No. 21-8263

IN THE SUPREME COURT OF THE UNITED STATES

July 27, 2022

JOHN MATTHIAS WATSON, III, *Petitioner,*

v.

THE STATE OF NEVADA, *Respondent*

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF NEVADA

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTION PRESENTED

CAPITAL CASE

Whether Petitioner fails to present a substantial conflict between lower courts or an important federal question that must be answered by this Court.

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PROCEDURAL HISTORY

The Nevada Supreme Court's reversal of the granting of habeas relief sets forth the procedural history of this case:

> John Watson and his wife, Everilda "Evey" Watson, travelled to Las Vegas, Nevada, and while there, Watson killed Evey and disposed of her body. A jury convicted him of first-degree kidnapping and first-degree murder with the use of a deadly weapon and sentenced him to death. This court affirmed the judgment of conviction and death sentence. *Watson v. State*, 130 Nev. 764, 335 P.3d 157 (2014). Watson filed a timely postconviction petition for a writ of habeas corpus, which the district court granted after concluding that trial counsel acted unreasonably by conceding Watson's guilt during closing argument when Watson had insisted on maintaining his innocence. The State appeals.

Petitioner's Appendix ("PA"), p. 003a. The Nevada Supreme Court reversed the granting of Petitioner's postconviction petition for a writ of habeas corpus on December 13, 2021. Id. Rehearing was denied on February 10, 2022. Id. at 001a. Petitioner sought discretionary review by this Court on June 24, 2022.

STATEMENT OF FACTS

The Nevada Supreme Court's opinion issued on direct appeal sets forth the facts of this matter:

> In June 2006, Watson told a friend that he believed that Evey was going to leave him and take half of his life savings. He said that he was mad enough to kill her and claimed to know of places he could hide her body where it would never be found.
> On July 9, 2006, Watson threw a surprise birthday party for Evey's 50th birthday. He had also planned a trip to Las Vegas as a present for Evey. After the party, Watson drove to Las Vegas. He checked into three rooms at two different hotels on July 10, 2006. At the Circus Circus, he checked in under his own name, but he checked into the Tuscany Suites under the name Joe Nunez. He had booked the room at the Tuscany Suites weeks earlier. When making the reservation, he had requested a specific room—N120—but that room was not available and he was given room N114. At the time of his arrival, Watson also booked another room (N118) at the Tuscany Suites for Sal Nunez and checked into that room as well. Evey flew to Las Vegas the following day, July 11, 2006, to join Watson. The next day, Watson called his son, Michael, and said that Evey had befriended a woman from Henderson and was missing.
> Watson stayed in Las Vegas for three more days. On July 13, 2006, the day after he called Michael, Watson used his credit card to purchase antifreeze at a Walmart. In a separate cash transaction, he procured bleach, an incense holder, and incense. In a nearby home improvement store, Watson paid cash for a band saw and the tools necessary to assemble it. The next day, July 14, 2006, Watson requested a move to room N120 at the Tuscany Suites—the room he had requested when he

made his reservation. After he moved to that room, he declined maid service. He checked out of both hotels the next day.

Watson then contacted Evey's cousin, Mira Alvarez. During a phone call, he told her that Evey walked away from him after an argument and he did not know where she was. He said that he did not file a missing person report because he believed that the police would suspect him of foul play. He added that Evey had cut her finger in the back of his Jeep while opening a flashlight package. Watson showed up at Alvarez's home on July 16, 2006. At that time, he claimed that Evey had called and told him that she was getting a ride with a woman she had met. Watson's son, Juan, came to Alvarez's house while Watson was there. Watson told Juan that he and Evey had a fight in front of the Four Queens casino. He also showed Alvarez and Juan a letter allegedly written by Evey that he had found in his car. The letter indicated that Evey went to Guatemala because her sister, Rose, had been in an accident. Alvarez doubted the letter's authenticity. According to her, Rose had not been in an accident, and the letter did not appear to be written by Evey.

Juan reported Evey missing that day, and later in the day, Watson was taken into custody. During the arrest, police confiscated identification bearing Watson's photograph and the name "Joseph Ernest Nunez, Jr." A search of Watson's Jeep Cherokee revealed several blood spots in the vehicle and evidence that it had been cleaned with a bleach-based cleanser. Blood found on the seatbelt, rear bumper, and cardboard in the vehicle had a DNA profile that was consistent with Evey's DNA. In addition, the Jeep contained bleach, cleaners, rubber gloves, a roll of plastic tarp, paperwork from Circus Circus, a Circus Circus casino card, and a card from Tuscany Suites. A search of Watson's home revealed a box of trash bags, from which 17 bags were missing; a box cutter with blood stains matching Evey's DNA, and a plastic bag with a blood stain consistent with Evey's and Watson's DNA. Juan later found a gun in the Watson home and turned it in to the police. Blood spots on the gun barrel matched Evey's DNA.

Evidence was also located in room N120 at the Tuscany Suites. In turning over the room, housekeeping staff had collected several kitchen utensils and a Teflon pan, which they turned over to the police. The bed sheets were also missing and the room contained trash from stores, scissors, and incense. The scissors appeared to have brown stains on them. In addition, staff noted an overwhelming odor. A housekeeper at Tuscany Suites testified that the guest in room N120 had asked her for

> a large trash bag on the day he left. Crime scene analysts discovered Evey's DNA in blood found in several stains recovered from the bathroom of room N120. Investigators also collected a piece of carpet from the room that was stained with blood matching Evey's DNA. The blood stain on the carpet had soaked through the carpet and padding and had stained the cement subfloor.
>
> Watson was released from custody in late July and was placed under surveillance. Officers observed Watson drive around the mountain roads in the area of Kern County, California. Near Lake Isabella, Watson was observed turning onto a dirt road, stopping his car, and walking away from it. Officers searched this area, commonly known as the Fairview dump, and discovered an area of the ground that appeared to have been recently disturbed with plastic protruding from it. The plastic recovered from the hole matched the type and tear pattern of a roll of plastic tarp recovered from Watson's Jeep. DNA found on the plastic matched Evey's DNA profile. Investigators who recovered the plastic bundle from the hole noted that it smelled of decomposition.
>
> On August 10, 2006, Watson was arrested at a Denny's in Claremont, California. He was in possession of a wig, false mustache, and glue. He also had a bus ticket to El Paso, Texas, a map of El Paso, cash, traveler's checks, driver's licenses in his name and the name of Zach Watson, a cell phone, and a list of phone numbers. Michael spoke to Watson after his arrest, and Watson implied that if Michael put money in Watson's jail fund then he would tell Michael of a general area where Evey's body could be found.

Watson v. State, 130 Nev. 764, 770–72, 335 P.3d 157, 163–64 (2014).

REASONS FOR DENYING THE PETITION

This Court's purpose is not to seek out opportunities to consider constitutional issues, but to address those problems that truly require resolution. Petitioner's request for extraordinary relief does not present a conflict between lower courts or an important federal question. Whether or not trial counsel conceded Petitioner's guilt to second-degree murder is a question of fact not requiring the interpretation of constitutional rights or principles. The Nevada Supreme Court correctly answered

this question in the negative. Furthermore, Petitioner's attempt to manufacture a split of authority fails, as he does not identify conflicting decisions regarding the central issue in this case—whether or not trial counsel conceded guilt.

Rule 10 of the Rules of the Supreme Court of the United States precludes discretionary intervention in this matter. Certiorari is only warranted where there is a substantial conflict between decisions of lower state or federal courts, or where an important question of federal law needs to be settled. It is generally accepted that "[a] petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law." 36 C.J.S. Federal Courts §295 (2012). "This Court's review ... is discretionary and depends on numerous factors other than the perceived correctness of the judgment we are asked to review." Ross v. Moffit, 417 U.S. 600, 616-17, 94 S. Ct. 2437, 2447 (1974)

A conflict between lower courts must be substantial to warrant intervention by this Court. Indeed, "[i]t is very important that [this Court] be consistent in not granting the writ of certiorari except . . . in cases where there is a real and embarrassing conflict of opinion and authority between the circuit courts of appeal." Rice v. Sioux City Memorial Park Cemetery, Inc., 349 U.S. 70, 79, 75 S. Ct. 614, 620 (1955).

/ / /

I. THIS CASE DOES NOT PRESENT AN IMPORTANT FEDERAL OR CONSTITUTIONAL QUESTION

An important question of federal law is one that goes beyond whether the alleged error complained of "is undesirable, erroneous or even 'universally condemned." Smith v. Phillips, 455 U.S. 209, 221, 102 S. Ct. 940, 948 (1982). In order to amount to an important federal question, the issue must be one of broad scope that actually needs to be settled:

> A federal question raised by a petitioner may be 'of substance' in the sense that, abstractly considered, it may present an intellectually interesting and solid problem. But this Court does not sit to satisfy a scholarly interest in such issues. Nor does it sit for the benefit of the particular litigants. ... 'Special and important reasons' imply a reach to a problem beyond the academic or the episodic. This is especially true where the issues involved reach constitutional dimensions, for then there comes into play regard for the Court's duty to avoid decisions of constitutional issues unless avoidance becomes evasion.

Rice, 349 U.S. at 74, 75 S. Ct. at 616-17 (citations omitted).

Petitioner has not presented this Court with an important federal question. This Court decided an important issue of constitutional dimension in McCoy v. Louisiana, 138 S.Ct. 1500 (2018), when it found that the Sixth Amendment prohibits counsel from overriding a defendant's "[a]utonomy to decide that the objective of the defense is to assert innocence." Id. at 1508.

Petitioner frames the question presented in this case as though it concerns this autonomy right the Court recognized in McCoy. Petition, p. i. But here, Petitioner asks this Court not to rule upon the scope of the Sixth Amendment autonomy right,

but to rule as to whether or not trial counsel conceded Petitioner's guilt at trial. The Nevada Supreme Court overturned the lower court's granting of habeas relief based on McCoy because it found "trial counsel did not concede Watson's guilt." PA, p. 003a. The question as to whether or not counsel conceded guilt requires factual analysis, not constitutional interpretation. This Court's guidance is not required for the lower courts to render fact-based determinations regarding whether or not a concession of guilt occurred. Thus, the Petition should be denied due to Petitioner's failure to raise an important federal question.

II. LOWER COURTS ARE NOT IN CONFLICT ON THE APPLICATION OF MCCOY

Petitioner claims to have identified a conflict among various lower courts regarding the scope of McCoy. In a failed attempt to support that claim, he cites three irrelevant state cases—two decisions from state high courts and one unpublished decision from a state intermediate appellate court. None conflict with the Nevada Supreme Court's ruling because they do not address the central issue in this case—whether or not trial counsel conceded guilt.

Petitioner attempts to manufacture a split among courts by claiming the Nevada Supreme Court's decision conflicts with those of other courts that "broadly construe when an unauthorized concession overrides a defendant's right to autonomy." Petition, p. 04. The two cases he cites as examples of a "broad" interpretation do not address whether counsel conceded guilt, as this was undisputed

in each case. State v. Horn, 251 So.3d 1069, 1075 (La. 2018) ("We know that Brian Horn killed Justin Bloxom."); People v. Bloom, 12 Cal.5th 1008, 1037, 508 P.3d 737, 795 (2022) ("He did it. Manslaughter, an intentional killing, he did it.").

In one case, the court found McCoy was "broad" in that it applied not only when a defendant maintained absolute innocence, but also when the defendant was willing to admit to an accidental killing but objected to counsel's admission of guilt as to any degree of murder. Horn, 251 So.3d at 1075-76. In another, the court reached the unremarkable conclusion that the defendant's willingness to admit to one of the three charged murders did not allow defense counsel to override the defendant's objective to maintain innocence as to the other two murders. Bloom, 12 Cal. 5th at 1036, 508 P.3d at 759. These cases are inapposite; neither conflicts in any way with the decision of the lower court in this case. Nor do they even address the central issue in this case.

Petitioner attempts to manufacture a conflict between the two cases cited above and other state courts, through a single citation to an unpublished case stating that McCoy involves a "narrow issue". State v. Brown, No. 106667, 2019 WL 413781, at *3 (Ohio Ct. App. Jan. 31, 2019). This case did not involve a concession of guilt, and thus is irrelevant here. The Ohio court considered a defendant's claim that the trial court was required to inform him that he had a right to testify or not testify at trial, a right the defendant claimed was recognized in the McCoy case. Id.

Unsurprisingly, the court concluded that McCoy was not relevant to such a claim, as its central holding was simply that a defendant has a Sixth Amendment autonomy right to determine the objective of his defense. Id.

Petitioner has not identified any conflict between the Nevada Supreme Court's decision and any state courts of last resort. Accordingly, this Court should deny Petitioner's invitation to resolve a conflict that does not exist.

III. THE NEVADA SUPREME COURT CORRECTLY FOUND PETITIONER FAILED TO ESTABLISH A SIXTH AMENDMENT VIOLATION UNDER MCCOY

Even if this Court were inclined to grant Petitioner's request to consider McCoy's scope, this case is a poor vehicle for doing so. Petitioner is not entitled to relief under McCoy because his counsel did not concede his guilt to any offense over his objection. Petitioner also ignores the fact that a mere concession is insufficient to establish a violation of the autonomy right recognized in McCoy. For this right to be violated, counsel must concede guilt over the defendant's unambiguous objection. 138 S.Ct. at 1510 ("counsel may not admit her client's guilt of a charged crime over the client's intransigent objection to that admission."). In addition to no concession taking place, Petitioner never made any objection to trial counsel's argument. Accordingly, Petitioner is not entitled to relief under McCoy.

Petitioner renews his contention that his Sixth Amendment autonomy right was violated by defense counsel acknowledging a possibility that the jury might find him guilty of second-degree murder, and by not raising a sufficient defense against

second-degree murder. Petition, pp. 02-03. The Nevada Supreme Court correctly rejected this contention, and this decision does not conflict with any decision of this Court or any state court of last resort. Accordingly, further review is unwarranted.

The Nevada Supreme Court's decision was a straightforward application of McCoy, which held that "[w]hen a client expressly asserts that the objective of *his* defence' is to maintain innocence of the charged criminal acts, his lawyer must abide by that objective and may not override it by conceding guilt." McCoy, 138 S. Ct. at 1509 (emphasis in original). The Nevada Supreme Court properly concluded that counsel did not concede Petitioner's guilt to any offense, and thus Petitioner was not entitled to relief under McCoy. PA 008a.

Petitioner has failed, both before this Court and the lower court, to identify a concession of guilt made by counsel. Petitioner boldly claims that counsel failed to offer a defense as to second-degree murder, and expressed an opinion as to Petitioner's guilt. The State disputes Petitioner's claim that trial counsel failed to offer a defense as to second-degree murder. However, even if trial counsel had failed to raise such a defense, this would not amount to a concession. To concede is to admit the truth of the allegations, not to fail to amount a sufficient defense against them. See Bryan A. Garner, A Dictionary of Modern Legal Usage 141 (2nd ed. 1995) (defining "concede" as "to admit to be true").

A claim that counsel did not mount a sufficient defense is a claim of ineffective assistance of counsel, which is outside the scope of this case and McCoy. See McCoy, 138 S.Ct. at 1510-11 ("Because a client's autonomy, not counsel's competence, is in issue, we do not apply our ineffective-assistance-of-counsel jurisprudence.").

Counsel never expressed an opinion that Petitioner was guilty of any offense, or instructed the jury to find Petitioner guilty, although counsel did indicate it was possible that the jury would find Petitioner guilty of second-degree murder. Notably, Petitioner chose not to include counsel's closing argument in his appendix, but instead quotes the order of the district court granting him post-conviction relief. Petition, p. 02; PA, p. 011a-012a. Regardless, the quoted portion from counsel's closing argument does not amount to a concession of guilt as to second-degree murder. Counsel acknowledged that the jury might find Petitioner guilty of second-degree murder, should they conclude the circumstances warranted it. Counsel concluded by stating that if they did not find that the circumstantial evidence warranted it, they should find him not guilty of the open murder charge. PA, p. 012a. Counsel did not express a personal opinion or belief that a finding of guilt was proper—in fact he expressly stated he did *not* agree with such a finding. PA, p. 011a.

Petitioner is simply not entitled to relief under McCoy because counsel did not concede Petitioner's guilt to any charge. Petitioner attempts to characterize what

he feels was an inadequate argument against a finding of guilt for second degree murder as a concession. It is not. Petitioner fails to present any legal authority that would support such a contention. Any alleged inadequacies in counsel's argument may be addressed through post-conviction litigation of ineffective assistance claims. The right recognized in McCoy stemmed from the right to choose the objectives of one's defense, not the right to the effective assistance of counsel. 138 S.Ct. at 1510-11.

The concession of guilt in McCoy was explicit. Among other admissions, counsel in McCoy stated to the jury "my client committed three murders." Id. at 1507. Petitioner's counsel never stated anything of the kind. None of the cases cited by Petitioner support a finding that counsel conceded Petitioner's guilt in this case. Because no concession occurred in this case, no reasonable interpretation of McCoy would entitle Petitioner to relief in this case. Accordingly, this Court should deny the Petition.

CONCLUSION

Petitioner has failed to establish that this Court's exercise of discretionary jurisdiction is warranted. No important federal issue or conflict in authority exists in this matter. Therefore, this Court should deny certiorari.

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Dated this 27th day of July, 2022.

Respectfully submitted.

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