

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

James William Riley — PETITIONER
(Your Name)

vs.

STATE of Delaware — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Delaware Supreme Court
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

APPENDIX

James W. Riley
(Your Name)

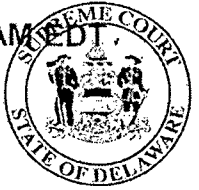
James T. Vaughn Correctional Center
(Address) 1181 Paddock Road

Smyrna, Delaware
(City, State, Zip Code)

(Phone Number)

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IN THE SUPREME COURT OF THE STATE OF DELAWARE

JAMES W. RILEY,

Defendant Below,
Appellant,

v.

STATE OF DELAWARE,

Plaintiff Below,
Appellee.

§
§
§ No. 245, 2020
§
§ Court Below—Superior Court
§ of the State of Delaware
§
§ Cr. ID No. 0004014504 (K)
§
§
§

Submitted: August 11, 2020
Decided: September 1, 2020

Before **SEITZ**, Chief Justice; **VALIHURA** and **MONTGOMERY-REEVES**,
Justices.

ORDER

After consideration of the appellant's opening brief, the State's motion to affirm, and the record on appeal, it appears to the Court that:

(1) The appellant, James Riley, appeals from the Superior Court's denial of his motion for reconsideration of the court's denial of his motion to reopen the proceedings on his second motion for postconviction relief. The State has filed a motion to affirm the Superior Court's judgment on the ground that it is manifest on the face of Riley's opening brief that the appeal is without merit. We agree and affirm.

(2) In 2003, Riley was convicted of felony murder and other offenses and was sentenced to life imprisonment plus twenty-five years. Riley proceeded *pro se* at trial as well as on direct appeal. In 2004, this Court affirmed on direct appeal.¹ In 2012 the Court affirmed the denial of Riley's first motion for postconviction relief.²

(3) Riley filed a second motion for postconviction relief, which the Superior Court denied on April 1, 2013. This Court affirmed the denial of that motion on January 9, 2014.³ More than four years later, on July 24, 2018, Riley filed a motion to reopen his second motion for postconviction relief, asserting that the United States Supreme Court's decision in *McCoy v. Louisiana*⁴ provided a basis for relief. The Superior Court denied the motion as untimely and also observed that Riley had not established that the court had "overlooked controlling precedent or legal principles or misapprehended the law or facts" that would change the court's decision. Riley filed a motion for reconsideration in the Superior Court and an appeal to this court. The Superior Court stayed consideration of the motion for reconsideration pending appeal. Riley later voluntarily dismissed the appeal,⁵ and the Superior Court ultimately denied the motion for reconsideration because the motion did not assert any new grounds for relief. Riley has appealed to this Court.

¹ *Riley v. State*, 2004 WL 2850093 (Del. Oct. 20, 2004).

² *Riley v. State*, 2012 WL 252405 (Del. Jan. 26, 2012).

³ *Riley v. State*, 2014 WL 98643 (Del. Jan. 9, 2014).

⁴ 138 S. Ct. 1500 (2018).

⁵ *Riley v. State*, 483, 2018, Docket Entry No. 9 (Del.) (filed Sept. 28, 2018).

(4) Superior Court Criminal Rule 61 does not provide any procedure for the “reopening” of a postconviction proceeding or for the reconsideration of a denial of a motion to reopen a postconviction proceeding.⁶ In the absence of an applicable rule of criminal procedure, the rules of civil procedure apply.⁷ Under Superior Court Civil Rule 59, a motion for reargument must be filed and served within five days after the filing of the court’s decision.⁸ The Superior Court therefore appropriately determined that Riley’s motion to reopen the proceedings on his second motion for postconviction relief—which he filed more than five years after the Superior Court denied his second motion for postconviction relief—was untimely.⁹ We therefore find no basis for reversing the Superior Court’s denial of Riley’s motion for reconsideration of the denial of the motion to reopen.

(5) Finally, Riley’s reliance on *McCoy*¹⁰ does not overcome the procedural bars of Rule 61 by pleading with particularity a new rule of constitutional law that

⁶ See *Roten v. State*, 2013 WL 3206746, at *1 (Del. June 21, 2013) (“[I]n the absence of any procedure under [Superior Court Criminal] Rule 61 for the ‘reopening’ of a postconviction proceeding, the Superior Court properly relied on [Superior Court Civil] Rule 59 in denying Roten’s motion.”).

⁷ *Id.* See also DEL. SUPER. CT. CRIM. R. 57(d) (“In all cases not provided for by rule or administrative order, the court shall regulate its practice in accordance with the applicable Superior Court civil rule . . .”).

⁸ DEL. SUPER. CT. CIV. R. 59(e).

⁹ See *Roten*, 2013 WL 3206746 (affirming denial of motion to reopen postconviction proceedings as untimely under Civil Rule 59).

¹⁰ 138 S. Ct. 1500.

applies retroactively to his case and renders his convictions invalid.¹¹ The decision in *McCoy* is consistent with this Court's decade-old decision in *Cooke v. State*.¹² Moreover, *McCoy* held that the defendant's Sixth Amendment rights were violated when his counsel, contrary to the defendant's express instructions, conceded the defendant's guilt.¹³ That holding does not apply to this case, in which Riley elected to represent himself at trial because of disagreements with his counsel regarding how the case should be litigated.

¹¹ See *Weber v. State*, 2020 WL 4360783 (Del. July 29, 2020) ("Contrary to the appellant's contentions, he did not plead with particularly a new rule of constitutional law that applied to his case retroactively and rendered his convictions invalid. The United States Supreme Court's decision in *McCoy v. Louisiana* is consistent with this Court's decision in *Cooke v. State* and does not apply to the appellant's claim that his counsel should have pursued a particular defense at trial." (citations omitted)).

¹² 977 A.2d 803, 842-46 (Del. 2009) (holding that defense counsel's pursuit of a guilty but mentally ill verdict over the defendant's repeated objections violated the defendant's Sixth Amendment right to make fundamental decisions).

¹³ See *McCoy*, 138 S. Ct. at 1505 ("We hold that a defendant has the right to insist that counsel refrain from admitting guilt, even when counsel's experience[-]based view is that confessing guilt offers the defendant the best chance to avoid the death penalty. Guaranteeing a defendant the right 'to have the Assistance of Counsel for his defence,' the Sixth Amendment so demands. 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.").

NOW, THEREFORE, IT IS ORDERED that the motion to affirm is GRANTED, and the judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Collins J. Seitz, Jr.
Chief Justice

SUPERIOR COURT
OF THE
STATE OF DELAWARE

JEFFREY J CLARK
JUDGE

KENT COUNTY COURTHOUSE
38 THE GREEN
DOVER, DELAWARE 19901
TELEPHONE (302) 739-5333

July 10, 2020

James W. Riley, SBI 00169716
Vaughn Correctional Center
1181 Paddock Road
Smyrna, DE 19977

RE: *State v. Riley*
ID No. 0004014504

Dear Mr. Riley:

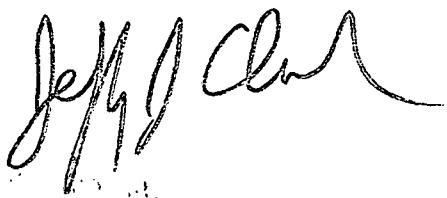
The Court is in receipt of your Motion to Compel "Motion for Reconsideration of the Court's August 9, 2018 Order Summarily Dismissal of Movant's Motion to Reopen Second Motion for Postconviction Relief" docketed April 20, 2020. Thereafter, on June 1, 2020 and June 3, 2020, you filed a 3 page Affidavit "...in support of movant's motion to compel ruling on movant's motion for reconsideration of movant's motion to reopen movant's second motion for postconviction relief." The Affidavit filed June 3 is a duplicate of the Affidavit filed June 1. You will recall that the Motion for Reconsideration was stayed when you appealed the August 9, 2018 Order to the Delaware Supreme Court (No. 483, 2018). Upon receipt of the Motion to Compel the Court reviewed the Delaware Supreme Court docket and learned that you voluntarily dismissed the appeal on September 28, 2018.¹

Accordingly, I will now review the "Motion for Reconsideration of the Court's August 9, 2018 Order Summarily Dismissal of Movant's Motion to Reopen Second

¹ The Court also notes that Defendant filed an appeal to the Delaware Supreme Court (No. 207, 2019) on May 14, 2019. The Superior Court judgment was affirmed by the Delaware Supreme on August 21, 2019, Mandate issued September 6, 2019. Further the Delaware Supreme Court docket reflects that a copy of a letter from the U.S. Supreme Court was filed on April 8, 2020.

Motion for Postconviction Relief' filed August 16, 2018. The Motion for Reconsideration merely realleges what you alleged in your "Motion to Re-open Movant's Second Motion for Postconviction Relief in Light of the New Rule Announced in McCoy v. Louisiana 2018 U.S LEXIS 2802." The Court dismissed that on August 9, 2018. You have not provided any additional information, cited legal principle, precedent, or facts that would change the Court's decision. As a result, your motion must be **DENIED**. The Affidavits in support of the motion filed in June will also not be considered as that motion is denied.

IT IS SO ORDERED.



JJC/dsc

oc: Prothonotary

cc: Stephen R. Welch, Jr., Esquire for DAG Wharton
James W. Riley, JTVCC

SUPERIOR COURT
OF THE
STATE OF DELAWARE

JEFFREY J. CLARK
JUDGE

KENT COUNTY COURTHOUSE
38 THE GREEN
DOVER, DELAWARE 19901
TELEPHONE (302) 739-5333

September 20, 2018

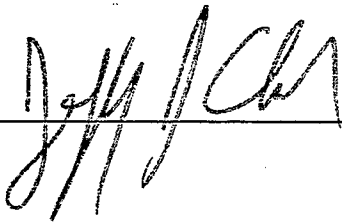
James W. Riley, SBI 00169716
Vaughn Correctional Center
1181 Paddock Road
Smyrna, DE 19977

RE: *State v. Riley*
ID No. 0004014504

Dear Mr. Riley:

The Court is in receipt of your "Motion for Reconsideration of the Court's August 9, 2018 Order Summarily Dismissal of Movant's Motion to Reopen Second Motion for Postconviction Relief" docketed August 16, 2018. The Court will consider the motion following the disposition of your appeal to the Delaware Supreme Court (No. 483, 2018). The Superior Court motion is currently *stayed*.

IT IS SO ORDERED.



AMF/dsc

oc: Prothonotary

cc: Stephen R. Welch, Jr., Esquire for DAG Wharton
Delaware Supreme Court No. 483, 2018 (*via File & ServeXpress*)
James W. Riley, JTVCC

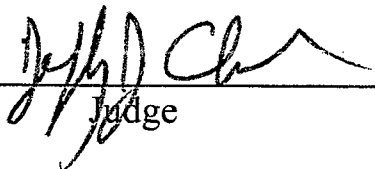
IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

STATE OF DELAWARE,	)	In and for Kent County
	)	
v.	)	RK82-05-0060-02
	)	Robbery 1 st (F)
JAMES W. RILEY	)	RK82-05-0061-02
I.D. No. 0004014504	)	PDWDCF (F)
D.O.B: 08/14/1960	)	RK82-06-0838-02
S.B.I. No. 00169716	)	Murder 1 st (F)

ORDER

The Court is in receipt of James W. Riley's ("Defendant") "Motion to Re-open Movant's Second Motion for Postconviction Relief in Light of New Rule Announced in McCoy v. Louisiana 2018 U.S. LEXIS 2802" docketed July 24, 2018. Upon careful consideration of Defendant's motion, it is *summarily dismissed*. This court dismissed Defendant's second motion for postconviction relief on April 1, 2013. The Delaware Supreme Court affirmed the dismissal of the second motion for postconviction relief on January 9, 2014.¹ The Motion to Re-open filed more than four years after the decision by the Delaware Supreme Court is dismissed as untimely. Further Defendant does not establish that the Court has overlooked controlling precedent or legal principles or misapprehended the law or facts that would change the Court's decision. Defendant has not provided any additional argument or evidence that warrants "to re-open" Defendant's second motion for postconviction relief.

SO ORDERED this 9th day of August, 2018.



Judge

JJC/dsc

cc: Prothonotary

cc: Stephen R. Welch, Jr., Esquire for DAG Wharton
James W. Riley, JTVCC

¹ Riley v. State, 2014 WL 98643 (Del. 2014).

In The Supreme Court Of The STATE Of Delaware

James W. Riley,
Appellant,

v.

STATE OF Delaware,
Appellee.

No. _____

Appellant's Opening Brief

By: James W. Riley (pro se)
James T. Vaughn Correctional Center
1181 Paddock Road
Smyrna, Delaware 19977

July 20, 2004

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Whiteside v. Scurr 744 F.2d 1323 (8th Cir.)

Flamer v. State 585 A.2d 736 (Del. 1990)

Riley v. State 862 A.2d 902 (Del. Super. 2004)

Shockely v. State 565 A.2d 1373 (Del. 1989)

State v. Weber 2019 Del. Super. LEXIS 364

Younger v. State 580 A.2d 552 (Del. 1990)

6th Amend. U.S. Const.

Nature And Stage Of The Proceedings

Appellant was convicted and sentenced to life imprisonment for capital murder and robbery following a jury trial in 2003. In 2004 the Delaware Supreme Court affirmed the convictions on direct appeal, see *Riley v. State* 867 A.2d 902 (Del 2004).

In 2018 the United States Supreme Court made a decision in *McCoy v. Louisiana*, 2018 U.S. LEXIS 2892, in which appellant felt applied to the issues raised in his direct appeal.

On July 17, 2018 appellant filed motion to reopen his second motion for postconviction relief in light of new rule announced in *McCoy*. The Superior Court by Order dated September 20, 2018 summarily dismissed the petition.

On August 13, 2018 appellant filed a motion for reconsideration of court's summarily dismissal Order therein appellant asked the to treat his motion to reopen as a successive motion for postconviction relief. When the Superior Court failed to answer in a reasonable amount of time, on April 15, 2020 appellant filed a Motion To Compel, arguing that *McCoy* was dictated by prior precedent and therefore did not announce a new rule. Again, when Superior court did not respond, appellant then forwarded Judge Jeffrey J. Clark a letter dated July 7, 2020 compelling him to answer.

Finally the Superior Court filed an Order July 10, 2020 upholding its initial summary dismissal Order with no regard for the retroactivity aspect of *McCoy*. Appellant also submitted two sworn Affidavits dated December 28, 2018 and May 24, 2020 in support of his request for postconviction relief. (Affidavits are attached hereto)

Summary Of The Argument

1. The new United States Supreme Court decision of *McCoy v. Louisiana* apply retroactive to appellant's case and render the Delaware Supreme Court's direct appeal decision in *Riley v. State*, 867 A.2d 902 (Del. 2004) contrary to prior caselaw governing the issues that McCoy clarify the application of law to facts constituting structural error for certain kinds of 6th Amendment autonomy rights categorized under *Jones v. Barnes*, 463 U.S. 745 (1983).

Statement Of Facts

Inadequate Faretti Proceedings:

In 2003 Appellant was retried for capital murder. The trial records will show that appellant's court appointed counsel tried to force him to plea guilty to first degree murder. When appellant refused to plea guilty and persisted on exercising his 6th Amendment rights to trial by jury, his counsel then employed illegal means of pressure by falsifying and altering records in appellant's case files to suggest that he made incriminating confessions during taped recorded interviews with psychiatrists in 1987 at which time Appellant was represented by postconviction counsel Professor Lawrence J. Connell of Widner University School of Law. Because these false altered documents included the names of Professor Connell and the psychiatrists that he hired to conduct these interviews with appellant, Appellant made timely requests prior to the retrial and to every State and Federal Court to gain access to the records in his case files and to obtain sworn affidavits from Professor Connell and the interviewing psychiatrists in an attempt to prove that his retrial counsel's accusations of incriminating confessions were false. Every State and Federal court denied Appellant's requests and access to these records to prove the accuracy of counsel's accusations against Appellant.

Because the trial court refused to hold a hearing out of the presence of the "media" so not to create unfair pretrial publicity that would jeopardize Appellant's 6th Amendment right to impartial jury selection and fair trial that these court officials' actions were intended to accomplish, Appellant was then forced to

Statement of Facts (cont'd)

represent himself throughout the retrial AND on direct appeal because his counsel threaten to use the false confessions and altered documents against appellant if appellant exercised his 6th Amendment right to testify in his own behalf. The record show that counsel actually argued to the trial court to deny Appellant's request to conduct the Faretta hearing out of the presence of the media so appellant could reveal the misconduct of counsel AND to review the documents counsel was using to support accusations of incriminating confessions. See *Riley v. STATE*, 867 A.2d 902, 2004 WL 2850093 *2 (Del. Supr.) where the trial court accepted counsel's argument not to conduct in camera proceedings or review any evidence supporting the ethical issues over appellant's vociferous and repeated objections to do so. See *Nix v. Whiteside*, 475 U.S. 157, 182-83 (1985) (defendant must show that hearing on ethical issues was inadequate). And because appellant did not receive an adequate hearing at this stage his rights under *Fareta v. California*, 422 U.S. 806 (1975) were violated leading to involuntary waiver of right to counsel.

The gross misconduct of counsel violated appellant's 6th Amendment autonomy rights and affected the framework within which the trial proceeds where the effects of the error are simply too hard to measure. See *McCoy v. Louisiana* 2018 U.S. LEXIS 2802 citing *Weaver v. United States*, 137 S.Ct. 1899, 1907-08 (2017).

The statement of facts are incorporated by reference in support of the claims and arguments below.

2. The Superior Court Abused Its Discretion
By Failing To Grant Postconviction Relief
ON The BASIS OF MCCOY V. LOUISIANA 138
S.Ct. 1500 (2018) And To Determine The
Retroactivity Application Of McCoy

Standard Of Review

The Delaware Supreme Court review the Superior Court's denial of postconviction relief for abuse of discretion. And review retroactivity of caselaw under *Younger v. State* 580 A.2d 552 (Del. 1990) and *Flamer v. State* 585 A.2d 736 (Del. 1990).

Argument

o Retroactivity Of McCoy:

The Superior Court abused its discretion in failing to consider the retroactivity application of McCoy to appellant's case. Appellant seek postconviction relief on the basis of new United States Supreme Court decision of McCoy which is clearly dictated by prior precedent governing the issues addressed in appellant's 2004 direct appeal to this court. see *Riley v. State*, 867 A.2d 902 (Del. 2004).

As appellant correctly argued in the court below, McCoy do not create a new law for retroactivity purposes under *Teague v. Lane*, 489 U.S. 288 (1989); *Younger v. State*, 580 A.2d 552 (Del. 1990); *Flamer v. State*, 585 A.2d 736 (Del. 1990).

The McCoy Court merely clarified the law as it applied to the particular facts of that case dealing with autonomy rights, structural errors and ethical issues. see *United States v. Wilson*, 2020 U.S. App. Ct. 3d Cir. LEXIS 16405 (May 22, 2020)*5 (holding that McCoy clarified the line between tactical and fundamental decisions); Also see *State v. Weber*, 2019 Del. Super. LEXIS 364 (holding that McCoy did not create a new rule in Delaware because it clarified Cooke). However Cooke do not deal with the Ethical aspect of McCoy. see *Cooke v. State*, 977 803 (Del. 2009).

Unlike Cooke, the appellant's circumstances are on all fours with McCoy dealing with both autonomy rights and ethical issues.

In *Lewis v. Johnson*, 359 F.3d 646 (3d Cir. 2004) the Third Circuit Court held that when a new United States Supreme Court ruling is dictated by precedent and merely clarified well settled law then the lower courts must review the legal landscape to determine whether the new decision a defendant seek to apply was dictated by precedent clearly established at the time his conviction became final. *Id.* 653; Also see *Younger*, 580 A.2d at 554; 585 A.2d at 749.

• McCoy Mandate This Court To Address The Ethical Issues:

The McCoy Court held that the Louisiana Supreme Court cannot rely on ethical issues under *Nix v. Whitesides*, 106 S.Ct 988 (1986) without proof of that fact in the records to deny McCoy's 6th Amendment autonomy rights. The Supreme Court held in McCoy: Autonomy to decide that the objective of the defense is to assert innocence belongs in the latter

category (referring to the Class under *Jones v. Barnes*, 463 U.S. 745, 751 (1983)) (Just as a defendant may steadfastly refuse to plead guilty in the face of overwhelming evidence against her, so may she insist on maintaining her innocence at the guilt phase of a capital trial). Thus the autonomy to assert innocence and to plead not guilty are one in the same objective and the courts cannot rely on unsupported ethical concerns to justify denying relief when these fundamental objectives are violated.

The Unresolved Ethical Issues In Appellant's case:

In Appellant's 2004 direct appeal to this court he argued that his trial counsel retaliated against him for not pleading guilty to capital murder. In an attempt to force Appellant to plead guilty counsel falsely claim that there are documents in Appellant's case files which suggest that Appellant made prior incriminating statements of his participation in capital murder and robbery. Counsel also threaten that if Appellant refuse to plead guilty and proceeded to testify at trial in support of an alibi defense then counsel would have to inform the trial judge that the testimony is false. All these claims are supported by letters trial counsel wrote to Appellant as referred to in *Riley v. State*, 867 A.2d 902, FN7, FN8 & FN9 (Del. 2004).

Clearly, the rights to plead not guilty and to testify are 6th Amendment autonomy objectives belonging to Appellant to make. see *McCoy v. Louisiana*, 138 S.Ct. 1500 (2018) citing *Jones v. Barnes*, 463 U.S. 745 (1983). Like McCoy, Appellant's counsel did not honor his autonomy not to plead guilty and seek to steer the ship the other way which made the death sentence more probable.

The 2004 direct appeal decision clearly supports the fact that neither the trial court nor the Delaware Supreme Court ever resolved the ethical issues in this case which is dictated by clearly established STATE and Federal caselaw of Shockley v. STATE, 565 A.2d 1373 (Del. 1989) citing Whiteside v. Scurr, 744 F.2d 1323 (8th Cir.) rev'd on other grounds, Nix v. Whiteside, 475 U.S. 157 (1986); United States ex rel. Wilcox v. Johnson, 555 F.2d 115 (1977). Each of these cases states that an attorney must have a "Firm Factual Basis" or "Knowledge Beyond A Reasonable Doubt" before he or she can determine (The Ethical Issue) that their client has committed or is going to commit perjury. see Shockley at 1379.

In Shockley the record support that the trial court held an evidentiary hearing (as in all the other cited caselaw) to determine whether or not counsel possessed knowledge beyond a reasonable doubt that Shockley was going to commit perjury. Id at 1377; see Nix v. Whiteside 475 U.S. at 179; Wilcox, at 117 & 121 (3d Cir. 1977).

Contrary to Shockley's... Adapt[ed] prevailing [STATE and Federal] law, 565 A.2d at 1379, ... the Delaware Supreme Court did not subject Appellant's trial counsel's ethical concerns to this adversarial testing standard to be sure that he possessed accurate knowledge beyond a reasonable doubt that Appellant made prior incriminating confessions to capital murder and for this reason he will testify falsely at trial.

Because there is no evidence in the state court records to support the ethical issues, McCoy mandate further proceedings or that Appellant's convictions and sentences be reversed for violation

of his 6th Amendment autonomy rights not to plead guilty to capital murder and to testify.

McCoy held that: Violation of a defendant's 6th Amendment secured autonomy rank as error of the kind our decision have called "structural"; when present, such an error is not subject to harmless-error review citing McKaskle v. Wiggins, 465 U.S. 168, 176 (1984), a case well established at the time appellant's case became final on direct appeal in 2004. A structural error depends on the circumstances of the error involved, see Weaver, 137 S. Ct. at 1908 and Statement of Facts in support hereto on page 1 and 2. Also see attached hereto appellant's sworn Affidavits averring that he never made any prior incriminating statements of his involvement in capital murder. *

* All interviews appellant had with prior post conviction counsels were all tape recorded. The court must first review these tapes which were prepared for mitigating and clemency purposes of the death penalty. The interviews with psychiatrists were conducted in 1987 and only to be used for mitigating purposes.

Conclusion

For the reasons argued above and supporting caselaw this court must grant a new trial or remand this case back to the superior court for further proceedings.

James W. Riley (pro se)

James T. Vaughn Correctional Center

1181 Paddock Road

Smyrna, Delaware 19977

Dated: July 20, 2020

In The Supreme Court Of The State Of Delaware

James W. Riley

Appellant,

v.

State of Delaware,

Appellee.

No. 245, 2020

Petition For Rehearing En banc

Appellant petition this court for rehearing en banc of the court's September 1, 2020 decision denying his direct appeal for postconviction relief based upon *McCoy v. Louisiana* 138 S.Ct. 1500 (2018).

Timeliness Issue In Court Below?

1. This court made erroneous findings that appellant's motion for reconsideration of the superior court's denial of his motion to reopen his second postconviction motion was untimely under Superior Court Civil Rule 59. On page 2 of this Court's decision it cite *Riley v. State*, 483, 2018 (Del. Supr.). If this Court read the reasons for that Notice of Appeal, it was to protect the timeliness of appellant's right to file his motion for reconsideration which was in jeopardy by the late reception of the Superior Court's September 9, 2018 decision. So appellant's Motion For Reconsideration was not untimely under Civil Rule 59, nor did the Superior court cite to Rule 59.

2. Nevertheless, in Appellant's motion For Reconsideration he asked the Superior Court to construe or treat his motion To Reopen as a successive motion For Postconviction Relief under Rule 61 (1) (2) (11). Because the Superior Court's final decision of July 10, 2020 is totally silent on this matter, then this Court must accept the fact that the Superior Court construed Appellant's motion For Reconsideration as a Rule 61 request as well.

McCoy Decision Applicable

3. This court also ruled that the McCoy decision only apply to autonomy against an attorney's conceding his client's guilt without consent. This is simply not true!! The U.S. Supreme Court ruled in McCoy that an attorney must always abide by his client objective of his defense whether to plea guilty; to be tried by judge or jury; to testify; to appeal; and now under McCoy-whether to admit guilt in the guilt phase of a capital case. See Pope v. Overmyer 2019 U.S. Dist. LE&IS 13304. These latter category of decisions "Are not strategic choices about how best to achieve a client's objectives; they are choices about what the client's objectives in fact are." see Kellogg-Roe v. Warden, HN State Prison, 2020 U.S. Dist. LE&IS 51228*12 (citing McCoy 138 S.Ct. at 1508).

4. In this Court's 2004 direct appeal decision in Riley v State 2004 WL 2850093*3 (Del. Supr.) the Court held "that the Professional Conduct Rule 1.2 states that a

lawyer shall abide by a client's decision concerning the objectives of representation," but also provides that the lawyer must act within the boundaries of the rules and the law in carrying out those objectives." *Id.*

In disposing of appellant's autonomy issue in 2004 this court ruled... "while a criminal defendant has a constitutional right to testify in his own defense, he does not have the right to testify falsely." *Id.* (citing *Nix v. Whiteside*) at FN. 14.

This is evident that this court knew that appellant was making a 6th Amendment autonomy right claim as identified in *Riley v. State*, *supra*, at *1, 2 & 3. ¹

What this court did not address in 2004 is the ethical issue behind trial counsel's reasons for not honoring appellant's secured autonomy objective to plea not guilty to capital murder which was based upon a false accusation that appellant made prior incriminating statements of his involvement in capital murder and robbery that prevented trial counsel, ethically, from representing appellant's alibi defense and decision to testify in support thereof. Such false accusations also led to involuntary waiver of 6th Amendment right to counsel and autonomy right to testify.

I.

The Delaware Supreme Court's decision in *Cooke v. State*, 977 A.2d 803 (Del. 2009) is only applicable to autonomy against non-consensual concessions of guilt, but McCoy cover all autonomy objectives in *Jones v. Barnes* 463 U.S. 745, 751 (1983), including *Cooke*.

Like in McCoy, there is nothing in the records of the State Courts to support such incriminating confession or any other ethical issue to justify trial counsel's and the Court's violations of appellant's 6th Amendment autonomy rights not to plea guilty to capital murder.

Although counsel did not concede the defendant's right not to plea guilty in *Taylor v. State* 213 A.3d 560, 568 (Del. Supr. 2019) this Court still applied the holdings in *McCoy* and *Cooke*, ruling that... "counsel cannot undermine the defendant's right to make personal and fundamental decisions by ignoring the defendant's choice and arguing affirmatively against the defendant's chosen objective." Because this is what exactly occurred in appellant's case, this Court must apply an Equal Application of the law of *Taylor* and *McCoy*.

This Court must also correct its erroneous holding at page 4 of its decision that... "Riley elected to represent himself at trial because of disagreements with his counsel regarding how the case should be litigated." To the contrary, the Court's findings are not supported by the Court's previous 2004 decision which show, unmistakably, that the disagreements were about the objectives of appellant's autonomy not to plea guilty and right to testify.

Wherefore, the Delaware Supreme Court's 2004 direct appeal decision in *Riley v. State*, supra, and this present appeal decision are contrary to *McCoy* and *Whiteside*. The Full Court shall grant rehearing to address the unresolved *Whiteside* ethical issue as mandated by *McCoy*.

Date: Sept. 14, 2020.

James W. Riley
James W. Riley (Appellant)
James T. Vaughn Correctional Center
1781 Paddock Road
Smyrna, Delaware 19977