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 Georgia Supreme Court

CAPITAL CASE

REPLY BRIEF FOR PETITIONER

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ARGUMENT

I. This Case Presents a Purely Legal Question that This Court Should Resolve.

The State's principal argument against certiorari is that the decision below is too "fact-heavy" for this Court's review, and that "[d]etermining whether a guilty plea was entered voluntarily is always a fact-bound inquiry." Brief in Opposition at 20 (hereinafter "BIO"). That argument is incorrect, both as a matter of law and on the facts of this case.

The State's argument is unsound because it rests on a false premise—that challenges to guilty pleas are "always" fact-heavy determinations. This Court's cases demonstrate the opposite. For example, in *Class v. United States*, 583 U.S. 184 (2018), this Court was asked to decide "whether a guilty plea by itself bars a criminal defendant from challenging the constitutionality of the statute of conviction on direct appeal." *Id.* at 178. The Court concluded that Class "did not relinquish his right to appeal the District Court's constitutional determinations simply by pleading guilty." *Id.* To so conclude, the Court did not need to conduct a searching inquiry into the facts of the plea colloquy and record below. Instead, as the Court explained, its "holding flows directly from this Court's prior decisions." *Id.*

Similarly, in *Lee v. United States*, 582 U.S. 357 (2017), the Court considered a scenario where the defendant, Jae Lee, pled guilty based on the incorrect advice from his attorney that the plea would not affect Lee's status as a lawful permanent resident. *Id.* at 360. Specifically, the Court was asked to decide whether Lee was prejudiced by his attorney's deficient performance, even though there was

overwhelming evidence of his guilt. *Id.* The Court concluded that Lee was prejudiced. *Id.* at 369. In reaching this conclusion, the Court resisted the State's attempt to pull the Court into an examination of the viability of Lee's defense at trial. *Id.* at 366-67. Instead, the Court looked to its past decisions and concluded that Lee could establish prejudice because the attorney's incorrect legal advice convinced him to forfeit a trial altogether. *Id.* at 367-68.

And in *Garza v. Idaho*, 139 S. Ct. 738 (2019), the Court was asked to decide whether prejudice is presumed by an attorney's failure to file a notice of appeal "even when the defendant has, in the course of pleading guilty, signed what is often called an 'appeal waiver'—that is, an agreement forgoing certain, but not all, possible appellate claims." *Id.* at 742. This Court concluded that prejudice was presumed in that scenario. *Id.* at 747. As in *Class* and *Lee*, the Court did not reach its holding by conducting a fact-bound inquiry into the plea colloquy or the specifics of the appeal waiver that Garza signed. Instead, it relied on its prior decisions and the decisions of other courts around the country. *See id.* ("The holding, principles, and facts of [*Roe v.*] *Flores-Ortega*[, 528 U.S. 470 (2000),] show why that presumption applies here.").

Moody's case is no different. Contrary to the State's assertion that this case "is a pile of facts from beginning to end," BIO at 20, the resolution of Moody's claim does not turn on an evaluation of the facts or an interpretation of Moody's statements during the plea colloquy. Instead, it turns on a resolution of a purely legal question—whether a defendant forfeits the right to appeal the denial of his

autonomy-based constitutional rights, such as the right to self-representation and the right to control his defense, merely by pleading guilty.[1] That is a legal question that this Court can and should resolve.

To the extent the case turns on the facts below, the relevant facts are undisputed. *See Lee*, 582 U.S. at 368 (reviewing a challenge to the validity of a plea where there was "contemporaneous evidence to substantiate a defendant's expressed preferences"). The State does not meaningfully contest that Moody and counsel had a disagreement over the objective of his defense. Nor does the State dispute that the trial court was explicitly asked to resolve this disagreement and decide who gets to determine the objective of the defense. And the State also does not argue that the trial court's resolution of that question—that counsel, not Moody, could determine the objective of his defense—can withstand this Court's decision in *McCoy v. Louisiana*, 138 S. Ct. 1500 (2018). Similarly, the State does not dispute that Moody's related request to represent himself so that he could put forth the defense of his choosing was preserved and challenged below. The question for this Court to resolve is purely legal: whether Moody can appeal the trial court's rulings on those two issues.

II. Moody Argued in the Court Below That the Violation of His Right to Choose the Objective of His Defense Invalidated His Guilty Plea.

The State's second argument for this Court to deny certiorari is that Moody

[1] The State offers its own version of the question presented. *See* BIO at ii. Whatever else may be said about the State's reformulation, it at the very least concedes that Moody's petition presents a legal issue for this Court to resolve.

did not challenge the validity of his guilty plea below. BIO at 22. Specifically, the State claims that Moody "did not raise" the argument that "the denial of his request to control his defense was violation [sic] of his due process rights that invalidates his guilty plea." BIO at 22. The State's argument is plainly false.

Moody raised this issue as the first claim in the court below, in which he argued that "the trial court violated Mr. Moody's fundamental right to choose the objective of his defense," and that "the Sixth Amendment violation in this case is a structural error that invalidates Mr. Moody's guilty plea and requires a new trial." This claim also consumed the oral argument at the Georgia Supreme Court. *See* Ga. Sup. Ct., "Oral Arguments – December 6, 2022," *Moody v. The State*, No. S23P0046, available at https://www.gasupreme.us/oa-december-6-2022/ (last visited Dec. 4, 2023). Indeed, elsewhere in its brief the State concedes that Moody raised the claim below:

> On appeal, Moody challenged his guilty plea, the trial court's denial of his request to represent himself, *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).

BIO at 17 (emphasis added). This claim was raised below and now is appropriately before the Court.

III. Defendants Who Plead Guilty Should Be Permitted to Challenge the Denial of Autonomy-Based Constitutional Rights.

As its final argument against review, the State defends the lower court's decision as an appropriate application of this Court's cases. Although the State acknowledges a circuit split on the questions presented in Moody's case, BIO at 25,

the State argues that under this Court's precedent, "the 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," BIO at 30 (quoting Pet. App. 11a). The State's argument is neither a correct appraisal of this Court's precedent nor a reason to deny review.

This Court has never imposed the dramatic limitation on the appellate rights of defendants who plead guilty that the State and lower court suggest it has. To be sure, a guilty plea "bars appeal of many claims." *Class*, 583 U.S. at 179; *see also Tollett v. Henderson*, 411 U.S. 258, 267 (1973) (recognizing that a guilty plea will often prevent a defendant from "rais[ing] independent claims relating to the deprivation of constitutional rights that occurred prior to the entry of the guilty plea"). But some claims survive that ordinary proscription. Indeed, this Court has recognized that, even when a defendant has signed an appeal waiver as part of the plea agreement, a defendant nevertheless retains the ability to raise claims on appeal. *See Garza*, 139 S. Ct. at 745 (noting that "some claims" are "unwaiveable," and that at a minimum, defendants "retain the right to challenge whether the waiver itself is valid and enforceable—for example, on the grounds that it was unknowing or involuntary").

Of particular relevance to this case, the Court has repeatedly recognized that a defendant can challenge his guilty plea on the ground that his counsel rendered ineffective assistance in advising him to accept the plea agreement. *See, e.g.*, *Hill v. Lockhart*, 474 U.S. 52, 58-59 (1985); *Padilla v. Kentucky*, 559 U.S. 356, 366 (2010);

Lee, 582 U.S. at 370-71. Those cases flow from the principle that "defendants cannot be left to the mercies of incompetent counsel." *McMann v. Richardson*, 397 U.S. 759, 771 (1970). As a result, this Court permits defendants to attack guilty pleas produced by advice that fell outside "the range of competence demanded of attorneys in criminal cases." *Id.*

Moody's case is worse than the type of case envisioned in *McMann*. Moody's plea was not one based on the advice of counsel who merely may have "misjudged the admissibility" of a piece of evidence. *Id.* It was a plea that followed directly after the trial court affirmatively denied him not only the right to defend himself, but also the right to control the objective of his defense (rulings with which Moody's defense counsel agreed). In these two respects, the trial court violated "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 v. Massachusetts*, 582 U.S. 286, 295 (2017). The lower court's rulings directly undermined Moody's constitutionally-protected autonomy rights. A defendant in that scenario must not be forced to sit through a trial that is in all respects a slow guilty plea simply to vindicate his rights on appeal. Lower courts are already divided on the consideration of *McCoy* and *Faretta* claims in this scenario. This Court's intervention is therefore warranted and necessary.

CONCLUSION

This Court should grant certiorari and reverse the judgment of the Georgia Supreme Court.

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