No. 21-7637 ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

MARECELLUS ADAMS — PETITIONER

vs.

TIM HOOPER, WARDEN — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

MARECELLUS ADAMS
425582, SPRUCE—4
LOUISIANA STATE PENITENTIARY
ANGOLA LOUISIANA 70712

QUESTIONS PRESENTED

1. Adams's trial counsel asked him if he could present a manslaughter defense instead of arguing justifiable homicide. Adams told counsel he did not agree with a manslaughter defense because he believed his actions were justified. Even so, counsel conceded guilt in his closing argument without Adams's consent:

   (A) Did trial counsel violate Adams's right to choose the objective of his defense when he conceded guilt over his express objection?

   (B) Was Adams entitled to stay his federal proceedings while he exhausted his substantive constitutional claim in the state courts?

   (C) Did the Fifth Circuit Court of Appeals erroneously conclude that *La. C. Cr. P. art.* 930.8 precluded Adams from post-conviction or habeas relief because he did not file his *McCoy* claim within 2 years of the finality of his conviction and sentence?

LIST OF PARTIES

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

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IN THE SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Adams respectfully prays that a writ of certiorari issue to review the orders of the United States Court of Appeals for the Fifth Circuit denying a Certificate of Appealability (COA) on his constitutional claims.

OPINIONS BELOW

The order of the Court of Appeals, No. 21-30503, denying a COA appears at Appendix A to the petition and has not been designated for publication. The order of the Court of Appeals, No. 19-31066, also denying a COA appears at Appendix A to the petition, is not reported in the Federal Reporter but is published at 2021 WL 2764694; however, there is a Motion and Brief in Support for a Panel Rehearing under F.R.A.P. Rule 40 for No. 19-31066 pending in Fifth Circuit Court of Appeals.

The district court's orders and the magistrate's report and recommendations are published at *Adams v. Vannoy*, 2021 WL 3500970 (August 9, 2021); 2021 WL 3504648 (May 28, 2021); and, 2019 WL 7139860 (Slip Copy) (December 20, 2019).

JURISDICTION

The Court of Appeals entered final judgment against Adams on March 2, 2022. As such, this Court has jurisdiction under 28 U.S.C. § 1254(1) and Rule 13.1 of the Rules of the Supreme Court of the United States. *See Hohn v. United States*, 524 U.S. 236,253 (1998) (holding denial of COA reviewable).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fifth Amendment to the United States Constitution provides in pertinent part:

> No person shall be held to answer for a capital, or otherwise infamous crime ... nor be deprived of life, liberty, or property without due process of law[.]

The Sixth Amendment to the United Sates Constitution provides in pertinent part:

> In all criminal prosecutions, the accused shall enjoy the right ... to have the assistance of counsel for his defence.

The Fourteenth Amendment to the United Sates Constitution provides in pertinent part:

> No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Article I § 1 of the Louisiana Constitution:

> All government, of right, originates with the people, is founded on their will alone, and is instituted to protect the rights of the individual and for the good of the whole. Its only legitimate ends are to secure justice for all, preserve peace, protect the rights, and promote the happiness and general welfare of the people. The rights enumerated in this Article are inalienable by the state and shall be preserved inviolate by the state.

Article I § 2 of the Louisiana Constitution:

> No person shall be deprived of life, liberty, or property, except by due process of law.

Article I § 3 of the Louisiana Constitution:

No person shall be denied the equal protection of the laws.

Article I § 13 of the Louisiana Constitution:

When any person has been arrested or detained in connection with the investigation or commission of any offense, he shall be advised fully of ... his right to the assistance of counsel and, if indigent, his right to court appointed counsel. ... At each stage of the proceedings, every person is entitled to assistance of counsel of his choice, or appointed by the court if he is indigent and charged with an offense punishable by imprisonment

Article I § 16 of the Louisiana Constitution:

Every person charged with a crime is presumed innocent until proven guilty and is entitled to ... [an] impartial trial ... [and] to present a defense[.]

No person shall be compelled to give evidence against himself.

La. C. Cr. P. art. 930.8 A. (2)

A. No application for post-conviction relief, including applications which seek an out-of-time appeal, shall be considered if it is filed more than two years after the judgment of conviction and sentence has become final under the provisions of Article 914 or 922, unless any of the following apply:

(2) The claim asserted in the petition is based upon a final ruling of an appellate court establishing a theretofore unknown interpretation of constitutional law and petitioner establishes that this interpretation is retroactively applicable to his case, and the petition is filed within one year of the finality of such ruling.

STATEMENT OF THE CASE

Adams was charged, tried, convicted, and sentenced to life imprisonment at hard labor without the benefits of probation, parole, or suspension of sentence for second degree murder. He was unsuccessful in the direct appeal and the collateral attack of his conviction and sentence in the state and federal courts.

On May 13, 2019, while his § 2254 petition was pending in the district court, Adams filed a successive application for post-conviction relief with Memorandum, Exhibits and Attachments in Support ("SAPCR") alleging that his trial counsel conceded guilt over his express objection in violation of *McCoy v. Louisiana*, 138 S.Ct. 1500 (2018). Adams also filed a motion to stay his § 2254 petition in the federal district court the same day. The district court denied the motion to stay December 20, 2019. On April 16, 2021, the federal appellate court denied Adams's request for a COA and, in turn, Adams filed a motion and brief in support for a panel rehearing. The motion is still pending before the Fifth Circuit Court of Appeal.

On November 10, 2020, the Louisiana Supreme Court denied Adams's SAPCR. On August 9, 2021, the federal district court denied Adams's § 2254 petition and his Motion to Amend his § 2254 petition. The district court further

declined to issue a certificate of appealability. If the district court would have held Adams's § 2254 petition in abeyance until he had exhausted his remedies in state court, it would have eliminated the chance that his § 2254 petition would be considered a mixed-petition. Thus far, Adams has been unsuccessful in obtaining a federal writ of habeas corpus and this instant petition for a writ of certiorari timely follows.

STATEMENT OF FACTS

Early on the morning of July 8, 2012, Michael Blackshire ("Blackshire") died as a result of blunt force injuries. Three people who were present when he received those injuries testified at Adams's trial: Leroy Scott ("Scott") Sarah Davis ("Davis") and Robert Rattler ("Rattler"). These three presented a story not supported by the evidence and their stories severely contradicted each others.

The incident, which sadly led to Blackshire's death, took place at Scott's residence. Scott told the jury he was inside watching television that evening while Davis, Blackshire, Adams, and someone named Donald were outside in the yard. According to Scott, Adams and his girlfriend, Neicy, had been arguing earlier in the day. Later that evening, Adams began "messing with" Blackshire, which was nothing out of the ordinary because they carried

on in that manner often. On this evening, however, Scott testified that Adams was angry about something concerning his girlfriend. Scott told the jury things got so out-of-hand that Blackshire threatened to call the police. Scott said he intervened to keep Blackshire from calling the police and said Blackshire should get him another drink from the cooler located in the yard.

Scott said he decided to go inside of his home until a scream drew him back outside. Scott said when he went back outside he saw Blackshire lying on the ground. According to Scott, he told Davis to pick Blackshire up and get him away from his residence. He also said he did not see any injuries on Blackshire. Scott went on to say that when the police arrived Adams was across the street and everyone was pointing him out to the officers. Scott said the police tried to catch Adams but could not because of a fence.

Davis testified that she was at Scott's home that evening drinking whiskey. According to Davis, she had consumed about a half pint when everything happened. Davis said although there were several guys present, she was not sure of who were all there. The only thing Davis said she was certain of is that she was the only female at Scott's home that evening.

Davis told the jury that she got up to go to the water cooler and when she turned around from taking a drink of water, Blackshire was on the ground.

Davis said she saw Adams hit Blackshire twice while he was on the ground. Davis said when she saw Adams hit Blackshire, she screamed and ran to Blackshire's aid and Adams's walked away. Davis said she was detained by the police for questioning because she was still on the scene when they arrived.

Rattler testified that he was also at Scott's house the night this tragic event happened. Ratter said he was sitting by a stump in the yard and drinking a beer. Rattler said in addition to himself, Blackshire, Adams, Davis, and Don were in Scott's yard. According to Rattler, Blackshire and Adams were talking by the fence. Rattler said he did not know anything was about to happen and he did not hear any raised voices. Rattler said Blackshire walked up to where he was while he was on the phone. Rattler said he heard a voice on the other end say, "911." Rattler went on to say that Blackshire had not said anything to the operator when Adams walked up and hit him across the back of the head with something twice.

Rattler told the jury that once struck, Blackshire went down. Rattler said when Blackshire went down Adams hit him again across the chest. Rattler said he told Adams to stop before he killed him and that Adams then took off running because the police were coming.

Forensic pathologist James Traylor performed Blackshire's autopsy. According to Dr. Traylor, Blackshire's death was caused by blunt force injuries; however, none of the injuries were to the back of the head.

Crime lab analyst, Katie Traweek, analyzed the clothing taken from Adams just hours after the incident. Her examination and report revealed that there was no blood on his t-shirt and that the only blood found on his pants was his own.

When Adams encountered a police officer the morning after the incident, he willingly cooperated with the officer and told him he knew the police were looking for him. Adams explained to the officer that he had been in a fight the night before and that the other guy had been hospitalized. Although he provided more details with each telling, Adams was consistent in asserting he acted in defense of himself and/or others when he hit Blackshire. Adams was arrested and charged with second degree murder for causing Blackshire's death.

REASONS FOR GRANTING THE WRIT

Under Rule 10, the Louisiana courts and the United States Fifth Circuit Court of Appeals denied relief and contrarily decided important questions of federal law that has been settled by this Court and has decided important

federal questions in a way that conflicts with relevant decisions of this Court as set forth below:

According the Court's clear precedent, the decision whether to plead guilty or not rests solely in the discretion of a criminal defendant and not his attorney. *McCoy v. Louisiana*, 138 S.Ct. 1500 (2018). The Court held that:

> [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.

McCoy v. Louisiana, 138 S.Ct. at 1505.

Applying the Court's precedent, the Louisiana Supreme Court explained:

> ... [T]here is no question that a criminal defendant's decision whether to concede guilt implicates fundamental constitutional rights and the right to exercise that decision is protected under the Sixth Amendment. Moreover, a violation of this Sixth Amendment right is a structural error and not subject to harmless error review. [Thus] ... [a] criminal defendant's express refusal to concede guilt is safeguarded by core constitutional protections.

State v. Horn, 2016-0559 (La. 9/7/18); 251 So.3d 1069,1073-74.

Because a criminal defendant does not surrender complete control of his defense to his counsel, Adams was deprived of his Sixth Amendment

right to counsel—at a critical stage no less—when Mr. Goins conceded guilt to manslaughter. *McCoy*, supra. This Court settled any dispute concerning the right to counsel when it said the Sixth Amendment grants an accused the right to make his own defense and when it "speaks of the 'assistance' of counsel, [that] assistant, however expert, is still an assistant." *McCoy*, supra. The Court also said that because a client's autonomy, and not counsel's competence is in issue, the usual ineffective-assistance-of-counsel jurisprudence does not apply to a *McCoy* claim. *McCoy v. Louisiana*, 138 S.Ct. at 1510-11 (2018); citing *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.2d 657 (1984). The Sixth Amendment guarantees a defendant, not counsel, the right to choose the objective of his defense and to insist his counsel refrain from admitting guilt over the counsel's experienced -based opinion because some decisions, like whether or not to plead guilty, are for the client to make. *McCoy v. Louisiana*, 138 S.Ct. at 1508-12. The Louisiana Supreme Court said the Court's decision in *McCoy* is not restricted to "cases where a defendant maintains his absolute innocence to any crime [because] *McCoy* is broadly written and focuses on a defendant's autonomy to choose the objective of his defense." *State v. Horn*, 251 So.3d at 1075.

right to counsel—at a critical stage no less—when Mr. Goins conceded guilt to manslaughter. *McCoy*, supra. This Court settled any dispute concerning the right to counsel when it said the Sixth Amendment grants an accused the right to make his own defense and when it "speaks of the 'assistance' of counsel, [that] assistant, however expert, is still an assistant." *McCoy*, supra. The Court also said that because a client's autonomy, and not counsel's competence is in issue, the usual ineffective-assistance-of-counsel jurisprudence does not apply to a *McCoy* claim. *McCoy v. Louisiana*, 138 S.Ct. at 1510-11 (2018); citing *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.2d 657 (1984). The Sixth Amendment guarantees a defendant, not counsel, the right to choose the objective of his defense and to insist his counsel refrain from admitting guilt over the counsel's experienced -based opinion because some decisions, like whether or not to plead guilty, are for the client to make. *McCoy v. Louisiana*, 138 S.Ct. at 1508-12. The Louisiana Supreme Court said the Court's decision in *McCoy* is not restricted to "cases where a defendant maintains his absolute innocence to any crime [because] *McCoy* is broadly written and focuses on a defendant's autonomy to choose the objective of his defense." *State v. Horn*, 251 So.3d at 1075.

A justifiable homicide claim is a colorable constitutional claim that *negates* the essential elements of criminal behavior. Moreover, when a defendant raises a justifiable homicide defense, the burden falls to the State to prove "beyond a reasonable doubt that the homicide was not committed in self-defense." *State v. Wells*, 2014-1701 (La. 12/8/15); 209 So.3d 709,712; see also *Engle v. Isaac*, 456 U.S. 107,119-122, 102 S.Ct. 1558,1567-1569, 71 L.Ed.2d 783 (1982). Thus, not only did counsel violate Adams's right to choose the objective of his defense, he also failed to hold the prosecution to its burden of proving guilt beyond a reasonable doubt. In other words, Adams's trial counsel failed to submit the State's case to any meaningful adversarial testing. *Fisher v. Gibson*, 282 F.3d 1283,1290 (C.A. 10 (Okla.) 2002); *Strickland v. Washington*, 466 U.S. 668,686, 104 S.Ct. 2052; *United States v. Cronic*, 466 U.S. 648,656, 104 S.Ct. 2039,2045 (1984).

To hold that a trial counsel could concede guilt over a defendant's express objection, even before *McCoy v. Louisiana*, supra, is violative of the state and federal constitutions—namely *La. Const. Art.* I, § 13, and the Sixth and Fourteenth Amendments. The issue, as pointed out by Justice Ginsberg, is not counsel's expert representation at trial. The issue is counsel usurping authority to change the objective of a criminal defendant's claims of

innocence and/or justification. Accordingly, Adams respectfully asks the Court to hold that *McCoy v. Louisiana* is retroactive to persons whose cases were final when *McCoy* was decided.

1. Adams was denied his Sixth Amendment right to counsel when his trial counsel conceded guilt over his express objection.

The state courts claimed Adams presented a supplemental ineffective-assistance-of-counsel claim afflicted with several procedural faults under *La. C. Cr. P. art.* 927. Specifically, the trial court said Adams failed to articulate a factual basis for the requested relief and offered conclusory allegations without any proof his counsel conceded guilt. The state appellate court said, after a review of the claims under *McCoy v. Louisiana*, Adams's writ is denied. In denying Adams's writ application, the state supreme court said Adams had previously exhausted his right to state collateral review and failed to show any exception that would allow him to file a successive APCR. However, the state courts overlooked the transcript of Adams's trial counsel's closing argument where he conceded guilt, without Adams's consent, and also told the jury Adams was a liar: "I want to make one thing very clear. This is also not a case of self-defense. Marecellus lied when he said he acted in self-defense in those two statements." Appendix G, p. 69. As for the alleged

procedural errors under *La. C. Cr. P. art.* 927, the state courts failed to identify them. *La. C. Cr. P. art.* 927, in pertinent parts, provides:

> A. If an application alleges a claim which, if established, would entitle the petitioner to relief, the court shall order the custodian, through the district attorney in the parish in which the defendant was convicted, to file any procedural objections he may have, or an answer on the merits if there are no procedural objections, within a specified period not in excess of thirty days. If procedural objections are timely filed, no answer on the merits of the claim may be ordered until such objections have been considered and rulings thereon have become final.
>
> B. In any order of the court requiring a response by the district attorney pursuant to this Article, the court shall render specific rulings dismissing any claim which, if established as alleged, would not entitle the petitioner to relief, and shall order a response only as to such claim or claims which, if established as alleged, would entitle the petitioner to relief.

The trial court directed the State to respond to Adams's claim that his trial counsel violated his Sixth Amendment right to choose the objective of his defense and conceded guilt over his express objection. The trial court then converted Adams's claim into an ineffective-assistance-of-counsel claim and said it was procedurally defaulted. The trial court's summary dismissal of Adams's SAPCR ran afoul of *La. C. Cr. P. art.* 927(B) because the court failed to specifically address Adams's violation of client autonomy claim—even before it changed the claim into an ineffective-assistance-of-counsel claim.

The trial court said Adams's claim was that his trial counsel rendered ineffective assistance when he chose to concede guilt to manslaughter. The trial court said Adams is not entitled to relief because he failed to prove Mr. Goins's **strategic** decision and advice fell below the standard for a criminal defense attorney who exercises reasonable professional judgment and failed to provide any factual basis to support his claim. When Adams said his trial counsel conceded guilt in his closing argument over his express objection and provided a copy of counsel's closing argument as an exhibit, he provided the factual basis to support his claim. In an obvious reference to an affidavit Mr. Goins submitted on the State's behalf, the trial court claimed Adams presented conclusory statements and did not offer any proof in the form of statements, affidavits, or depositions under *La. C. Cr. P. arts.* 928 and 930.2. This is contrary for more than one reason. First, *La. C. Cr. P. art.* 928 is not applicable here: the trial court directed the State to respond because Adams alleged a claim which, if established, would entitle him to relief. Secondly, in light of *La. C. Cr. P. art.* 930.2, the trial court had a duty to extend the provisions of *La. C. Cr. P. art.* 930, especially after Adams presented a copy of Mr. Goins's closing argument where he conceded guilt without Adams's permission. Cf. *Cope v. Vannoy*, 2019 WL 8918835 *16 (W. D. La. 12/16/2019).

And, as submitted in his affidavit, Mr. Goins admitted he conceded guilt over Adams's objection:

> In my experience of handling a number of Murder cases, a claim of self-defense does not always equate to a valid claim of self-defense. Mr. Adams's case, in my opinion was not a case in which a valid claim of self-defense could be sustained, hence given the facts, evidence, and law herein, I pursued a Manslaughter argument. Unfortunately for Mr. Adams, the evidence was too much to overcome.

Exhibit E, p. 64.

Under the clear language found in *McCoy v. Louisiana* and under *La. C. Cr. P. art.* 930.2, Mr. Goins's affidavit is proof he conceded guilt without Adams's permission and over his express objection. In other words, the essential elements of the State's accusation against Adams were not found by a rational trier of fact but were conceded by Adams's alleged advocate.

A. The Court has authority to address Adams's claim on its merits under ineffective-assistance-of-counsel jurisprudence.

The Sixth Amendment right to counsel is a structural error and was recognized as such in *McCoy*. Cf. *Elmore v. Shoop*, 2019 WL 7139860, at *9 (S.D. Ohio 2019). The Southern District Court of Ohio, at Cincinnati, discussed the effects of *McCoy* in habeas petitioner Elmore's case and concluded that *McCoy* did not apply retroactively to his matter. *Id.*, at ** 9-10. However, that court said Elmore was "entitled to relief as a matter of law, because this

constitutional violation was a structural error, which entitles him to a new trial[.]" *Id.* That court also acknowledged that when a defendant is denied his constitutional right to choose the objective of his or her defense, the error is structural and prejudice is presumed under the Sixth Amendment because the defendant is prejudiced by counsel's actions in a number of ways.

A structural error is understood to be an error that affects the framework within which a trial proceeds and not "simply an error in the trial process itself." *Arizona v. Fulminante*, 499 U.S. 279,309-310, 111 S.Ct. 1246, 113 L.Ed.2d 302 (1991). Without basic constitutional protections, such as the Sixth Amendment right to have counsel for one's defense, "a criminal trial cannot reliably serve its function as a vehicle for determination of guilt or innocence, and no criminal punishment may be regarded as fundamentally fair." *Arizona v. Fulminante*, supra, quoting *Rose v. Clark*, 478 U.S. 570,577-78, 106 S.Ct. 3101,3106, 92 L.Ed.2d (1986). This is especially true when counsel believes his client is guilty and informs the jury of that belief. Adams's right to have the assistance of counsel for his defense is guaranteed by the Sixth and Fourteenth Amendments and "is indispensable to the fair administration of our adversarial system of criminal justice." *Maine v. Moulton*, 474 U.S. 159,168, 106 S.Ct. 477, 88 L.Ed.2d 481 (1985).

The standard of review for a claim of ineffective assistance of counsel requires a reviewing court to reverse a conviction if the defendant establishes that counsel's performance fell below an objective standard of reasonableness under prevailing professional norms; and, but for counsel's deficient performance, there is a reasonable probability that the outcome of the proceeding would have been different. *Strickland v. Washington*, 466 U.S. at 694. This reasonable probability standard does not require a defendant to show that counsel's deficient conduct more likely than not altered the outcome in the case. *Strickland v. Washington*, 466 U.S. at 693, 104 S.Ct. at 2068. While a reviewing court must examine the "totality of circumstances and the entire record" to assess counsel's performance, "[s]ometimes a single error is so substantial that it alone causes the attorney's performance to fall below the Sixth Amendment standard." *Nero v. Blackburn*, 597 F.2d 991,994 (5th Cir. 1979).

In *United States v. Cronic*, the Court created limited exceptions to the application of Strickland's two-part test for situations that "are so likely to prejudice the accused that the cost of litigating their effect in a particular case is unjustified." *United States v. Cronic*, 466 U.S. 648,658, 104 S.Ct. 2039, 80 L.Ed.2d 657 (1984). Included among these situations are instances when a defendant is denied counsel at a critical stage of the proceedings and

when counsel fails to subject the prosecution's case to meaningful adversarial testing. *Cronic*, 466 U.S. at 659-662. A detailed examination of the specific facts and circumstances of each case is necessary to determine whether a presumption of prejudice applies and any inquiry into the counsel's effectiveness must be individualized and fact-driven. See *Cronic*, supra; *Strickland*, supra. The presumption of prejudice applies to Adams's case because Mr. Goins's performance defied the Sixth Amendment's right to counsel, and its effective-assistance guarantee, when he failed to subject the state's case to any adversarial testing. Cf. *Gideon v. Wainwright*, 372 U.S. 355, 83 S.Ct. 792, 9 L.Ed.2d 799 (1963).

"[A]n attorney may not admit his client's guilt which is contrary to his client's earlier entered plea of 'not guilty.'" *Wiley v. Sowders*, 647 F.2d 642, 649 (6th Cir.1981). Even if Mr. Goins believed it was "tactically wise to stipulate to a particular element of a charge or to issues of proof," he could "not stipulate to facts [that] amount to the 'functional equivalent' of a guilty plea." *Id.* When Adams pled not guilty, he retained his "constitutional rights fundamental to a fair trial" and Mr. Goins was obligated to "structure the trial of the case around" his plea. *Id.* at 650. When Mr. Goins conceded guilt, he deprived Adams of his "constitutional right to have his guilt or

innocence decided by the jury" and his concession "nullified the adversarial quality of this fundamental issue." *Id.*, see also *Ramirez v. U.S.* 17 F.Supp.2d 63, 68 (D.R.I. 1998). Mr. Goins asked the jury to accept his concession of guilt as a confession that Adams was guilty. He acted on the "belief that [Adams] should be convicted" and failed "to function in any meaningful sense as the [prosecution's] adversary." *Fisher v. Gibson*, 282 F.3d at 1291. Mr. Goins's concession deprived Adams of his right to a trial by jury and qualifies as a structural error. See *Sullivan v. Louisiana*, 508 U.S. 275, 281-282, 113 S.Ct. 2078, 124 L.Ed.2d 182 (1993) ("The right to trial by jury reflects, we have said, 'a profound judgment about the way in which law should be enforced and justice administered.' *Duncan v. Louisiana*, 391 U.S. 145,155, 88 S.Ct. 1444,1451 20 L.Ed.2d 491 (1968). The deprivation of that right, with consequences that are necessarily unquantifiable and indeterminate, unquestionably qualifies as 'structural error.'").

B. ADAMS WAS ENTITLED TO STAY HIS FEDERAL HABEAS PROCEEDING UNTIL HE EXHAUSTED HIS *McCOY* CLAIM IN THE STATE COURTS.

In *State v. Cannon*, the state supreme court denied the defendant's writ application concerning an issue stemming from this Court's decision in *McCoy v. Louisiana*. However, Justice Crichton disagreed with the majority and, in part, said the state supreme court was "missing a valuable opportunity

to provide guidance on the best practice for trial courts across the State in conducting hearings in this unprecedented area of the law." *State v. Cannon*, 2018-1846 (La. 11/20/18); 257 So.3d 182 (J. Crichton, dissenting).

Before a prisoner seeking post-conviction relief under §2254 may appeal a district court's denial or dismissal of the petition, he must first seek and obtain a COA from a circuit justice or judge under § 2253. When a habeas applicant seeks a COA, the court of appeals should limit its examination to a threshold inquiry into the underlying merits of his claim. See *Slack v. McDaniel*, 529 U.S. 473,481, 120 S.Ct. 1595, 146 L.Ed.2d 542 (2000). This inquiry does not require full consideration of the factual or legal basis supporting the claim.

Consistent with this Court's precedence and the statutory text, a prisoner need only demonstrate "a substantial showing of the denial of a constitutional right." § 2253(c)(2). Adams satisfied this standard when he demonstrated that jurists of reason could disagree with the district court's resolution of his case and that the issues presented were adequate to deserve encouragement to proceed further. *Slack v. McDaniel*, 529 U.S., at 484. He did not have to convince a judge or panel that he would prevail. Adams only had to demonstrate that reasonable jurist would find the district court's

assessment of the constitutional claim debatable or wrong. *Id.* quoting *Miller-El v. Cockrell*, 537 U.S. 322, 123 S.Ct. 1029,1032 (2003).

Judge Patrick E. Higginbotham opined that: (1) Adams did not have good cause for his failure to exhaust his claim that his trial counsel violated his autonomous right to choose the objective of his defense; (2) the claim has no merit; (3) Adams failed, inexcusably, to exhaust his claim in state court; (4) Adams's claim is procedurally barred; (5) Adams's claim is "plainly meritless;" and (6) the claim does "not warrant a stay." Exhibit A, pp. **1-2**.

Judge Higginbotham concluded, in error, that *La. C. Cr. P. art.* 930.8 precludes Adams from post-conviction or habeas relief because he did not file his *McCoy* claim within 2 years of the finality of his conviction and sentence. Judge Higginbotham correctly noted that Adams filed his *McCoy* claim in 2019, but overlooked that under *La. C. Cr. P. art.* 930.8A(2); Adams's *McCoy* claim falls under an exception to the procedural bar:

> No application for post-conviction relief ... shall be considered if it is filed more than two years after the judgment of conviction and sentence has become final ... **unless** any of the following apply:
>
> (2) The claim asserted in the petition is based upon a final ruling of an appellate court establishing a theretofore unknown interpretation of constitutional law and petitioner establishes that this interpretation is retroactively applicable to his case, and the petition is **filed within one year** of the finality of such ruling.

On May 14, 2018, the Court decided *McCoy v. Louisiana*, 138 S.Ct. 1500 (2018). Adams filed a successive application for post-conviction May 13, 2019—within 1 year of the Court's decision. Adams asked the district court stay his habeas petition when he filed his successive post-conviction application. He also served the district court with a copy of the application along with his memorandum in support. Adams's *McCoy* claim has been completely exhausted in the state courts. The trial court denied relief September 12, 2019. The appellate court denied relief December 5, 2019; and the Louisiana Supreme Court denied relief November 10, 2020. On November 20, 2020, Adams filed a Motion to Amend his petition for a writ of habeas corpus in the federal district court. The district court denied Adams's request and the Fifth Circuit Court of Appeals, in error, applied a procedural bar. Cf. *Rhines v. Weber*, 544 U.S. 269, 125 S.Ct. 1528, 161 L.Ed.2d 440 (2005); *Neville v. Dretke*, 423 F.3d 474,480 (5th Cir. 2005).

2. Adams's trial was rendered fundamentally unfair because his trial counsel rendered ineffective assistance in violation of the Fifth, Sixth and Fourteenth Amendments to the United States Constitution.

Adams briefed the lower courts of how his trial counsel, Mr. Goins, rendered ineffective assistance within the confines of *Strickland*. Because Mr. Goins was not prepared for trial, and because he further failed to

prepare Adams for trial, Adams suffered prejudice in this case because the jury only heard the State's representation of what allegedly happened on the day of this tragic incident. Mr. Goins's failure, in this regard, did affect the outcome of trial. In other words, Mr. Goins's failure to adequately investigate the facts and circumstances of Adams's case in order to present them to the jury in an orderly fashion is evidence of his deficient performance. For instance, there is evidence that establishes Adams and Blackshire have had fights before —fights that were reported to be as violent as the one that resulted in Blackshire's death. According to Scott, Adams and Blackshire argued and fought regularly. In fact, Scott testified that Blackshire "was just laying on the ground like he usually do, fighting." R. pp. 372-374. Mr. Goins had a duty to present to the jury that Adams did not possess "that state of mind which exists when the circumstances indicate that the offender actively desired the prescribed criminal consequences to follow his act or failure to act." See *State v. Harris*, 00-3459 (La. 2/26/02); 812 So.2d 612,618 (quoting *La. R.S.* 14:10(1)). Mr. Goins told Adams he would present his intoxication defense but failed to do so. In fact, Mr. Goins, in addition to his other failures, did not even offer an opening statement. *U.S. v. Hammonds*, 425 F.2d 597 (1970). Adams was intoxicated and could not form the requisite specific intent. This

was just another drunken brawl that turned out badly for the two willing participants. Mr. Goins could have told this to the jury in an opening statement.

Mr. Goins also failed to cross-examine certain witnesses and failed to properly cross-examine other witnesses. Mr. Goins constructively denied Adams the right to testify in his own defense by failing to prepare him for trial. It is for this reason that Adams told the trial court he did not want to testify. He was afraid to speak on his own behalf because he could not anticipate what Mr. Goins would ask him. Mr. Goins was also ineffective for not preparing him for what could possibly happen on cross-examination. Mr. Goins failed to present Adams with any anticipatory questions that may have been asked by the prosecution. As was pointed out in his original APCR, Mr. Goins's performance was so grossly deficient that there was a break down of the adversarial process because he failed to subject the State's case to any meaningful adversarial testing. According to the lowers courts, Adams's claim that Mr. Goins rendered ineffective assistance does not have any merit; however, each court failed to list or address any one of the so-called "general allegations and assumptions" supposedly contained in Adams's APCR.

Adams's right to the effective assistance of counsel is guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution, and

is also "indispensable to the fair administration of our adversarial system of criminal justice." *Maine v. Moulton*, 474 U.S. at 168. The United States Court of Appeals for the District of Columbia discussed what it means for a criminal defendant to have the assistance of counsel for his defense. *U.S. v. Hammonds*, 425 F.2d 597,600-601 (1970). The *Hammond* court said the constitutional guarantee of the Sixth Amendment is not just a procedural formality. The court said that although "the word 'effective' does not appear in the Constitution itself, it was held in *Powell v. Alabama*, 287 U.S. 45,71, 53 S.Ct. 55, 77 L.Ed.2d 158 (1932) that the failure of the trial court to make an 'effective' appointment of counsel was a denial of due process, and that the duty to assign counsel is not discharged by an assignment 'under such circumstances as to preclude the giving of effective aid in the preparation and trial of the case.'" *Id.* at 601, quoting its decision in *Mitchell v. United States*,104 U.S. App. D. C. 57, 259 F.2d 787,793 (1958) *cert. denied*, 358 U.S. 850, 79 S.Ct. 81, 3 L.Ed.2d 86 (1958). The *Hammonds* court said:

> We think the term "effective assistance"—the courts' construction of the constitutional requirement for the assistance of counsel—does not relate to the quality of the service rendered by a trial lawyer or to the decisions he makes in the normal course of a criminal case; except that, if his conduct is so incompetent as to deprive his client of a trial in any real sense—render the trial a mockery and farce is one descriptive expression,—the accused must have another trial, or rather, more accurately, is still entitled to a trial.

The standard of review for a claim of ineffective assistance of counsel requires a reviewing court to reverse a conviction if the defendant establishes: (1) that counsel's performance fell below an objective standard of reasonableness under prevailing professional norms; and (2) but for counsel's deficient performance, there is a reasonable probability that the outcome of the proceeding would have been different. *Strickland v. Washington*, supra. This reasonable probability standard does not require a defendant to show that counsel's deficient conduct more likely than not altered the outcome in the case. *Strickland v. Washington*, 466 U.S., at 693, 104 S.Ct., at 2068. While a reviewing court must examine the "totality of circumstances and the entire record" to assess counsel's performance, "[s]ometimes a single error is so substantial that it alone causes the attorney's performance to fall below the Sixth Amendment standard." *Nero v. Blackburn*, 597 F.2d at 994.

CONCLUSION

For the foregoing reasons Adams's petition for a writ of certiorari should be granted.

Respectfully submitted,

Marecellus Adams

Date: April 11, 2022