

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

JEREMY MOODY,

Petitioner,

v.

STATE OF GEORGIA,

Respondent.

On Petition for Writ of Certiorari
to the Georgia Supreme Court

CAPITAL CASE

PETITION FOR WRIT OF CERTIORARI

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October 18, 2023

CAPITAL CASE

QUESTIONS PRESENTED

The months leading up to Petitioner Jeremy Moody’s capital trial in March of 2013 centered on a dispute between counsel and Moody over the objective of his defense. As counsel explained to the trial court, Moody “want[ed] to contest guilt innocence in this case,” but counsel wanted to concede guilt, even though Moody “disagree[d] with” that decision. Vol. 41, T. 452. Determined to contest his guilt, Moody first attempted to discharge counsel and represent himself. After the trial court denied that request, counsel asked the trial court to decide whether the decision to concede guilt was “a strategy decision or is it one of those critical decisions that the Constitution mandates that the defendant make even if his lawyers disagree with it.” Vol. 25, T. 2733. Over Moody’s objection, the trial court ruled that counsel, not Moody, could determine the objective of his defense. Forced to go to trial with counsel who would concede his guilt, Moody suddenly reversed course and decided to plead guilty rather than watch counsel plead him guilty over his objection.

While Moody’s post-trial motions were pending in the trial court, this Court decided *McCoy v. Louisiana*, 138 S. Ct. 1500 (2018), holding that a defendant has the right to control the objective of his defense. As the Court explained, the violation of the defendant’s “protected autonomy right was complete when the court allowed counsel to usurp control of an issue within [the defendant’s] sole prerogative.” *Id.* at 1511.

On appeal, Moody argued that the trial court’s rulings violated *Faretta v. California*, 422 U.S. 806 (1975), and *McCoy*. Acknowledging a circuit split on the question of whether a guilty plea waives such claims, the Georgia Supreme Court concluded that Moody’s *Faretta* and *McCoy* claims were waived.

This gives rise to the following questions:

1. Whether a guilty plea inherently waives claims that the trial court violated a defendant’s autonomy-based rights, such as the right to self-representation and the right to control the objective of his defense?
2. Whether the trial court’s ruling that counsel could concede guilt over Moody’s objection violated this Court’s decision in *McCoy v. Louisiana*, 138 S. Ct. 1500 (2018), rendering Moody’s guilty plea involuntary?

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PARTIES TO THE PROCEEDING

Petitioner Jeremy Moody was the defendant/appellant in the proceedings below. Respondent State of Georgia was the prosecutor/appellee in the proceedings below.

LIST OF RELATED PROCEEDINGS

Trial and Direct Appeal

State v. Moody, Fulton Cty. No. 07SC55795 (Apr. 24, 2013)

Moody v. State, Ga. No. S23P0046 (May 16, 2023)

PETITION FOR WRIT OF CERTIORARI

Petitioner Jeremy Moody respectfully petitions this Court for a writ of certiorari to review the judgment of the Georgia Supreme Court.

OPINIONS BELOW

The decision of the Georgia Supreme Court affirming Moody's conviction and death sentence is reported at *Moody v. State*, 888 S.E.2d 109 (Ga. 2023). See App. 1a-37a.

JURISDICTION

The Georgia Supreme Court affirmed Moody's conviction and death sentence on May 16, 2023. Moody timely moved for reconsideration of the judgment, and the Georgia Supreme Court denied that motion on June 21, 2023. See App. 38a. On August 4, 2023, Justice Thomas extended the time for filing this petition to and including October 19, 2023. See *Moody v. Georgia*, No. 23A104 (Aug. 4, 2023). This Court has jurisdiction pursuant to 28 U.S.C. § 1257(a).

RELEVANT CONSTITUTIONAL PROVISIONS

The Sixth Amendment to the United States Constitution provides, in relevant 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 States Constitution provides, in relevant part: "[N]or 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."

STATEMENT OF THE CASE

“Mr. Moody wants to contest guilt innocence in this case, and he perceives that we are not contesting that based on the questions we are asking the jurors. And, quite frankly, he’s exactly right in that regard. He just simply disagrees with it.”

--Moody’s counsel, Vol. 41, T. 452.

“[T]he violation of [the defendant’s] protected autonomy right was complete when the court allowed counsel to usurp control of an issue within [the defendant’s] sole prerogative.”

--*McCoy v. Louisiana*, 138 S. Ct. 1500, 1511 (2018).

A. Pretrial Proceedings

On April 20, 2007, William Felts and Jeremy Moody were indicted for the murder of Chrisondra Kimble and Delarlonva Mattox, Jr. Vol. 1, R. 4-8.¹ The indictment alleged that the murders occurred during a kidnapping and assault with the intent to rob, and that Kimble was raped. Vol. 1, R. 4-8. Soon after the indictment was returned, the State noticed its intent to seek the death penalty against Felts and Moody.

Over the course of the lengthy pretrial proceedings in this case, there were several hearings pertaining to Moody’s history of serious mental illness and his need for adequate treatment at the Fulton County Jail. However, there was never any dispute regarding Moody’s competency. As the trial court found, Moody was “competent to stand trial” and to assist in his defense. Vol. 24, T. 2686.

¹ Citations to the record are in the following format: “Vol. __, R. __” refers to the clerk’s record from the proceedings below. “Vol. __, T. __” refers to the transcripts from the proceedings below.

B. The Dispute Over the Objective of the Defense, and Moody's Sudden Guilty Plea

The months leading up to Moody's trial were defined by a sharp dispute between counsel and Moody over the objective of Moody's defense. The conflict, which developed over the course of multiple hearings between September 2012 and March 2013, prompted Moody to attempt to discharge counsel, a request the trial court denied. After that denial, counsel urged the trial court to resolve what he described as a "fundamental disagreement" between him and Moody—whether to concede guilt in hopes of increasing the chance for a life sentence (as counsel preferred), or to contest guilt in hopes of obtaining an acquittal or lesser conviction (as Moody preferred). The trial court found that the decision rested with counsel, not Moody.

1. Several Months Before Trial, Moody Voices His Objection to Counsel's Plan to Concede Guilt.

The disagreement over the objective of Moody's defense began to emerge during an ex parte proceeding several months before trial. Near the conclusion of that hearing, the trial court asked Moody if he was satisfied with his counsel's performance. Vol. 41, T. 310. Moody told the court that he would "really rather just defend [him]self," but he did not think the court was "going to allow that." Vol. 41, T. 311. Pressed to explain why, Moody explained:

Because like I have my theory of innocence and they have their theory, and it's like they just don't want to hear my theory. It's not - you know, they just want to go with what they have said it is.

Vol. 41, T. 313.

In response, the trial court told Moody that his lawyers had a “duty under the law . . . to exercise their professional judgment as to what issues to bring up and not bring up.” Vol. 41, T. 313. The court added that it would “be improper for them to bring up things that a reasonable attorney should not bring up.” Vol. 41, T. 313.

The conflict persisted at the next hearing, when Moody again informed the court that he wanted to represent himself. Vol. 41, T. 331. Asked to explain the rationale for his decision, Moody stated:

There’s certain evidence I want to present, there’s certain things I want to do, and my defense wants to go at it his way. And on the scope of representation I [’m] suppose[d] to be able to pretty much have opinion on what’s going on. . . . So I feel like I’m not having that, and I just feel like the only way that I feel I can get a fair shake is to defend myself.

Vol. 41, T. 332. The trial court advised Moody against discharging his counsel, deferred ruling on Moody’s request, and suggested that Moody discuss his concerns with counsel. Vol. 41, T. 334. The court then asked Moody if he was satisfied with what counsel had done on the case thus far. Vol. 41, T. 336. Moody responded, “All except for scope of representation.” Vol. 41, T. 336.

Moody continued to stress his disagreement with and desire to discharge counsel in the weeks leading up to trial, to no avail. For example, at one hearing, the trial court told Moody that counsel wanted to present a mental health defense because they “want[ed] to try and save [his] life.” Vol. 41, T. 396. The court also explained that counsel’s “job . . . in a death penalty case is to save [Moody’s] life, and they believe in the exercise of their professional judgment that there are issues that might help a jury deciding [Moody’s] fate” Vol. 41, T. 396. The court

acknowledged that Moody “may have a disagreement about that,” but said that unlike the decision to testify, the choice regarding the objective of the representation was up to counsel, not Moody:

Ultimately, ultimately many of those things are your choice, but the question of . . . do they pursue something or not is always a question that a lawyer has to answer in their professional judgment.

Vol. 41, T. 397. After Moody reiterated his desire to represent himself, the trial court expressed considerable frustration, telling Moody that this was merely an effort to delay the trial. Vol. 41, T. 398-99. Moody disagreed and said he was willing to go to trial the next day if allowed to represent himself. Vol. 41, T. 399-400. The trial court deferred a ruling on Moody’s request so that counsel again could confer with Moody about the defense.

But counsel and Moody never reached an agreement on the objective of Moody’s defense. During an ex parte hearing approximately one week into jury selection, counsel told the court that Moody had “some fundamental disagreements” with the defense that went “to the heart of the strategy in this case.” Vol. 41, T. 452. Asked to provide more context to the disagreement, counsel responded as follows:

Mr. Moody wants to contest guilt innocence in this case, and he perceives that we are not contesting that based on the questions we are asking the jurors. And, quite frankly, he’s exactly right in that regard. He just simply disagrees with it.

Vol. 41, T. 452. After counsel and Moody provided a list of issues that Moody wanted to contest in the guilt phase of the trial, the trial court dismissed Moody’s ideas as “just nonsense, just nonsense.” Vol. 41, T. 459. The trial court stated that Moody was only trying to delay the trial, and that his only reason for trying to

discharge counsel was over disagreements “about what to do with the case.” Vol. 41, T. 460. The trial court abruptly concluded the hearing.

2. The Court Conducts a *Faretta* Hearing and Denies Moody’s Request to Represent Himself.

A few days later, the court observed that, based on “prior ex parte hearings that we’ve had [and] the discussions regarding the representation of Mr. Moody,” it was necessary to hold a *Faretta* hearing.² Vol. 24, T. 2678. Counsel explained that Moody had two primary complaints, one of which centered on his conditions at the jail. The second complaint was that Moody had “disagreements” with counsel’s “trial strategy.” Vol. 24, T. 2680-81.

After providing a brief history of the court’s interactions with Moody during the pretrial proceedings, the court conducted its *Faretta* inquiry. Vol. 24, T. 2688. During the colloquy, Moody explained that he had “tried to discuss with [his] defense [counsel] on numerous occasions that - which direction [he] was trying to go in. They basically told me, no, we’re going in this direction and you have no - you have no say-so.” Vol. 24, T. 2690. The court subsequently questioned Moody regarding the risks and dangers of proceeding without representation. Vol. 24, T. 2693-2703. Of particular note, the court asked Moody if he understood that his lawyers would be much better positioned to argue to the jury that, “Moody may have been found guilty of doing something terrible, but his life is worth saving because of these reasons.” Vol. 24, T. 2700. Moody responded that this was the

² *Faretta v. California*, 422 U.S. 806 (1975) (governing a defendant’s constitutional right to self-representation).

precise “conflict” he had with counsel: “If I’m found guilty, I don’t want to live.” Vol. 24, T. 2700. At the conclusion of the colloquy, Moody reiterated why he wanted to represent himself:

I strongly feel that in situations so serious as this that the only way I can get the defense that I’m looking for is to do it myself, and I’ve sincerely tried to express the type of defense that I was interested in, tried to give my insight, tried everything possible and it’s just - it’s not happening. It’s breaking down some.

Vol. 24, T. 2719. The trial court denied Moody’s request to represent himself. Vol. 24, T. 2722-23. In response, Moody stated that he “no longer wish[ed] to participate in this” and would “rather burn in [his] cell again than continue on like this.” Vol. 24, T. 2723, 2725.

3. After the Trial Court Rules that Counsel Can Concede Guilt Over Moody’s Objection, Moody Suddenly Enters a Guilty Plea.

Moody pressed his disagreement with counsel’s objective of the defense again during the next court appearance. As jury selection neared its conclusion, counsel said that Moody wanted to “readdress the *Faretta* issue briefly.” Vol. 25, T. 2732. Additionally, counsel informed the court that there remained “a disagreement amongst the defense team and Moody concerning the appropriate strategy to pursue in this case.” Vol. 25, T. 2732. Counsel explained the disagreement as follows:

Your Honor, Mr. Moody has expressed to us this morning that he would prefer to pursue a not guilty by reason of insanity defense or a defense of simply not guilty. The defense team believes that the more appropriate strategy is to pursue a strategy that basically embraces the notion of guilty but mentally ill. That is the strategy that we are prepared to present and that Moody disagrees with.

Vol. 25, T. 2733. In other words, Moody’s objective at trial was to pursue a theory of non-guilt, but his lawyers’ objective was to pursue a theory of guilt. Counsel contended that, in their view, this was “a strategy decision reserved for the lawyers,” whereas Moody “believe[d] it is a decision that he has a fundamental right to make.” Vol. 25, T. 2732.³ Counsel then asked the court to decide whether this was “a strategy decision or is it one of those critical decisions that the Constitution mandates that the defendant make even if his lawyers disagree with it.” Vol. 25, T. 2733.

The trial court agreed with counsel, finding that Moody was not entitled to make this decision about the objective of his defense. As the court explained, it “made a decision that Mr. Moody will continue to be represented by counsel So, therefore, strategy decisions are appropriately given to his attorneys.” Vol. 25, T. 2734; *see also* Vol. 25, T. 2735 (“[S]trategy decisions are appropriately invested in counsel.”). Through counsel, Moody reiterated his disagreement with the court’s ruling and with the chosen defense, stating that he “strongly believes that [counsel] are pursuing a strategy that he disagrees with,” and that counsel were “obligated to pursue the strategy that [Moody] believes is the most appropriate.” Vol. 25, T. 2736.

The trial began immediately after the court’s ruling reiterating that Moody would be required to accept the representation of counsel who were planning to admit his guilt, despite Moody’s express objective to pursue a defense of non-guilt. After the trial court issued its preliminary instructions to the jury, the prosecution

³ The prosecution agreed that this was a strategy decision for counsel to make. Vol. 25, T. 2733-34.

presented its opening statement. Vol. 25, T. 2758-72. The court briefly returned to Moody's disagreement with counsel during a break following the prosecution's opening statement, reiterating that Moody was not entitled to determine the objective of his defense. Moody's counsel agreed with the court, and explained why they were pursuing an objective that Moody opposed:

Our position simply is that as opposed to, for example, the right to enter a guilty plea as opposed to which strategy to use in terms of what verdict is the best, we believe that we are deciding and what we are deciding in opposition to what Mr. Moody wants is a strategy decision. It is not a decision that goes to the fundamental aspect or the process of the trial. It's not an area of the case where due process guarantees him the right to make the decision, and that's why we're proceeding accordingly.

Vol. 25, T. 2775.

The jury returned and defense counsel rose to begin his opening statement. Before he could begin, however, he suddenly asked for a brief continuance "to raise one more issue with the Court outside the presence of the jury." Vol. 25, T. 2776. After a few minutes, counsel announced that Moody intended to forego his trial—at which his counsel was about to admit Moody's guilt—and instead would enter a guilty plea to all charges. Vol. 25, T. 2776.

During the ensuing plea colloquy, the court reacted to Moody's decision to suddenly enter a guilty plea: "We are literally starting the trial of your case as far as the guilt innocence phase is concerned, and I observed while we were doing that that just before [counsel] was about to get up to deliver the opening statement in that part of your case that you wanted to speak with him . . ." Vol. 25, T. 2794. Moody told the court that he changed his mind out of a desire to "resolve this issue

as quickly as possible.” Vol. 25, T. 2795. After finding that Moody’s plea was freely and voluntarily given, the court had the following exchange with Moody:

THE COURT: We have had a discussion otherwise in this case recently about your rights as they pertain to going forward with this case. The important question I have for you is, despite the fact that I have made a ruling about your representation, are you still pleading guilty understanding where we go from here because that’s what you want to do and not because of the ruling I made? In other words, am I forcing - do you feel like I’m forcing you into pleading guilty because of the ruling I made or are you pleading guilty because you think it’s the best thing for you to do?

MOODY: I feel it is the best thing to do *at this time*.

Vol. 25, T. 2797 (emphasis added). In sum, when Moody believed that he could go to trial and contest guilt, he wanted to go to trial. But when the court told Moody that if he went to trial, his lawyers would admit his guilt, resulting in a guilty plea by proxy, Moody suddenly changed his plea to guilty.

At an ex parte conference after the guilty plea, the trial court asked Moody if he had any concerns regarding his attorneys. Moody responded, “[i]t doesn’t really matter anymore, Your Honor.” Vol. 41, T. 506. The trial court told Moody that it did matter because counsel was trying to save Moody’s life. Vol. 41, T. 506-07. Moody disagreed: “In my eyes it’s over with. So it’s over with, Your Honor. It’s over with.” Vol. 41, T. 507.

C. Penalty Phase Proceedings

The penalty phase began approximately one week later and spanned five days. The jury's sentencing deliberations occurred over two days. Before the jury returned its verdict, Moody moved to withdraw the guilty plea based on his longstanding "complain[ts] about the defense strategy in this case." Vol. 29, T. 4006-07. The court denied the motion. Vol. 29, T. 4014. After the jury recommended a sentence of death, Vol. 29, T. 4018-20, the court immediately imposed that sentence, Vol. 29, T. 4028-30.

D. Post-Trial Proceedings

Counsel filed a timely motion for new trial, Vol. 13, R. 4951-53, and subsequently amended it three times, Vol. 13, R. 5013-16; Vol. 13, R. 5051-52; Vol. 14, R. 5128-57. During the pendency of those pleadings, this Court issued its decision in *McCoy v. Louisiana*, 138 S. Ct. 1500 (2018). In *McCoy*, the Court held that "it is the defendant's prerogative to decide on the objective of his defense." *Id.* at 1505. As the Court explained, the Sixth Amendment guarantees to each defendant the "[a]utonomy to decide that the objective of the defense is to assert innocence" *Id.* at 1508. Thus, "counsel may not admit her client's guilt of a charged crime over the client's intransigent objection to that admission." *Id.* at 1510.

Moody amended his motion for new trial to include a claim under *McCoy*, but the trial court denied the motion. Vol. 14, R. 5173-81.

E. Appellate Proceedings.

On appeal, Moody argued that the trial court's ruling regarding the objective of Moody's defense violated this Court's decision in *McCoy*. Moody also contended that the trial court's ruling regarding his request to discharge counsel violated *Faretta v. California*, 422 U.S. 806 (1975). Finally, as relevant here, Moody argued that his guilty plea was constitutionally invalid because the trial court's rulings deprived Moody of his constitutional right "to make his own choices about the proper way to protect his own liberty." *Weaver v. Massachusetts*, 582 U.S. 286, 295 (2017); *see also McCoy*, 138 S. Ct. at 1511 ("[T]he violation of [Moody's] protected autonomy right was complete when the court allowed counsel to usurp control of an issue within [Moody's] sole prerogative.").

The Georgia Supreme Court rejected Moody's claims and affirmed his conviction and death sentence. In particular, the court held that Moody's guilty plea was valid and that as a result, "Moody waived any argument regarding his right to self-representation at the guilt/innocence phase." App. 9a. In reaching this conclusion, the court noted the "split" among the "federal appellate courts" to have decided the question of whether a guilty plea waives a *Faretta* challenge on appeal. App. 10a. Confronted with the split, the court concluded that by pleading guilty Moody "waived all such claims arising from alleged errors preceding his guilty plea." App. 11a.

The court reached a similar conclusion regarding Moody's *McCoy* claim, holding that the "trial court's challenged ruling . . . has been waived by virtue of his guilty plea." App. 11a. The court explained that "a valid guilty plea relinquishes

any claim that would contradict the ‘admissions necessarily made upon entry of a voluntary plea of guilty,’” App. 12a (quoting *Class v. United States*, 138 S. Ct. 798, 805 (2018)), and found that a *McCoy* claim falls within that category of claims that are waived upon entry of a voluntary guilty plea, App. 12a. The court also declined to reach the merits of Moody’s claim, “express[ing] no view on whether the trial court was correct” to conclude that counsel could determine the objective of the defense. App. 34a n.12.

REASONS FOR GRANTING THE WRIT

I. The Affirmative Denial of a Defendant’s Autonomy-Based Rights Can Render a Guilty Plea Involuntary.

This Court has held that a guilty plea “bars appeal of many claims,” even those that are of constitutional dimension. *Class v. United States*, 138 S. Ct. 798, 803 (2018). As this Court has recognized, “a guilty plea represents a break in the chain of events which has preceded it in the criminal process.” *Tollett v. Henderson*, 411 U.S. 258, 267 (1973). As a result, when a defendant pleads guilty to the charges alleged, he is ordinarily prevented from “rais[ing] independent claims relating to the deprivation of constitutional rights that occurred prior to the entry of the guilty plea.” *Id.*

But there are exceptions to this general rule. As the Court has noted, a guilty plea does not “‘inevitably waive’ all antecedent [i.e., pre-plea] constitutional violations.” *Menna v. New York*, 423 U.S. 61, 62 n.2 (1975); accord *Blackledge v. Perry*, 417 U.S. 21, 30-31 (1974). Thus, a defendant who pleads guilty is not barred from raising “a claim that—judged on its face—the charge is one which the State

may not constitutionally prosecute.” *Menna*, 423 U.S. at 63; *see also Blackledge*, 417 U.S. at 30-31 (permitting a defendant to raise a claim of vindictive prosecution because “[t]he very initiation of the proceedings” against Perry “operated to deprive him due process of law”). Similarly, a guilty plea does not inherently waive a claim “challenging the constitutionality of the statute of conviction on appeal.” *Class*, 138 S. Ct. at 803.

This Court has also recognized an exception for claims “attack[ing] the voluntary and intelligent character of the guilty plea” *Tollett*, 411 U.S. at 267; *see also McMann v. Richardson*, 397 U.S. 759, 770-71 (1970) (holding that a defendant can challenge his guilty plea on the ground that his attorney rendered ineffective assistance). Claims implicating a defendant’s autonomy belong in the narrow categories recognized by *Tollett* and *Blackledge*. When a defendant has been deprived of his right to represent himself, and then is affirmatively denied the right to insist on his innocence at trial, the guilty plea that follows from those denials violates “the fundamental legal principle that a defendant must be allowed to make his own choices about the proper way to protect his own liberty.” *Weaver*, 582 U.S. at 295; *see also McCoy*, 138 S. Ct. at 1511 (“[T]he violation of [Moody’s] protected autonomy right was complete when the court allowed counsel to usurp control of an issue within [Moody’s] sole prerogative.”). In such a case as this one, the trial is a formality—it is effectively a guilty plea despite the client’s insistence on not pleading guilty. Under these circumstances, the guilty verdict—by plea or by trial—

violates due process. Pursuant to *Tollett*, *Blackledge*, and *McCoy*, the outcome is unconstitutional.

In these rare instances where a defendant is affirmatively denied the right to control his own defense, like here, he should not be forced to endure a trial at which he is “effectively forced to relinquish this right to make his defense.” Brief for the Cato Institute as Amicus Curiae, p.23, *McCoy v. Louisiana*, 138 S. Ct. 1500 (2018). As recognized by the Cato Institute as amicus in *McCoy*, a “decision” to plead guilty before one’s attorney admits guilt at trial is no “decision” at all. As such, Moody’s guilty plea did not break the chain of events so as to waive the constitutional violations in his case.

II. Lower Courts Are Divided on the Question of Whether a Guilty Plea Waives Claims Regarding a Defendant’s Autonomy.

As the Georgia Supreme Court observed in its opinion, there is a split among the lower courts on whether a guilty plea inherently waives claims implicating a defendant’s autonomy. *See* App. 10a; *see also United States v. Williams*, 29 F.4th 1306, 1314 (11th Cir. 2022) (acknowledging “the circuit split on the question of whether a defendant’s *Faretta* right to self-representation automatically renders a guilty plea involuntary”).

The Ninth Circuit has concluded that a defendant who pleads guilty may nevertheless appeal the denial of his request to represent himself. *See United States v. Hernandez*, 203 F.3d 614, 626-27 (9th Cir. 2000). In *Hernandez*, the court reasoned that “the district court’s refusal to allow Hernandez to exercise his right of self-representation forced him to choose between pleading guilty and submitting to

a trial *the very structure* of which would be unconstitutional.” *Id.* at 626. Under those circumstances, the defendant’s “decision to plead guilty is not voluntary, for in that case, he has not been offered the lawful alternatives—the free choice—the Constitution requires.” *Id.* at 627.

Other circuits have disagreed with the Ninth Circuit’s approach. For example, in *United States v. Dewberry*, 936 F.3d 803 (8th Cir. 2019), the Eighth Circuit concluded that the denial of one’s right to self-representation is a “‘case-related constitutional defect’” made “‘irrelevant to the constitutional validity of the conviction’ by a later guilty plea” *Dewberry*, 936 F.3d at 807 (quoting *Class*, 138 S. Ct. at 804-05). Other courts have agreed with the Eighth Circuit’s approach. See *United States v. Moussaoui*, 591 F.3d 263, 279-80 (4th Cir. 2010); *Gomez v. Berge*, 434 F.3d 940, 943 (7th Cir. 2006); *United States v. Montgomery*, 529 F.2d 1404, 1407 (10th Cir. 1976).

Specific to this case, the court below observed that whether “a defendant allegedly denied his right to self-representation at the guilt/innocence phase has, by virtue of his guilty plea, waived a *Faretta* challenge on appeal is a question of first impression in this Court, and the United States Supreme Court has not spoken directly on the issue.” App. 10a; *accord Williams*, 29 F.4th at 1314.

III. The Trial Court Violated Moody’s Fundamental Right to Control the Objective of His Defense, Rendering the Resulting Guilty Plea Involuntary.

The Georgia Supreme Court’s decision is incorrect on a fundamental question of federal constitutional law. In *McCoy*, this Court held that the “[a]utonomy to

decide that the objective of the defense is to assert innocence belongs in” the category of decisions “reserved for the client.” *McCoy*, 138 S. Ct. at 1508. Even when counsel’s experience leads him to believe that conceding guilt offers a better chance of saving the client’s life, “the client may not share that objective.” *Id.* As the Court explained, “[t]hese are not strategic choices about how best to *achieve* a client’s objectives; they are choices about what the client’s objectives in fact *are*.” *Id.* (emphasis in original) (citing *Weaver*, 582 U.S. at 295, and *Martinez v. Court of Appeal of Cal., Fourth Appellate Dist.*, 528 U.S. 152, 165 (2000) (Scalia, J., concurring in judgment)).

This Court’s analysis in *McCoy* applies squarely to this case. After Moody repeatedly voiced disagreement with counsel’s decision to concede guilt, the trial court instructed counsel to confer with Moody about the benefits of that defense and the risks of pursuing Moody’s objective of contesting his guilt. Vol. 24, T. 2679-80. Even after those consultations, however, Moody maintained his desire to contest his guilt. Vol. 25, T. 2732. Indeed, just like the defendant in *McCoy*, Moody even tried to terminate his representation so that he could present his desired defense. *McCoy*, 138 S. Ct. at 1506; Vol. 24, T. 2719. And just like in *McCoy*, the trial court denied Moody’s effort to represent himself and then required him to defer to counsel’s chosen objective. *McCoy*, 138 S. Ct. at 1506; Vol. 24, T. 2722-23.

The parallels to *McCoy* are indisputable. Over the course of six months and nearly a dozen hearings, counsel and Moody informed the trial court that there were “fundamental disagreements” regarding the objective of Moody’s defense:

MOODY:	“Because like I have my theory of innocence and they have their theory, and it’s like they just don’t want to hear my theory. It’s not - you know, they just want to go with what they have said it is.” Vol. 41, T. 313
COUNSEL:	“Moody wants to contest guilt innocence in this case, and he perceives that we are not contesting that based on the questions we are asking the jurors. And, quite frankly, he’s exactly right in that regard. He just simply disagrees with it.” Vol. 41, T. 452.
COUNSEL:	“Your Honor, Moody has expressed to us this morning that he would prefer to pursue a not guilty by reason of insanity defense or a defense of simply not guilty. The defense team believes that the more appropriate strategy is to pursue a strategy that basically embraces the notion of guilty but mentally ill. That is the strategy that we are prepared to present and that Moody disagrees with.” Vol. 25, T. 2733.
COUNSEL:	“Our position simply is that as opposed to, for example, the right to enter a guilty plea as opposed to which strategy to use in terms of what verdict is the best, we believe that we are deciding and what we are deciding in opposition to what Moody wants is a strategy decision.” Vol. 25, T. 2775.

After counsel and Moody were unable to resolve the conflict, counsel asked the trial court to decide whether this was “a strategy decision or is one of those critical decisions that the Constitution mandates that the defendant make even if the lawyers disagree with it.” Vol. 25, T. 2733. The trial court concluded that this was a “strategy decision[] appropriately given to [the] attorneys.” Vol. 25, T. 2734.

McCoy firmly establishes that the trial court’s ruling was incorrect as a matter of law. Once Moody communicated his objections “to court and counsel . . . a concession of guilt should have been off the table.” *McCoy*, 138 S. Ct. at 1512. Instead, it was compelled. As a result of the trial court’s ruling, Moody was denied

his constitutional right to a trial at which he contested his guilt; the only “choice” Moody had was whether to concede guilt or watch his counsel concede guilt. *McCoy* held that it is unconstitutional to place Moody in that predicament. *See McCoy*, 138 S. Ct. at 1511 (holding that the violation of the defendant’s “protected autonomy right was complete when the court allowed counsel to usurp control of an issue within [the defendant’s] sole prerogative”).

Contrary to the decision below, it is impossible to separate the *McCoy/Faretta* errors from Moody’s guilty plea. For months, Moody implored counsel and the court to permit him to present a defense of non-guilt. He was explicit about his intention with the court, even going so far as to seek permission to represent himself—not because he felt trained in the law, but because he believed it was the only way to contest his guilt and determine the objective of his defense. But the court denied him his right to self-representation, and then it denied him the right to choose the objective of his defense. It was only after the trial court finally ruled on how the defense could proceed that Moody entered his guilty plea—a decision he entered as counsel was standing up to concede Moody’s guilt to the jury anyway.

In Moody’s case, the *McCoy* and *Faretta* violations did not merely “affect the framework within which the trial proceed[ed]”—they affected whether a trial would proceed at all. *McCoy*, 138 S. Ct. at 1511 (citation omitted). Moody was *explicitly denied* his constitutional right to choose the objective of his defense. Moreover, the denial of that constitutional right had a cascading effect on the remaining

constitutional rights that Moody would have enjoyed if he had insisted on a trial.

For example, the rights that Moody purportedly waived include the following:

- “the right to a trial by jury”—but only a trial in which his counsel would concede Moody’s guilt;
- “the right to confront witnesses against [him]”—but only via questioning that would support counsel’s defense that Moody was guilty;
- “the right to assistance of counsel”—but only counsel who would concede Moody’s guilt to the jury;
- “the right to the presumption of innocence”—but only with the understanding that this right would dissipate with counsel’s admission of guilt, beginning with the opening statement;
- “the right to testify on [his] own behalf”—but only after counsel had conceded guilt to the jury;
- “the right to subpoena witnesses and compel the production of evidence”—but only in support of counsel’s defense that Moody was guilty; and
- “the right to have the charges against [him] proved beyond a reasonable doubt”—but only after counsel had conceded guilt to the jury.

Vol. 25, T. 2787-88. Thus, this was not a scenario in which a trial would have provided a vehicle to “cure” the “case-related constitutional defects.” *Class*, 138 S.

Ct. at 804-05. This was necessarily a guilty plea—either by Moody or by his lawyers—over Moody’s repeated express objection.⁴

⁴ See Brief for the Cato Institute as Amicus Curiae, p. 15, *McCoy v. Louisiana*, 138 S. Ct. 1500 (2018) (“The rest of a defendant’s constitutional rights are hollow and feeble if he lacks authority to muster them toward their ultimate aim - putting the state to its burden of proving guilt beyond a reasonable doubt . . .”).

IV. This Case Is an Appropriate Vehicle for Resolving the Questions Presented.

There are no impediments to this Court’s review. App. 5a (“Because Moody’s guilty plea – if valid – would waive several of his claims, we first address his challenges to that plea.”). The constitutional violations in this case are unique in their clarity. No further factual development is necessary to resolve the *Faretta* claim, because the trial court denied Moody’s request to represent himself after conducting a colloquy on the record. Similarly, the disagreement over the objective of Moody’s defense was clear, sustained, and explicit: Moody wanted to present a defense of non-guilt, but his counsel wanted to concede guilt. The trial court was aware of the disagreement and was specifically asked to resolve it. The trial court ruled that the decision rested with counsel, not Moody. That ruling cannot survive *McCoy*.

CONCLUSION

Petitioner Jeremy Moody respectfully requests that this Court grant certiorari and reverse the judgment of the Georgia Supreme Court.

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