No. 23-5857

In the

Supreme Court of the United States

Jeremy Moody,

Petitioner,

v.

State of Georgia,

Respondent.

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

BRIEF IN OPPOSITION

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QUESTION PRESENTED

1. Whether the Georgia Supreme Court correctly applied this Court's precedent in determining that Moody's antecedent constitutional claims, that did not concern the state's power bring the petitioner to court, were waived on direct review by virtue of Moody's valid guilty plea.

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The decision of the Georgia Supreme Court in the criminal direct appeal is published at 316 Ga. 490, 888 S.E.2d 109 (2023) and is included in Petitioner's Appendix.

CONSTITUTIONAL PROVISIONS INVOLVED

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."

INTRODUCTION

After the State laid out the evidence of Petitioner Jeremy Moody's guilt in opening remarks at the beginning of the guilt phase of trial, Moody chose to plead guilty. When asked by the trial court during the plea colloquy if he wanted to plead guilty, Moody responded, "I just feel it would be more appropriate for the families involved in this not to have to go through trial procedure." Vol. 25, T. 2794. When asked if he was pleading guilty voluntarily, Moody answered in the affirmative. Pet. App. 8a. And when asked by the trial court if Moody felt he was "forc[ed]" to plead guilty by the trial court's denial of his request for self-representation or because Moody felt

"it's the best thing" to do, Moody responded, "I feel it is the best thing for me do at this time." Pet. App. 6a.

Largely ignoring his guilty plea statements, and with a dash of unsupported revision, Moody asks this Court to grant certiorari to create new law regarding which antecedent constitutional claims are waived with a valid guilty plea. Relying mostly on an outlier opinion from the Ninth Circuit Court of Appeals, Moody argues that his claims challenging the trial court's denial of his request to control strategy decisions and to represent himself were not waived on appeal by his guilty plea. In a somewhat circular fashion, Moody argues that his guilty plea is invalid because of the trial court's denials.

This Court should deny certiorari. To start, the validity of his guilty plea is a heavily fact-bound one, that was answered in the affirmative after a full record review by the Georgia Supreme Court and not refuted by Moody. Pet. App. 5a-9a. As for Moody's arguments that his antecedent constitutional claims were not waived by his guilty plea, the Georgia Supreme Court rightly rejected the arguments as they were inconsistent this Court's long-standing precedent that exceptions to waiver only concern antecedent constitutional claims that "[go] to the very power of the State to bring the defendant into court." *Blackledge v. Perry*, 417 U.S. 21, 30 (1974). Since Moody's antecedent constitutional claims would not preclude the State from bringing the charges filed against Moody, the state court correctly determined this exception did not apply and his claims were waived for direct review. Further, Moody's attempt to create a due process violation from the trial court's finding that trial counsel, not Moody, was in charge of trial strategy was not raised in the

court below and is not before this Court for review. Therefore, Moody has failed to present a claim worthy of this Court's review and his petition should be denied.

STATEMENT

Petitioner Jeremy Moody was indicted in 2007 for the "rape and murder of 13-year-old Chrisondra Kimble and the murder of Kimble's 15-year-old cousin, Delarlonva Mattox, Jr.," and for two counts of aggravated assault, two counts of aggravated assault with intent to rob, and two counts of kidnapping with bodily injury. Vol. 1, R. 4-9.[1] On April 10, 2013, Moody pled guilty as charged in the indictment. Vol. 22, T. 2740-72, 2777-800 (plea colloquy); Vol. 31, T. 5225-29 (guilty plea form). "At the conclusion of the sentencing phase, a jury found the existence of multiple statutory aggravating circumstances as to each murder and recommended a sentence of death for each murder, and the trial court sentenced Moody accordingly." Pet. App. 2a.[2]

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[1] "Vol. __, R. __" refers to the Georgia Supreme Court's online docket volume and page number(s) of the clerk's record.

"Vol. __, T. __" refers to the Georgia Supreme Court's online docket volume and page number(s) of the trial transcript.

"Supp. Vol. __, T. __" refers to the Georgia Supreme Court's online docket volume and page number(s) of the supplement trial transcript from William Felt's trial.

[2] Moody was also sentenced "to consecutive terms of imprisonment of twenty years for each of the two counts of aggravated assault with intent to rob, life for each of the two counts of kidnapping with bodily injury, and life for the count of rape." Pet. App. 32 n.2.

A. Facts of the Crimes

On April 5, 2007, Chrisondra Kimble and Delarlonva Mattox, Jr., left Mattox's father's residence between 4:00 and 4:30 p.m. and walked to a Dollar Tree to purchase snacks. Vol. 25, T. 2883-84, 2461–62 2946-50. They never returned home.

Kimble's and Mattox's families contacted law enforcement and conducted a search. Vol. 25, T. 2885-87, 2950-54, 2966-73. On the afternoon of April 6, 2007, Kimble's mother located the victims' bodies in a wooded area near a school playground. *Id.* at 2887, 2954-55, 2962, 2982; Vol. 26, T. 3071-72. Both victims were naked, and Mattox had a leather belt tied around his ankles. Vol. 25, T. 2984-93; Vol. 27, T. 3473-74. Both had been stabbed multiple times; the wounds "were consistent with being caused by a flat-headed screwdriver." Pet. App. 3a.

According to the medical examiner, Kimble was stabbed thirteen times in her neck and three times in her head. Pet. App. 3a. Although the stabbing was the primary cause of death, she also suffered blunt trauma to the neck and petechial hemorrhages in her eyes, consistent with manual strangulation. Vol. 27, T. 3358, 3362-64. Scratches on her face suggested she was forcibly held to the ground in a wooded area, and bruising in and around her vagina indicated that she was raped. *Id.* at 3358, 3365-69. "The medical examiner opined that the stab wounds and the injuries to the vaginal area most likely occurred before Kimble's death and that Kimble could have survived for 'minutes' or for 'hours' after the stab wounds, although she would not have survived 'very long following the strangulation." Pet. App. 3a.

The forensic testing of the vaginal smears from Kimble revealed the presence of Moody's DNA. Vol. 25, T. 2939.

Mattox was likewise killed by "stab wounds to the head, neck, and chest." Pet. App. 3a. "[H]e had approximately 41 stab wounds in total." *Id.* Some of the stab wounds to Mattox's head went through the skull and penetrated his brain, which "would have required a significant amount of force to inflict" and would have been "very painful." *Id.* "[T]he injuries to his neck would have been 'quite painful' and would have resulted in 'significant bleeding,' as his left carotid artery and both of his jugular veins were pierced." *Id.* The stabs to his chest penetrated his chest cavity, damaged the cephalic brachial vein, and caused blood to pool in his chest. Vol. 27, T. 3379-81. "[I]t would have taken 'several minutes to an hour or so' for Mattox to bleed to death." Pet. App. 3a.

The day after the victims' bodies were found, "law enforcement officials received a telephone call from Moody's ex-girlfriend, Tameka Wright, who identified Moody as a suspect" and informed them that Moody might be attempting to leave town on a Greyhound bus. Pet. App. 3a; Vol. 25, T. 3000-01, 3019-20; Vol. 26, T. 3105-07. "Moody was arrested at the bus station with paperwork in his possession regarding trips to Orlando and Houston." Pet. App. 3a. On the way to the police station, when the officers would not tell him the reason for his arrest, Moody stated that he watched the news and "[y]ou're not going to put those kids on me." *Id.* at 3002-03.

Wright gave a statement to law enforcement, which she testified about at trial. Vol. 25, T. 3020-23; State's Exhibit 11-11A. According to Wright's

statement, "Moody called her at 5:21 p.m. on the day of the murders and said that he was going to commit a robbery." Pet. App. 3a. Later that night, Moody informed Wright that he killed two drug dealers who he believed had a gun and left their bodies in the woods by his mother's house. Vol. 25, T. 3028-3033. Moody described the victims as young and scared. *Id.* at 3032-33. Moody also stated "that he undressed the victims because he did not want any evidence, such as hairs or fibers, to be found on them." Pet. App. 4a. Moody also told Wright that he wanted to return to the scene to move the bodies so they would not be located. Vol. 25, T. 3032-33. Moody expressed concern that the victims' bodies would start to smell but stated that they probably would not smell because it was still cold outside. *Id.* at 3033. Moody further stated that he wished it would rain. *Id.* In response, Wright told him to not move the victims' bodies. *Id.* at 3032-33.

"[O]n the night of April 6, 2007, Moody called [Wright] to inform her that, according to news reports, the victims' bodies had been discovered." Pet. App. 4a. Wright confronted Moody after learning on the news that the victims were two children and not drug dealers. Vol. 25, T. 3036-37; Vol. 26, T. 3050-51. In response, Moody stated the victims meant nothing to him and that they appeared to be adults, as they were larger than him. *Id.* Moody never "expressed remorse" for murdering the victims and denied raping the victims. Pet. App. 4a.

In further support of the death penalty, the "State presented extensive non-statutory aggravating evidence regarding Moody's violent behavior both prior to the murders and during his pretrial detention." Pet. App. 4a. "The

State introduced evidence of Moody's certified convictions for simple battery, for simple battery involving family violence, and for obstruction of an officer that resulted from an incident in which Moody attacked his girlfriend at the time and a person who came to her defense." *Id.* Additionally, the State presented evidence that Moody had harassed a former girlfriend and threatened to kill her, her family, and her co-workers. *Id.* Moody also beat "Wright's five-to-six-year-old daughter with a belt" and strangled and threatened another female friend after "she thwarted his plans to have sex with her." *Id.*

During his incarceration awaiting trial, the State presented evidence that Moody

> had been violent with jail personnel many times, including attacking a guard with a shank; he had made numerous verbal and written threats to kill specific jail personnel, including a law librarian and a detention officer; he had been found in possession of contraband, including a shank, pills, and cellphones, both in his cell and on his person; he had been involved in numerous incidents in which the jail's special team for dealing with dangerous inmates had to intervene, and he had tried to intimidate new officers on this team by throwing water or feces on them and spitting at them; and he had abused the nurses at the jail in numerous ways, including making derogatory sexual comments to them, throwing various liquids such as a mixture of urine and sour milk at them, spitting at and kicking one of them, and exposing himself to one of them.

Pet. App. 4a.

B. Pre-Trial Proceedings

1. Ex Parte Hearings. Five years passed between Moody's indictment in April of 2007 and of his trial in April of 2013. Pet. App. 32a n.2. Roughly five

months before jury selection, Moody "express[ed] to the trial court that he was dissatisfied with his counsel and that he wanted to represent himself" but gave no specifics. *Id.* at 33a n.7. Then, during several ex parte hearings that began the month before jury selection and occurred throughout voir dire, "Moody vacillated as to whether his frustrations were with his attorneys or with the conditions of his incarceration and as to whether he truly desired to represent himself at trial." *Id.* He also alternated his position on whether trial counsel should present evidence of his mental illness. At one point he disagreed with this strategy and then after meeting with counsel agreed to the strategy. Vol. 41, T. 407-08. Additionally, during this time, Moody refused to take his psychiatric medication and reopened wounds on his body which delayed the on-going voir dire proceedings. Vol. 20, T. 1331-32; Vol. 41, T. 370-72, 376-81. Moody admitted during one ex parte hearing that his request to represent himself had been "triggered" by his "mental health issues." Vol. 41, T. 473-74.

2. *Faretta* Hearing. Two days before the guilt phase of trial, the court held a *Faretta v. California*, 422 U.S. 806 (1975) hearing to address Moody's request to represent himself. Vol. 24, T. 2677. After going through the proper components of a *Faretta* hearing, the trial court denied Moody's request. *Id.* at 2677-724. The Court found Moody was "self-destructive" as evidenced in part by his setting himself on fire resulting in "significant burns over a large part of his body" and that "he continued to harm himself." *Id.* at 2721. The court also found that Moody's alternating opinion about representing himself was further evidence of his "self-destructive behavior" and an attempt "to

[a]ffect his situation at the jail." *Id.* The court was clear it was not being "critical" of Moody for his actions. *Id.* at 2722. Moreover, the court took into consideration Moody's "psychiatric history," "psychiatric evaluations," and the court's "personal observations" of Moody. *Id.* Finally, the court found that, because his request was motivated by "self-destructive behavior" and his desire to secure "better treatment at the jail" rather than a genuine concern "about the outcome of [his] case," his decision to proceed without counsel could not be knowing and intelligent. *Id.* at 2722-23.

C. Trial

1. Prior to Guilty Plea. On the first day of the guilt phase of trial, Moody's counsel informed the court that he wanted to address the *Faretta* hearing and a "disagreement amongst the defense team and Mr. Moody concerning the appropriate strategy to pursue in this case." Vol. 25, T. 2732. Regarding the strategy problem, counsel informed the court:

> 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 Mr. Moody disagrees with.

Id. at 2733.

The court then made the following finding:

> Well, Mr. Morrison, I have, based on our hearing on day before yesterday, I've made a determination about Mr. Moody's representation. We went through an extensive *Faretta* hearing based on the case law and upon the facts as I found them to be. I have made a decision that Mr. Moody will continue to be

> represented by counsel based upon my finding that he had not made a knowing and intelligent waiver of his right to be represented by counsel. So, therefore, strategy decisions are appropriately given to his attorneys.

Vol. 25, T. 2734-735.

The court then asked Moody "[s]o has what Mr. Morrison described to me an accurate description of the disagreement that you have with them?" Vol. 25, T. 2735. Moody responded: "Not completely, your honor." *Id.* The court asked Moody to speak with counsel to "flesh out what the additional nuances of that disagreement are." *Id.* After consultation, counsel for Moody informed the court:

> Mr. Moody did want me to reiterate to you that he strongly believes that we are pursuing a strategy that he disagrees with. He believes that under the bar rules that we are ethically obligated to pursue the strategy that he believes is the most appropriate.
>
> Second, Mr. Moody wanted me to inform the court that he had not been administered any of his medications this morning, that he did not feel physically capable of being present during the trial, and that he wished to absent himself from the trial unless he is properly medicated.

Id. at 2736.

The court informed Moody that it would inquire about his medication issue. Vol. 25, T. 2736. The court also explained that the decision of whether to stay in the courtroom was Moody's but the court asked Moody not to absent himself just because he was upset with the court. *Id.* at 2736-37. Moody chose to stay in the courtroom.

2. Guilty Plea. After the trial court had sworn the jury, given preliminary instructions, and the State had delivered opening remarks,

Moody entered a guilty plea. Vol. 25, T. 2740-72, 2777-800 (plea colloquy); Vol. 31, T. 5225-29 (guilty plea form). After going through all the necessary components of a plea colloquy, which Moody does not dispute, the trial court "found that [Moody's] plea of guilty is freely, voluntarily, and knowingly entered." Vol. 25, T. 2800.

Specifically, "Moody testified under oath at the plea hearing that he was 35 years old, had completed his G.E.D., and was not then under the influence of alcohol, drugs, or medication." Pet. App. 4a. Moody acknowledged that he understood the charges brought against him; that "he was waiving the right to a jury trial" and other trial rights; and his initials and signature on the five-page guilty-plea form," which "he had discussed with both of his attorneys." *Id.* "This form set out the charges that Moody faced and the maximum sentence that could be imposed for each charge, including a sentence of death for each of the murders." *Id.*

"Both on the guilty plea form and during the hearing, Moody confirmed that no one had in any way 'threatened,' 'forced,' or 'coerced' him to plead guilty and that no one had 'promised [him] anything to get [him] to enter this guilty plea.'" Pet. App. 5a. When asked by the State whether it was Moody's "'decision to waive these rights and enter a guilty plea because you are, in fact, guilty' Moody testified '[y]es.'" Vol. 25, T. 2788. The State then went through each charge and Moody pleaded guilty to each one. *Id.* at 2788-89. "After pleading guilty, Moody affirmed that his guilty plea was freely and voluntarily given with full knowledge of the charges against him and that he

understood that he might have only a limited right to appeal his guilty-plea convictions." Pet. App. 5a.

Additionally, the trial court had the following colloquy with Moody about his reasons for pleading guilty:

> THE COURT: Okay. Are you pleading guilty now rather than going through with a trial as to the guilt innocence phase because that's what you want to do?
>
> THE DEFENDANT: *Yes, your honor. I just feel it would be more appropriate for the families involved in this not to have to go through trial procedure, and it's just, you know, just a decision I made, sir.*
>
> THE COURT: Okay. So as far as the reason why you're doing it, you believe it's in your best interest to go that way as opposed to putting the state and the families and other people through the trial of the facts as to the guilt and innocence. Is that what you're saying?
>
> THE DEFENDANT: *Yes, your honor, just to try to resolve this issue as quickly as possible, your honor.*
>
> THE COURT: Okay. And the important part for me -- because remember my job is to make sure that what you're doing is freely and voluntarily done. And is that true? *Are you doing that freely and voluntarily?*
>
> THE DEFENDANT: *Yes, your honor.*

Vol. 25, T. 2794-795 (emphasis added).

Moody affirmed twice more to the trial court that "that he was pleading guilty because he believed that it was in his best interest to do so:"

> THE COURT: Okay. And, again, are you [pleading guilty and foregoing a jury trial as to guilt/innocence] because you want to do it?

THE DEFENDANT: Yes, your honor.

THE COURT: As I understood what you said before, you're doing it because you believe that's the best thing for you?

THE DEFENDANT: Yes, your honor.

* * *

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 that ruling that 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*?

THE DEFENDANT: I feel it is the best thing to do at this time.

Pet. App. 6a (emphasis added).

3. Moody's Request to Withdraw Guilty Plea. The jurors retired for sentencing deliberations on April 23, 2013 at approximately 2:00 p.m. and continued until released that evening prior to reaching a decision. Vol. 28, T. 3984, 3991, 4000. The following morning, while the jurors were deliberating, Moody sought to withdraw his guilty plea. Vol. 29, T. 3517. Counsel for Moody explained that there were several reasons Moody wished to withdraw his guilty plea. At first, counsel stated that although Moody had not "exactly [stated] what his basis is" counsel "would contend that his basis is just general disagreement with the strategy of the defense and the way that the case was worked up, including such issues as whether or not he testified at his sentencing hearing, just other general matters." *Id.* at 4004. Counsel then sought input from Moody, and counsel reported the following issues from

Moody that prompted his request to withdraw his guilty plea: (1) a contention that "he never saw his discovery"; (2) the complaint that "he wanted to represent himself" and felt "he could have done a better job, he would have prepared the case differently, he would have presented it differently"; (3) an allegation that "he has been denied access to the law library"; (4) the "contention [] that his antidepressants, whether they be Wellbutrin or any other antidepressants prescribed at the jail, that those medications have not been provided to him in a medically reasonable manner and that they have affected his ability to basically participate in the trial"; and (5) the allegation that "was pressured into a *Faretta* hearing," which he thought "he was not prepared for." *Id.* at 4004-008.

The trial court took each of Moody's reasons in turn and found they were not a proper basis for withdrawing his guilty plea. First, the court addressed Moody's medication issue. The court stated that "the only medication that changed recently for Mr. Moody is that he was, in addition to other medications, given Wellbutrin because of his requests on several occasions for it." Vol. 29, T. 4009. The court explained that this occurred "only after we had a discussion with the physicians treating him that they essentially acquiesced to him receiving this medication as opposed to another medication that he was already receiving, [] in their words, equally if not more effective mood stabilization medications" in order to "placate" him. *Id.* Finally, the court found that Moody "has regularly refused various components of his medication over the last several weeks, several months, several years" which was evidence of "self-destructive behavior, behavior here at the courthouse

and at the jail designed to either draw attention or divert attention from something else, draw attention to himself or divert attention away from something else, i.e., this case and the movement of it." *Id.* at 4009-010.

In conjunction with the medication issue, the trial court also addressed Moody's allegation that his medication interfered with his ability to "participate in his trial." The court noted for the record that Moody had "consistent[] active participation …in his defense." Vol. 29, T. 4015. The court found Moody has "written notes, talked to, argued with, … his counsel… during the course of this proceeding" and the court was informed that Moody's suggestions "have been considered, incorporated, and actually used by defense counsel during the prosecution of this case from the defense's perspective." *Id.* at 4015-16.

Additionally, the court addressed Moody's contention that he was denied access to the law library. The court stated that "[i]f nothing else is clear from this record, both ex parte and in joint session conversations, it is that Mr. Moody's situation at the jail is almost exclusively a result of his own conduct." Vol. 29, T. 4012-13. This conduct, as found by the court, was illustrated in the law librarian's testimony that Moody "mistreated" her." *Id.* at 4013. The court found this "was an emblematic example of why Mr. Moody had forfeited his right to such things as being able to go to the law library on a regular basis or have the information brought to him." *Id.* The court went on to find that "[t]he constant threats to staff, the assaults on staff, the berating, the refusal to abide by all of the rules and regulations, all of those things have caused him to forfeit so many opportunities, including the ability

to safely have him interact with staff in a way that would permit him to do that." *Id.*

The court also addressed Moody's allegation that he was "forced" into a *Faretta* hearing, which the court found "could be nothing further from the truth." Vol. 29, T. 4010. The court explained that it "regularly spoke with Mr. Moody in the presence of opposing counsel and ex parte on several occasions" and "had regular, full free-ranging discussions about Mr. Moody's feelings about his attorneys." *Id.* The discussions, the court found, showed that Moody's feelings about his counsel "vacillated dramatically back and forth between trying to say something about his representation to change and otherwise affect his treatment at the jail to wanting to have them put off the case to he's happy basically with them, all back and forth." *Id.* All of this contributed to the court denying Moody's request to represent himself, which the court stood by. *Id.* The court concluded that "to say that [Moody] was forced into a *Faretta* hearing would be to utterly ignore all of the record evidence in this case." *Id.*

Additionally, the court found that the *Faretta* hearing had "nothing to do with the plea" and "there is a clear dividing line" at "the beginning of the trial and the opening statement of the State and Mr. Moody's clear, unequivocal, voluntary decision in the face of what he knew would be the evidence against him to plead guilty and accept responsibility." Vol. 29, T. 4013. The court stated there was "no question in my mind" that Moody's "plea of guilty was freely and voluntarily made at the time" and denied the request to withdraw the guilty plea. *Id.* at 4014.

The Court then addressed the guilty plea colloquy. The court took specific notice of the fact that Moody's decision to enter a plea occurred directly after the State had given its opening argument "chronicling [] the evidence that would have come out in this case in the guilt innocence phase had that gone forward." Vol. 29, T. 4011. The court found "[i]t was in the face of that very promise… of that evidence coming out that Mr. Moody made his decision to plead guilty," which was "not a unique experience in the court's experience as a lawyer or a judge that when faced with the reality of what the evidence against him was going to be a defendant pled guilty." *Id.* Additionally, the court found "to say that [Moody] was pressured into [pleading guilty] would not only be untrue, but it would also fly in the face of the very questions he was asked during the plea colloquy." *Id.* at 4011-012.

D. Direct Appeal

On appeal, Moody challenged his guilty plea, the trial court's denial of his request to represent himself at trial, and the trial court's alleged prevention of Moody "determining the objective of his defense in violation of the federal constitution" as held in *McCoy v. Louisiana*, 138 S. Ct. 1500 (2018). Pet. App. 5a-11a. The Georgia Supreme Court determined Moody's guilty plea passed review and that it "waived any argument regarding his right to self-representation at the guilt/innocence phase," which included his adjacent claim based on *McCoy*. *Id.*

As part of his attack on his guilty plea, Moody argued, "that his response to the trial court that he felt that pleading guilty was 'the best thing to do at this time' indicates that he believed that pleading guilty was 'the best

thing' for him to do given that, at that time, 'the [trial] court [had] told [him] that if he went to trial, his lawyers would admit his guilt[.]'" Pet. App. 8a. The Georgia Supreme Court rejected Moody's interpretation of the record. Instead, the Court determined that "[a]t no time did Moody state that his decision to plead guilty was the result of feeling coerced to do so by the trial court's rulings denying his request to represent himself and permitting trial counsel to pursue a strategy that he expressed opposition to" "even when the trial court explicitly asked him whether he felt that its 'ruling about [his] representation]' had 'forc[ed him] into pleading guilty.'" *Id.* Ultimately, the Court held that the record "amply support[ed] the trial court's findings that the plea was not coerced by the trial court's rulings denying Moody's request to represent himself and allowing trial counsel to determine the objective of the defense" and "that Moody's guilty plea was knowing and voluntary." *Id.* at 9a. Further, the Court "conclude[d] that the withdrawal of the guilty plea was not necessary to correct a manifest injustice." *Id.*

The Court then analyzed whether Moody's guilty plea waived his challenges to self-representation. The Court noted that "[u]nder both this Court's precedent and that of the United States Supreme Court, a valid guilty plea generally operates as a waiver of independent claims of constitutional error that occurred before the plea." Pet. App. 9a. However, "[w]hether this principle mean[t] that a defendant …waived a *Faretta* challenge on appeal [was] a question of first impression" for the Georgia Supreme Court and one this Court "has not spoken directly on." *Id.* at 10a.

Looking at the federal courts of appeals, the Georgia Supreme Court found that all but one of the courts that had answered this question determined a valid guilty plea waived a *Faretta* challenge. Pet. App. 10a. The court analyzed the outlier opinion, *United States v. Hernandez*, 203 F.3d 614 (9th Cir. 2000), and determined its reasoning was unpersuasive when compared to the opinions of the other circuits. In coming to this decision, the court relied on this Court's precedent that "'[a]n exception will only be made if the error goes to the very power of the State to bring the defendant into court'" because a "guilty plea represents a break in the chain of events which has preceded it in the criminal process.'" Pet. App. 9a (quoting *Tollet v. Henderson*, 411 U.S. 258, 267 (1973); *Moore v. State*, 285 Ga. 855, 858 (2009)). Thus, the court rejected Moody's arguments and held that his *Faretta* challenge and *McCoy* claim were waived.

REASONS FOR DENYING THE PETITION

Moody argues he is entitled to relief on the theory that his guilty plea was involuntary because the trial court denied his request to choose his defense strategy and his request for self-representation. *See* Pet. at 15. The Georgia Supreme Court rightly rejected that far-reaching argument. And this Court should deny review, for two main reasons.

First, this case does not present a question worthy of certiorari. The voluntariness of a guilty plea is an intensively fact-bound question. *Second*, Moody's argument lacks merit. To the extent there is a legal question, the denial of self-representation and to choose one's defense strategy is not

among the narrow class of challenges identified by this Court that a defendant can raise on direct review following a guilty plea. Contrary to Moody's argument of a significant split regarding whether a *Farretta* claim can be waived on appeal by a valid guilty plea, every court but one to decide this issue has held the claim is waived. Thus, there is no significant split in authority requiring this Court's attention.

I. The validity of Moody's guilty plea is an intensively fact-bound question that does not present an issue worthy of certiorari.

This Court generally does not grant certiorari to review fact-heavy decisions. Determining whether a guilty plea was entered voluntarily is always a fact-bound inquiry. *See United States v. Flynn*, 969 F.3d 873, 878 (8th Cir. 2020). That determination requires courts to consider "the total circumstances surrounding the plea," including whether the court conducted a sufficient plea colloquy and whether the defendant was adequately informed of his rights. *United States v. Perillo*, 897 F.3d 878, 883 (7th Cir. 2018). Voluntariness, in other words, is an often-detailed inquiry that is not easily susceptible to broad categorical rules.

This case is no exception, as the validity of Moody's guilty plea is a pile of facts from beginning to end. In determining the voluntariness of Moody's plea, the Georgia Supreme Court reviewed the whole record, including Moody's plea colloquy with the trial court, to decide whether "the trial court's *factual findings*" on that point were correct. Pet. App. 8a (emphasis added). Ultimately, the Georgia Supreme Court deemed those factual findings

correct, noting that "the record supports" the conclusion that "the trial court's adverse rulings and Moody's decision to plead guilty were unrelated." *Id.*

Of particular relevance, when Moody was asked why he was pleading guilty, he answered that he "felt it would be more appropriate for the families involved in this not to have to go through trial procedure, and it's just, you know, just a decision I made, sir." Vol. 25, T. 2794. The trial court then asked, "Are you doing that freely and voluntarily?" to which Moody responded "Yes, your honor." *Id.* at 2795. Towards the end of the plea colloquy, the trial court specifically asked if Moody was pleading guilty because the court had denied his request to represent himself or because "you think it's the best thing for you to do?" Moody responded, "I feel it is the best thing to do at this time." Pet. App. 6a. Thus, when given the chance to specifically state whether he felt coerced into pleading guilty because the court had denied his request for self-representation, and by extension his right to choose the strategy for defense, Moody chose to state the opposite.

And when Moody attempted to withdraw his guilty plea after the jury had begun sentencing deliberations based in part on his claim that he should have been allowed to represent himself, the trial court found the *Faretta* hearing had "nothing to do with the plea" and "there [was] a clear dividing line" at "the beginning of the trial and the opening statement of the State and Mr. Moody's clear, unequivocal, voluntary decision in the face of what he knew would be the evidence against him to plead guilty and accept responsibility." Vol. 29, T. 4013. The court concluded, in denying the request to withdraw the plea, that there was "no question in [its] mind" that Moody's

"plea of guilty was freely and voluntarily made at the time" and denied the request to withdraw the guilty plea. *Id.* at 4014.

Moody's case, in other words, is a poor vehicle for determining whether guilty pleas are rendered involuntary if they are entered following the denial of a request for self-representation, because—as his colloquy with the trial court makes clear—he pleaded guilty for reasons separate from the self-representation issue. At the very least, this is an intensively factual issue.

II. Moody's claim that an alleged violation of his due process rights invalidates his guilty plea is waived because it was not raised in the state courts.

Moody argues that the denial of his request to control his defense was violation of his due process rights that invalidates his guilty plea. Moody did not raise this argument in the state courts; thus it is not properly before this Court for review. *See Illinois v. Gates*, 462 U.S. 213, 247 (1983) ("we have consistently dismissed for want of jurisdiction where the federal claim asserted in this Court was not raised below"); Pet. App. 5a-12a. But even if it were, this Court's precedent does not support Moody's argument. The only antecedent constitutional claims that render a guilty plea void are ones that would have precluded a state from bringing charges in the first place. *See Blackledge*, 417 U.S. at 30. The right to choose one's trial strategy does not implicate a state's ability to "hale" a person into court. *Id.* Thus, Moody has not presented this Court with a claim for certiorari review.

Moody relies on *Tollett, McMann v. Richardson,* 397 U.S. 759 (1970), and *Blackledge v. Perry*, 417 U.S. 21 (1974), to support his argument that certain due process violations may invalidate a guilty plea. Starting with

Tollett, it is easily distinguishable. The petitioner in *Tollett* did not challenge the validity of his guilty plea. *See Tollett*, 411 U.S. at 268 ("The Court of Appeals was at pains to point out that respondent's present petition did not attack the guilty plea."). The only issue addressed by the Court was whether a valid guilty plea waived a challenge to the antecedent constitutional claim of an infirm grand jury, which the Court held it did. The only holding in *Tollett* that is relevant to Moody's argument is that "a guilty plea represents a break in the chain of events which has preceded it in the criminal process." *Tollett*, 411 U.S. at 267. Although Moody acknowledges this holding, he fails to admit that it firmly cuts against his argument. As found by the state courts, Moody's request to represent himself and his guilty plea "were unrelated to each other" which is not only shown by the record but by *Tollett's* holding that a guilty plea is separate from all the events that occurred before. Pet. App. 8a. Thus, *Tollett* offers Moody no help because it does not even suggest Moody's alleged due process violation voided his guilty plea.

Moody also relies upon *McMann v. Richardson,* 397 U.S. 759, 760 (1970), but it also undermines his argument. On review in *McMann* was the Second Circuit Court of Appeals' decision that if "a guilty plea is shown to have been triggered by a coerced confession …the plea is vulnerable …where the guilty plea was taken prior to *Jackson* v. *Denno." Id.* at 766. This Court disagreed with the court of appeals and held "that a defendant who alleges that he pleaded guilty because of a prior coerced confession is not, without more, entitled to a hearing on his petition for habeas corpus. Nor do we deem the situation substantially different where the defendant's plea was entered

prior to *Jackson* v. *Denno*." *Id.* at 771. The only exception, or attack, to the validity of the plea discussed in *McMann* was where the petitioner could "allege and prove serious derelictions on the part of counsel sufficient to show that his plea was not, after all, a knowing and intelligent act." *Id.* at 774. Moody has not alleged trial counsel were ineffective with regard to the guilty plea, but, as in *McMann*, that a prior alleged unconstitutional act coerced his guilty plea. Thus, nothing in *McMann* suggests that his current attack on his guilty plea can be used to prove his plea was invalid because of a due process violation.

Finally, Moody relies on *Blackledge*, which also provides no support for his certiorari request. Petitioner Perry pleaded guilty to a felony charge but on appeal challenged the state's right to have filed the charge against him under the due process clause because the felony charge was only filed after Perry appealed his misdemeanor conviction for the same crime. This Court held that the due process clause "simply could not permissibly require Perry to answer to the felony charge." *Blackledge*, 417 U.S. at 31. The Court distinguished *Tollett*, explaining "[u]nlike the defendant in *Tollett*, Perry is not complaining of 'antecedent constitutional violations'" but '[r]ather…the right not to be haled into court at all upon the felony charge" because the "initiation of the proceedings against him in the Superior Court thus operated to deny him due process of law." *Id.* at 30-31 (quoting *Tollett*, 411 U.S. at 266, 267). Obviously, no similar situation occurred here.

In sum, even assuming Moody had raised a due process claim below and the trial court erroneously precluded Moody from choosing his trial strategy,

this ruling had nothing to do with whether the state could "hale" him into court for the crimes charged. Therefore, as shown above, and will be argued more below, any of Moody's antecedent constitutional claims that relate to his chosen trial strategy and self-representation was correctly held by the Georgia Supreme Court to be waived on review by his guilty plea.

III. The Georgia Supreme Court correctly determined under this Court's precedent that Moody's guilty plea waive his *Faretta* claim.

Relying solely on the outlier *Hernandez* decision of the Ninth Circuit—holding that *Faretta* claims cannot be waived by a guilty plea—Moody asks this Court to grant certiorari review to create new law. However, as determined by every other federal court of appeals that has decided this issue, and the Georgia Supreme Court, the *Hernandez Faretta* holding conflicts with this Court's long-standing precedent. The Georgia Supreme Court correctly rejected the Ninth Circuit's holding and held that Moody's *Farretta* claim did not fall within an exception to the waiver rule.

As mentioned above, decades ago in *Tollett*, this Court examined whether "direct inquiry into the merits of claimed antecedent constitutional violations" was required if a valid guilty plea was entered. *Tollett*, 411 U.S. at 265. The Court looked to its prior precedent—known as the *Brady* trilogy—where the Court had determined that review of alleged constitutional violations that occurred prior to the entry of the guilty plea precluded review of those claims. In two of the cases that made up the *Brady* trilogy, *Brady v. United States*, 397 U.S. 742 (1970) and *Parker v. North Carolina*, 397 U.S. 790 (1970), the antecedent constitutional violation related

to an improper "burden placed on the exercise of the right to jury trial," which the respondents claimed motivated the guilty pleas. *Id.* And in the third case, *McMann*, "each of the respondents asserted that a coerced confession had been obtained by the State" that led them to plead guilty. *Id.*

The Court "reaffirm[ed] the principle recognized in the *Brady* trilogy: a guilty plea represents a break in the chain of events which has preceded it in the criminal process." *Id.* at 267. In support, the Court explained that "[w]hen a criminal defendant has solemnly admitted in open court that he is in fact guilty of the offense with which he is charged, he may not thereafter raise independent claims relating to the deprivation of constitutional rights that occurred prior to the entry of the guilty plea." *Id.* Thus, the Court concluded that Tollett's "claim of discrimination in the selection of the grand jury" was "foreclose[d]" on appeal because he pled guilty. *Id.* at 266.

During the next term in *Blackledge*, as explained above, the Court provided an exception to the waiver of antecedent constitutional claims that "went to the very power of the State to bring the defendant into court." *Blackledge*, 417 U.S. at 30. However, the Court explained that antecedent constitutional claims that didn't preclude a defendant from being charged for a particular offense were not part of this exception. The Court pointed out that "[t]he defendants in *McMann* …could surely have been brought to trial without the use of the allegedly coerced confessions, and even a tainted indictment of the sort alleged in *Tollett* could have been cured through a new indictment by a properly selected grand jury." *Id.* (cleaned up). Whereas, in *Blackledge*, "by contrast, the nature of the underlying constitutional infirmity

[was] markedly different" because the state could not obtain a conviction for a misdemeanor charge in one state court and then require "the respondent to answer to the more serious [felony] charge" in a higher state court under the due process clause. *Id.* No other exceptions to the waiver rule have been identified by this Court. Here, obviously the State was not precluded from bringing Moody into court to answer the felony charges brought against him.

Based upon *Tollett* and *Blackledge*, the Georgia Supreme Court disagreed with the Ninth Circuit's decision in *Hernandez*. The *Hernandez* court held that a "court's refusal to allow [a defendant] to exercise the right of self-representation forced him to choose between pleading guilty and submitting to a trial *the very structure of* which would be unconstitutional," which "'imposed unreasonable constraints' on the defendant's decision to plead guilty." *Hernandez*, 203 F.3d at 626 (emphasis in original); Pet. App. 10a (quoting *Hernandez, supra* at 627). The Georgia Supreme Court pointed out that the four other federal courts of appeal that had decided the issue disagreed with the Ninth Circuit, and the state court found their decisions, unlike the Ninth Circuit, aligned with this Court's precedent. Pet. App. 10a (citing *United States v. Dewberry*, 936 F.3d 803, 805-807 (II) (8th Cir. 2019); *United States v. Moussaoui*, 591 F.3d 263, 279-280 (II) (A) (4th Cir. 2010); *Gomez v. Berge*, 434 F.3d 940, 942-943 (II) (7th Cir. 2006); and *United States v. Montgomery*, 529 F.2d 1404, 1406-1407 (10th Cir. 1976)).

In rejecting the Ninth Circuit's decision, the Georgia Supreme Court agreed with Fourth and Eighth Circuit's point that "*Hernandez*'s rationale 'is based on the false premise that the defendant who is denied his right to

represent himself is forced to *either* plead guilty or submit to an unconstitutional trial.'" Pet. App. 10a (emphasis in original) (quoting *Dewberry*, 936 F.3d at 806) (citing *Moussaoui*, 591 F.3d at 28). "As both the Fourth and Eighth Circuits reasoned, this premise is flawed because it 'fails to account for the fact that if the defendant proceeded to trial and was convicted, he could seek an appellate remedy for the constitutional violations he alleged.'" *Id.* (quoting *Moussaoui*, 591 F.3d at 280) (citing *Dewberry*, 936 F.3d at 806 (same).

This reasoning is supported by this Court's decision in *McMann*, which concerned defendants claiming alleged coerced confessions forced them to plead guilty. This Court rejected that rationale stating that "[f]or the defendant who considers his confession involuntary and hence unusable against him at a trial, tendering a plea of guilty would seem a most improbable alternative." *McMann*, 397 U.S. at 768. Instead, "[t]he sensible course would be to contest his guilt, prevail on his confession claim at trial, on appeal, or, if necessary, in a collateral proceeding, and win acquittal, however guilty he might be." *Id.* Likewise, here, Moody allegedly objected to his counsel conceding his guilty, which he could have then challenged on appeal. It makes no sense to find that he was forced to plead guilty because his counsel had chosen a strategy to concede guilt.

Moreover, the Georgia Supreme Court correctly found persuasive, the Eighth Circuit's point that "'the approach used *in Hernandez* is inconsistent with [long-standing] Supreme Court precedent' holding that a 'guilty plea represents a break in the chain of events which has preceded it in the

criminal process.'" Pet. App. 10a (brackets in original) (quotation marks omitted) (quoting *Dewberry*, 936 F.3d at 807). "As the Eighth Circuit further noted, Supreme Court precedent also holds that 'case-related constitutional defects' are made 'irrelevant to the constitutional validity of the conviction' by a later guilty plea 'because the defendant has admitted the charges against him.'" *Id.* (quotation marks omitted) (quoting *Dewberry*, *supra*). This is especially true in this case where Moody's objection to counsel's performance, and the reason for his request to represent himself, was the disagreement to concede guilt. Whatever objection he had to this strategy was obliterated by his subsequent confession of guilt, which he explicitly stated he was doing because he "*fe[lt] it would be more appropriate for the families involved in this not to have to go through trial procedure."* Vol. 25, T. 2794-795 (emphasis added).

Additionally, because *Hernandez* was one of the earliest decisions to address the question, it lacked the benefit of its fellow circuit courts' reasoning to the contrary. *See, e.g.*, *Gomez*, 434 F.3d at 942-43; *Moussaoui*, 591 F.3d at 279-80; *Dewberry*, 936 F.3d at 806. And it lacked the benefit of this Court's decision in *Class v. United States*, which clarified that a defendant who has pleaded guilty may "challenge [on appeal] the Government's power to criminalize [the defendant's] (admitted) conduct," but may *not* challenge "case-related constitutional defects that occurred prior to the entry of the guilty plea." 583 U.S. 174, 181 (2018) (quotation omitted); *see also Dewberry*, 936 F.3d at 807 (explaining that "*Hernandez*'s approach turns the [*Class*] rule on its head by making a defendant's admission of guilt

irrelevant because of an earlier purported case-related constitutional defect"). Notably, *Hernandez* remains the only case in which the Ninth Circuit has permitted a defendant to raise a self-representation claim on appeal after pleading guilty.

As correctly held by the Georgia Supreme Court, in line with *Blackledge* and *Class,* "[t]he limited exceptions to the general rule of waiver are for claims that go 'to the very power of the State to bring the defendant into court to answer the charge brought against him.'" Pet. App. 11a (quoting *Blackledge*, 417 U.S. at 30). Moody does not argue—and could not argue—that, "judged on [their] face," the murder charges levied against him were ones "which the State may not constitutionally prosecute." *Menna v. New York*, 423 U.S. 61, 52 n.2 (1975). So the Georgia Supreme Court correctly held that Moody did not qualify for an exception to the general rule that a guilty plea precludes challenging antecedent constitutional violations on appeal.

Outside of *Hernandez*, Moody has not identified any other decision, from any court, supporting his position—the Ninth Circuit stands alone. To the extent that *Hernandez* even remains the law of the Ninth Circuit, it is hardly a basis for review here, where the Georgia Supreme Court adopted the overwhelming majority view that aligns precisely with this Court's precedent.

IV. The Georgia Supreme Court correctly determined under this Court's precedent that Moody's guilty plea waived his *McCoy* claim.

On direct appeal, relying on *McCoy*, Moody also argued that the trial court "prevented him from determining the objective of his defense in violation of the federal constitution." Pet. App. 11a. Moody argues that the

Georgia Supreme Court was in error to find this claim was "waived by virtue of his guilty plea" because it "affected whether a trial would proceed at all" and essentially forced him to plead guilty. Pet. App. 11a; Brief at 20. Moody is wrong.

As already shown above, antecedent constitutional claims that do not fall within the class of claims that preclude the State from bringing charges, are precluded from review following a valid guilty plea. As correctly explained by the Georgia Supreme Court, and not refuted by Moody, his "*McCoy* claim is related to the manner in which he would have conducted his defense at trial, and it focuses on a ruling on a non-jurisdictional issue unrelated to his guilty plea, and that occurred prior to the entry of the guilty plea." Pet. App. 12a. The exception to the waiver rule clearly does not apply here.

Additionally, the state court pointed out in determining his *McCoy* claim was waived, "'a valid guilty plea relinquishes any claim that would contradict the admissions necessarily made upon entry of a voluntary plea of guilty.'" *Id.* (quotation marks omitted) (quoting *Class*, 138 S. Ct. at 805). Applying that holding, Moody's admission of guilt cleared the slate of any claim that concerned any objection he had to admitting guilt. As wisely noted by the Georgia Supreme Court at the beginning of its review of Moody's guilty plea, "the '[e]ntry of a plea is not some empty ceremony, and statements made to a [trial] judge in open court are not trifles that defendants may elect to disregard.'" Pet. App. 5a (quoting *United States v. Stewart*, 198 F.3d 984, 987

(7th Cir. 1999)). Moody can ignore what he stated during his guilty plea, but the Georgia Supreme Court did not err by refusing to follow this path.

Accordingly, Moody has failed to identify an issue worthy of this Court's review.

CONCLUSION

For the reasons set out above, this Court should deny the petition.

Respectfully submitted.

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I hereby certify that on November 21, 2023, I served this brief on all parties required to be served by mailing a copy of the brief to be delivered via email, addressed as follows:

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