Jones*, 141 S. Ct. at 1311. The category of defendants protected from punishment by *McCoy* is no less clear. Regardless, it is "the function of the rule" which "determine[s] whether a … rule is substantive or procedural," *Welch*, 136 S. Ct. at 1265, and the "clarity" of the protected class is

immaterial to the function of a given rule. The Louisiana district court's contrary reasoning was wrong.

B. Alternatively, *McCoy* Is A Watershed Rule Of Criminal Procedure

To the extent this Court considers *McCoy* a procedural rule, that rule applies retroactively under the second *Teague* exception. A rule of criminal procedure is watershed, and thus retroactively applicable on collateral review, if it is "necessary to prevent an 'impermissibly large risk' of an inaccurate conviction" and if it "alter[s] our understanding of the bedrock procedural elements essential to the fairness of a proceeding." *Whorton* v. *Bockting*, 549 U.S. 406, 418 (2007). This Court has pointed to the holding of *Gideon* v. *Wainwright*, 372 U.S. 335 (1963), "that a defendant has the right to be represented by counsel in all criminal trials for serious offenses," as emblematic of "the type of rule coming within the [watershed] exception." *Saffle*, 494 U.S. at 495.

The rule articulated in *McCoy* meets these requirements. By prohibiting defense counsel from overriding the defendant's objection to an admission of guilt, *McCoy* assures that the prosecution's case is subject to the adversarial testing that is key to "better, more accurate, decision-making." *Kaley* v. *United States*, 571 U.S. 320, 338 (2014). And the universality and cross-cutting nature of *McCoy*'s holding confirms its bedrock status.

1. The United States has "elected to employ an adversary system of criminal justice." *United States* v. *Nixon*, 418 U.S. 683, 709 (1974). "The very premise of our adversary system," this Court has repeatedly explained, "is that partisan advocacy on both sides of a

case will best promote the ultimate objective that the guilty be convicted and the innocent go free." *Herring* v. *New York*, 422 U.S. 853, 862 (1975); *accord Kaley*, 571 U.S. at 338 (characterizing as "generally sound" the notion "that the adversarial process leads to better, more accurate, decision-making"); *Penson* v. *Ohio*, 488 U.S. 75, 84 (1988) (describing the adversary system as "premised on the well-tested principle that truth—as well as fairness—is 'best discovered by powerful statements on both sides of the question'"); *Lassiter* v. *Department of Soc. Servs. of Durham Cty.*, 452 U.S. 18, 28 (1981) (explaining that "our adversary system presupposes" that "accurate and just results are most likely to be obtained through the equal contest of opposed interests"). This premise of the adversary system—that it minimizes the likelihood of a wrong result at trial—is so fundamental this Court has said it "underlies and gives meaning to the Sixth Amendment." *United States* v. *Cronic*, 466 U.S. 648, 655-656 (1984).

In order to function properly, "the adversarial process protected by the Sixth Amendment requires that the accused have 'counsel *acting in the role of an advocate*.'" *Cronic*, 466 U.S. at 656 (emphasis added). A defense attorney's admission of guilt against the defendant's wishes upends this adversary system. "A fundamental premise of our criminal law is that the prosecution has the burden of proving beyond a reasonable doubt that the accused committed the offense charged." *Nilva* v. *United States*, 352 U.S. 385, 399 (1957). The adversary system requires defense counsel to hold the State to this burden, "put[ting] the State's case in the worst possible light." *United States* v. *Wade*, 388 U.S. 218, 257 (1967) (White, J., dissenting in part and concurring in part). When "the prosecution's case" is not forced to "survive the crucible of meaningful

adversarial testing," the trial is stripped of "its character as a confrontation between adversaries." *Cronic*, 466 U.S. at 656-657. More specifically, when defense counsel admits the defendant's guilt to the jury over the defendant's objection, the defendant is, effectively, staring down two prosecutors. Criminal trials become the very "sacrifice of unarmed prisoners to gladiators" that the Sixth Amendment aims to avoid. *See id.* at 657 (quotation marks omitted).

Because partisan advocacy on both sides "best promote[s]" accurate outcomes of criminal trials, *Herring*, 422 U.S. at 862, "if the adversary system is not permitted to function properly, there is an increased chance of error, and with that, the possibility of an incorrect result," *Lankford* v. *Idaho*, 500 U.S. 110, 127 (1991) (internal citation omitted). *McCoy*'s holding preserves the functioning of the adversary system, and, consequently, promotes the accuracy of trial results.

The importance of *McCoy* to the functioning of the adversary system compares favorably to *Gideon*. In *Gideon*, this Court treated as an "obvious truth" the proposition that "in our adversary system of criminal justice, any person haled into court, who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided for him," given the "vast sums of money" the government spends "to establish machinery to try defendants accused of crimes." *See* 372 U.S. at 344. The "noble idea" of defendants receiving "fair trials before impartial tribunals in which every defendant stands equal before the law," this Court explained, "cannot be realized if the poor man charged with crime has to face his accuser without a lawyer to assist him." *Id.* at 344-345 (quoting *Powell* v. *Alabama*, 287 U.S. 45, 68-69 (1932)). Equally, that "noble idea" cannot be realized if a defendant's lawyer refuses to subject the

State's case for the defendant's guilt to adversarial testing, despite the defendant's express instruction. In mitigating the risk that a defendant will be unable to pose a fair adversary to the "machinery" of the State without counsel serving as an advocate, *McCoy* mirrors *Gideon*, the benchmark for watershed rules. As such, it satisfies the first criterion for retroactivity.

2. *McCoy* also satisfies the second requirement. As a universally-applicable rule necessary for the protection of multiple rights of criminal defendants', the holding in *McCoy* implicates "'the bedrock procedural elements essential to the fairness of a proceeding,'" *Whorton*, 549 U.S. at 418.

The Court's holding in *McCoy* that "it is the defendant's prerogative, not counsel's, to decide on the objective of his defense," 138 S. Ct. at 1505, applies to every criminal case, whether capital or non-capital, state or federal, felony or misdemeanor. That rule must be respected in at least as many cases as the right to counsel in *Gideon*, and arguably more so, because the latter is limited by this Court's holding that "where no sentence of imprisonment was imposed, a defendant charged with a misdemeanor ha[s] no constitutional right to counsel," *Nichols* v. *United States*, 511 U.S. 738, 743 (1994). The fact that *McCoy* is applicable to every criminal case separates it from narrower cases that this Court has held fall outside the procedural *Teague* exception—such as *O'Dell* v. *Netherland*, 521 U.S. 151 (1997), which addressed the retroactivity of *Simmons* v. *South Carolina*, 512 U.S. 154 (1994), which "afford[ed] to defendants in a limited class of capital cases" a "narrow right of rebuttal, *O'Dell*, 521 U.S. at 167.

McCoy is also a bedrock procedural rule because it is "essential to the fairness of a proceeding." *Whorton*, 549 U.S. at 421. Not only is the right protected in *McCoy* critical to the functioning of the adversary system, *supra* pp.21-23, but a violation of that right is a cross-cutting error that can thwart other core rights of criminal defendants. Most obviously, when defense counsel short-circuits the adversarial process and admits the defendant's guilt, that admission "relieve[s] the State of its due process burden to prove every element of the crime beyond a reasonable doubt," *Jones* v. *United States*, 526 U.S. 227, 240 (1999), a burden which functions as "a prime instrument for reducing the risk of convictions resting on factual error," *In re Winship*, 397 U.S. 358, 363 (1970).

The spillover consequences of a *McCoy* violation do not stop there. For example, a defense counsel's objected-to admission of guilt undermines the defendant's right to choose to testify (or not testify) "in the unfettered exercise of his own free will," *Brooks* v. *Tennessee*, 406 U.S. 605, 610 (1972). If a defendant wants to contest the prosecution's guilt-phase case and does not want to testify, but the defense attorney affirmatively tells the jury the defendant is guilty, testimony from the defendant is the *only* means through which the defendant can mount a defense. This forces a defendant into a dilemma in which he *must* give up either his right to choose not to testify (as happened in *McCoy*) or his right to challenge the State's guilt-phase case (as happened here). On the other side of the coin, if the defendant does testify, an admission of guilt from the defendant's own lawyer significantly diminishes the value of that testimony. *See Buck* v. *Davis*, 137 S. Ct. 759, 766 (2017) ("When damaging evidence is introduced by a defendant's own lawyer, it is in the nature of an

admission against interest, more likely to be taken at face value.").

3. The Louisiana district court gave three reasons for rejecting the watershed exception. None has merit.

First, the court asserted that "the right of a defendant to overrule his counsel on trial strategy cannot be equated to his basic right to counsel" because, in the court's estimation, "it is highly doubtful allowing a defendant to make such a critical decision [of whether to admit guilt] over advice of counsel would" "be central to a determination of guilt or innocence." App. 4a. Besides failing to appreciate that *McCoy* did not address matters of "trial strategy," the court's reasoning ignored how *McCoy* error completely undermines both the adversary system and the importance of holding the government to its burden of proof, both of which are central to accurate fact-finding. *Supra* pp.21-24.

Second, the court speculated that—unlike *Gideon*, which in the court's estimation "[s]urely … has lead [sic] to many not guilty verdicts and verdicts more favorable to defendants"—"*McCoy* might lead to less favorable verdicts for more defendants." App. 4a n.3. This concern—for which the court provided no support—ignores that the prosecution's evidence in a given case may only appear strong because that evidence has not been subjected to any adversarial testing.

And finally, the court declared, without elaboration, that, unlike *Gideon*, "*McCoy* cannot be said to have altered our understanding of the bedrock procedural elements essential to the fairness of a proceeding." App. 4a-5a. This entirely ignored the universal and cross-cutting nature of the *McCoy* right. *Supra* pp.23-24.

II. This Case Is A Good Vehicle To Resolve An Important And Recurring Question Of Law

In holding that the autonomy right this Court protected in *McCoy* falls outside either *Teague* exception, the Louisiana court erroneously answered an important and recurring question of law. Several courts have addressed, and rejected, the retroactivity of *McCoy*. *See, e.g.*, *Christian* v. *Thomas*, 982 F.3d 1215, 1224-1225 (9th Cir. 2020); *Smith* v. *Stein*, 982 F.3d 229, 235 (4th Cir. 2020), *cert. denied*, 2021 WL 1520899 (U.S. Apr. 19, 2021); *Colvin* v. *Tanner*, 2021 WL 356238 (W.D. La. Feb. 2, 2021), *appeal docketed*, No. 21-30115 (5th Cir.); *Elmore* v. *Shoop*, 2020 WL 3410764, at *11 (S.D. Ohio June 22, 2020); *United States* v. *Allen*, 2020 WL 3865094, at *6 (E.D. Ky. Feb. 28, 2020), *report and recommendation adopted*, 2020 WL 1623988 (E.D. Ky. Apr. 2, 2020). Certiorari is warranted to rectify this flawed consensus.

This case is an ideal vehicle for this Court to do so. To start, by assuming that the facts of this case fit within *McCoy*, App. 1a n.1, the Louisiana district court squarely addressed the applicability of the *Teague* exceptions. *Cf. Cortinas* v. *State*, 2021 WL 912351, at *1 (Nev. Mar. 9, 2021) (Table) ("Because *McCoy* is distinguishable, we need not resolve Cortinas's argument that *McCoy* applies retroactively.").

The fact that this case arises from a state post-conviction proceeding offers further advantages. For one, this Court will be able to directly answer whether *McCoy* satisfies the *Teague* exceptions; it will not have to ask whether the Louisiana trial court's holding "was contrary to, or involved and unreasonable application of" *Teague*, *see* 28 U.S.C. § 2254(d)(1). For another, applications to file second or successive *federal* habeas

petitions are statutorily barred from "be[ing] the subject of a petition for … a writ of certiorari." *Id.* § 2244(b)(3)(E); *see also Christian*, 982 F.3d at 1226 (addressing *McCoy* in the context of such an application). That obstacle to this Court's review is not present here.

III. Alternatively, This Petition Should Be Held Pending This Court's Decision In *Edwards* v. *Vannoy*

As an alternative to granting certiorari at this time, this Court should hold this petition until it decides *Edwards* v. *Vannoy*, No. 19-5807. That case addresses whether this Court's decision in *Ramos* v. *Louisiana*, 140 S. Ct. 1390 (2020), applies retroactively. *See* Petitioner Br. i, No. 19-5807, *Edwards* v. *Vannoy* (U.S. July 15, 2020). As such, the application of the *Teague* framework is implicated in *Edwards*.

CONCLUSION

The petition for a writ of certiorari should be granted. In the alternative, this petition should be held pending the Court's decision in *Edwards* v. *Vannoy*.

Respectfully submitted.

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