

**ORIGINAL**

Supreme Court, U.S.  
FILED

JUN 21 2021

OFFICE OF THE CLERK

No. **21-5709**

IN THE

SUPREME COURT OF THE UNITED STATES

MIGUEL GONZALEZ — PETITIONER  
(Your Name)

vs.

Jaime Sorber - Supt. Of Phoenix — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

SUPREME COURT OF PENNSYLVANIA EASTERN DISTRICT  
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Miguel Gonzalez, #HX-4697  
(Your Name)

1200 Mokychic Drive  
(Address)

Collegeville, PA 19426  
(City, State, Zip Code)

NONE  
(Phone Number)

### QUESTION(S) PRESENTED

1. Did the Supreme Court, Superior Court and trial Court commit reversible error when they held that a new constitutional right was not created by the Supreme Court's decision in **McCoy v. Louisiana**, 138 S.Ct. 1500 (2018)

a. SUGGESTED ANSWER: YES

2. Did the Supreme Court, Superior Court and trial Court commit reversible error when they held that the holding in **McCoy v. Louisiana**, 138 S.Ct. 1500 (2018) was not retroactive.

a. SUGGESTED ANSWER: YES

## LIST OF PARTIES

[ ] All parties appear in the caption of the case on the cover page.

[X] 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 is as follows:

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

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

☐ For cases from federal courts:

The opinion of the United States court of appeals appears at Appendix \_\_\_\_\_ to the petition and is

☐ reported at \_\_\_\_\_; or,  
☐ has been designated for publication but is not yet reported; or,  
☐ is unpublished.

The opinion of the United States district court appears at Appendix \_\_\_\_\_ to the petition and is

☐ reported at \_\_\_\_\_; or,  
☐ has been designated for publication but is not yet reported; or,  
☐ is unpublished.

☒ For cases from state courts:

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

☒ reported at 685 MAI 2020; or,  
☐ has been designated for publication but is not yet reported; or,  
☒ is unpublished.

The opinion of the Superior court appears at Appendix B to the petition and is

☒ reported at 840 EDA 2020; or,  
☐ has been designated for publication but is not yet reported; or,  
☐ is unpublished.

## JURISDICTION

☐ For cases from federal courts:

The date on which the United States Court of Appeals decided my case was \_\_\_\_\_.

☐ No petition for rehearing was timely filed in my case.

☐ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: \_\_\_\_\_, and a copy of the order denying rehearing appears at Appendix \_\_\_\_\_.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including \_\_\_\_\_ (date) on \_\_\_\_\_ (date) in Application No. \_\_\_\_ A \_\_\_\_.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☒ For cases from state courts:

The date on which the highest state court decided my case was May 12, 2021.  
A copy of that decision appears at Appendix A.

☐ A timely petition for rehearing was thereafter denied on the following date: \_\_\_\_\_, and a copy of the order denying rehearing appears at Appendix \_\_\_\_\_.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including \_\_\_\_\_ (date) on \_\_\_\_\_ (date) in Application No. \_\_\_\_ A \_\_\_\_.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Sixth Amendment to the United States Constitution provides in relevant part:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial Jury of the State and District wherein the crime shall have been committed, which District shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

United States Constitution

U.S. Const. Amdt. 6



#### IV. STATEMENT OF THE CASE

This matter comes before the Court on Defendant Miguel Gonzalez's (hereinafter "Appellant") appeal of the Superior Court's PCRA order dated November 16, 2020. Appellant asserts that the Superior Court and trial court erred when they held that a new constitutional right was not created by the Supreme Court's decision in *McCoy v. Louisiana*, 138 S.Ct. 1500 (2018) and when they held that the holding in *McCoy* was not retroactive.

Petitioner was convicted on December 8, 2008 of Criminal Homicide Murder in the First Degree, two counts of Recklessly Endangering Another Person, Former Convict in possession of a Firearm and Intercept Communications. **R.R. p. 112a.** On January 12, 2009, Appellant was sentenced to life imprisonment without parole followed by incarceration of not less than four, nor more than eight years. **R.R. p. 113a.**

On February 10, 2009, Appellant filed his notice of appeal to the Pennsylvania Superior Court, which was denied on December 30, 2009. **R.R. p. 113a.** On January 29, 2010, Appellant filed a petition for allowance of appeal with the Pennsylvania Supreme Court, which was denied on July 14, 2010. **R.R. p. 113a.**

On December 9, 2010, Appellant filed a *pro se* petition for federal *habeas corpus* relief in the United States District Court for the Eastern District of Pennsylvania. **R.R. p. 113a.** By Order dated May 13, 2011, the case was transferred

to the United States District Court for the Middle District of Pennsylvania. **R.R. p. 113a.** On May 16, 2014, the District Court denied Appellant's petition. On July 19, 2016, the United States Court of Appeals for the Third Circuit affirmed the District Court's Order denying Appellant's petition. **R.R. p. 113a.**

On July 19, 2018, Appellant filed a *pro se* motion for Post-Conviction relief (PCRA). **R.R. p. 124a.** A hearing on Appellant's PCRA petition was held on January 7, 2019. **R.R. p. 31a.** Appellant's request for post-conviction relief was denied on March 15, 2019. **R.R. p. 111a.** On February 21, 2020, the trial court reinstated Appellant's appellate rights and afforded him thirty (30) days to file an appeal with the Superior Court of Pennsylvania. **R.R. p. 121a.** Appellant filed a Notice of Appeal on March 2, 2020. **R.R. p. 23a.**

Appellant alleged in his PCRA that his trial counsel was ineffective by questioning his innocence, presenting a diminished capacity defense without consulting Appellant of the overall trial strategy and contradicting Appellant's testimony in court that he was innocent. **R.R. p. 127a.** Appellant argued a violation of his constitutional rights under the Sixth Amendment of the U.S. Constitution as incorporated to the Commonwealth by the Fourteenth Amendment. **R.R. p. 126a-127a.** Specifically, his constitutional rights were violated when he was not able to decide on the objective of his defense. **R.R. p. 126a-127a.**

Appellant repeatedly professed his innocence to his attorneys. **R.R. p. 51-52a.** Appellant refused to accept a plea bargain because he believed in his innocence. **R.R. p. 52a.** Appellant did not give his attorneys authority to concede his guilt to the jury. **R.R. p. 52a.** Appellant did not give consent to his attorneys to pursue a diminished capacity defense to the jury. **R.R. p. 52 and 59a.** He asked his attorneys to focus on the evidence at trial. **R.R. p. 53a.** Appellant argues that his attorneys never even asked him about admitting his guilt to the jury. **R.R. p. 54a.** The first time Appellant discovered his attorneys' plan to admit his guilt was at the trial in front of the jury. **R.R. p. 54a.** In stark contrast to his attorneys' statements in court, Appellant testified to his innocence of the crimes. **R.R. p. 55a.**

There was a discussion amongst trial counsel and the District Attorney in President Judge Ronald E. Vican's chambers about whether or not trial counsel obtained Appellant's permission to concede his guilt. **R.R. p. 56and 58a.** The District Attorney had doubts that trial counsel had the authority of Appellant to confess for him in open court. **R.R. p. 58a.**

Shockingly, trial counsel admitted at the PCRA hearing that he did not obtain authority from the Appellant to proceed with a diminished capacity defense with him accepting responsibility. **R.R. p. 81a.** Trial counsel admitted that Appellant maintained his innocence throughout. **R.R. p. 82and 102a.** Trial counsel admitted that it was his own choice of defense strategy to concede guilt in order to reduce the

charges. **R.R. p. 82a.** Trial counsel was aware that when placed on the witness stand, Appellant would profess his innocence. **R.R. p. 89a.**

Appellant alleges that his constitutional rights were violated when he was not permitted by trial counsel to decide on the objective of his defense. He further alleges that his constitutional rights were violated when his trial counsel admitted his guilt to the jury without his permission.

Appellant now brings the present appeal on the basis that the trial court erred when it held that a new constitutional right was not created by the Supreme Court's decision in *McCoy v. Louisiana*, 138 S.Ct. 1500 (2018), holding that a criminal defendant has a constitutional right to decide the objective of his defense and when the trial court held that the holding in *McCoy* was not retroactive.

#### **A. Argument**

##### **1. The Law of the Commonwealth Historically Was That Trial Counsel Retained Strategy Decisions**

The Superior Court erred because *McCoy v. Louisiana*, 138 S. Ct. 1500 (2018), created a new constitutional right in Pennsylvania, because courts in Pennsylvania have historically denied PCRA matters holding that trial counsel inherently has broad discretion to determine course of defense tactics employed. *See Commonwealth v. Thomas*, 744 A.2d. 713, 717 (Pa. 2000); *Commonwealth v.*

*Fowler*, 670 A.2d 153, 155 (Pa. Super. 1996) and *Commonwealth v. Schultz*, 707 A.2d 513, 518 (Pa. Super. 1997).

In *Commonwealth v. Fowler*, 670 A.2d 153, 155 (Pa. Super. 1996), the court held that “[t]rial counsel inherently has broad discretion to determine the course of defense tactics employed.” *Id.* The record revealed defense counsel made a tactical decision not to object to evidentiary tapes, as it was their defense the voice on the tape at pertinent times was not that of appellant. *Id.* at 156. In light of the defense, the court held that it was a reasonable strategy to allow the tapes to be played for the jury. Appellant was not entitled to relief simply because the strategy was unsuccessful.

Similarly, in *Commonwealth v. Thomas*, 744 A.2d 713, 717 (Pa. 2000), appellant claimed that his counsel failed to call certain witnesses who would have testified to seeing the victim in a bar prior to the murder with two men, one of whom the witnesses identified as appellant. *Id.* The witnesses supposedly would have given contradictory descriptions of the two men who were with the victim, thereby diluting the identification of appellant. *Id.* “Trial counsel, instead of calling these witnesses, made the strategic decision to call only one witness who testified that he saw the victim in the bar with her boyfriend.” *Id.* The court found that this testimony was consistent with appellant’s theory that the boyfriend actually murdered the victim.

*Id.* “Therefore, it was a reasonable strategy by counsel not to call the witnesses and was therefore not ineffective assistance.” *Id.*

Likewise in *Commonwealth v. Schultz*, 707 A.2d 513, 518 (Pa. Super. 1997), appellant claimed that trial counsel was ineffective for failing to make an opening statement. *Id.* at 518. “It is well-established that the decision whether to make an opening statement is a matter of trial strategy that is vested in the discretion of a defendant’s attorney.” *Id.* The court noted that there are instances in which counsel may have a reasonable strategy designed to effectuate his client’s interests in waiving an opening statement and failed to find such a strategy decision ineffective assistance of counsel. *Id.*

Based upon the foregoing case law, it is clear that the law in the Commonwealth had historically been that it was not ineffective assistance of counsel for the trial counsel to determine the trial strategy despite the objections of his defendant client. As discussed below in Section B, the Supreme Court created a new constitutional right in the case of *McCoy v. Louisiana*, 138 S. Ct. 1500 (2018), which required trial counsel to permit criminal defendants to determine the objective of their own defense. Therefore, Appellant respectfully requests that this Honorable Court find that because of the Court’s error, Appellant should be granted the right to a new trial.

## 2. McCoy v. Louisiana Created a New Constitutional Right

The Superior Court erred when it held that a new constitutional right was not created in the case of *McCoy v. Louisiana*, 138 S. Ct. 1500 (2018). In *McCoy*, the defendant vociferously insisted that he did not engage in the charged acts and adamantly objected to any admission of guilt. *Id.* at 1505. Yet the trial court permitted counsel, at the guilt phase of a capital trial, to tell the jury the defendant committed three murders and he was guilty. *Id.* The Supreme Court held as follows:

[T]hat a 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. Guaranteeing a defendant the right "to have the *Assistance of Counsel for his defense*," 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.

*Id.* (emphasis in original).

This is a newly created constitutional right, at the very least as it applied to the Commonwealth of Pennsylvania, which historically has permitted great latitude to trial counsel to determine trial strategy as explained *supra* in Section A. Also, the court noted that it was revising prior case law. In *Florida v. Nixon*, 543 U.S. 175, 125 S.Ct. 551, 160 L.Ed.2d 565 (2004), the Court considered whether the

Constitution bars defense counsel from conceding a capital defendant's guilt at trial "when [the] defendant, informed by counsel, neither consents nor objects," *id.*, at 178, 125 S.Ct. 551. In that case, defense counsel had several times explained to the defendant a proposed guilt-phase concession strategy, but the defendant was unresponsive. *Id.*, at 186, 125 S.Ct. 551. We held that when counsel confers with the defendant and the defendant remains silent, neither approving nor protesting counsel's proposed concession strategy, *id.*, at 181, 125 S.Ct. 551, "[no] blanket rule demand[s] the defendant's explicit consent" to implementation of that strategy, *id.*, at 192, 125 S.Ct. 551. However, in contrast to *Nixon*, the defendant in *McCoy* vociferously insisted that he did not engage in the charged acts and adamantly objected to any admission of guilt. *McCoy*, 138 S. Ct. at 1505.

The court found that trial management has historically been the lawyer's province, and in Pennsylvania, courts have historically denied PCRA petitions based upon the trial counsel's decisions concerning strategy. *Id.* Counsel provides his or her assistance by making decisions such as what arguments to pursue, what evidentiary objections to raise, and what agreements to conclude regarding the admission of evidence. *Id.* at 1508. Some decisions, however, the court held are reserved for the client, such as whether to plead guilty, waive the right to a jury trial, testify in one's own behalf, or forgo an appeal. *Id.* "When a client expressly asserts that the objective of "*his* defense" is to maintain innocence of the charged criminal



acts, his lawyer must abide by that objective and may not override it by conceding guilt." *Id.* at 1509; (court citing U.S. Const. Amdt. 6.) (emphasis in original). The Court held that it was not open to trial counsel to override the defendant's objection to admitting guilt.

"Violation of a defendant's Sixth Amendment-secured autonomy ranks as error of the kind our decisions have called "structural"; when present, such an error is not subject to harmless-error review." *Id.* at 1511. "Structural error "affect[s] the framework within which the trial proceeds," as distinguished from a lapse or flaw that is "simply an error in the trial process itself." *Id.* "An error may be ranked structural, we have explained, "if the right at issue is not designed to protect the defendant from erroneous conviction 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." *Id.* The Court held that counsel's admission of a client's guilt over the client's express objection is error structural in kind. "Such an admission blocks the defendant's right to make the fundamental choices about his own defense." *Id.* "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." *Id.* Therefore, the Supreme Court held that McCoy must therefore be accorded a new trial without any need first to show prejudice.

It is clear that the Supreme Court in McCoy created a new constitutional right, at least a new constitutional right as applied to the Commonwealth of Pennsylvania based upon Section A, *supra*. A defendant must be afforded the right to not admit guilt despite the objections of trial counsel. A criminal defendant has the constitutional right to decide the objectives of his defense.

In the case at bar, Appellant repeatedly professed his innocence to his attorneys. **R.R. p. 51-52a.** Appellant refused to accept a plea bargain because he believed in his innocence. **R.R. p. 52a.** Appellant did not give his attorneys authority to concede his guilt to the jury. **R.R. p. 52a.** Appellant did not give consent to his attorneys to pursue a diminished capacity defense to the jury. **R.R. p. 52 and 59a.** He asked his attorneys to focus on the evidence at trial. **R.R. p. 53a.** Appellant argues that his attorneys never even asked him about admitting his guilt to the jury. **R.R. p. 54a.** The first time Appellant discovered his attorneys' plan to admit his guilt was at the trial in front of the jury. **R.R. p. 54a.** In stark contrast to his attorneys' statements in court, Appellant testified to his innocence of the crimes. **R.R. p. 55a.**

There was a discussion amongst trial counsel and the District Attorney in President Judge Ronald E. Vican's chambers about whether or not trial counsel obtained Appellant's permission to concede his guilt. **R.R. p. 56and 58a.** The

District Attorney had doubts that trial counsel had the authority of Appellant to confess for him in open court. **R.R. p. 58a.**

Shockingly, trial counsel admitted at the PCRA hearing that he did not obtain authority from the Appellant to proceed with a diminished capacity defense with him accepting responsibility. **R.R. p. 81a.** Trial counsel admitted that Appellant maintained his innocence throughout. **R.R. p. 82and 102a.** Trial counsel admitted that it was his own choice of defense strategy to concede guilt in order to reduce the charges. **R.R. p. 82a.** Trial counsel was aware that when placed on the witness stand, Appellant would profess his innocence. **R.R. p. 89a.**

Appellant was denied the constitutional right to profess his innocence and require the Commonwealth to meet its burden of proving his guilt beyond a reasonable doubt. Therefore, Appellant respectfully requests that this Honorable Court find that because of the Court's error, Appellant should be granted the right to a new trial.

### **3. McCoy v. Louisiana Should be Retroactively Applied**

The Superior Court erred when it held that the new constitutional right created by *McCoy v. Louisiana*, 138 S. Ct. 1500 (2018) did not apply retroactively. Because *McCoy v. Louisiana* espoused a substantive or watershed newly created constitutional right, it should be retroactively applied.

Justice O'Connor's plurality opinion in *Teague v. Lane*, 489 U.S. 288, 109 S.Ct. 1060, 103 L.Ed.2d 334 (1989), set forth a framework for retroactivity in cases on federal collateral review. Under *Teague*, a new constitutional rule of criminal procedure does not apply, as a general matter, to convictions that were final when the new rule was announced. *Teague* recognized, however, two categories of rules that are not subject to its general retroactivity bar. First, courts must give retroactive effect to new substantive rules of constitutional law. Substantive rules include "rules forbidding criminal punishment of certain primary conduct," as well as "rules prohibiting a certain category of punishment for a class of defendants because of their status or offense." *Penry v. Lynaugh*, 492 U.S. 302, 330, 109 S.Ct. 2934, 106 L.Ed.2d 256 (1989); see also *Teague, supra*, at 307, 109 S.Ct. 1060. Although *Teague* describes new substantive rules as an exception to the bar on retroactive application of procedural rules, this Court has recognized that substantive rules "are more accurately characterized as ... not subject to the bar." *Schriro v. Summerlin*, 542 U.S. 348, 352, n. 4, 124 S.Ct. 2519, 159 L.Ed.2d 442 (2004). Second, courts must give retroactive effect to new " "watershed rules of criminal procedure" implicating the fundamental fairness and accuracy of the criminal proceeding." *Id.*, at 352, 124 S.Ct. 2519; see also *Teague*, 489 U.S., at 312–313, 109 S.Ct. 1060.

In *Montgomery v. Louisiana*, 136 S. Ct. 718 (2016), the Supreme Court held that when a new substantive rule of constitutional law controls the outcome of a case,

the Constitution requires state collateral review courts to give retroactive effect to that rule. *Id.* at 729 “*Teague*’s conclusion establishing the retroactivity of new substantive rules is best understood as resting upon constitutional premises. That constitutional command is, like all federal law, binding on state courts.” *Id.* The court held as follows:

This Court’s precedents addressing the nature of substantive rules, their differences from procedural rules, and their history of retroactive application establish that the Constitution requires substantive rules to have retroactive effect regardless of when a conviction became final.

*Id.* at 729. “By holding that new substantive rules are, indeed, retroactive, *Teague* continued a long tradition of giving retroactive effect to constitutional rights that go beyond procedural guarantees.” *Id.* at 730.

A criminal defendant’s Sixth Amendment constitutional right to determine whether he will admit his or her guilt as set forth in *McCoy* is a substantive right as well as a watershed right that requires retroactivity as set forth in *Teague*. The very right to determine one’s right to plead guilty or to abandon a defense to guilt is a right envisioned by *Teague* to be applied retroactively. The right to say “I am not guilty” is a basic and fundamental constitutional right. *Teague* would mandate a determination of retroactivity in the instant case where Appellant was denied the very basic constitutional right to profess his innocence and require the Commonwealth to meet its burden of proving his guilt beyond a reasonable doubt.

This Honorable Court's opinion in **McCoy** went so far as to specifically hold the trial court's error was **^structural^**. **McCoy**, supra at 1511. This required a new trial without the need to find prejudice. **Id.** The **McCoy** decision was clearly substantive and watershed and requires a determination of retroactivity.

Therefore, Appellant respectfully requests that this Honorable Supreme Court find that because of the Pennsylvania Supreme Court denied his allowance and of the Superior Court's error, Appellant should be granted the right to appeal seeking a new trial.

## REASONS FOR GRANTING THE WRI

The issues of whether a new constitutional right was created by this Honorable Supreme Court's decision in *McCoy v. Louisiana*, 138 S.Ct. 1500 (2018), and whether that decision applies to the petitioner retroactively should be allowed to be heard on appeal subject to Pa.R.A.P. 1114(b)(4):

**Pa.R.A.P. 1114(b):**

**(4): The question presente is one of such substantial public importance as to require prompt and definitive resolution by the Pennsylvania Supreme Court.**

This ruling affects criminal defendants throughout the Commonwealth. A defendant must be afforded the right to not admit guilt despite the objections of trial counsel. A criminal defendant has the constitutional right to decide the objectives of his defense. This issue is of such substantial public importance that it requires prompt and definitive resolution by this Honorable Court.

The Pennsylvania Supreme Court denied his request for allowance of appeal, the Superior Court and trial court both erred when they held that a new constitutional right was not created by this Honorable Court's decision in *McCoy v. Louisiana*, 138 S.Ct. 1500 (2018), holding that a criminal defendant has a constitutional right to decide the objective of his defense and when the trial court held that the holding in *McCoy* was not

retroactive.

Appellant's trial counsel admitted his guilt to the jury, despite the fact that he did not have Appellant's express permission to do so. In fact, Appellant maintained his innocence throughout the trial strategy time frame and the trial. The law of the Commonwealth had previously permitted trial counsel great latitude to decide trial strategy and obtaining Appellant's permission to determine trial strategy was not previously required.

However, this Supreme Court's decision in **McCoy** created a new constitutional right in the Commonwealth requiring trial counsel to permit their defendant client to decide the objective of their own defense. Moreover, because this was a substantive and also a watershed new constitutional right, its application was retroactive to Appellant's case.

Because the Pennsylvania Supreme Court denied his Allowance of appeal and the Superior Court and trial court erred, it arrived at a manifestly unjust and legally flawed outcome. Appellant respectfully requests to be remanded for a new trial at which he be permitted to decide the objective of his defense. Appellant was denied a fair trial.

Therefore, Petitioner's respectfully requesting this Honorable United States Supreme Court exercise its supervisory



authority to reverse the decision of the Pennsylvania Supreme Court, Superior Court and trial Court.

### C O N C L U S I O N

The petition for a writ of certiorari should be granted.

Wherefore, Petitioner seeks Certiorari to appeal to this Honorable Supreme Court. The Pennsylvania Supreme Court erred when denied his allowance of appeal, the Superior Court erred when it held that a new constitutional right was not created by this Honorable Court's decision in **McCoy v. Louisiana**, 138 S.Ct. 1500 (2018) and when it held that holding in **McCoy** was not retroactive.

Appellant respectfully requests that this Honorable Court permit Petitioner Certiorari to appeal in order to reverse the decision of the Pennsylvania Supreme Court, the Superior Court and remand for a new trial wherein Appellant has the Sixth Amendment constitutional right to decide the objective of his defense.

Respectfully submitted,

By: 

Miguel Gonzalez, HX-4697

Pro se, Appellant

