

No. _____

In the
**Supreme Court of the United
States**

—◆—
AKIL JAHI aka PRESTON CARTER,
Petitioner,

v.

STATE OF TENNESSEE,
Respondent.

—◆—
On Petition for Writ of Certiorari to the
Tennessee Court of Criminal Appeals,
Western Division

—◆—
PETITION FOR A WRIT OF CERTIORARI
—◆—

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CAPITAL CASE

QUESTIONS PRESENTED

This Court held in *McCoy v. Louisiana*, 138 S. Ct. 1500 (2018) that the Sixth Amendment of the U.S. Constitution guarantees criminal defendants full autonomy to decide the objective of their defense, including whether to admit to heinous conduct charged against them. Consequentially, an attorney may not unilaterally “admit her client’s guilt of a charged crime” or particular conduct “over the client’s intransigent objection to that admission,” 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, 1510. This Sixth Amendment guarantee protects a criminal defendant from having counsel usurp control of an issue within the defendant’s sole prerogative.

The questions presented are:

1. Does the Sixth Amendment holding of *McCoy v. Louisiana*, 138 S. Ct. 1500 (2018) apply to a penalty phase capital trial to protect a defendant’s autonomy over the objectives of his defense by preventing defense counsel from falsely admitting that the client engaged in more heinous conduct than the client admitted in a limited guilty plea, resulting in a death sentence?

2. Should this Court grant certiorari and accept merits briefing on Question 1 or summarily reverse the judgment below and remand for further proceedings not inconsistent with *McCoy v. Louisiana*, 138 S. Ct. 1500 (2018)?

RELATED CASES

State of Tennessee v. Preston Carter, Nos. 93-09760 & 93-09761, Criminal Court of Tennessee for the Thirtieth Judicial District at Memphis, judgment entered Aug. 31, 2000.

State of Tennessee v. Preston Carter, No. W2000-02204-CCA-R3-DD, Tennessee Court of Criminal Appeals, judgment entered Feb. 8, 2002.

State of Tennessee v. Preston Carter, No. W2000-02204-SC-DDT-DD, Tennessee Supreme Court, judgment entered Sept. 18, 2003.

Preston Carter v. State of Tennessee, No. 03-8068, U.S. Supreme Court, petition for certiorari denied Mar. 1, 2004.

State of Tennessee v. Akil Jahi, Nos. 93-09760, 93-09761 & P-28413, Criminal Court of Tennessee for the Thirtieth Judicial District at Memphis, judgment entered Oct. 14, 2011.

Akil Jahi v. State of Tennessee, No. W2011-02669-CCA-R3-PD, Tennessee Court of Criminal Appeals, judgment entered Mar. 13, 2014.

Akil Jahi v. State of Tennessee, No. W2011-02669-SC-R11-PD, Tennessee Supreme Court, judgment entered Sept. 18, 2014.

Akil Jahi v. Wayne Carpenter, Warden, No. 14-2791, U.S. District Court for the Western District of Tennessee, filed Oct. 14, 2014 (stayed).

State of Tennessee v. Akil Jahi, Nos. 93-09760, 93-09761 & P-28413, Criminal Court of Tennessee for the Thirtieth Judicial District at Memphis, judgment entered Sept. 29, 2016.

Akil Jahi v. State of Tennessee, No. W2016-02201-CCA-R3-PD, Tennessee Court of Criminal Appeals, judgment entered Aug. 1, 2017.

Preston Carter n.k.a Akil Jahi v. State of Tennessee, Nos. 93-09760, 93-09761 & P-28413, Criminal Court of Tennessee for the Thirtieth Judicial District at Memphis, judgment entered Nov. 27, 2017.

Akil Jahi v. State of Tennessee, No. W2017-02527-CCA-R28-PD, Tennessee Court of Criminal Appeals, judgment entered Apr. 24, 2018.

Akil Jahi v. State of Tennessee, No. W2017-02527-CCA-R28-PD, Tennessee Court of Criminal Appeals, judgment entered May 21, 2018.

Akil Jahi v. State of Tennessee, No. W2017-02527-SC-R11-PD, Tennessee Supreme Court, judgment entered Sept. 17, 2018.

Akil Jahi v. State of Tennessee, No. 18-1077, United States Supreme Court, petition for writ of certiorari denied, Apr. 29, 2019.

Preston Carter n.k.a Akil Jahi v. State of Tennessee, Nos. 93-09760, 93-09761 & P-28413, Criminal Court of Tennessee for the Thirtieth Judicial District at Memphis, judgment entered June 5, 2020.

Akil Jahi v. State of Tennessee, No. W2020-00944-CCA-R28-PD, Tennessee Court of Criminal Appeals, judgment entered Aug. 31, 2020.

Akil Jahi v. State of Tennessee, No. W2020-00944-SC-R11-PD, Tennessee Supreme Court, judgment entered Jan. 1, 2021.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Akil Jahi¹ respectfully petitions for a writ of certiorari to review the judgment of the Tennessee Court of Criminal Appeals in this case. This petition gives the Court an opportunity to confirm that the scope of the substantive rights afforded to the accused under *McCoy v. Louisiana*, 138 S. Ct. 1500 (2018) includes the penalty phase capital trial following a limited guilty plea.

OPINIONS BELOW

The Tennessee Supreme Court order denying Akil Jahi's application for permission to appeal is unreported. *Akil Jahi v. State of Tennessee*, No. W2020-00944-SC-R11-PD; App. 19a. The Tennessee Court of Criminal Appeals order denying permission to appeal is also unreported. *Preston Carter v. State of Tennessee*, Nos. 93-09760, 93-09761, and P-28413; App. 1a.

STATEMENT OF JURISDICTION

This Court has jurisdiction under 28 U.S.C. § 1257. The Tennessee Supreme Court denied Akil Jahi's application for discretionary review on January 14, 2021. App. 19a. This petition is timely filed under Supreme Court Rule 13.1, as extended by Order of March 19, 2020.

¹ Akil Jahi legally changed his name from Preston Carter in 1996.

**CONSTITUTIONAL PROVISIONS
AND STATUTES INVOLVED**

The Sixth Amendment to the United States Constitution: 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.

Article I, Section 9 of the Tennessee Constitution: That in all criminal prosecutions, the accused hath the right to be heard by himself and his counsel; to demand the nature and cause of the accusation against him, and to have a copy thereof, to meet the witnesses face to face, to have compulsory process for obtaining witnesses in his favor, and in prosecutions by indictment or presentment, a speedy public trial, by an impartial jury of the county in which the crime shall have been committed, and shall not be compelled to give evidence against himself.

Section 40-30-117 of the Tennessee Code Annotated authorizing reopening of post-conviction proceedings following a final ruling of an appellate court establishing a constitutional right that was not recognized as existing at the time of trial is included as Appendix E. App. 44a–45a.

STATEMENT OF THE CASE

Petitioner Akil Jahi entered a plea of guilty to reckless killing during a burglary on January 24, 1995. App. 23a. He specifically did *not* plead guilty to first degree premeditated murder. *Ibid.* However, at his penalty phase capital trial, Akil Jahi’s counsel told the jury that he instead committed “cold-blooded, premeditated murder” and “probably deserves to die.” *Id.* at 21a. The jury then returned a verdict of death on the conviction, and Akil Jahi was formally sentenced to death in February of 2000. *Id.* at 23a–24a. The convictions and sentences were affirmed on appeal by the Tennessee Court of Criminal Appeals and the Tennessee Supreme Court. *Ibid.*

Trial Counsel’s inflammatory admission undermined Akil Jahi’s goals for his defense—which were reflected in his limited guilty plea to felony murder. *Id.* at 22a. Trial Counsel did not secure Akil Jahi’s permission to admit to more heinous conduct than the plea acknowledged. *Id.* at 25a. He was appointed on March 16, 1999. *Id.* at 23a. He spoke with Akil Jahi only twice before trial: once on April 19, 1999 for approximately fifteen minutes and once more before trial. *Id.* at 24a–25a.

Trial Counsel did not discuss strategy with Akil Jahi, seek permission to expand the scope of the plea admissions, or ask whether his overall objectives had changed since he entered his plea. *Id.* at 25a. Then, at the penalty phase capital trial in February of 2000, Trial Counsel expanded on the admissions in that plea by asserting that Akil Jahi had committed cold-blooded, premeditated murder. *Id.* at 25a–27a.

Trial Counsel made these concessions repeatedly, without approval, and in conflict with Akil Jahi's guilty plea to a "reckless killing." *Ibid.* Trial Counsel further represented that it was "a heinous, atrocious, cruel act of cold-blooded murder" and argued that Akil Jahi "probably deserved to die." *Id.* at 27a, 31a. Additionally, Trial Counsel conceded several aggravating factors and waived obvious and compelling mitigating factors—such as Akil Jahi's intellectual disabilities and his intoxication at the time of the killing—undoubtedly affecting the jury's decision to sentence him to death. *Id.* at 28a–30a.

Akil Jahi moved to reopen his state post-conviction proceeding on May 10, 2019, based on the new rule of constitutional law set forth in *McCoy*. *Id.* at 20a. *McCoy* established that the Sixth Amendment prohibits Trial Counsel's unauthorized concession that Akil Jahi engaged in more heinous conduct constituting a more serious crime than he admitted in his plea. *Ibid.*

The post-conviction trial court denied the motion on June 5, 2020, holding that *McCoy* does not apply during a penalty phase capital trial. App. 8a. The Court of Criminal Appeals affirmed the trial court's decision by denying Akil Jahi's application to appeal on August 30, 2020. App. 1a. In so doing, the court contradicted *McCoy* by holding that Mr. Jahi's only protected goal during his penalty phase capital trial was to "avoid the death penalty." *Id.* at 6a. Finally, the Tennessee Supreme Court denied Mr. Jahi's application for appeal on January 14, 2021, in an unreasoned *per curiam* opinion. App. 19a.

Akil Jahi's penalty phase capital trial was tainted by the false, inflammatory admissions of legal and factual guilt by Trial Counsel in direct violation of the Sixth Amendment of the United States Constitution and this Court's recent decision in *McCoy*. Akil Jahi now petitions this Court for a writ of certiorari to reverse his conviction and death penalty sentence.

REASONS FOR GRANTING THE PETITION

This Court should grant certiorari because: (1) The Tennessee courts have failed to consider the whole text and reasoning of *McCoy*'s holding, and this Court should thus grant certiorari, vacate or summarily reverse the judgment, and remand for further proceedings not inconsistent with *McCoy*; (2) The Tennessee courts' judgments conflict with the text and reasoning of *McCoy*'s holding by depriving individuals of the Sixth Amendment rights recognized in *McCoy* during a penalty phase capital trial; (3) The Tennessee courts' opinions diverge with opinions from other states' courts that recognize the full breadth of the Sixth Amendment rights articulated in *McCoy*; and (4) This petition presents an appropriate vehicle for addressing whether the Sixth Amendment rights recognized in *McCoy* apply during a penalty phase capital trial.

I. This Court should grant certiorari, vacate the judgment below, and remand for proceedings not inconsistent with *McCoy*.

Perhaps the cleanest way of resolving this petition while ensuring the proper application of *McCoy*'s holding to penalty phase capital trials, is to grant certiorari, vacate or summarily reverse the judgment below, and remand for proceedings not inconsistent with *McCoy*.

The Tennessee courts refused to apply the clear holding of *McCoy* because they assumed that "the holding in *McCoy* is inapplicable" unless counsel "concede[s] the Petitioner's guilt during the guilt phase." App. 2a–3a (quoting *Smith v. State*, No.

M2019-01662-CCA-R28-PD, at *2 (Tenn. Crim. App. Oct. 28, 2019). As explained below, this assumption is inconsistent with *McCoy*'s text and reasoning. That text and reasoning flesh out a Sixth Amendment right to obtain assistance from counsel in a criminal proceeding without being forced to “surrender control entirely to counsel” or to accept “the opprobrium that comes with admitting” to a heinous act. *McCoy*, 138 S. Ct. at 1508. The assistance the Sixth Amendment guarantees and the autonomy *McCoy* recognizes are not explicitly or implicitly extinguished prior to the penalty phase of a capital trial. The assistance of counsel is as essential then as it is prior to a conviction or limited plea. The social, psychological, and moral cost of admitting to heinous conduct—a consequence *McCoy* recognizes as one that a defendant may choose to avoid—persists throughout the trial process. The constitutional violation of a defendant's autonomy is no less significant simply because counsel makes the admission during a trial's penalty phase.

The line the Tennessee courts draw in this case between the guilt and penalty phases of a trial has no foundation in either the Sixth Amendment or *McCoy*. The intermediate appellate court's assumption that a limited guilty plea proved that Akil Jahi's “objective . . . was not to assert his innocence but to avoid the death penalty” suggests a fundamental misunderstanding of *McCoy*'s holding and reasoning. App. 6a. Its assumption that there are no subjective moral distinctions between premeditated murder and felony murder simply because they are both codified “within the same first degree murder statute” confirms it. *Id.* at 5a–6a, n.1.

This Court can correct that misunderstanding and promote a uniform application of *McCoy* in state courts by vacating or summarily reversing the judgment below and remanding this case for further proceedings not inconsistent with *McCoy*.

II. The decision below conflicts with *McCoy* by limiting core Sixth Amendment autonomy rights to the guilt stage of trials.

By denying Akil Jahi's petition to reopen his post-conviction proceedings, the Tennessee courts held that a criminal defendant is not afforded full autonomy of his defense during a penalty phase capital trial, narrowing the unrestricted holding of *McCoy*. The Tennessee courts recognized the holding in *McCoy* and emphasized that an attorney "may not admit her client's *guilt of a charged crime* over the client's intransigent objection to that admission." *Smith v. State*, No. M2019-01662-CCA-R28-PD at *2 (Tenn. Crim. App. Oct 28, 2019) (quoting *McCoy*, 138 S. Ct. at 1510). However, they arbitrarily and wrongfully constricted its protections during a penalty phase capital trial only to include "avoid[ing] the death penalty." App. 6a.

This flatly contradicts this Court's reasoning in *McCoy*, including the recognition that, while "counsel may reasonably" believe conceding guilt is the "best" way to avoid the death penalty, the client "may not share that objective" and wish to avoid "the opprobrium attending admission" that he committed murder. *McCoy*, 138 S. Ct. at 1503–1504. Based on Tennessee's limited and restrictive approach to a criminal defendant's fundamental autonomy to refuse to admit guilt to charged offenses, the courts

below effectively granted counsel the right to make unilateral decisions in direct conflict with this Court's ruling in *McCoy*.

Contrary to the holdings below, *McCoy* protects a wide range of fundamental goals under the Sixth Amendment, including the accused's right to dictate the objectives of his defense and "avoid the opprobrium that comes with admitting" to particularly heinous acts. *McCoy*, 138 S. Ct. at 1508. The courts below casually and unconstitutionally narrowed the scope of this Sixth Amendment right when they denied Akil Jahi's petition to reopen post-conviction proceedings, holding that "*McCoy* applies only to the guilt-innocence phase of a criminal trial," not to a penalty phase capital trial. App. 3a.

Of course, *McCoy*'s holding is not so limited. Factual admissions during a penalty phase capital trial carry the same risk of opprobrium as they do during the guilt-innocence phase of trial. A criminal defendant's right to determine the goals and scope of his defense, such as avoiding admitting guilt to heinous crimes, necessarily applies to a penalty phase capital trial. To hold otherwise is to hollow out *McCoy*'s ruling, because a criminal defendant's right to "insist that counsel refrain from admitting guilt, even when the counsel's experienced-based view is that confessing guilt offers the defendant the best chance to avoid the death penalty," *McCoy*, 138 S. Ct. at 1505, is completely undermined if counsel may then unilaterally forego those clear and expressed desires in later phases of trial.

If the Court does not correct the atextual holding below, Tennessee defendants like Akil Jahi will lose

their Sixth Amendment right to determine the goals and the scope of their defenses. This Court honors the “fundamental legal principle that a defendant must be allowed to make his own choices about the proper way to protect his own liberty.” *McCoy*, 138 S. Ct. at 1511 (quoting *Weaver v. Massachusetts*, 137 S. Ct. 1899, 1908 (2017)). While counsel may provide assistance on “how to best *achieve* a client’s objectives,” choices about “what the client’s objectives in fact *are*,” such as whether to plead guilty, are “reserved for the client.” *Id.* at 1508; *see also id.* at 1509 (When a client asserts that “the objective of ‘his defen[s]e’ is to maintain innocence of the charged criminal acts, his lawyer must abide by that objective and may not override it by conceding guilt.”).

Akil Jahi’s clear objective was to plead guilty to felony murder and proceed to a penalty phase capital trial. He entered that plea during the guilt-innocence phase of trial, but Trial Counsel unilaterally conceded guilt to “premeditated murder” at his penalty phase capital trial. App. 21a, 26a. Trial Counsel’s unauthorized attribution of a heinous, premeditated intent to kill exposed Akil Jahi to the precise consequences that *McCoy* prohibits—a loss of autonomy and the opprobrium that accompanies admissions to specific heinous acts apart from any criminal sentence.

McCoy recognized what the Tennessee courts now reject. The Sixth Amendment did not allow Trial Counsel to overrule Akil Jahi’s decisions about the fundamental goals of his defense—including what acts to admit and whether the moral, psychological, or social consequences of heinous

admissions or a potential death sentence were more consequential to him. It did not permit the Tennessee courts to assume that Akil Jahi's only possible goal was to avoid a death sentence. This Court should grant certiorari and confirm that *McCoy* protects a defendant's fundamental right to decide the objectives of his defense and maintain his innocence of heinous acts during a penalty phase capital trial.

III. The holding below splits from other state courts' recognition that *McCoy's* holding applies to the full reach of its text.

Unlike the Tennessee courts, other state courts have properly recognized that *McCoy's* broad holding applies as written to protect a defendant's autonomy to choose from a broad range of plausible objectives that constrain factual admissions as well as plea decisions. Louisiana courts recognize, based on *McCoy*, that a criminal defendant's willingness to admit guilt to a "different crime as part of his defense objective" does not grant defense counsel "the authority to admit guilt to the crime charged . . . lesser-included crimes," or more serious crimes. *State v. Horn*, 251 So. 3d 1069, 1076 (La. 2018). Oregon courts recognize, more broadly, that "after *McCoy*, even if a concession is not tantamount to a plea . . . a petitioner's fundamental objective to assert innocence is reserved to the client in the same way as the right to plead guilty, and that autonomy to direct the defense cannot be usurped by defense counsel." *Thompson v. Cain*, 433 P.3d 772, 777 (Or. Ct. App. 2018).

California courts go further, taking *McCoy*'s text at its word by acknowledging that “the plausible objectives that a defendant might have at trial” extend beyond guilty verdicts and sentences to include, for example, “the avoidance of the ‘opprobrium that comes with admitting [particularly heinous acts].’” *People v. Flores*, 34 Cal. App. 5th 270, 282, 246 Cal. Rptr. 3d 77, 86 (2019) (quoting *McCoy*); see also *People v. Eddy*, 33 Cal. App. 5th 472, 482, 244 Cal. Rptr. 872, 879 (2019) (“preservation of the Sixth Amendment right recognized in *McCoy* [does not] necessarily turn[] on whether a defendant objects” before conviction). Because factual admissions during a penalty phase capital trial carry the same risk of opprobrium, the associated right to “maintain[] innocence of *the alleged acts* throughout trial,” necessarily applies throughout the guilt and penalty phases of trial. *Flores*, 34 Cal App. 5th at 282 (quoting *McCoy*).

Other courts recognize that the autonomy principle in *McCoy* requires procedural protections. Nevada courts, for example, read *McCoy* to require that a defendant “expressly consent[]” to a defense strategy that acknowledged guilt. *Malone v. Williams*, No. 80193-COA, 2020 WL 6129818, at *1 (Nev. App. Oct. 16, 2020). Arizona courts correctly understood a criminal defendant’s autonomy under *McCoy* applied to determining strategies related to sentencing and penalties. *United States v. Christensen*, No. CR-14-08164-PCT-DGC, 2019 WL 9240238, at *4 (D. Ariz. Nov. 6, 2019) (“The Supreme Court [in *McCoy*] held that concession of guilt as part of a sentencing mitigation strategy was within the purview of the defendant, not defense counsel.”).

Likewise, following *McCoy*, Oregon courts reserve the “fundamental objective to assert innocence . . . to the client in the same way as the right to plead guilty,” such that “autonomy to direct the defense cannot be usurped by defense counsel.” *Thompson v. Cain*, 433 P.3d at 777. Other states have correctly recognized that *McCoy* highlights a criminal defendant’s broad “protected autonomy right” to “control [] issues that were within [a defendant]’s sole prerogative.” *E.g., Krogmann v. State*, 914 N.W.2d 293, 324 (Iowa 2018).

Each of these faithful applications of this Court’s holding in *McCoy* conflicts with the Tennessee courts’ arbitrary, atextual declaration that *McCoy* simply does not apply to a penalty phase capital trial. The Tennessee courts’ clear and impermissible narrowing of the holding of *McCoy* creates a gap in an important Sixth Amendment right that this Court can and should correct here.

IV. This petition presents an appropriate vehicle for determining whether *McCoy*’s holding is actually as broad as its text and reasoning.

This case is a strong vehicle because the Tennessee courts’ holdings barring application of *McCoy* during penalty phase capital trials are crisp and clearly contrary to the text and reasoning of *McCoy*. The Tennessee courts’ refusal to apply *McCoy* specifically because Trial Counsel’s violative admissions occurred during a penalty phase capital trial presents a black and white question of law. If a defendant retains Sixth Amendment rights to autonomy and the assistance of counsel at a penalty

phase capital trial under *McCoy*, this case offers a clear vehicle to say so.

If the Court goes further than summarily reversing the Tennessee courts' holdings limiting *McCoy* to guilt-phase assistance of counsel, this case is also a strong vehicle for addressing the qualitative nature of the autonomy rights recognized in *McCoy*. The Tennessee courts reject *McCoy*'s holding by declaring that Akil Jahi's only protected goal during a penalty phase capital trial was to "avoid the death penalty" and not to avoid the opprobrium associated with a false admission that he committed a "premeditated, deliberate, planned," cold-blooded murder." App. 6a, 25a.

If the Court goes even further, the record below is also clear enough to establish the conflict between Akil Jahi's goal and his Trial Counsel's conduct. Akil Jahi's sworn statement establishes Trial Counsel acted in opposition to his goal, which was to plead guilty to felony murder, not to a more heinous crime, such as "cold-blooded, premeditated murder." App. 21a. Not even the State has argued that Akil Jahi authorized Trial Counsel to forfeit the benefits of his plea to reckless felony murder by admitting guilt for premeditated murder during a penalty phase capital trial.

Certainly, *some* court should evaluate the facts establishing a *McCoy* violation during Akil Jahi's penalty phase capital trial. If the Court prefers for that to occur in a Tennessee court, it can accomplish that goal by granting certiorari, reversing the threshold holdings that pretermitted that process, and remand to the Tennessee courts.

This petition, therefore, presents an appropriate vehicle for addressing the questions presented, and this Court should grant certiorari.

CONCLUSION

This Court should grant certiorari, summarily reverse, and remand for proceedings not inconsistent with *McCoy v. Louisiana*, 138 S. Ct. 1500 (2018), or grant certiorari and order briefing to decide whether *McCoy's* holding is as broad as its text.

Respectfully submitted,

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