No. 21 - 8263

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 the State of Nevada

PETITIONER'S REPLY TO OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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REPLY TO OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

In this capital case, the Nevada Supreme Court misapplied and circumvented this Court's ruling in McCoy v. Louisiana, 138 S. Ct. 1500 (2018). In response, the State contends there is no important federal question to be resolved, and that the Nevada Supreme Court correctly applied McCoy. Neither of these contentions by the State are true.

A. Death Penalty Cases Always Present An Important Question Worthy of This Court's Scrutiny.

The Court has made one thing abundantly clear throughout the history of its jurisprudence – death is different. Furman v. Georgia, 408 U.S. 238, 286, 92 S. Ct. 2726, 2750 (1972); Woodson v. North Carolina, 428 U.S. 280, 305, 96 S. Ct. 2978, 2991 (1976); Ford v. Wainwright, 477 U.S. 399, 411, 106 S. Ct. 2595, 2602 (1986); Harmelin v. Michigan, 501 U.S. 957, 994, 111 S. Ct. 2680, 2701 (1991).

This Court engages in error correction when it finds that the issue at stake is important to "society as a whole". City & Cnty. of S.F. v. Sheehan, 575 U.S. 600, 611 n.3, 135 S. Ct. 1765, 1774 (2015). Capital cases often provide issues affecting society as whole, because carrying out a death sentence requires "reliability in the determination that death is the appropriate punishment in a specific case." Woodson, 428 U.S. at 305, 96 S. Ct. at 2991. Thus, when this Court faces questions arising from a State's desire to carry out an execution, issues of mere error correction are elevated to questions of critical importance. Andrus v. Texas, 142 S. Ct. 1866, 1879 (2022) (Sotomayor, J., dissenting).

Because this Court recognizes that death is different, it recognizes a need for exacting scrutiny in the "full and fair" procedures which result in a death sentence. Barr v. Lee, 140 S. Ct. 2590, 2592 (2020) (Breyer, J., dissenting). Death is a grave matter, and this Court does not take its imposition lightly. United States v. Higgs, 141 S. Ct. 645, 652 (2021) (Sotomayor, J., dissenting). Failing to consider the novel or significant legal questions raised by an inmate on death row calls into question the justice of our legal system. Id. at 646. (Breyer, J., dissenting).

Capital cases involving ineffective assistance of counsel issues are of the utmost importance because they implicate Constitutional rights. Bonin v. California, 494 U.S. 1039, 1040, 110 S. Ct. 1506, 1506 (1990) (Marshall, J., dissenting). Assistance of counsel is a fundamental component of the criminal justice system, particularly in capital cases, and questions regarding the effective assistance of counsel are "uniquely important". Mickens v. Taylor, 535 U.S. 162, 179, 122 S. Ct. 1237, 1248 (2002) (Stevens, J., dissenting).

This is particularly so because this Court has promulgated standards for determining effectiveness, and questions of their implementation are necessarily important to the Court. Dufour v. Mississippi, 479 U.S. 891, 891, 107 S. Ct. 292, 293 (1986) (Marshall, J., dissenting). That is even more true when the questions surrounding the application of this Court's standard are not resolved uniformly by lower state and federal courts. Adams v. South Carolina, 464 U.S. 1023, 1024, 104 S. Ct. 558, 558 (1983) (Marshall, J., dissenting).

Watson's request, while appearing to be a plea for mere error correction, raises important questions of federal law which only this Court can resolve. As presented in the petition, courts have split on what constitutes a concession under this Court's precedents. Watson's case provides an ideal platform for this Court to resolve issues of the application of precedential standards for counsel representing accused individuals in capital cases. This Court should take the opportunity to promote a universal understanding of the contours of its holding in McCoy. Above all else, this Court should use Watson's case as a reaffirmation of critical cornerstone of the modern criminal justice system in this country – death is different.

B. The Only Way The Nevada Supreme Court Could Determine No Concession Occurred Was By Ignoring This Court's Decision In McCoy.

As to the State's argument on the merits, there is little more to be said. To support its contention that no concession occurred, the State directs this Court to an off-brand dictionary. Brief in opposition at 10. Watson directs this Court to McCoy, and the many historical precedents cited therein.

What the State fails to grasp is that this Court has already spoken on this issue many times. A concession occurs when trial counsel "steers the ship the other way," so to speak, away from a client's stated will to maintain innocence. McCoy, 138 S. Ct. at 1509. The State proclaims that failing to offer a defense is not tantamount to a concession. This Court long ago held otherwise. McCoy at 1508, citing Gannett Co. v. DePasquale, 443 U.S. 368, 382 at n. 10 (1979).

Here, in direct violation of McCoy, defense counsel brought up second-degree murder and encouraged the jury to find Mr. Watson guilty of it. But Mr. Watson authorized no concession and maintained his innocence. If that's not "steering the ship" the other way, nothing is.

CONCLUSION

The Court should grant Mr. Watson's petition for certiorari and reverse the judgment of the Nevada Supreme Court.

Respectfully submitted,

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