

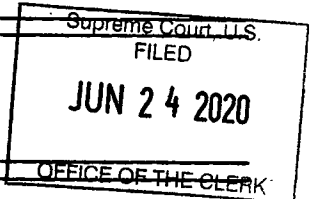
No. 20-5607

ORIGINAL

IN THE SUPREME COURT OF THE UNITED STATES

"In re BILLIE J. ALLEN",
Petitioner

PETITION FOR AN ORIGINAL WRIT OF HABEAS CORPUS



"CAPITAL CASE"

** NEGATIVE DNA RESULTS (APPENDIX A) AND NEGATIVE GASOLINE RESULTS
(APPENDIX B) SHOW "EXTRAORDIANRY CIRCUMSTANCES" (quoting S. Ct. R. 20)
TO SUPPORT ISSUANCE OF THE WRIT.

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I

"CAPITAL CASE"

QUESTION PRESENTED

Petitioner Billie Allen submits **NEGATIVE DNA RESULTS (APPENDIX A)** and **NEGATIVE GASOLINE RESULTS (APPENDIX B)** that would have exonerated Allen to show "extraordinary circumstances" (quoting S. Ct. R. 20), and the importance of the question presented;

1. Whether it is unconstitutional for defense counsel to admit an accused's guilt to the jury over the accused's express objection?

II

LIST OF PARTIES

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AN ORIGINAL WRIT OF HABEAS CORPUS

Billie J. Allen (Allen), respectfully petition this Court for an original writ, in aid of this Court's habeas jurisdiction to determine whether it was unconstitutional for defense counsel to admit an accused's guilt to the jury over the accused's express objection. This Court should grant this writ. Allen deserves a new trial.

INTRODUCTION

When confronted with counsel's opposition to "win"; by maintaining and proving Allen's innocence at trial, Allen would file numerous motions to the court (E.D. Mo. Case# 4:97-cr-00141ERW-2 Doc.# 95 & 97) to substitute counsel from his capital case, (8) months before trial. But the court would deny Allen's motion(s) without a hearing, an inquiry, nor any investigation by the court to see if "not substituting counsel" would violate Allen's Sixth Amendment right to "the assistance of counsel for his defence." (quoting U.S. Const. amend. VI).

With counsel left on Allen's case, because of the court's denial of Allen's motions, the court would permit counsel to "usurp control of an issue within [Allen's] sole prerogative". McCoy v Louisiana, 138 S. Ct. 1500, _____. Where counsel would override Allen's instructions and objective for Allen's defense, by counsel conceding Allen's guilt to the jury. Where counsel would tell the jury:

"Even discounting everything else in the case, if you take Allen's statement's, he tells the police, "I shot but I missed."" (Tr. Record Vol. 12, pg. 82)

Counsel for Allen would use an alleged statement against Allen, that Allen informed counsel he never made,¹ and that Allen had instructed counsel to never attribute to him. Especially when a defendant's "own confession [is] probably '**the most probative and damaging evidence that can be admitted against him**'", United States v Chagra, 669 F.2d 241,251-52 n.11 (CA5 1982) (emphasis added), and where "[s]uch an admission blocks

1 Officers would claim Allen gave a statement while in police custody. But there is nothing written or signed by Allen to show a statement was ever given, there's no recording, no video, nor any notes. Yet, an officer would claim to have taken notes, but allegedly threw them away.

the defendant's right to make the fundamental choices about his own defense, and the effects of the admission would be immeasurable, 'because the jury would almost certainly be swayed by a lawyer's concession of his client's guilt. "' McCoy, 138 S. Ct. at 1511 (emphasis added).

Because for Allen to have "shot", "but . . . missed", as counsel would attribute to Allen as having said; Allen would've had to plot the robbery with suspect Norris Holder (Holder). For Allen to have "shot", "But . . . missed"; Allen would've had to rode in the gasoline soaked getaway van with Holder. For Allen to have "shot", "but . . . missed"; Allen would've had to possess one of the weapons used in the crime, enter the bank with Holder with the intent of robbing it, discharge one of the guns inside the bank, and take part in the death of the security guard, Richard Heflin. Because "the felony-murder doctrine traditionally 'attributes death caused in the course of the crime **"to all participants"** who intended to commit the felony, **"regardless of whether they killed or intended to kill."**" Miller v Alabama, 567 U.S. 460 (2012) (emphasis added).

And with counsel's admission of Allen's guilt, through the use of an alleged statement that Allen told counsel he never made, and instructed counsel to never attribute to him. Allen would be found guilty with counsel's help.

Counsel's intent to concede Allen's guilt as a sacrifice for a life sentence in the penalty phase can be seen in counsel's closing arguments in the penalty phase, where counsel would tell the jury:

"[A]ll right what is Mr. Allen's intent? **Remember, he tells you, he tells the police, I think I missed with every shot that I fired.**" (Tr. Record Vol. 19, pg. 74).

But it wasn't Allen who would concede his guilt to the jury in the guilt, nor the penalty phase, through the use of an incriminating statement. Allen never took the stand. Allen never addressed the jury. It was counsel, who in both the guilt and penalty phase; through the use of the alleged statement, who conceded Allen's guilt. And despite

counsel's unauthorized sacrifice and gamble in conceding Allen's guilt. Allen would be sentenced to death.

What's most telling is when counsel, in the "Motion For A New Trial", would concede to the trial court that "[t]he District Court erred, clearly erred, or abused its discretion in 'denying [Allen's] motion[s] for appointment of different counsel.'" (filed by counsel on May 18, 1998) (emphasis added). And despite counsel's concession. The court would deny the motion without a hearing, an inquiry, nor any investigation by the court to determine if Allen's Sixth Amendment right to the "Assistance of Counsel for his defence" (quoting U.S. Const. amend. VI) was denied.

Allen's circumstances and issue are on par with McCoy; where this Court has held that for such a violation, which presents the exact circumstances, that "a new trial is the required corrective." McCoy, 138 S. Ct. at _____. See Hashimi v United States, 139 S. Ct. 377 (2018) (judgment vacated and remanded in light of McCoy); see also Clark v Louisiana, 138 S. Ct. 2671 (2018) (judgment vacated and remanded in light of McCoy). Allen deserves a new trial in accordance with McCoy, Hashimi, and Clark.

OPINIONS RELATED TO WRIT: S. CT. DOCKET# 18-9554

On May 24, 2019, Allen would file an original writ; raising the exact issue and presenting the exact circumstances as those presented in McCoy. The case would be docketed on June 5, 2019. After (8) extensions, the government would file their brief in opposition on March 26, 2020. Allen would reply on Apr. 3, 2020. The Court would deny Allen's petition on May 18, 2020. On May 19, 2020, Allen would file a petition for rehearing, asking the Court to reconsider its denial, in light of the fact that his issue and circumstances are on par with McCoy, Hashimi, and Clark. The petition for rehearing was docketed on May , 2020. On , 2020, the petition was . Allen now files this writ, asking the Court to consider whether it should correct it's denial of Allen's writ and grant this writ, in light of McCoy. See Gamble v United States, 139 S. Ct. 1960,1983-84 (2019) (Holding that "[i]f . . . any solemnly adjudged case can

be shown to be founded in error, it is 'no doubt the right and the duty of the judges who have a similar case before them, to correct the error.'" (Thomas, J., concurring in judgment). (emphasis added). (quoting 1J. Kent, Commentaries on American Law 443 (1826)). (emphasis added).

STATEMENT OF JURISDICTION

This Court's jurisdiction is invoked pursuant to 28 U.S.C. 1651(a), and S. Ct. R. 20.4(a).

STATEMENT PURSUANT TO S. Ct. R. 20.4(a)

This petition satisfies the requirements of S. Ct. R. 20.4(a). See "Introduction", "Facts Related To Writ", and "Extraordinary Circumstances".

RELEVANT CONSTITUTIONAL AND STATUTORY

PROVISIONS

The Sixth Amendment to the Constitution provides in relevant part: In all criminal prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his defence.

FACTS RELATED TO WRIT

On March 18, 1997, Allen would be arrested as the second suspect to have allegedly robbed the Lindell Bank and Trust, in St. Louis, Missouri, with suspect Norris Holder; who was arrested at the crime scene. Upon questioning by officers, Allen would inform officers that he had been shopping at a shopping mall; Northwest Plaza, at the exact time the crime took place. But with officer's ignoring Allen's alibi, Allen would ask "for an attorney from the court."

Officer's would admit that while Allen was in police custody for over 7 hours, that no officer took any steps to get Allen counsel. But officers would allege that Allen allegedly gave a statement to officers, after being handcuffed to the leg of a table inside the interrogation room. Yet, there was never anything signed or written by Allen to show that a statement was ever given, no recordings, no video, nor any notes of the alleged statement. But one officer would testify that he took notes, but allegedly threw the notes away.

Allen would enter a plea of "not guilty", and when appointed counsel, Allen would tell counsel he was innocent; at Northwest Plaza, and that Allen wanted counsel to "win"; by maintaining and proving Allen's innocence at trial. But counsel would oppose Allen's instructions and objective to maintain and prove Allen's innocence, telling Allen about the alleged statement, and telling Allen, without an investigation, nor a look at the files, that counsel planned to concede Allen's guilt for a life sentence. Allen objected to counsel's plan to concede guilt, and would file numerous motions; asking the court for its help to substitute counsel from his case; (E.D. Mo. Case#4:97-cr-00141ERW-2 Doc.# 95 & 97). But the court would deny the motion without a hearing, an inquiry, nor any investigation by the court into whether substituting counsel was warranted.

Because of the court's denial of Allen's motions, counsel would override Allen's instructions and objective for Allen's defense at trial, by using the alleged statement against Allen, that Allen told counsel he never made, and that Allen told counsel to never attribute to him. Because the alleged statement would concede guilt. But counsel would use the alleged statement and tell the jury:

"Even discounting everything else in the case, if you take Allen's statement's, he tells the police, I shot but I missed." (Tr. Record Vol. 12 pg. 82)

With counsel vouching for the alleged statement's authenticity, and then attributing it to Allen. With counsel's help, Allen would be found guilty.

In the penalty phase, counsel would see if his gamble and sacrifice of Allen's guilt for Allen's life would work. Where, again, he would use the alleged statement against Allen, and concede Allen's guilt, when telling the jury in the penalty phase;

"Remember, he tells you, he tells the police, I think I missed with every shot that I fired." (Tr. Record Vol. 19, pg.74).

But Allen never took the stand, never addressed the jury at trial, nor admitted to telling officers anything. Counsel did that in the guilt phase and then doubled-

down on conceding Allen's guilt and vouching for the statement's authenticity, by attributing it to Allen. But despite counsel's gamble and sacrificing Allen's guilt for a life sentence. Allen would be sentenced to death.

In the "Motion For A New Trial", counsel would confess to the trial court that it has "erred, clearly erred, or abused its discretion 'in denying [Allen's] motion[s] for appointment of different counsel.'" (filed by counsel on May 18, 1998). (emphasis added). But the court would deny counsel's motion without a hearing, an inquiry, nor any investigation by the court into why it was that counsel conceded that substitution of counsel should've been made at Allen's request, before trial.

On May 18, 2020, this Court would deny an original writ petition (docket #18-9554), filed by Allen, pursuant McCoy v Louisiana, 138 S.ct. 1500 (2018); where the Court held that it's unconstitutional for defense counsel to admit guilt over the accused's express objection. On May 19, 2020, Allen would file a petition for rehearing, which was docketed on May , 2020; asking the Court to reconsider it's ruling. Because the Court would grant relief for McCoy, but deny relief for Allen, when the two raised the same issue and presented the exact circumstances. On , 2020, the Court would , the petition for rehearing.

Allen now petitions the Court, with a corrected petition, asking the Court to reconsider its denial of Allen's previous petition; docket# 18-9554. Where Allen shows that relief is warranted, pursuant McCoy Louisiana.

REASONS FOR GRANTING WRIT

In McCoy v Louisiana, this Court held that the,

"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." Because "[s]uch an admission blocks the defendant's right to make the fundamental choice about his own defense, and the effects of the admission would be immeasurable, because the jury would almost certainly be swayed by a lawyer's concession of his client's guilt." Id. at ____, 1511.

Moreover, holding such a violation to be a "structural error", "not subject to harmless error review", and "a new trial is the required corrective." McCoy, S.Ct. 1511. See also Hashimi v United States, 139 S.Ct. 377 (2018) (judgment vacated and remanded in light of McCoy); see also Clark v Louisiana, 138 S.Ct. 2671 (2018) (judgment vacated and remanded in light of McCoy).

Allen would file a petition to this Court, within one-year after McCoy was decided, raising the exact issue and presented the exact circumstances as McCoy, Hashimi, and Clark. The Court would grant relief for McCoy, Hashimi, and Clark. Yet, the Court would deny "the required corrective" for Allen; "a new trial." McCoy, S.Ct. at 1511. See Gamble, 139 S.Ct. at 1983-84 (Holding that [i]f . . . any solemn adjudged case can be shown to be founded in error, it is **'no doubt "the right and the duty" of the judges who have a similar case before them, to correct the error.'**") (Thomas, J., concurring in judgment) (emphasis added) (quoting 1J. Kent, Commentaries on American Law 443 (1826)) (emphasis added) "A new trial is the required corrective" for Allen. McCoy, 138 S.Ct. 1511. Allen deserves a new trial. The Court should grant this writ.

"EXTRAORDINARY CIRCUMSTANCES"

What's "extraordinary" about Allen's "circumstances" (quoting S. Ct. R. 20.4(a)) is that Allen is actually innocent. But this fact and Allen's instructions to counsel to maintain and prove his innocence at trial was ignored by counsel, when counsel decided to override Allen's objective for Allen's defense and concede guilt. Which would result in counsel not looking for, not discovering, and counsel not presenting;

- 1). LAB REPORT: Where negative DNA results exonerate Allen. (Appendix A)
- 2). LAB REPORT; Where negative gasoline results exonerate Allen. (Appendix B)
- 3). Transcript (partial); Where a security guard would tell two FBI agents that he saw Allen at a shopping mall; Northwest Plaza, at the exact time the crime was taking place. (Appendix C)
- 4). FBI REPORT; Where a witness would tell the FBI that he saw and overheard someone other than Allen, a few days before the robbery, plotting the crime with suspect Holder. (Appendix D)
- 5). TRANSCRIPT (Dispatch tape); Where several witnesses would report seeing

someone other than Allen fleeing the crime scene, matching the description of the second suspect; who would have an injury to his right hand. (Appendix E)

Where this Court would hold that "ignor[ing] pertinent avenues for investigation of which [counsel] 'should be aware'"[,] "did not reflect reasonable professional judgment." Porter v McCollum, 558 U.S. 30,40 (2008) (emphasis added). And as such, "the substantial 'risk of putting an innocent man to death' . . . is 'sufficiently exceptional to warrant utilization of this Court's Rule 20.4(a), and . . . original habeas jurisdiction.'" In re Davis, 557 U.S. 952, 95__ (2009). Showing more reasons as to why this Court should grant this writ. Allen deserves a new trial.

CONCLUSION

Allen respectfully pleads with this Court to grant this writ, permit merits briefing and oral arguments if needed, or the Court grant Allen the same relief that was granted McCoy, Hashimi, and Clark. because Allen has shown that his issue and his circumstances are in accordance with McCoy, Hashimi, and Clark. Where "a new trial is the required corrective". McCoy, 138 S. Ct. 1511. Allen deserves a new trial.

Respectfully submitted,



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