App. 1

First Judicial District Court of Caddo Parrish
Ruling
Filed May 15, 2020

STATE OF LOUISIANA	NUMBER: 175,282; SECTION 3
VERSUS	FIRST JUDICIAL DISTRICT COURT
JAMES S. TYLER, III	CADDO PARISH, LOUISIANA

RULING

Before the Court is a "Motion to Reconsider District Court's Denial of James Tyler's Supplemental Petition for Post-Conviction Relief' filed on March 13, 2020 on behalf of James S. Tyler, III ("the Motion to Reconsider").[1] For the following reasons, the Motion is **DENIED**.

In the "Relevant Procedural History" section of the Motion to Reconsider counsel for James S. Tyler, III ("Tyler") recites six (6) claims made in the Petition filed on May 14, 2019 and denied by this Court on February 13, 2020. The claims for relief as set forth in the Motion to Reconsider are that TYLER is entitled to relief because:

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[1] The "Supplemental Petition for Post-Conviction Relief' this Court is asked to reconsider is herein referred to as the Petition ("the Petition") and was based on *McCoy v. Louisiana,* ___ U.S. ___ 138 S.Ct. 1500 (2018) ("*McCoy*").

(1) the concession of his guilt over his objections based on a straight forward application of McCoy,

(2) the conflict of interest between Mr. Tyler and his trial counsel pursuant to *Holloway v. Arkansas*, 435 U.S. 475 (1978), in light of *McCoy*,

(3) the conflict of interest between Mr. Tyler and his trial counsel pursuant to *Cuyler v. Sullivan*, 446 U.S. 335 (1980), in light of *McCoy*,

(4) the denial of counsel at critical stages of proceedings, in violation of *United States v. Cronic*, 466 U.S. 468 (1984), in light of *McCoy*,

(5) the denial of effective assistance of counsel due to the complete breakdown in communication between Mr. Tyler and his trial attorneys, in light of *McCoy*, and

(6) the denial of effective assistance of counsel under *Strickland v. Washington*, 466 U.S. 668 (1994), in light of *McCoy*.

In the Motion to Reconsider, counsel seems to admit that the February 13, 2020 Ruling addresses Tyler's claim #1, which is the same as the first claim in the Petition. The list itself shows the reason this Court did not address each and every one of the other five (5) claims in its original Ruling on February 13, 2020. Counsel lists the five (5) remaining claims in the Motion to Reconsider, but suggests each is to be reviewed "in light of *McCoy*". Counsel's approach in the Motion

to Reconsider seems disingenuous in view of the issue(s) involved in the cases cited in claims 2-6 ("ineffective assistance of counsel") and their inapplicability to the issue in *McCoy* ("autonomy of defendants in strategic decisions"). The new rule of *McCoy* does not address the effectiveness of counsel in view of counsel's conflicts as in *Holloway v. Arkansas*, 435 U.S. 475 (1978) ("*Holloway*") or *Chyler v. Sullivan*, 446 U.S. 335 (1980) ("*Sullivan*"). The new *McCoy* rule does not concern whether the defendant's case was presumptively affected by counsel's conflict or if the defendant must prove some deleterious effect. Likewise, the new rule of *McCoy*, and the issues in this case do not involve the question of whether external circumstances surroundings a defense of a case can be said to require reversal without delving into whether under those circumstances defense counsel's work was acceptable as was the case in *United States v. Cronic*, 466 U.S. 468 (1984) ("*Cronic*").

Counsel in the Motion to Reconsider boldly assert on page 16 that:

> "*McCoy* established a new bedrock procedural rule on par with *Gideon*, in its respect for the personal dignity of the accused, the right to autonomy as a fundamental right, essential to the fair administration of justice." (Emphasis added.)

Consequently, counsel argue this Court should find that McCoy applies retroactively to Tyler's claim in the Petition. This Court simply disagrees and does not believe that *McCoy* applies retroactively. It was and

remains the Ruling of this Court that *McCoy* has no application to Tyler's claims. This Court conceded that if *McCoy* could be applied retroactively, it would have application in this case, but decided it should not be so applied.

Curiously, the "new bedrock procedural rule" quote above follows several pages of argument that McCoy's rule is nothing new. That nothing new characterization of *McCoy*'s rule is argued beginning on page 3 of the Motion and summarized on page 9 as follows:

> The reasoning and holding of the McCoy decision respecting the autonomy of a defendant to determine the objectives of his representation, to maintain his innocence, and to hold the State to its burden of proof at trial were based on centuries of precedent, embedded in the fabric of our Constitution, codified in the Model and Louisiana Professional Rules of Professional Conduct. The *McCoy* decision neither broke new ground nor imposed a new obligation on the States or Federal Government. To the contrary, the holding and reasoning in McCoy were mandated by longstanding legal precedent, the United States Constitution, the Louisiana Constitution, the Rules of Professional Conduct, and longstanding legal precedent recognizing that the defendant, and not his lawyer is the Master of his Defense. (Emphasis added.)

Can these two arguments both be true? This Court thinks not and sees *McCoy* as a new procedural rule, **but not a new bedrock procedural rule on a par**

with *Gideon*. Did McCoy "establish a new bedrock procedural rule" or did it " neither break new ground . . . " nor impose " . . . a new obligation on the States . . . "? Both cannot be true.

Counsel for Tyler make some fairly profound statements about this case in the Motion to Reconsider. One such statement is on page 12 of the Motion:

> James Tyler was a rational defendant, against whom the evidence at trial was not "overwhelming," whose attorneys did not investigate his case, and did nothing to represent him at trial, save agree with the prosecution, bolster the credibility of shaky state witnesses, and ask the jury to convict their client of first degree murder.

Counsel is not reviewing the same record as the undersigned judge. For example, big issues were made by Tyler about: (1) his counsel not adequately investigating possible brain damage; and (2) and failing to have his experts explain the side effects of his psychotic medication during trial.[2] Tyler was no rational defendant and the evidence in this case is overwhelming. A more realistic view of the record would suggest none of Tyler's claims 2-6 justify relief aside from or "in light of *McCoy.*

Counsel now says the rules set forth in claims 2-6 must be decided "in light of *McCoy*." This is clearly not

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[2] See the Ruling of the Supreme Court of Louisiana in State v. ex rel. James S. Tyler, III v. Burl Cain, Warden, No. 2013-KP0913 dated November 22, 2013.

the case. It is for this reason and several other reasons documented in the cases relied upon in claims 2 – 6 that this Court did not find it necessary to address each and every claim made by TYLER individually in its Ruling on February 13, 2020.

To suggest that *Holloway* has any application to this case, as Tyler does in his Claim 2, stretches the imagination. In *Holloway*, three individuals were alleged to have robbed and terrorized eleven (11) employees of a restaurant on June 1, 1975. On July 29, 1975, each of the three defendants was charged with one (1) count of robbery and two (2) counts of rape. On August 5 of that same year, a public defender was appointed to represent all three (3) defendants who were then arraigned and pled not guilty. On August 7 the three (3) were set for trial on a consolidated basis with their lone lawyer for September 4. On August 13 of that year, the public defender moved the court to appoint separate counsel because "the defendants had stated to him that there was a possibility of a conflict of interest in each of their cases . . . ". After a hearing on the motion and defendant's Motion for a Severance, the Court declined to appoint separate counsel or order separate trials. On the morning of the trial, before the jury was empaneled, the public defender renewed his Motion for Appointment of Separate Counsel "on the grounds that one or two of the defendants may testify and if they do, then I will not be able to cross examine them because I have received confidential information from them." The court responded: "I don't know why you wouldn't" and again denied the motion. To predict

what would occur at trial would not require much foresight. When the public defender advised the court that the three (3) defendants had decided to testify he renewed his motions concerning a conflict of interest. The judge stated: "That's alright; let them testify. There is no conflict of interest. Every time I try more than one person in this court each one blames it on the other one." One defendant took the stand and then another whereupon the public defender complained without success of his inability to cross examine. Needless to say, the defendants were convicted and appealed. The U.S. Supreme Court rightly reversed that decision. In that case, the U.S. Supreme Court held that:

> Finally, a rule requiring a defendant to show that a conflict of interests – which he and his counsel tried to avoid by timely objections to the joint representation-prejudiced him in some specific fashion would not be susceptible of intelligent, evenhanded application. In the normal case where a harmless-error rule is applied, the error occurs at trial and its scope is readily identifiable. Accordingly, the reviewing court can undertake with some confidence its relatively narrow task of assessing the likelihood that the error materially affected the deliberations of the jury. Compare *Chapman v. California, supra.* at 24-26, 87 S.Ct. at 828-829, with *Hamling v. United States*, 418 U.S. 87, 108, 94 S.Ct. 2887, 2902, 41 L.Ed.2d 590 (1974) and *United States v. Valle-Valdez*, 554 F.2d 911, 914-917 (CA9 1977). But in a case of joint representation of conflicting interests the evil-it bears repeating-is in what

> the advocate finds himself compelled to refrain from doing, not only at trial but also as to possible pretrial plea negotiations and in the sentencing process. It may be possible in some cases to identify from the record the prejudice resulting from an attorney's failure to undertake certain trial tasks, but even with a record of the sentencing hearing available it would be difficult, to judge intelligently the impact of a conflict on the attorney's representation of a client. And to assess the impact of a conflict of interests on the attorney's options, tactics, and decisions in plea negotiations would be virtually impossible. Thus, an inquiry into a claim of harmless error here would require, unlike most cases, unguided speculation. *Holloway* at p. 450.

Holloway stands for one proposition. In a case of representation by one lawyer of three (3) defendants whose defenses conflict, the reviewing court need not find actual prejudice to a defendant to reverse. Such is not the case herein and *McCoy* does not apply to the ruling in *Holloway.*

In issue #3, Tyler suggests the conflict of interest between Tyler and his counsel should be reviewed pursuant to *Sullivan. Sullivan is* a dual representation case, but the Supreme Court in *Sullivan* determined that a defendant claiming a conflict of interest based on multiple representation must establish an actual conflict of interest adversely affecting his lawyer's performance. The mere possibility of a conflict is not enough. The case was remanded to the Court of Appeal

for a determination as to whether the conflict rendered counsel's assistance ineffective. In *Sullivan*, the Supreme Court explained *Holloway*:

> In Holloway, a single public defender represented three defendants at the same trial. The trial court refused to consider the appointment of separate counsel despite the defense lawyer's timely and repeated assertions that the interests of his clients conflicted. This Court recognized that a lawyer forced to represent codefendants whose interests conflict cannot provide the adequate legal assistance required by the Sixth Amendment. *Id.* at a481-482, 98 S.Ct., at 1177. Given the trial court's failure to respond to timely objections, however, the Court did not consider whether the alleged conflict actually existed. It simply held that the trial court's error unconstitutionally endangered the right to counsel. *Id.* at 483-487, 98 S.Ct., at 1178-1180. *Sullivan* at p. 345.

Sullivan recognized the unique facts in *Holloway* that eliminated the need for proof of ineffective counsel. Like *Holloway*, it has no application to *McCoy* or Tyler's case.

In issue #4, counsel refers to *Cronic* and suggests that case be considered in light of *McCoy.* Perhaps this is the most difficult to understand. *Cronic* is a case in which the Court of Appeals had decided that external factors affecting the defense mandated a decision that a defendant had not received effective assistance of counsel. The U.S. Supreme Court reversed

and indicated that inferring counsel's failure to accurately perform based on several external factors was inappropriate. These factors included: time afforded counsel for investigation and preparation (25 days); the experience of counsel (a young lawyer with a real estate practice); the gravity of the charge; complexity of possible defenses; and the accessibility of witnesses to counsel. The Supreme Court held the right to the effective assistance of counsel is a right of the accused to require the prosecution to survive meaningful adversarial testing. The court held a party can make out " . . . a claim of ineffective assistance of counsel only by pointing to specific errors made by trial counsel." *Cronic* at p. 666. (Emphasis added.) *McCoy* cannot affect the *Cronic* rule because *McCoy* does not deal with effective assistance of counsel, but a defendant's right determine whether or not to present a particular defense or to admit guilt in the face of overwhelming evidence against him. It is for this reason *McCoy* specifically distinguishes itself from *Strickland v. Washington*, 466 U.S. 668 (1984) **and *Cronic***:

> Because a client's autonomy, not counsel's competence, is in issue, we do not apply our ineffective-assistance-of-counsel jurisprudence. *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d. 674 (1984), or *United States v. Cronic*, 466 U.S. 648, 104 S.Ct. 2039, 80 L.Ed.657 (1984), to *McCoy*'s claim. See Brief for Petitioner 43-48; Brief for Respondent 46-52. To gain redress for attorney error, a defendant ordinarily must show prejudice. See *Strickland*, 466 U.S., at 692. 104 S.Ct.

> 2052. Here, however, the violation of *McCoy*'s protected autonomy right was complete when the court allowed counsel to usurp control of an issue within *McCoy*'s sole prerogative. *McCoy v.* Louisiana, 1385 S.Ct. 1500, ___ U.S. ___ (2018) at p. 1510-1511. (Emphasis added.)

In their 5th claim, Tyler's counsel suggests a complete breakdown in communication between Mr. Tyler and his trial attorneys must be "reviewed in light of *McCoy".* Such is not the case. *McCoy* did not deal with a breakdown in communication, but with a particular decision and who was entitled to make that decision.

Finally, in issue #6 Tyler's counsel says he is entitled to relief due to ineffective assistance of counsel under *Strickland "*in light of *McCoy*". As noted above, *McCoy* has nothing to do with *Strickland.* See *McCoy* at page 1510-1511 quoted above.

None of the cases cited in TYLER'S "issues" 2 – 6 relate to the one issue decided in *McCoy.*

TYLER'S PRO SE REPLY

Tyler was granted time to file a pro se brief in addition to that filed by counsel in support of reconsideration.[3]Like that of his counsel, however, Tyler ignores that there is but one central issue in *McCoy.* The issue in McCoy is narrow: Can counsel admit complicity by his client in a crime to win favor from the jury on the

[3] TYLER captioned his pleading filed April 20, 2020 "Petitioner's Pro Se Reply to State's Procedural Objections to Supplemental Petition for Post-Conviction Relief."

issue of life or death? Like counsel, Tyler argues that McCoy expresses a new rule worthy of retroactive application like *Gideon*. Again, like counsel, Tyler argues, in the alternative, it is not a new rule. With all due respect, it is either a new rule or it is not a new rule. It is a new rule. The only question is whether it is so basic to a fair trial and valid result that it should be equated with *Gideon*. It is clear it cannot.

It must be remembered the effect of the *McCoy* decision can be different in every case. There are cases in which the defendant is so clearly guilty that an admission of guilt is the only way to avoid death. *McCoy* leaves that decision to the defendant even when, as here, defendant's approach could have been even more dangerous.

McCoy is not an "effectiveness" of counsel case. Who can say what decision would have been best in *McCoy*'s case or in Tyler's case? Tyler is right, the Supreme Court in *McCoy* said: "And the effects of the admission would be immeasurable because a jury would almost certainly be swayed by a lawyer's concession of his client's guilt". *McCoy* at p. 1511. But what if the evidence is so overwhelming that to argue otherwise would "almost certainly" have been more disastrous to a defendant? This is not a situation where the decision can be evaluated as to whether it resulted in prejudice to the defendant or, if prejudice resulted, it can be said to have affected the outcome. Clearly, therefore, the Supreme Court was right and this issue is not appropriate for decision by *Strickland* standards. This refutes Tyler's pro se argument about his right to **appellate**

review being affected by Louisiana's system of Post-Conviction Relief. Tyler argues pro se that because Louisiana does not generally address ineffective counsel claims on appeal, but more often in post-conviction proceedings; that somehow affected his ability to pursue his claims. His argument on this issue is unclear, but fails because Tyler has had adequate opportunities to pursue his claims and the only thing new in his reservoir of claims is the ruling in *McCoy.*

Tyler also tries, as did counsel, to argue the *McCoy* rule is such a bedrock principle that it is on par with *Gideon.* There is just no way to make that case. *McCoy* takes away counsel's ability to represent his client's best interests as he see those interests. To suggest that reserving to defendants the right to override defense counsel on one issue in *McCoy* is equal to the right of every defendant to effective counsel is difficult to conceive. This Court agrees with the dissent when it states that " . . . the result of mounting petitioner's conspiracy defense almost certainly would have been disastrous." *McCoy* at p. 1513. This is "almost certainly" true in Tyler's case as well. Contrary to Tyler's argument his lawyer was helping the prosecution, *McCoy*'s lawyer, thought that if he pursued Tyler's wish, he would have "helped the District Attorney send [petitioner] to the death chamber." *McCoy* at p. 1514. No doubt counsel for Tyler felt the same.

In contradictory sections of his pro se brief, TYLER argues: (1) "The circumstances in McCoy and its holding is not only analogous to *Gideon*, but it is essentially the same"; but (2) "The circumstances in

these two cases are not the same . . . ".[4] Which is it? Are *Gideon* and *McCoy* the same? *Gideon* assures defendants have counsel which must be effective or at least not ineffective. McCoy says whether effective or not, counsel can be overruled on one decision: Whether to admit guilt to avoid death. The Supreme Court in *McCoy* couched its decision in different ways, but always narrowly. On page 1510 it said: "In this stark scenario . . . counsel may not admit her client's guilt of a charged crime over the client's intransigent objection to that admission." On page 1511, the Supreme Court said: "Violation of a defendant's Sixth Amendment – secured autonomy ranks as error . . . " that cannot be overlooked. Now defendants have a right to counsel, per *Gideon*, but that counsel must follow the clients' directive concerning his defense. On page 152, the Supreme Court said " . . . allowance of English's admission of McCoy's guilt despite McCoy's insistent objections was incompatible with the Sixth Amendment." This is NOT the same as being forced to trial without advice of counsel as prohibited by *Gideon:"* . . . any person hailed into court, who is too poor to hire a lawyer – as petitioner was – cannot be assured a fair trial." Gideon at p. 344 as quoted by Tyler. Tyler's autonomy guarantees his right, but to direct his defense, but it does not guarantee him a fair trial. This Court continues to believe these two cases, *Gideon* and *McCoy, are meant* to preserve wholly separate, wholly incomparable rights in the overall scheme of our justice system. One provides an attorney to defendant so that he is

[4] See pages 11 and 12 of TYLER's pro se brief.

"assured a fair trial" while the other protects his right to direct his defense. Defendant's right to counsel is said to be necessary to assure a fair trial, so he is guaranteed counsel. His right to make the decision reserved to him in *McCoy* guarantees his autonomy, but cannot be said to assure a fair trial.

CONCLUSION

Neither counsel's Motion to Reconsider nor Tyler's pro se filing changes this Court's February 13, 2020 ruling.

The Clerk is requested to provide a copy of this Ruling to James S. Tyler, III, his counsel and the District Attorney.

Shreveport, Louisiana this 15 day of May, 2020.

/s/ Charles G. Tutt
JUDGE CHARLES G. TUTT
FIRST JUDICIAL DISTRICT COURT

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Excerpt from the

Application for Supervisory Writs From Trial Court's Denial of James Tyler's Supplemental Application for Post-Conviction Review Based on McCoy v. Louisiana

Filed by Petitioner, James S. Tyler, III
at the
Supreme Court of Louisiana
20-KP-984

* * *

b. McCoy v. Louisiana: Retroactivity Analysis pursuant to Teague v. Lane

The trial court erred when it denied James Tyler's *Supplemental Petition for Post-Conviction Review* and held that he is not entitled to the benefit of the *McCoy* decision because *McCoy* announced "new rule" which is not retroactive pursuant to either of the two *Teague* exceptions. To the contrary, the reasoning of the *McCoy* decision, reaffirming the autonomy and basic individual liberty of a criminal defendant, can be traced to basic principles in British common law, incorporated in the adoption of the Sixth Amendment right to the assistance of counsel for one's defense, guaranteed by the text of the Louisiana Constitution, and codified in the Louisiana and Model Rules of Professional Conduct.

James Tyler, who vociferously expressed his clear objective to stand trial and adamantly objected at every possible opportunity – on the record – to the concession of guilt foist upon him by his appointed counsel, was constitutionally entitled to insist that his

court-appointed attorney refrain from conceding his guilt and affirmatively defend him against the charges. James Tyler is entitled to relief.

As a threshold matter, James Tyler's conviction became "final" for *Teague* analysis purposes, on April 19, 1999, when the United States Supreme Court denied his petition for certiorari, following the decision by the Louisiana Supreme Court denying his direct appeal and confirming his conviction and death sentence. *Tyler v. Louisiana*, 526 U.S. 1073 (1999); *State v. Tyler*, 97-0338 (La. 9/9/98); 723 So.2d 939.

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