The Supreme Court of the State of Louisiana

JAMES S. TYLER, III

VS.

No. 2020-KP-00984

DARREL VANNOY, WARDEN LOUISIANA STATE PENITENTIARY

IN RE: James S. Tyler, III - Applicant Defendant; Applying For Supervisory Writ, Parish of Caddo, 1st Judicial District Court Number(s) 175,282;

November 17, 2021

Writ application denied.

JDH
JTG
WJC
JBM

Weimer, C.J., would grant.
Griffin, J., would grant and docket to consider the retroactivity of McCoy v. Louisiana, 138 S.Ct. 1500, 200 L.Ed.2d 821 (2018).
Crichton, J., recused.

Supreme Court of Louisiana
November 17, 2021

/s/ Katie Marjanovic
Chief Deputy Clerk of Court
For the Court

JAMES TYLER, III	NUMBER 175,282 Sec. 3
VERSUS	1st JUDICIAL DISTRICT COURT
DARREL VANNOY, WARDEN	CADDO PARISH, LOUISIANA

RULING

(Filed Feb. 13, 2020)

Before the Court is a "Supplemental Petition for Post-Conviction Relief" ("the Petition") filed May 14, 2019 by JAMES TYLER, III ("TYLER"). For the reasons expressed below, the Petition is **DENIED**.

TYLER has filed various post-conviction proceedings since his conviction for the 1995 first degree murder of the manager of a Pizza Hut during an armed robbery. His last attempt prior to the Petition was rejected by the Louisiana Supreme Court in *State v. Tyler*, 2013 – KP-0913 (La. 11/6/15), 181 So.3d 678. Several of TYLER's other claims were discussed in that 2015 opinion. In that last motion, TYLER CLAIMED ineffective counsel at the penalty phase of his trial due to counsel's failure to follow up on a letter to an expert.

In the Petition, TYLER seeks a new trial based upon the recent criminal procedure ruling by the United States Supreme Court in *McCoy v. Louisiana*, 138 S.Ct. 1500, 200 L.Ed.2d 821 (2018) ("*McCoy*"). *McCoy* held a defendant should have autonomy to control his defense. Specifically, *McCoy* held that a defendant, and not his 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. TYLER's case presents that same issue. The Petition was well done and quite thorough. However, the Petition is **DENIED** for the reasons set forth below.

The Petition was filed, perhaps by coincidence, on the same day as a similar pleading for relief pursuant to *McCoy*. See the "Petitioner's Second Application for Post-Conviction Relief based on *McCoy v. Louisiana*" filed May 14, 2020 in "Bobby Lee Hampton v. Darrel Vannoy," No. 176,627 on the docket of this court. This Court denied Mr. Hampton's request for new trial in a ruling filed February 3, 2020. A copy of this Court's Ruling on that Application is attached as Exhibit A and referred to herein as "Hampton." If TYLER 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 in the face of overwhelming evidence against him.[1] However, TYLER is not faced with such a decision now, but was faced with that decision at his trial. The only question to be decided concerning the Petition is whether or not *McCoy is* to be applied retroactively.

There are only two (2) types of new procedural rules that are applied retroactively. All other new rules of criminal procedure are not retroactively applied.

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[1] For purposes of this Ruling only, this Court assumes that TYLER, as his filing suggests, made such an objection in 1997. With this understanding, no evidentiary hearing is needed on the Application at this time.

The 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; and

(2) watershed rules of criminal procedure implicating the fundamental fairness and accuracy of the criminal proceeding.

In its Procedural objections, the State argues TYLER is wrong and rules such as that set forth in *McCoy* in 2018 cannot reach back to set aside TYLER's conviction. This Court agrees.

As this Court held in Hampton, the rule of *McCoy* simply does not fit either *Teague* exception. First, it is not a rule that prohibits punishment for either: (a) certain conduct; or (b) a category or class of defendants. TYLER argues otherwise, but no conduct was decreed unpunishable in *McCoy.* Likewise, no punishment was declared inappropriate for any class of defendants in *McCoy.* The second aspect of the first exception was rightly applied in *Montgomery v. Louisiana*, 193 L.Ed. 2d 599, 136 S.Ct. 718 (2016) ("*Montgomery*"). *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.* The class in *Montgomery*, all juvenile offenders based on age and maturity, is easily defined and distinguishable from all

other defendants. All defendants facing a death penalty may have only that in common.

The second *Teague* exception just as clearly does not apply here, either. The McCoy holding 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 second *Teague* 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. 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*").

This Court cannot be convinced that the right of a defendant to overrule his counsel on this particular trial strategy can 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 like that in *McCoy* 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. No doubt, *Gideon* has led 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.

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." (Emphasis added.) There can be doubt *Gideon* did so. *McCoy* cannot be said to have altered our understanding of the bedrock procedural elements essential to the fairness of a proceeding.

As mentioned in footnote 1, no evidentiary 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." Neither TYLER nor his counsel can convince this Court to change its position in Hampton. This Court can not equate the ruling in *McCoy* to those in *Montgomery* or *Gideon*. TYLER cannot convince this Court otherwise with more argument making further proceedings in this Court unnecessary. Alternatively, the State's Procedural Objections are considered an Answer and this Ruling is issued pursuant to La. C.Cr.P. Art. 929A.

The Clerk is directed to provide a copy of this Ruling to Bobby Lee TYLER, through his attorneys of record, Rachel I. Conner and William Sothern, and to the Caddo Parish District Attorney.

Shreveport, Caddo Parish, Louisiana this 11 day of February, 2020.

/s/ [Illegible]
JUDGE CHARLES G. TUTT
DISTRICT JUDGE

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BOBBY LEE HAMPTON	:	NUMBER 176,627 Sec. 3
VERSUS	:	
DARREL VANNOY, WARDEN	:	1st JUDICIAL DISTRICT COURT
	:	CADDO PARISH, LOUISIANA
	:	

RULING

(Filed Feb. 3, 2020)

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 such a decision now, but was faced with that

[1] For purposes of this Ruling only, this Court assumes that HAMPTON made such an objection in 1997. With this understanding, no evidentiary hearing is needed on the Application at this time.

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. 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

[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.*

> 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. 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 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/ [Illegible]
JUDGE CHARLES G. TUTT
DISTRICT JUDGE

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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.

[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.

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