

No. ____ - _____

IN THE
SUPREME COURT OF THE UNITED STATES

JOHN MATTHIAS WATSON, III,
Petitioner

v.

THE STATE OF NEVADA,
Respondent.

On Petition for Writ of Certiorari to the
Supreme Court of Nevada

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED – CAPITAL CASE

- I. Is it a concession of guilt by trial counsel which violated Mr. Watson's longstanding right to autonomy and the Sixth Amendment holding of McCoy v. Louisiana, 138 S. Ct. 1500 (2018) when without authorization, during the guilt phase of a capital murder trial, counsel presented no defense to a charge of second-degree murder, and instead expressed an opinion that Watson was guilty of that offense.

LIST OF PARTIES

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

RELATED CASES

None known.

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PETITION FOR WRIT OF CERTIORARI

Petitioner John Watson requests that a writ of certiorari issue to review the judgment of the Nevada Supreme Court.

OPINION BELOW

The Opinion of the Nevada Supreme Court denying rehearing, with one dissent, appears at page 1a to the petition and is unpublished.

The Order of Reversal and Remand of the Nevada Supreme Court appears at pages 2a to 7a to the petition and is unpublished.

The judgment of the Eighth Judicial District Court, granting Mr. Watson's post-conviction claim, appears at pages 8a to 18a and is unpublished.

JURISDICTION

The Nevada Supreme Court decided this case on December 13, 2021. A petition for rehearing was denied on February 10, 2022.

This Court has jurisdiction under 28 U.S.C. §1257(a).

CONSTITUTIONAL PROVISIONS

Constitution of the United States, Amendment VI:

The Sixth Amendment provides:

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 defence.

STATEMENT OF THE CASE

As this Court recognized in McCoy v. Louisiana, 138 S. Ct. 1500 (2018), the Sixth Amendment generally grants the accused the right to determine the objectives of the defense. As relevant here, Watson was charged with murdering his wife Evey. The State sought the death penalty at his trial. Watson maintained his innocence throughout the proceedings. App. at 11a. His wife's body has still never been found.

During closing arguments, Watson's attorney made several statements that conceded his guilt to some degree of murder, despite Watson's stated desire to maintain his innocence. Counsel first admitted that "something" happened to Mrs. Watson and that he was not "silly" enough to tell the jury otherwise. App. at 11a.

Continuing, counsel then interjected the idea of a second-degree murder conviction into the proceedings. Counsel suggested the evidence "at most" supported a second-degree murder conviction. Counsel acknowledged that he could not tell the jury to find Watson "not guilty of murder." App. at 12a. Rather, contending he was not "an idiot," counsel conceded there was evidence to support a guilty verdict. App. at 12a.

Concluding, counsel then told the jury that, “Admittedly, you may very well find him guilty of second degree murder, if and only if, you feel the circumstantial evidence warrants it.” App. at 12a. At no time did counsel ever argue that the “circumstantial evidence” did not establish Watson’s guilt to a lesser charge of second-degree murder. Counsel offered no defense to that charge, instead, he chose to highlight evidence that supported a second-degree murder conviction.

In 2014, Watson sought post-conviction relief. App. at 10a. Among other claims, he contended his trial counsel ineffectively conceded his guilt to second-degree murder without his permission. The trial record showed that Watson was unaware that his attorney would make arguments about second-degree murder during closing. App. at 12a.

The trial court granted relief on this claim, finding that counsel did concede Watson’s guilt to the jury and that Watson never authorized counsel to do so. App. at 15a. The court also found McCoy was dictated by precedent and therefore merely restated the law which would have been in effect at the time of Watson’s trial. App. at 15a. As a result, the court was compelled to order a new trial based on counsel’s improper concession of guilt.

On appeal, the Nevada Supreme Court reversed asserting that trial counsel never conceded Watson’s guilt, so there was nothing to violate McCoy or any other autonomy-based case. App. at 4a. This was so, said the Nevada Supreme Court, because courts “generally” only find a concession when it is explicit, and, the concession in McCoy was explicit. App. at 4a-5a. The Nevada Supreme Court said

that Watson’s attorney “did not opine Watson was guilty or implore the jury to find him guilty of any offense.” App. at 6a.

Although the decision on appeal was unanimous, Watson petitioned for rehearing, which one Justice said she would have granted. App. at 1a.

REASONS FOR GRANTING THE PETITION

- I. The Nevada Supreme Court’s decision splits from other state courts’ decisions that broadly construe when an unauthorized concession overrides a defendant’s right to autonomy.

This Court can most appropriately remedy Nevada’s errors by summarily reversing the Supreme Court of Nevada’s decision to deny the Petitioner a new trial. Or by granting certiorari, this Court can promote a uniform application of McCoy’s holdings by clarifying, among other things, that concession of guilt to any lesser charged or chargeable offense is impermissible where the accused has expressly asserted a desire to maintain their innocence as part of the objectives of their defense.

The Nevada Supreme Court found that McCoy was inapplicable to Petitioner’s case because “we agree with the State that trial counsel did not concede [Petitioner]’s guilt”. App. at 3a. Because the Nevada Supreme Court did not believe Petitioner’s trial counsel conceded Petitioner’s guilt at trial, the logic goes, then there was no violation of McCoy, the Sixth Amendment, or any other Constitutional right.

McCoy's central holding reaffirmed a Constitutional right to autonomy, especially as for the rights of individuals accused of committing a crime. McCoy v. Louisiana, 138 S. Ct. 1500, 1508 (2018). The Constitution, via the Sixth Amendment, grants individuals a right to assistance of counsel, but even after counsel has been retained, the individual retains the right to determine the objectives of their own defense. Id. Counsel who concede their client's guilt in the face of their client's steadfast proclamation of innocence rob their clients of that autonomy, because while it is counsel's role to determine how best to achieve their client's objectives, it is solely the client's prerogative to determine what those objectives are in the first place. Id.

This Court's own precedents confirm that the correct reading of McCoy is a broad one. McCoy's decision was not rendered in a vacuum; it built on Sixth Amendment holdings that established a right for the accused to be the "master of his own defense". See Gannett Co. v. DePasquale, 443 U.S. 368, 382 n.10, 99 S. Ct. 2898, 2907 (1979). As reiterated many times by this Court, the Sixth Amendment right speaks of the *assistance* of counsel who can provide guidance and advice to the accused. McCoy, 138 S. Ct. at 1508; Faretta v. California, 422 U.S. 806, 820 (1975).

Under the Sixth Amendment, counsel providing proper assistance to the accused do not usurp the accused's agency – rather, they enhance the accused's stated defense objectives by providing expert insight onto the technical details of defending oneself in court. See e.g., Jones v. Barnes, 463 U.S. 745, 751 (1983) (Counsel assists by choosing which arguments to focus on); Henry v. Mississippi,

379 U.S. 443, 451 (1965) (Counsel assists by choosing how to respond to evidence); United States v. McGill, 11 F.3d 223, 227 (1st Cir. 1993) (Counsel assists by contextualizing evidence). Yet the Sixth Amendment reserves certain decisions solely for the accused – such as how to plead, whether to testify, or whether to appeal a decision. Jones, 463 U.S. at 751.

Watson repeatedly asserted he desired to maintain his innocence of any crime for which he was accused. App. at 11a. Yet the Nevada Supreme Court found that trial counsel’s concession of Petitioner’s guilt was insufficiently explicit in comparison to similar concessions and that trial counsel’s language could not reasonably be construed as a concession of his client’s guilt. App. at 4a-5a. While it is accurate to say that McCoy did not strictly define the elements of a concession of guilt, McCoy did provide a guideline by holding that counsel cannot “override” a client’s “expressly assert[ed]” objective. Id. at 1508-09. When the client expressly asserts that their goal is to maintain their innocence of any wrongdoing, as the Petitioner so asserted here, counsel cannot override their expressly asserted objective by subsequently conceding their guilt of the charged crime or any lesser-included offense.

Thus, the main failing here is Nevada’s decision to read McCoy narrowly. Other states have determined that this is the very error McCoy’s broad holding was meant to foreclose. The Supreme Courts of both Louisiana and California found that proper application of McCoy required granting a criminal defendant a new trial when their trial counsel improperly conceded guilt to a lesser offense. State v.

Horn, 251 So. 3d 1069, 1077 (La. 2018); People v. Bloom, 12 Cal. 5th 1008, 1015 (2022).

In Horn, the defendant was found guilty of first-degree murder and sentenced to death for the killing of a 12-year old boy. Horn, 251 So. 3d at 1070. At trial, the defendant’s counsel made implicit and express concessions of guilt, such as that “nobody knows what happened” or that counsel was not “asking you [the jury] to let him walk the streets.” Id. at 1074. The court found these concessions violated McCoy, which it found to be “broadly written.” Id. at 1075.

Similarly, in Bloom, the Supreme Court of California found that trial counsel’s concession of guilt to lesser offenses violated a defendant’s Constitutional right to autonomy even when trial counsel managed to secure a conviction to the lesser offense. Bloom, 12 Cal. 5th at 1015. In analyzing McCoy’s central holding, the Supreme Court of California noted “McCoy makes clear that the decision whether to concede the defendant should be found guilty of a crime—even a lesser crime than the one the prosecution charged—is a decision that necessarily belongs to the defendant”. Id. at 1039 (emphasis added).

Nevada has taken the opposite stance by reading this Court’s precedents so narrowly it effectively winnows them out of existence. Rather than give McCoy broad reading, Nevada has given it such a narrow reading that it refused to even find that counsel conceded Watson’s guilt. But Watson’s attorney first brought up second-degree murder during the closing. Watson’s attorney then offered no

defense to that charge, in that he urged the jury not to find Watson guilty of “first” degree murder. App. at 12a.

But the Nevada Supreme Court simply glossed over that counsel, among other things, told the jury they “may very well” find Watson guilty of second-degree murder. App. at 12a. This, along with the other concessions of record and overall failure to provide any defense to the charge of second-degree murder, were a blatant violation of the Sixth Amendment. This Court could effectively remedy this error by issuing a *per curiam* decision vacating the Nevada Supreme Court decision and remanding the case for further proceedings in accordance with the proper McCoy standard.

Or, this Court may also find that the facts here present an ideal vehicle with which to address the split of authority between the states as to the proper application of the McCoy standard. Together with questions surrounding the essence of an unauthorized concession of guilt, states have questioned the breadth of McCoy’s holding. Compare State v. Horn, 251 So. 3d 1069 (La. 2018) (“McCoy is broadly written...”) with State v. Brown, 2019 Ohio 313, ¶ 13 (Ct. App.) (“...McCoy pertains to an incredibly narrow issue...”).

The Court is uniquely positioned to provide the necessary guidance promoting a uniform application of McCoy’s holding. As the states cannot even agree on how broad or narrow the holding itself is, this Court should take the opportunity to provide much needed clarity. The better answer, apparent from even a cursory reading of McCoy, is that the right to autonomy is historically

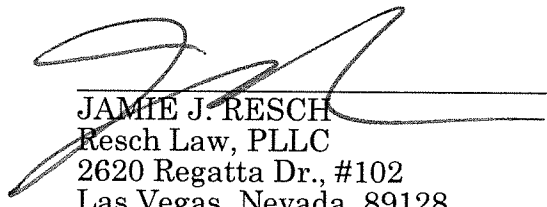
longstanding and broad. Yet it would appear Nevada, Ohio, and perhaps other states refuse to acknowledge this fact, where other states such as Louisiana and California do.

Accordingly, this Court should grant certiorari to vacate the Supreme Court of Nevada's order and to address the growing split of authority between the states as to the broadness of McCoy's holding.

CONCLUSION

The Court should grant this petition and review the Nevada Supreme Court's decision to overturn Watson's grant of relief before the trial court, or should summarily reverse the Nevada Supreme Court based on its disregard for this Court's precedents.

Respectfully submitted,



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