

No. 21-5363

ORIGINAL

Supreme Court, U.S.
FILED

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IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM 2021

CHRISTOPHER BRIAN COPE - PETITIONER

vs.

DARREL VANNOY WARDEN
LOUISIANA STATE PENITENTIARY - RESPONDENT(S)

ON PETITION FOR WRIT OF CERTIORARI TO
UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

CHRISTOPHER COPE # 604579

MAIN PRISON-EAST YARD

LOUISIANA STATE PENITENTIARY

ANGOLA, LOUISIANA, 70712

QUESTION(S) PRESENTED

1. **Whether petitioner was denied his constitutional right to have effective assistance of counsel when trial counsel admitted petitioner's guilt at trial. *Robert Leroy McCoy v. Louisiana*, U.S.S.C. No. 16-8255 (5/ 14/18).**

LIST OF PARTIES

All parties do not appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition as follows:

**DISTRICT ATTORNEY, 1ST JDC
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SHREVEPORT, LA., 71101-0000**

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IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

The Petitioner, Christopher Cope, respectfully prays that a writ of certiorari issue to review the judgment of the Fifth Circuit Court of Appeals.

OPINIONS BELOW

For cases from federal courts:

The opinion of the United States Fifth Circuit Court of Appeals appears at Appendix "A" to the petition and is

reported at Christopher Cope v. Darrel Vanney ; COA No. 20-30378

The opinion of the United States Western District Court of Louisiana appears at Appendix "B" to the petition and is unpublished,

Christopher Cope v. Darrel Vanney, USDC No. 5:18CV-1445

For cases from state courts:

The opinion of the highest state court to review the merits appears at Appendix "C" to the petition and is reported at

State v. Christopher Cope ; No. 2014-1008 (La. 12/8/14) 153 So 3d 440

The opinion of the Louisiana Second Circuit Court of Appeal appears at Appendix "D" to the petition and is reported at

State v. Christopher Cope; No. 48,739 (La. App. 2d Cir. 4/09/14), 137 So 3d 151.

The opinion of the District Court and reviewing courts on Post Conviction for the State of Louisiana appears at Appendix "E" -"G" and are unpublished.

JURISDICTION

For cases from federal courts:

The date on which the United States Fifth Circuit Court of Appeals decided my case was June 1, 2021.

No petition for rehearing was timely filed in my case.

For cases from state courts:

The date on which the highest state court decided my case was Direct App. 12/8/14 & PCR 8/4/17.

A copy of that decision appears at Appendix "C" & "G".

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1). This petition is timely pursuant to 28 U.S.C. § 2101 (c).

CONSTITUTIONAL AND STATUTORY PROVISION INVOLVED

Fifth Amendment to United States Constitution: "No person shall ... be deprived of life, liberty, or property, except by due process of law..."

Sixth Amendment to United States Constitution: "In all criminal prosecutions, the accused shall enjoy the right... to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense."

Fourteenth Amendment, Section 1, to United States Constitution: "... nor shall any state deprive any person of life, or property without due process of law...."

***McCoy V Louisiana*, 138 S. Ct. 1500 (2018)**

STATEMENT OF THE CASE

A. STATE COURT PROCEEDINGS

On September 6, 2011, the Caddo Parish District Attorney filed an indictment charging Christopher Brian Cope with one count of first degree murder, in violation of La. R.S. 14:30.¹ R. 21. Specifically, it alleged that on or about October 24, 2012, Mr. Cope murdered Timothy C. Prunty. R. 21. Mr. Cope entered a plea of not guilty on December 6, 2010, after formal arraignment. R. 1.

On June 16, 2011, Christopher Brian Cope filed a motion to suppress confession, alleging that Mr. Cope has not intelligently waived his *Miranda* rights and/or that his confession was not given freely and voluntarily without the influence of fear, duress, intimidation, menace, threats, inducements, or promises. R. 2, 539-42. Specifically, Mr. Cope alleged, *inter alia*, that multiple uniformed officers beat, kicked, and threatened him before his confession. On October 20, 2011, the State filed an opposition to the motion to suppress. R. 2, 563-64.

The Trial Court ordered a hearing on the motion be set for October 20, 2011, R. 541, 1307-1480. On November 7, 2011, the State filed a memorandum in opposition to Christopher Brian Cope's motion to suppress. R. 574-78. On November 15, 2011, the State filed a supplemental memorandum in opposition of Mr. Cope's motion to suppress. R. 581-83. On November 16, 2011, Mr. Cope filed a memorandum in support of his motion to suppress. R. 611-17. On November 16, 2011, the District Court denied Christopher Brian Cope's motion to suppress. R. 618-23, 1483.

August 20, 2012, Christopher Brian Cope filed a motion for discovery regarding publicity. R. 940-48. Mr. Cope wanted to learn who in the District Attorney's Office provided

¹ Other charges were filed; however, they were not pursued at the trial at issue herein. R. 21.

video of Mr. Cope's arrest to the media, which video was played the evening of the hearing on Mr. Cope's motion to suppress. R. 941.

On September 24, 2012, Christopher Brian Cope filed a motion to change venue. R. 9, 1096-99, 1858-59. on October 24, 2012, Mr. Cope reurged his motion to change venue, and the Trial Court denied the motion. R. 14, 4428-38.

Jury selection commenced on October 11, 2012 and continued until October 24, 2012. R. 12-14. While picking the jury, 134 jurors were excused for cause. R. 14. While picking the alternate jurors, 18 jurors were excused for cause. R. 14.

A jury trial followed from October 26, 2012, until October 30, 2012. R. 14. The State's case concluded on October 29, 2012. R. 16. Christopher Brian Cope presented his case on October 30, 2012. R. 16-17. The jury returned a verdict of guilty as charged on October 30, 2012. R. 17, 1273.

On October 29, 2012, the Court reviewed Christopher Brian Cope's writ that sought review of "a trial court ruling disallowing testimony from a defense pathologist to counter the State's evidence that the injuries suffered by the victim were not survivable, said evidence relating to the issue of specific intent to kill or inflict great bodily harm." R. 1274. In reaching its decision, this Court noted that "[t]he determination of whether specific intent exist is a fact question for the jury. While the defendant's expert may not testify directly as to specific intent, he may testify as to the survivability of the victim's wounds. Accordingly, the evidentiary ruling is hereby reversed." R. 1274 (citations omitted).

From October 31, until November 2, 2012, the penalty phase occurred. R. 17-19. On November 7, 2012, the Trial Court declared a mistrial in the penalty phase when the jury announced that it was hopelessly deadlocked. R. 19. On November 8, 2012, the Trial Court sentenced Christopher Brian Cope to life imprisonment at hard labor without benefit of parole,

probation or suspension of sentence. R. 19.

On November 8, 2012, Christopher Brian Cope filed a motion and order for appeal, and the order of appeal was entered on November 8, 2013. R. 19-20, 1289-91. Mr. Cope's appeal was filed as a right guaranteed by the Louisiana Constitution. La. Const., Article 1, § 19.

On September 16th, 2013, Mr. Cope, through appointed counsel Douglas L. Harville, filed his appeal brief to the Second Circuit Court of Appeal. On April 9, 2014, the Second Circuit Court of Appeal affirmed Mr. Cope's conviction and sentence. App. D. Mr. Cope then file for certiorari/review in the Louisiana Supreme Court which denied review on December 8, 2014. App. "C"

Petitioner submitted his Uniform Application for Post Conviction Relief on October 12, 2015.

Judge John Mosely delivered the judgment of the lower court denying Petitioner's Application in it's entirety on November 19, 2015. App. "E". The Second Circuit denied writs on February 11, 2016. NO.50746-KH App."F". The Louisiana Supreme Court followed suit on. **See State ex rel. Christopher Cope v. State, NO. 2016-KH-0481 August 4, 2017.** No. App. "G".

B. FEDERAL COURT PROCEEDINGS

Cope timely filed a federal petition for habeas corpus under 28 U.S.C. §2241, et seq., raising three issues, this issue below being one.

A federal Magistrate Judge recommended that Cope's petition be denied and dismissed with prejudice.

Federal District Court Judge adopted the magistrate's recommendations.

The Fifth Circuit Court of Appeals denied COA on June 1, 2021.

STATEMENT OF FACTS

At approximately 3:30 a.m., on October 24, 2010, Christopher Brian Cope shot and killed Sergeant Timothy C. Prunty at the Circle K located at 3391 Bert Nouns Industrial Loop, at Dean Road, in Shreveport, Louisiana. R. 4725, 4736, 4749, 4784-85, 4789-97, 4799, 4813, 4823.

Christopher Brian Cope fired 14 times and shot Sergeant Timothy C. Prunty five times. Sergeant Prunty died from blood loss, in part due to a popliteal artery wound to his left leg. R. 5038-40, 5047-48, 5057, 5570.

During his confession, Christopher Brian Cope suggested that shooting at Sergeant Timothy C. Prunty was designed to lead to Mr. Cope's death, i.e., was meant to be a "suicide by cop." R. 5724

REASONS FOR GRANTING THE PETITION

There is one question of law to be settled here: (1) whether the Christopher Cope's trial counsel was ineffective in admitting his guilt to the jury, especially after Christopher Cope pled not guilty.

The Louisiana and Federal courts erred in their decision denying petitioner's claims relief.

The petitioner alleges (1) *McCoy V Louisiana*, 138 S. Ct. 1500 (2018), held that defense counsel's admission of guilt over a client's express objection violates the Sixth Amendment. The court's below concluded, in conflict with a decision of the

Louisiana Supreme Court, that *McCoy* does not apply if the defendant admits killing the victim. In reversing *McCoy's* conviction, this Court held that a defendant has the right to insist that counsel not admit his guilt, regardless of counsel's view of how best to protect the defendant's interests. 138 S. Ct. at 1505. Whether to admit guilt is a question not of strategy but of a client's fundamental objectives, and it is therefore a decision reserved for the client. See *id.* The Court explained:

With individual liberty – and in capital cases, life – at stake, it is the defendant's prerogative, not counsel's, to decide the objective of his defense: to admit guilt in 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. ...

There is no doubt that counsel was ineffective and the effect of this ineffectiveness denied petitioner his right to a fair trial. There is a reasonable probability that the result of the proceeding would have been different if the jury had not heard from Petitioner's counsel that he was guilty. It should be noted that the court did not address this allegation under deficiency of trial counsel.

The post conviction court erred in making a decision on these allegations of ineffective assistance of counsel without holding an evidentiary hearing to ascertain the truth, which if these allegation prove true would grant petitioner relief.

Petitioner disagrees with the state's rulings as they are contrary to clearly established federal law. See, *Robert Leroy McCoy v. Louisiana*, U.S.S.C. No. 16-8255 (5/ 14/18); *Strickland v. Washington*, 466 U.S. 668 (1984); *U.S. v Cronic*, 466 U.S. at 655, 104 S. Ct 2039.

The rulings of the Louisiana Courts in this case are in conflict with *McCoy*, *Cronic*, and *Strickland*, *supra*, and the Sixth Amendment, and is a departure from clearly established Federal law, as determined by the Supreme Court of the United States and an unreasonable determination of facts in light of the evidence presented in the State court proceedings.

These issue presented below are clearly ripe for review by this Honorable Court to decide the important question.

CLAIM NO. 1

TRIAL COUNSEL ADMITTED PETITIONER'S GUILT INEFFECTIVE ASSISTANCE OF COUNSEL

Mr. Cope (herein petitioner) was assigned two experienced public defenders. In their judgment the evidence against Petitioner would result in his conviction. They decided that the best trial strategy would be to acknowledge that petitioner did commit first degree murder of Officer Prunty and hope to show that petitioner was a good person in hopes of avoiding the death penalty.

In their opening statement counsel for petitioner stated that **they were not denying Mr. Cope's guilt, that he was guilty of the crime of which he was charged and we have no doubt as to his guilt. Ladies and gentlemen, he did it, we know he did it, he confessed to it. We are not arguing whether or not he is innocent or guilty.** Then in closing, defense counsel conceded, **"As I told you in opening statement, we are not here to minimize or pretend otherwise, than the death of Timothy Prunty is ultimately the responsibility of Christopher Cope."** Petitioner repeatedly told counsel that he pled not guilty and did not agree with this strategy but counsel disregarded petitioner's request.

The jury found petitioner guilty of first degree murder but could not agree on the punishment, and under Louisiana law the trial judge sentenced Petitioner to life without possibility of parole.

The Sixth amendment right to effective assistance of counsel derives from the defendant's fundamental right to a fair trial, a goal best achieved by ensuring that the process involves vigorous partisan advocacy by both sides. As the *Cronic* court pointed out, "[T]he adversarial process protected by the Sixth Amendment requires that the accused have

'counsel acting in the role of advocate.' The right to effective assistance of counsel is thus the right of the accused to require the prosecution's case to survive the crucible of meaningful adversarial testing." *U.S. v Cronic*, 466 U.S. at 655, 104 S. Ct 2039.

The question before the court is whether, by explicitly conceding petitioner's guilt from the beginning of the case, counsel "fail[ed] to subject the prosecution's case to meaningful adversarial testing." The impact upon the adversarial process of conceding guilt over the client's express objection was described by the Supreme Court in North Carolina in these terms:

This Court is cognizant of situations where the evidence is so overwhelming that a plea of guilty is the best trial strategy. However, the gravity of the consequences demands that the decision to plea guilty remains in the defendant's hands. When counsel admits his clients guilt without first obtaining the client's consent, the client's rights to a fair trial and to put the State to the burden of proof are completely swept away. The practical effect is the same as if counsel had entered a plea of guilty without the client's consent. Counsel in such situations denies the client's right to have the issue of guilt or innocence decided by a jury. *State v Harbison*, 315 N.C. 175, 337 S.E. 2d 504, 507 (1985) (citing *Willey v. Sowders*, 647 F. 2d 642 (6th Cir. 1981)).

Petitioner did not consent to trial counsel pleading him guilty and trial counsel did not contest any of the prosecution's case. The sixth amendment does not require counsel to invent a defense or act in an unethical manner. It does, however, require counsel to put the prosecution's case to the test through vigorous partisan advocacy. "[E]ven when no theory of defense is available, if the decision to stand trial has been made, counsel must hold the prosecution to its heavy burden of proof beyond a reasonable doubt." *Cronic*, 466 U.S. at 656-57 n. 19, 104 S. Ct. 2039.

A lawyer who informs the jury that it is his view of the evidence that there is no reasonable doubt regarding the only factual issues that are in dispute has utterly failed to

"subject the prosecution's case to a meaningful adversarial testing." *Cronic*, 466 U.S. at 659, 104 S. Ct. at 2047.

Petitioner was deprived of the right to due process and effective assistance of counsel that was prejudice per se and should be granted a new trial.

The Supreme Court recently held: The trial court violated the defendant's constitutional rights by allowing his prior counsel to concede, over his client's objections, that the defendant committed the three murders of which he was accused. *Robert Leroy McCoy v. Louisiana*, U.S.S.C. No. 16-8255 (5/ 14/18).

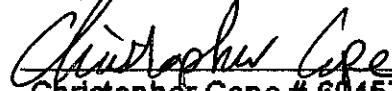
The Court held that the Sixth Amendment guarantees a defendant the right to choose the objective of his defense and to insist that his counsel refrain from admitting guilt, even when counsel's experience-based view is that confessing guilt offers the defendant the best chance to avoid the death penalty. In *McCoy's* case, the violation of his protected autonomy was manifest when the trial court allowed counsel to take control of the issue of innocence or guilt that was solely *McCoy's* to make. In making that decision for McCoy, over his objection, counsel violated his client's Sixth Amendment-secured autonomy which is ranked a "structural" error and is not subject to harmless error review.

An error is structural if it is not designed to protect defendants from erroneous convictions, but instead protects some other interest, such as "the fundamental legal principle that a defendant must be allowed to make his own choices about the proper way to protect his own liberty. Because counsel's admission of *McCoy's* guilt over the client's express objection was a structural error, since it blocked the defendant's right to make a fundamental choice about his own defense, *McCoy* was entitled to a new trial without any need first to show prejudice. Such is the case here and Mr. Cope is entitled to the same result.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,


Christopher Cope # 604579

Date: 8-4, 2021