

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

WILLIAM BURTON,
Petitioner

v.

WARDEN JAMES T. VAUGHN CORRECTIONAL CENTER,
Respondent

and

ATTORNEY GENERAL DELAWARE,
Respondent

**PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT**

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Dated: May 7, 2024

QUESTION PRESENTED

Was Petitioner's Sixth and Fourteenth Amendment right to effective assistance of counsel violated when his trial attorney stipulated to the prosecution's evidence without Petitioner's consent and despite Petitioner's plea of not guilty?

PARTIES TO THE PROCEEDING

All parties appear in the caption of the case on the cover page.

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PETITION FOR WRIT OF CERTIORARI TO THE
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Petitioner, William Burton, by and through his counsel, Christopher S. Koyste, Esquire respectfully prays that a writ of certiorari be issued to review the judgment and opinion of the United States Court of Appeals for the Third Circuit filed on February 1, 2024. The judgment and opinion appear at A1-9 and is reported as *Burton v. Warden James T. Vaughn Corr. Ctr.*, 2024 U.S. App. LEXIS 2833 (3d Cir. Feb. 1, 2024) .

OPINION BELOW

The United States Court of Appeals for the Third Circuit issued a judgment and opinion on February 1, 2024 affirming the United States District Court for the District of Delaware's denial of Petitioner's petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. The Delaware District Court's order and memorandum opinion appears at A10-40 and is reported as *Burton v. May*, 2022 U.S. Dist. LEXIS 195589 (D. Del. Oct. 27, 2022). In the opinion, the Third Circuit found that the Delaware Supreme Court's factual findings were not unreasonable factual determinations and that the Delaware Supreme Court did not unreasonably apply the *Strickland* standard to deny Mr. Burton postconviction relief. The Delaware Supreme Court's opinion appears at A41-46 and is reported as *Burton v. State*, 2018 Del. LEXIS 588 (Del. Dec. 26, 2018).

JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1). The decision of the United States Court of Appeals for the Third Circuit which Petitioner seeks review was issued on February 1, 2024. This petition was filed within 90 days of the Third Circuit's decision in compliance with United States Supreme Court Rule 13.

CONSTITUTIONAL PROVISIONS INVOLVED

United States Constitution, Amendment 6 provides, in pertinent part:

In all criminal prosecution, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense. (U.S. Const. amend. VI).

United States Constitution, Amendment 14 provides, in pertinent part:

No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor 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. (U.S. Const. amend. XIV).

STATEMENT OF THE CASE

On March 18, 2013, Mr. Burton was charged by indictment with one count of drug dealing cocaine, one count of aggravated possession of cocaine, one count of possession of drug paraphernalia, and two counts of possession of marijuana. (A48).

On June 3, 2013, Trial Counsel filed a motion to suppress challenging the constitutionality of the administrative search of Mr. Burton's residence and seeking to exclude all of the evidence seized as a result of the administrative search. (A63). A hearing on the motion to suppress was held on August 16, 2013 and August 21, 2013. (A62-63). On September 9, 2013, the Delaware Superior Court denied Mr. Burton's motion to suppress. (A96-04).

On September 24, 2013, Mr. Burton signed a stipulation of waiver of jury trial¹ and then engaged in the following colloquy with the Trial Court:

THE COURT: Okay. Mr. Burton, I'm informed that you desire to waive your right to a jury trial. Is that correct?

THE DEFENDANT: Yes.

THE COURT: Before accepting your waiver, there are a number of questions I'm going to ask you to ensure that it's a valid waiver. If you do not understand any of the questions at any time and you wish to interrupt the proceedings to consult further with your attorney, please say so.

Can you tell me what your full name is?

THE DEFENDANT: William David Burton.

THE COURT: And how old are you?

THE DEFENDANT: 57 years old.

THE COURT: Okay. And how far did you go in school?

THE DEFENDANT: 12th grade, Your Honor.

THE COURT: Okay. Have you taken any drugs, medicine, or any alcoholic beverages within the last 24 hours?

THE DEFENDANT: Just my diabetic medication.

THE COURT: Okay. Do you understand that you're entitled to a trial by jury on the charges filed against you?

THE DEFENDANT: Yes.

¹ A105.

THE COURT: Do you further understand that you would have the opportunity to take part along with your lawyer in the selection of the jurors?

THE DEFENDANT: Yes.

THE COURT: Do you understand that a jury trial means that you would be tried by a jury consisting of 12 people and all 12 jurors must agree on your guilt or innocence or level of guilt?

THE DEFENDANT: Yes.

THE COURT: Do you understand that if I approve your waiver of a jury trial the Court alone, and that would be me, would try the case and determine your innocence or guilt or level of guilt?

THE DEFENDANT: Yes.

THE COURT: Have you discussed this decision with your lawyer?

THE DEFENDANT: Yes.

THE COURT: Has he discussed with you the advantages and disadvantages of a jury trial?

THE DEFENDANT: Yes.

THE COURT: Do you want to discuss the issue further with your attorney?

THE DEFENDANT: No.

THE COURT: Although your attorney may advise you, the final decision is yours. Do you understand that?

THE DEFENDANT: Yes.

THE COURT: What is your decision?

THE DEFENDANT: To waive.

(A107-08).

Based upon the colloquy, the Trial Court held that Mr. Burton's waiver of his right to a trial by jury was knowingly, intelligently and voluntarily made. (A108). Thereafter, Trial Counsel informed the Trial Court that a "pretty thorough record" had been made during the suppression hearing and that the Defense was willing to rely on that record for the purposes of appealing the Trial Court's suppression decision. (A107). Trial Counsel further advised that for purpose of trial, the defense was willing to reply on the suppression hearing record, as well as the record that the State would "make with respect to where the drugs were found and what they were and how much was found." (A107). As a result of the stipulation, Trial Counsel conceded that 28.45 grams of cocaine and 0.93 grams of marijuana were found inside Mr. Burton's bedroom and inside a jacket located in

the bedroom at the address that Probation and Parole identified as Mr. Burton's residence and which Mr. Burton acknowledged as his place of residence. (A60, A66, A72, A89, A97-98, A107).

As evidenced in the transcript, the Trial Court's colloquy with Mr. Burton did not include any discussion regarding Mr. Burton's consent to a stipulated bench trial nor did the Trial Court ascertain whether Mr. Burton understood that Trial Counsel was conceding the weight and identity of the State's drug evidence and that the evidence had been found in his residence, and more specifically in his jacket. (A107-08).

An exceptionally short bench trial followed thereafter,² during which the State called only one witness. (A108-11). The State's witness testified that Mr. Burton identified his bedroom as the room where the drugs were found, as well as opined that the weight of the cocaine recovered was not indicative of personal use. (A109-10). Defense Counsel only asked a few simple questions during his cross examination, all of which pertained to whether Mr. Burton had access to a microwave, which would have been needed if he were cooking cocaine as the witness believed him to be. (A110). No opening or closing arguments were given by either party and Mr. Burton was quickly found guilty of all counts by the Trial Judge. (A108, A110-11). Thereafter, Mr. Burton was sentenced to life in prison pursuant to Delaware's habitual offender statute. (A112-13).

Mr. Burton timely appealed his sentence to the Delaware Supreme Court and on June 8, 2016, the Delaware Supreme Court affirmed the judgment of the Superior Court. (A42).

On August 11, 2016, Mr. Burton timely filed a *pro se* Rule 61 motion for postconviction relief with the Delaware Superior Court. (A42). Undersigned Counsel was appointed on June 23, 2017 to represent Mr. Burton during his state of Delaware postconviction proceedings.

² The entire trial portion of the transcript spans only ten pages.

Based upon the aforementioned, Mr. Burton sought postconviction relief and filed an amended motion for postconviction relief alleging that Mr. Burton's right to effective assistance of counsel under the Sixth and Fourteenth Amendments to the United States Constitution and Article 1, § 7 of the Delaware Constitution was violated when Trial Counsel stipulated to the State's evidence without his consent.³ (A186-97). Following an affidavit from Trial Counsel, a response from the State, and a reply from Mr. Burton, the Delaware Superior Court denied Mr. Burton's amended motion on April 30, 2018. (A199-237).

On May 30, 2018, Mr. Burton timely appealed the denial of his amended Rule 61 motion to the Delaware Supreme Court. (A42). Following briefing from the parties, the Delaware Supreme Court affirmed the judgment of the Superior Court on December 26, 2018. (A41-46, A238-313).

On March 22, 2019, Mr. Burton timely filed a petition for writ of certiorari to the United States Supreme Court. The Supreme Court declined to hear the case on April 22, 2019.⁴

On August 7, 2019, Mr. Burton timely filed a *pro se* petition for a writ of habeas corpus in the United States District Court for the District of Delaware and an amended habeas petition on December 24, 2019. (A314). In the amended petition and the briefing that would follow, Mr. Burton asserted that the Delaware state courts unreasonably applied the facts of Mr. Burton's case to the clearly established federal law set forth in *Strickland* and its progeny. (A332-40, A379-87). On October 27, 2022, the Delaware District Court dismissed Mr. Burton's habeas petition. (A10-40).

³ Mr. Burton also raised an additional postconviction argument in his amended motion, however, that claim is not relevant to this petition.

⁴ No. 18-8574.

Mr. Burton timely filed a notice of appeal to the United States Court of Appeals for the Third Circuit on December 1, 2022. Following briefing, the Third Circuit affirmed the Delaware District Court's dismissal of the habeas petition. (A1-9, A460-564).

REASONS FOR GRANTING THE WRIT

Supreme Court Rule 10(a) provides that a writ of certiorari may be granted where “a United States court of appeals has entered a decision in conflict with the decision of another United States court of appeals on the same important matter; has decided an important federal question in a way that conflicts with a decision by a state court of last resort; or has so far departed from the accepted and usual court of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court’s supervisory power.” In finding that Petitioner had not carried his burden of showing that the Delaware Supreme Court’s factual determinations were objectively unreasonable and the court unreasonably applied the *Strickland* standard, the Third Circuit has sanctioned Mr. Burton’s conviction despite Trial Counsel overriding his own Client’s constitutional right to effective assistance of counsel and to plead not guilty. As such, this Court should exercise its supervisory power and grant this petition for a writ of certiorari.

1. The Third Circuit’s holdings that Mr. Burton did not carry his burden of showing that the State Courts’ factual determinations were objectively unreasonable was contravened by the factual record.

In denying Mr. Burton’s habeas appeal, the Third Circuit concluded that Mr. Burton failed to carry his burden of demonstrating that the Delaware State Courts’ factual determinations were objectively unreasonable. *Burton*, 2024 U.S. App. LEXIS 2833, at *3. In particular, the Third Circuit gives undue credit to the representations of Mr. Burton’s trial counsel before the start of the stipulated bench trial and in his affidavit response to Mr. Burton’s amended postconviction motion in the Delaware Superior Court. *Id.* These findings are flawed for two reasons.

First, the fact that Trial Counsel stated, before the Trial Court’s waiver of jury trial colloquy, that he had previously discussed “the nature of a stipulated trial” with Mr. Burton and “that for

purposes of a trial today, we'll rely upon" the record created at the suppression hearing, does not demonstrate that Mr. Burton voluntarily, knowingly, and intelligently waived his Sixth Amendment rights to effective assistance of counsel, to plead not guilty, and to meaningfully oppose the prosecution's evidence, as well as his Fourteenth Amendment due process right to a fair trial⁵ by consenting to a stipulated bench trial.

As articulated in Mr. Burton's habeas filings,⁶ after Trial Counsel made the above described statements, the Court conducted the following colloquy with Mr. Burton:

THE COURT: Okay. Mr. Burton, I'm informed that you desire to waive your right to a jury trial. Is that correct?

THE DEFENDANT: Yes.

THE COURT: Before accepting your waiver, there are a number of questions I'm going to ask you to ensure that it's a valid waiver. If you do not understand any of the questions at any time and you wish to interrupt the proceedings to consult further with your attorney, please say so.

Can you tell me what your full name is?

THE DEFENDANT: William David Burton.

THE COURT: And how old are you?

THE DEFENDANT: 57 years old.

THE COURT: Okay. And how far did you go in school?

THE DEFENDANT: 12th grade, Your Honor.

THE COURT: Okay. Have you taken any drugs, medicine, or any alcoholic beverages within the last 24 hours?

THE DEFENDANT: Just my diabetic medication.

THE COURT: Okay. Do you understand that you're entitled to a trial by jury on the charges filed against you?

THE DEFENDANT: Yes.

⁵ U.S. Const. amend. VI; U.S. Const. amend XVI; *McCoy v. Louisiana*, 584 U.S. 414, 417-18 (2018); *Florida v. Nixon*, 543 U.S. 175, 187 (2004); *Taylor v. Illinois*, 484 U.S. 400, 417-18 (1988); *United States v. Cronin*, 466 U.S. 648, 659-52 (1984); *Strickland v. Washington*, 466 U.S. 668, 686 (1984); *Wainwright v. Sykes*, 433 U.S. 72 (1977); *Faretta v. California*, 422 U.S. 806, 819-20 (1975); *Boykin v. Alabama*, 395 U.S. 238, 243 (1969); *Duncan v. Louisiana*, 391 U.S. 145, 149 (1968); *Brookhart v. Janis*, 384 U.S. 1, 7-8 (1966); *Pointer v. Texas*, 380 U.S. 400, 403 (1965); *Malloy v. Hogan*, 378 U.S. 1, 6 (1984).

⁶ A323-25, A366-67, A470-71.

THE COURT: Do you further understand that you would have the opportunity to take part along with your lawyer in the selection of the jurors?

THE DEFENDANT: Yes.

THE COURT: Do you understand that a jury trial means that you would be tried by a jury consisting of 12 people and all 12 jurors must agree on your guilt or innocence or level of guilt?

THE DEFENDANT: Yes.

THE COURT: Do you understand that if I approve your waiver of a jury trial the Court alone, and that would be me, would try the case and determine your innocence or guilt or level of guilt?

THE DEFENDANT: Yes.

THE COURT: Have you discussed this decision with your lawyer?

THE DEFENDANT: Yes.

THE COURT: Has he discussed with you the advantages and disadvantages of a jury trial?

THE DEFENDANT: Yes.

THE COURT: Do you want to discuss the issue further with your attorney?

THE DEFENDANT: No.

THE COURT: Although your attorney may advise you, the final decision is yours. Do you understand that?

THE DEFENDANT: Yes.

THE COURT: What is your decision?

THE DEFENDANT: To waive.

(A107-08). The above colloquy demonstrates that the Delaware Superior Court engaged Mr. Burton in a discussion to determine whether Mr. Burton was knowingly, intelligently, and voluntarily waiving his right to a jury trial. However, at no point during the colloquy did the Court inquire as to whether Mr. Burton was consenting to a stipulated bench trial during which Trial Counsel would not subject the State's evidence to any meaningful adversarial testing. (A107-08). And as there is no rational basis to assume that Mr. Burton's waiver of jury trial also included his consent to a stipulated trial, Trial Counsel's statements before the start of Mr. Burton's trial does not establish that Mr. Burton knowingly, intelligently, and/or voluntarily consented to an evidentiary stipulation that would override his constitutional right to plead not guilty.

The Third Circuit's reliance of Trial Counsel's affidavit statements is similarly flawed. Trial Counsel's affidavit is wholly speculative as Trial Counsel could "only assume" that he discussed the evidentiary stipulation with Mr. Burton as it "would have been [his] practice to explain to Mr. Burton that the State's evidence would largely go unchallenged as a result of the stipulation. (A200-01). By giving credit to Trial Counsel as he "probably conducted some explanation as to how the trial would proceed", the Third Circuit assumes the existence of one fact, Mr. Burton consenting to a stipulated trial, because of the presence of another fact, Trial Counsel discussing evidentiary stipulation with other clients in other cases. Such logic is flawed. Therefore, the Third Circuit was incorrect when it concluded that Mr. Burton failed to carry his burden of showing that the State Courts' factual determinations were objectively unreasonable.

2. The Third Circuit improperly concluded that Mr. Burton did not carry his burden that the State Courts unreasonably applied the *Strickland* standard to the facts of Mr. Burton's case.

The Third Circuit also denied Mr. Burton's appeal on the basis that Mr. Burton failed to overcome the presumption that Trial Counsel was effective because "the State introduced 'overwhelming' admissible evidence of Burton's guilt." *Burton*, 2024 U.S. App. LEXIS 2833, at *7. Like the courts before it,⁷ the Third Circuit erred when it failed to consider that Mr. Burton was prejudiced during his trial and post-trial.

As a result of Trial Counsel's stipulation, the Trial Court was allowed to rely on the entirety of the suppression hearing record to determine Mr. Burton's guilt. This meant that the Trial Court was free to treat inadmissible factual testimony presented during the suppression hearing as admissible

⁷ *Burton v. May*, 2022 U.S. Dist. LEXIS 195589, at *27-30 (D.Del. Oct. 27, 2022); *Burton*, 2018 Del. LEXIS 588, at *4-5; *State v. Burton*, 2018 Del. Super. LEXIS 191, at *10-13 (Del. Super. Ct. Apr. 30, 2018).

evidence at Mr. Burton's trial. This included the fact that Mr. Burton was on probation at the time of his arrest and that Mr. Burton was identified by a confidential informant who alleged that Mr. Burton was selling crack cocaine from his residence. (A60, A66, A72, A89, A97-98, A107). As such, absent Trial Counsel's consent, the State would have been placed in an unusual situation in which the State would have had to reveal the identity of the confidential informant and call him/her to testify in order to rely on those facts to prove the elements of possession and intent to manufacture or distribute.⁸ Therefore, because Trial Counsel's evidentiary stipulation allowed the Trial Court to consider otherwise inadmissible evidence to convict Mr. Burton, the Third Circuit's finding that Mr. Burton had not suffered any prejudice is incorrect.

Additionally, Mr. Burton suffered prejudice post-trial as the State Courts denied Mr. Burton's motion for a new trial and/or re-testing of the alleged drug evidence due to the discovery of misconduct at Delaware's forensic drug lab because Trial Counsel stipulated to the drug evidence and to its chain of custody.⁹ As such, Mr. Burton clearly suffered prejudice from Trial Counsel's evidentiary stipulation and the Third Circuit erred by failing to take this fact into consideration.

⁸ 16 *Del. C.* § 4752(1) (2012) ("Except as authorized by this chapter, any person who: (1) Manufactures, delivers, or possesses with the intent to manufacture or deliver a controlled substance in a Tier 4 quantity. . . shall be guilty of a class B felony."); 16 *Del. C.* § 4752(3) (2012) ("Except as authorized by this chapter, any person who . . . (3) Possesses a controlled substance in a Tier 5 quantity . . . shall be guilty of a class B felony."); 16 *Del. C.* § 4764(b) (2012) ("Any person who knowingly or intentionally possesses, uses, or consumes a controlled substance. . . shall be guilty of an unclassified misdemeanor and be fined not more than \$575 and imprisoned not more than 3 months.").

⁹ *Burton v. State*, 142 A.3d 504, 504 (Del. 2016); *State v. Burton* 2015 Del. Super. LEXIS 1068, at *9 (Del. Super. Ct. Nov. 30, 2015).

3. **This Court can expand its holding in *McCoy v Louisiana* to require trial courts to conduct a colloquy to ensure that a criminal defendant fully understands the ramifications of an evidentiary stipulation so that the issue in Mr. Burton's case never arises again.**

Since 1803, this Court has exercised the power of judicial review and has had the final say as to when a specific right is protected by the United States Constitution or when a constitutional right has been violated.¹⁰ And in defining the scope of the United States Constitution and what is protected under the Constitution, this Court has long held that some decisions belong solely to criminal defendants, such as whether to exercise or waive basic trial and appellate rights, because they are so personal to the defendant “that they cannot be made for the defendant by a surrogate.”¹¹ As this Court’s constitutional precedent mandates that a criminal defendant has “ultimate authority to make certain fundamental decisions regarding the case, as to whether to plead guilty, waive a jury, testify in his or her own behalf, or take an appeal”,¹² fundamental decisions reserved to criminal defendants cannot be waived by counsel “without the fully informed and publicly acknowledged consent of the client.”¹³

In order to ensure that fundamental decisions are reserved to criminal defendants, this Court has required lower courts to conduct colloquies with defendants to ensure the preservation of their constitutional rights. In particular, this Court has ruled that lower courts must conduct a colloquy

¹⁰ *Marbury v. Madison*, 5 U.S. 137, 137 (1803) (“It is emphatically the duty of the Judicial Department to say what the law is. Those who apply the rule to particular cases must, of necessity, expound and interpret the rule. If two laws conflict with each other, the Court must decide on the operation of each. If courts are to regard the Constitution, and the Constitution is superior to any ordinary act of the legislature, the Constitution, and not such ordinary act, must govern the case to which they both apply.”).

¹¹ *Nixon*, 543 U.S. at 187.

¹² *Jones v. Barnes*, 463 U.S. 745, 751 (1983); *see also Nixon*, 543 U.S. at 187.

¹³ *See Taylor*, 484 U.S. at 417-18; *Brookhart*, 384 U.S. at 7-8.

when a defendant wishes to enter a guilty plea¹⁴ and when a defendant wants to waive his/her right to counsel¹⁵ or right to a jury trial.¹⁶ Similarly, this Court has held that a hearing must be held when a defendant's competency has been placed into question.¹⁷

More recently in *McCoy v. Louisiana*, this Court emphasized protecting a criminal defendant's right to autonomy when it decided an issue akin to the issue in this case. In *McCoy*, this Court was presented with the question of "whether it is unconstitutional to allow defense counsel to concede guilt over the defendant's intransigent and unambiguous objection" and granted certiorari due to their being a split between state courts of last resort on the issue.¹⁸ This Court definitively held in *McCoy* that "a defendant has the right to insist that counsel refrain from admitting guilt, even when

¹⁴ *Boykin v. Alabama*, 395 U.S. 238, 242-43 (1969) (holding that "[s]everal federal constitutional rights are involved in a waiver that takes place when a plea of guilty is entered in a state criminal trial" and "[w]e cannot presume a waiver of these three important federal rights from a silent record.").

¹⁵ *Faretta*, 422 U.S. at 835 ("When an accused manages his own defense, he relinquishes, as a purely factual matter, many of the traditional benefits associated with the right to counsel. For this reason, in order to represent himself, the accused must 'knowingly and intelligently' forgo those relinquished benefits. Although a defendant need not himself have the skill and experience of a lawyer in order to competently and intelligently to choose self-representation, he should be made aware of the dangers and disadvantages of self-representation, so that the record will establish that 'he knows what he is doing and his choice is made with eyes open.'") (internal citations omitted); *Carnley v. Cochran*, 369 U.S. 506, 516 (1962) ("Presuming waiver from a silent record is impermissible. The record must show, or there must be an allegation and evidence which show, that an accused was offered counsel but intelligently and understandingly rejected the offer. Anything less is not waiver.").

¹⁶ *Patton v. United States*, 281 U.S. 276, 312 (1930) ("Not only must the right of the accused to a trial by a constitutional jury be jealously preserved, but the maintenance of the jury as a fact finding body in criminal cases is of such importance and has such a place in our traditions, that, before any waiver can become effective, the consent of government counsel and the sanction of the court must be had, in addition to the express and intelligent consent of the defendant. And the duty of the trial court in that regard is not to be discharged as a mere matter of rote, but with sound and advised discretion. . . .").

¹⁷ *Pate v. Robinson*, 383 U.S. 375, 385 (1966).

¹⁸ *McCoy*, 584 U.S. at 420 (citing *Cooke v. State*, 977 A.2d 803, 842-46 (Del. 2009)).

counsel's experienced-based view is that confessing guilt offers the defendant the best chance to avoid the death penalty."¹⁹ As the Supreme Court noted, "a defendant may steadfastly refuse to plead guilty in the face of overwhelming evidence against her",²⁰ because "[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*."²¹

In sum, this Court's holding in *McCoy* directs that "[w]hen a client expressly asserts that the objective of 'his defense' is to maintain innocence of the charged criminal acts, his lawyer must abide by that objective and may not override it by conceding guilt."²² And this holding is entirely consistent with this Court's prior holding in *Nixon* regarding the objectives of the representation and the requirement that an attorney "must both consult with the defendant and obtain consent to the recommended course of action."²³ Likewise, the *McCoy* holding emphasizes that which has been long established – that although counsel may be able to better make such fundamental strategic choices, the defendant retains full autonomy to make the fundamental decisions because he or she alone experiences the consequences of them.²⁴

In the present case, Trial Counsel violated Mr. Burton's right to autonomy when he essentially conceded Mr. Burton's guilt by stipulating to the suppression hearing record. Mr. Burton steadfastly

¹⁹ *Id.* at 417.

²⁰ *Id.* at 422.

²¹ *Id.* at 415 (citing *Weaver v. Massachusetts*, 582 U.S. 286, 295 (2017); *Martinez v. Court of Appeal of Cal., Fourth Appellate Dist.*, 528 U.S. 152, 165 (2000)).

²² *Id.* at 423 (citing U.S. Const. amend VI; ABA Model Rules of Professional Conduct 1.2(a) (2016)). Conversely, the United States Supreme Court has held that "[i]f a client declines to participate in his defense, then an attorney may permissibly guide the defense pursuant to the strategy he/she believes to be in the defendant's best interest." *Id.* at 424.

²³ *Nixon*, 543 U.S. at 187.

²⁴ See *Faretta*, 422 U.S. at 819-20; *Boykin*, 395 U.S. at 243; *Duncan*, 391 U.S. at 149; *Brookhart*, 384 U.S. at 7-8; *Pointer*, 380 U.S. at 403; *Malloy*, 378 U.S. at 6.

refused to plead guilty, and Trial Counsel impermissibly overrode Mr. Burton's objective of maintaining his innocence when Trial Counsel conceded, without Mr. Burton's consent, the majority of the elements of the charged offenses. Based on the offenses that Mr. Burton was charged with and their respective elements which needed to be proven beyond a reasonable doubt,²⁵ and by stipulating to the suppression hearing record, Trial Counsel conceded all of the required elements except for possession and possession with intent to manufacture or distribute. However, by failing to conduct any meaningful cross examination of the State's witness regarding his opinion that the weight of the cocaine was not indicative of personal use,²⁶ Trial Counsel effectively offered no opposition to the State's evidence of possession with intent to manufacture or distribute.

There is no question that the constitutional right to plead guilty or not-guilty rested solely and unconditionally with Mr. Burton.²⁷ And although Trial Counsel never admitted Mr. Burton's guilt to the charged offenses, his actions and non-actions did just that, all without Mr. Burton's "fully informed and publicly acknowledged consent."²⁸

In light of the aforementioned, this Court has an opportunity to expand its holding in *McCoy* to require that trial courts conduct a colloquy with criminal defendants prior to accepting an

²⁵ 16 *Del. C.* § 4752(1) (2012) ("Except as authorized by this chapter, any person who: (1) Manufactures, delivers, or possesses with the intent to manufacture or deliver a controlled substance in a Tier 4 quantity. . . shall be guilty of a class B felony."); 16 *Del. C.* § 4752(3) (2012) ("Except as authorized by this chapter, any person who . . . (3) Possesses a controlled substance in a Tier 5 quantity . . . shall be guilty of a class B felony."); 16 *Del. C.* § 4764(b) (2012) ("Any person who knowingly or intentionally possesses, uses, or consumes a controlled substance. . . shall be guilty of an unclassified misdemeanor and be fined not more than \$575 and imprisoned not more than 3 months.").

²⁶ A110.

²⁷ *Gonzalez v. United States*, 553 U.S. 242, 250 (2008) (citing *Nixon*, 543 U.S. at 187; *Strickland*, 466 U.S. at 688; *Taylor*, 484 U.S. at 417-18; *Jones*, 463 U.S. at 751; *Wainwright*, 433 U.S. at 93 n.1; *Brookhart*, 384 U.S. at 7-8.

²⁸ *Taylor*, 484 U.S. at 417-18; *Brookhart*, 384 U.S. at 7-8.

evidentiary stipulation.²⁹ As evidentiary stipulations, like the stipulation in the present case, touch upon a defendant's constitutional right to plead not guilty and to have his/her counsel meaningfully oppose the prosecution's evidence,³⁰ the trial court must be required to create a record to ensure that the defendant understands what the stipulation is and the effect that the stipulation will have on the defendant's trial, as well as whether the defendant has consented to the entry of the stipulation. A defendant's consent can not be presumed from a silent record. Thus, in order to prevent the issue in this case from occurring in any other cases, this Court should expand its holding in *McCoy* to require trial courts to hold colloquies prior to the entry of an evidentiary stipulation.

²⁹ Mr. Burton did not raise this issue in his habeas filings in the Delaware District Court or in the United States Court of Appeals for the Third Circuit as he is limited to arguing that the Delaware State Courts findings were contrary to clearly established federal law or that the Delaware State Courts unreasonable applied clearly established federal law to the facts of this case. *Williams v. Taylor*, 529 U.S. 362, 407-08 (2000).

³⁰ U.S. Const. amend. VI; U.S. Const. amend XVI; *McCoy*, 584 U.S. at 417-18; *Nixon*, 543 U.S. at 187; *Taylor*, 484 U.S. at 417-18; *Cronic*, 466 U.S. at 659-52; *Strickland*, 466 U.S. at 686; *Wainwright*, 433 U.S. 72; *Faretta*, 422 U.S. at 819-20; *Boykin*, 395 U.S. at 243; *Duncan*, 391 U.S. at 149; *Brookhart*, 384 U.S. at 7-8; *Pointer*, 380 U.S. at 403; *Malloy*, 378 U.S. at 6.

CONCLUSION

For the foregoing reasons, petitioner requests that this Court grant the petition for certiorari.

Dated: May 7, 2024

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Chris Koyste', written over a horizontal line.

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