

JUN 09 2018

No. _____

In The
Supreme Court of the United States

AHMAD SAYED HASHIMI,
Petitioner,

v.

UNITED STATES OF AMERICA,

Respondents

On Petition For Writ of Certiorari
To the United States Court Of Appeals
For the Fourth Circuit

PETITION FOR A WRIT OF CERTIORARI

Parties:

PETITIONER:

AHMAD SAYED HASHIMI
REGISTER No. 89875-083
FCI GILMER
P.O. BOX 6000
GLENVILLE, WV 26351

RESPONDENT:

SOLICITOR GENERAL OF THE
UNITED STATES
Room 5614, Department of Justice
950 Pennsylvania Ave., N. W.
Washington, DC 20530-0001

QUESTION PRESENTED

Whether the case of *United States v. Ahmad Hashimi*, (No. 16-4846 – Fourth Cir.) should be remanded for review and decision by the Fourth Circuit Court of Appeals in light of the United States Supreme Court's case of *McCoy v. Louisiana*, 138 S. Ct. 1500 (2018), decided/issued on May 14, 2018.

TABLE OF CONTENTS

QUESTION PRESENTED	i
TABLE OF AUTHORITIES.....	iii
OPINIONS BELOW	1
JURISDICTION	1
STATUTORY PROVISION INVOLVED.....	2
STATEMENT OF THE CASE.....	2
REASONS FOR GRANTING THE PETITION ...	4
I. HASHIMI'S RIGHT TO MAINTAINING HIS INNOCENCE WAS VIOLATED BY TRIAL COUNSEL.....	5
A. Hashimi's autonomy in deciding the objective of his defense was stripped of him by trial counsel.....	5
B. Hashimi had no opportunity to contest his trial counsel's admission of guilt during closing argument.	6
CONCLUSION	7
APPENDICES	7

TABLE OF AUTHORITIES

Cases

McCoy v. Louisiana,
138 S. Ct. 15002, 4-7

United States v. Hashimi,
718 Fed. Appx. 178 (4th Cir. 2018)..... 3, 4

Constitution

U.S. Const. amend. VIpassim

No. _____

In The
Supreme Court of the United States

AHMAD SAYED HASHIMI,
Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent

On Petition For Writ of Certiorari
To the United States Court Of Appeals
For the Fourth Circuit

PETITION FOR A WRIT OF CERTIORARI

Petitioner Ahmad Sayed Hashimi respectfully requests a petition for a writ of certiorari to review the judgment of the U.S. Court of Appeals for the Fourth Circuit.

OPINIONS BELOW

The U.S. Court of Appeals for the Fourth Circuit issued in an unpublished opinion on January 22, 2018, Case 16-4846, Doc. 1000226868, on appeal from a finding of guilt found on September 28, 2016, in case No. 1:16-cr-00135 from the US District Court of the Eastern District of Virginia. The court of appeals denied a timely petition for rehearing *en banc* on March 12, 2018 Doc. 1000255831.

JURISDICTION

The judgement of the U.S. Court of Appeals for the Fourth Circuit was entered on January 22, 2018, Case 16-4846 Doc. 1000226868. The court of appeals denied a timely petition for rehearing *en banc* on

March 12, 2018 Doc. 1000255831. This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

STATUTORY PROVISION INVOLVED

The Sixth Amendment to the Constitution guarantees a defendant the right to choose the objective of his defense and to insist that his counsel refrain from admitting guilt. *McCoy v. Louisiana*, 138 S. Ct. 1500 (2018).

STATEMENT OF THE CASE

Ahmad Hashimi was denied his Sixth Amendment right to choose the objective of his defense when his trial counsel made an admission of guilt during closing argument. In accordance with the Supreme Court holding in *McCoy v. Louisiana*, this Court must reverse the judgment of the Fourth Circuit Court of Appeals and remand this case for further proceedings.

Mr. Hashimi was not consulted prior to his trial counsel making the admission of guilt, and because it was done during closing argument he was not given an opportunity to maintain his innocence in open court. He subsequently filed a motion for new counsel which was denied by the district court, despite having asked the court to appoint a new attorney for him at least five times because of the severe lack of communication with his trial attorney.

The petition for *McCoy v. Louisiana* was filed on March 6, 2017. Briefs were filed in November of 2017 and oral arguments were heard on January 17, 2018, nearly a week prior to the Fourth Circuit opinion delivered in Hashimi's case. All this should have been enough to provide adequate notice to Hashimi's appellate lawyer to file a notice to the Fourth Circuit Court of Appeals that the Supreme Court was currently hearing a case highly pertinent to Mr. Hashimi's case.

Facts

On April 8, 2016, Ahmad Hashimi was charged in the U.S. District Court in the Eastern District of Virginia with four crimes: Count I - conspiracy to distribute oxycodone, Count II - conspiracy to distribute cocaine, Count III - interstate kidnapping, and Count IV - interstate domestic violence. *U.S. v. Hashimi*, 718 Fed. Appx 178, 179 (4th Cir. 2018). Mr. Hashimi's case went to trial, and on September 28, 2016, Mr. Hashimi was found guilty of all four counts.

During closing argument, without consulting Mr. Hashimi, his trial counsel argued against guilt for the drug convictions, but conceded guilt for the interstate kidnapping and interstate domestic violence counts. He said:

The last few days I've done very little, if no questioning relating to the kidnap and domestic violence. Shame on Mr. Hashimi, shame on him. I am sure he was humiliated that Hilina [the victim] was cheating on him behind his back, I am sure, but that doesn't excuse what he did. And if he were allowed to, he would accept responsibility for that right in front of you.

J.A. 792.

On December 16, 2016, a sentencing hearing was held and the court rendered its final judgment: 240 months of incarceration on Count I and II; 300 months of incarceration on Count III; and 120 months of incarceration on Count IV, all to run concurrently. J.A. 918-23.

Mr. Hashimi had moved the court to appoint new counsel to replace his trial counsel on at least five different occasions complaining that he was being pressured to plead guilty, that his communications with counsel totaled only 45 minutes, that he had not

seen nor discussed discovery, again noting trial counsel's lack of communication, and for failing to comply with the court's direction when he was told counsel had not received discovery. J.A. 62-64, 71, 934, 151, 171. The court denied all of his requests for new counsel. J.A. 72-73, 159, 172.

Mr. Hashimi appealed the conviction. The appeal was denied on January 22, 2018. In the unpublished opinion issued by the Fourth Circuit Court of Appeals, the appellate court said:

Hashimi argues that trial counsel was ineffective because he conceded Hashimi's guilt on Counts 3 and 4 during closing argument without Hashimi's consent. However, because this may have been a strategic decision, counsel's ineffectiveness does not appear on the face of the record and thus Hashimi should raise this claim, if at all, in a 28 U.S.C. § 2255 (2012) motion.

Hashimi, 718 F. App'x at 181.

A Final Mandate was stayed until after the request for a re-hearing *en banc* was decided. The request for a re-hearing *en banc* was denied on March 12, 2018. The Final Mandate was issued on March 20, 2018.

REASONS FOR GRANTING THE PETITION

Mr. Hashimi's Sixth Amendment right to counsel was effectively violated when his trial counsel made an admission of guilt without consulting his client and despite his client's objections. The Supreme Court recently held in *McCoy* that the Sixth Amendment guarantees a defendant the right to choose the objective of his defense and to insist that his counsel refrain from admitting guilt, even if doing so is considered part of counsel's trial strategy. *McCoy*, 138 S. Ct. at 1505.

I. HASHIMI'S RIGHT TO MAINTAINING HIS INNOCENCE WAS VIOLATED BY TRIAL COUNSEL.

The Sixth Amendment guarantees each criminal defendant “the Assistance of Counsel for his defence” but this does not surrender control entirely to counsel. *Id.* at 1503. Trial management may be the domain of the lawyer, but autonomy to decide that the objective of the defense is to assert innocence belongs to the client. *Id.*

A. Hashimi's autonomy in deciding the objective of his defense was stripped of him by trial counsel.

A client's right to autonomy is decided differently than a complaint of counsel's competence. *Id.* at 1510–11. The Supreme Court held that the violation of the protected autonomy right was complete when the court allowed counsel to usurp control of an issue within the defendant's sole prerogative. *Id.* at 1511. The Sixth Amendment guarantees a right to secured autonomy and violation of that right is a structural error because it protects “the fundamental legal principle that a defendant must be allowed to make his own choices about the proper way to protect his own liberty.” *Id.* Counsel's admission of a client's guilt over the client's express objection blocks the defendant's right to make a fundamental choice about his own defense and requires that defendant be accorded a new trial without any need to first show prejudice. *Id.*

Autonomy to decide the objective of the defense is different than decisions of strategy; insisting on innocence even in the face of overwhelming evidence to the contrary is not a strategic choice about how to best achieve a client's objectives but rather a choice about what the client's objectives are. *Id.* at 1508.

An admission of guilt is a decision that must be made by the client, and Hashimi was not given the

opportunity to make that decision. He insisted upon his innocence despite trial counsel's continuous pressure to plead guilty, and counsel never formally asked him whether he approved of his strategy to concede guilt to two counts in order to bolster support against the other two counts. Furthermore, Hashimi received the harshest sentence on Count III. Trial counsel's admission of guilt automatically created five more years of incarceration than Hashimi could have faced if he had only been sentenced on Counts I and II. Consequently, his trial counsel stripped him of his autonomy and this fact demands granting a new trial in accordance with *McCoy*.

B. Hashimi had no opportunity to contest his trial counsel's admission of guilt during closing argument.

The Supreme Court held in *McCoy* that when a client makes it plain that the objective of his defense is to maintain innocence, his lawyer must abide by that objective and may not override it by conceding guilt. *Id.* at 1504. This standard is illustrated by comparing the facts of *McCoy* to *Florida v. Nixon*. In the latter case, Nixon's attorney did not negate Nixon's autonomy by overriding Nixon's desired defense for he was "generally unresponsive" during discussions of trial strategy and only complained about counsel's admission of guilt after trial. *Id.* The Supreme Court contrasts this with *McCoy*, who opposed his counsel's assertion of his guilt at every opportunity, before and during trial, both in conference with his lawyer and in open court. *Id.*

The *McCoy* opinion makes it very clear that a client cannot complain about counsel's admission of guilt only after trial, but this assumes a client who was aware of counsel's trial strategy prior to its use. Hashimi had previously complained about his counsel's lack of communication and pressure to plead guilty. However, Hashimi was never consulted regarding his trial counsel's proposed strategy of admitting guilt to Counts III and IV. Furthermore, the fact that the admission was entered during closing

argument immediately before jury instructions meant that there was effectively no moment where Hashimi could have contested this admission openly in court. This is in contrast to the defendant in *McCoy* who was able to testify to his own innocence after his counsel made the admission of guilt. Even if this fact does not constitute an outright reversal of the Fourth Circuit's opinion, it still demands a remand in order to interpret Hashimi's claim in light of *McCoy*.

CONCLUSION

The petitioner's Sixth Amendment right to secured autonomy was violated by his trial counsel which demands the Supreme Court reverse the lower court's opinion. For the foregoing reasons, the petition for a writ of certiorari should be granted and this case should be remanded to the Fourth Circuit Court of Appeals for review in light of *McCoy v. Louisiana*, 138 S. Ct. 1500 (2018).

Respectfully submitted,

/s/ Ahmad S. Hashimi

Petitioner

Inmate Register Number: 89875-083

FCI GILMER

P.O. BOX 6000

GLENVILLE, WV 26351

APPENDICES