APPENDIX

APPENDIX A

NUMBER 176,627 Sec. 3
1st JUDICIAL DISTRICT COURT
CADDO PARISH, LOUISIANA

BOBBY LEE HAMPTON

VERSUS

DARREL VANNOY, WARDEN

[STAMP: FILED FEB 03 2020]

RULING

Before the Court is "Petitioner's Successive Application for Post-Conviction Relief Based on *McCoy v. Louisiana*" ("the Application") filed May 14, 2019. For the reasons expressed below, the Application is **DENIED.**

In the Application, BOBBY LEE HAMPTON ("HAMPTON") seeks a new trial based upon a recent ruling by the United States Supreme Court in *McCoy v. Louisiana,* 138 S.Ct. 1500, 200 L.Ed.2d 821 (2018) ("*McCoy*"). *McCoy* held that a lawyer may not admit his client's guilt over the client's intransigent objection to that admission. If HAMPTON were on trial today, *McCoy* would appear to require this Court to allow him to override his counsel's advice and insist upon claiming innocence, even in the face of overwhelming evidence against him.[1] However, HAMPTON is not faced with

[1] For purposes of this Ruling only, this Court assumes that HAMPTON made such an objection in 1997. With this under-

such a decision now, but was faced with that decision in 1997. The only question to be decided in the Application is whether or not *McCoy* is to be applied retroactively.

Typical new rules of criminal procedure are not retroactively applied. There are only two (2) types of new procedural rules that are said to be exceptions to this general rule. These two exceptions were established in *Teague v. Lane*, 489 U.S. 288, 109 S.Ct. 1060,103 L.Ed.2d 334 (1989) ("*Teague*"). They are: (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; (2) watershed rules of criminal procedure implicating the fundamental fairness and accuracy of the criminal proceeding. HAMPTON claims the rule of criminal procedure set forth in *McCoy* is such a watershed rule that it should be applied retroactively to his 1997 murder conviction. *McCoy* held that criminal defendants have the right to choose the objective(s) of their defense. Specifically, *McCoy* held a defendant, and not counsel, has the right in capital cases to decide whether to admit guilt in the hope of gaining mercy at the sentencing stage or to maintain his innocence.

In its Procedural objections, the State argues HAMPTON is wrong and rules such as that set forth in *McCoy* in 2018 cannot reach back to set aside a 1997 conviction pursuant to *Teague.* This Court agrees.

The rule of *McCoy* simply does not fit either *Teague* exception. First, it is not a rule that prohibits punishment for certain conduct or punishment for a category or class of defendants. Such as was present in *Montgomery v. Louisiana*, 193 L.Ed. 2d 599, 136 S.Ct.

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standing, no evidentiary hearing is needed on the Application at this time.

718 (2016) ("*Montgomery*").[2] Second, it is not a rule that implicates the fundamental fairness or accuracy of the criminal proceeding such as the right to counsel found in *Gideon v. Wainwright*, 272 U.S. 355, 83 S.Ct. 792, 9 L.Ed. 2d 799 (1963) ("*Gideon*").

The first *Teague* exception was clearly and rightly applied in *Montgomery*, but cannot be said to apply here. Hampton argues otherwise, but all juvenile offenders is a clearly defined class of offenders based on age. Defendants who claim their innocence against advice of counsel is not such a clearly defined class. The first *Teague* exception is limited to cases involving a class of defendants like in *Montgomery* or those being punished for conduct no longer punishable. HAMPTON is neither.

The second *Teague* exception does not apply here, either. The second exception is limited in scope to:

> " ... a small core of rules requiring observance of those procedures that ... are implicit in the concept of ordered liberty." *O'Dell*, *supra*, at 157, 117 S.Ct. 1969 (quoting *Graham*, *supra*, at 478, 113 S.Ct.892). And, because any qualifying rule " 'would be so central to an accurate determination of innocence or guilt [that it is] unlikely that many such components of basic due process have yet to emerge.'" *Graham*, *supra*, at 478, 113 S.Ct. 892 (quoting *Teague*, *supra* at 313, 109 S.Ct. 1060), it should come as no surprise that we have yet to find a new rule that falls under the second *Teague* exception.

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[2] *Montgomery* made the holding of *Miller v. Alabama*, 567 U.S. 460 132 S.Ct. 2455, 183 L.Ed.2d 407 (2012), eliminating life without parole for most juvenile offenders, retroactive pursuant to the analysis of *Teague*.

> Perhaps for this reason, respondent does not even attempt to argue that *Mills* qualifies or to rebut petitioner's argument that it does not, Brief for Petitioners 23-26.
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> **In providing guidance as to what might fall within this exception, we have repeatedly referred to the rule of *Gideon v. Wainwright,* 272 U.S. 355, 83 S.Ct. 792, 9 L.Ed.2d 799 (1963) (right to counsel), and only to this rule.** (Emphasis added.)

See *Beard v. Banks*, 124 S.Ct. 2504, 159 L.Ed.2d 494, 542 U.S. 406 (2004) at p. 2513 ("*Beard v. Banks*").

Surely, the right of a defendant to overrule his counsel on trial strategy cannot be equated to his basic right to counsel. As stated in *Graham v. Collins*, 506 U.S. 461, 122 L.Ed.2d 260 (1993) at p. 478 and quoted in *Beard v. Banks*, rules worthy of retroactive effect pursuant to this second exception must be **"... central to an accurate determination of innocence or guilt ...".** (Emphasis added.) Having a lawyer clearly can be central to a determination of guilt or innocence, but it is highly doubtful allowing a defendant to make such a critical decision over advice of counsel would have that effect. *McCoy's* new rule is not likely to lead to a more accurate determination of guilt or innocence.[3] In *Beard v. Banks*, at page 2514, the Supreme Court correctly said it is fair to say *Gideon*... "alter(ed) our understanding of the '*bedrock procedural elements*' essential to the fairness of a proceeding." (Emphaiss added.) No doubt *Gideon* did so. *McCoy* cannot be said to have altered

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[3] Surely, *Gideon* has lead to many not guilty verdicts and verdicts more favorable to defendants. This Court is concerned *McCoy* might lead to less favorable verdicts for more defendants.

our understanding of the bedrock procedural elements essential to the fairness of a proceeding.[4]

The Clerk is directed to provide a copy of this Ruling to Bobby Lee Hampton, through his attorney of record, Letty S. DiGiulio, and to the Caddo Parish District Attorney.

Shreveport, Caddo Parish, Louisiana this 28 day of January, 2020.

/s/ Charles G. Tutt
JUDGE CHARLES G. TUTT
DISTRICT JUDGE

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[4] As mentioned in footnote 1, no hearing is needed. This Ruling is issued pursuant to La. C.Cr.P. Art. 928 as the Application "… fails to allege a claim which, if established, would entitle the petitioner to relief." The Application is thorough. It is well documented and well done, but neither HAMPTON nor counsel can convince this Court to equate the ruling in *McCoy* to those in *Montgomery* or *Gideon*. HAMPTON cannot convince this Court otherwise with more argument. Further proceedings in this Court are unnecessary. Alternatively, the State's Procedural Objections can be treated as an Answer and this Ruling issued pursuant to La.Cr.P. Art. 929A.

APPENDIX B

THE SUPREME COURT OF THE STATE OF LOUISIANA

No.2020-KD-00390

BOBBY LEE HAMPTON

VS.

DARREL VANNOY, WARDEN

IN RE: Bobby Lee Hampton – Applicant Plaintiff;
Applying For Supervisory Writ, Parish of Caddo,
1st Judicial District Court Number(s) 176,627;

December 08, 2020

Writ application denied.

JDH

JTG

WJC

JHB

Johnson, C.J., would grant and docket.
Weimer, J., would grant and docket.
Crichton, J., would grant and docket and assigns reasons.

Supreme Court of Louisiana
December 08, 2020

[illegible]
Clerk of Court
For the Court

APPENDIX C

SUPREME COURT OF LOUISIANA

No. 2020-KD-00390

BOBBY LEE HAMPTON

VS.

DARREL VANNOY, WARDEN

[December 8, 2020]

**On Supervisory Writ to the
1st Judicial District Court, Parish of Caddo**

Crichton, J., would grant and docket.

I would grant and docket this application for full consideration by this Court in order to address the retroactivity of *McCoy v. Louisiana*, 584 U.S. __, 138 S.Ct. 1500, 200 L.Ed.2d. 821 (2018). *See Teague v. Lane*, 489 U.S. 288, 109 S.Ct. 1060, 103 L.Ed.2d 334 (1988).