

No. _____

IN THE
Supreme Court of the United States

CHARLES RAY CRAWFORD,
Petitioner,

v.

STATE OF MISSISSIPPI,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF MISSISSIPPI

PETITION FOR A WRIT OF CERTIORARI

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CAPITAL CASE
QUESTION PRESENTED

In *McCoy v. Louisiana*, 584 U.S. 414 (2018), this Court held that the Sixth Amendment guarantees the defendant the right to personally decide whether to permit counsel to concede guilt before the jury, and that the trial court's allowance of such a confession over the defendant's objection constitutes structural error. At petitioner's capital trial, defense counsel conceded petitioner's guilt before the jury over petitioner's repeated objections to the trial court.

The question presented is whether, under the retroactivity framework established in *Teague v. Lane*, 489 U.S. 288 (1989), *McCoy* announced a new rule that does not apply retroactively to convictions that became final before *McCoy* was decided.

RELATED PROCEEDINGS

The proceedings directly related to this petition are:

Crawford v. State, No. 2024-DR-01386-SCT, Mississippi Supreme Court. Judgment entered on September 12, 2025.

Crawford v. State, No. 2013-DR-02147-SCT, Mississippi Supreme Court. Judgment entered on August 4, 2016. Rehearing denied on November 10, 2016. This Court denied a petition for a writ of certiorari, No. 16-7918, on May 22, 2017. See 581 U.S. 995 (2017).

Crawford v. State, No. 1999-DR-00647-SCT, Mississippi Supreme Court. Judgment entered on December 4, 2003. Rehearing denied on March 25, 2004. This Court denied a petition for a writ of certiorari, No. 03-11056, on October 4, 2004. See 543 U.S. 866 (2004).

Crawford v. State, No. 94-DP-01016-SCT, Mississippi Supreme Court. Judgment entered on March 12, 1998. Rehearing denied on June 18, 1998. This Court denied a petition for a writ of certiorari, No. 98-6115, on November 30, 1998. See 525 U.S. 1021 (1998).

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Charles Ray Crawford respectfully petitions for a writ of certiorari to the Supreme Court of Mississippi.

OPINIONS BELOW

The Supreme Court of Mississippi's decision dismissing petitioner's petition for post-conviction relief is not reported and is reprinted in the Appendix to the Petition. Pet. App. 1a. The Supreme Court of Mississippi's order setting an execution date is not reported and is reprinted in the Appendix to the Petition. Pet. App. 5a.

JURISDICTION

The Supreme Court of Mississippi entered judgment on September 12, 2025. This Court's jurisdiction is invoked under 28 U.S.C. 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Sixth Amendment to the United States Constitution, U.S. Const. amend. VI, provides in relevant part: "In all criminal prosecutions, the accused shall enjoy the right * * * to have the Assistance of Counsel for his defence."

INTRODUCTION

At petitioner's capital trial in Mississippi state court, defense counsel conceded petitioner's guilt to the jury, telling jurors in guilt-phase closing arguments that petitioner was "legally responsible" for the

charged crimes and that he was “still dangerous to the community.” See p. 8, *infra*. Unsurprisingly, the jury convicted petitioner and sentenced him to death. Counsel made those sweeping concessions over petitioner’s repeated and vehement objections, which he expressed to both counsel and the trial court. The trial court’s rejection of petitioner’s objections was a stark violation of the Sixth Amendment, which guarantees an accused the right to decide whether to permit counsel to concede guilt before the jury. *McCoy v. Louisiana*, 584 U.S. 414 (2018).

In a series of decisions stretching back a half-century, this Court has construed the Sixth Amendment to confer on the accused a right to a personal defense, that is, a defense whose fundamental objectives and nature are determined by the defendant himself, not his counsel. *Faretta v. California*, 422 U.S. 806, 819 (1975). Those decisions that the accused alone may make include whether to plead guilty, whether to testify in one’s defense, what counsel to retain, and whether to forgo an appeal. *Jones v. Barnes*, 463 U.S. 745, 751 (1983). And, this Court confirmed in *McCoy*, the Sixth Amendment right to a personal defense includes the right to decide whether to concede guilt. That choice, the Court explained, is materially indistinguishable from those important decisions that the Court has long held fall within the defendant’s personal purview for purposes of the Sixth Amendment. Indeed, well before *McCoy*, and well before petitioner’s conviction became final, lower federal courts and state courts had held that this Court’s Sixth Amendment precedents established that defense counsel may not concede guilt over the defendant’s objection.

Here, however, the Mississippi Supreme Court summarily refused to consider the open-and-shut *McCoy* error that rendered petitioner's conviction invalid. That court asserted that *McCoy* does not apply retroactively—an assertion that rests on the unstated and unreasoned assumption that *McCoy* announced a new rule of constitutional law under the retroactivity framework of *Teague v. Lane*, 489 U.S. 288 (1989). That assumption is wrong. *McCoy* did not break new ground or impose new obligations on the State. To the contrary, it applied existing, well-established Sixth Amendment principles to a situation that the Court had not previously confronted. Indeed, *McCoy* itself described the right to decide whether to concede guilt as falling well within the bounds of the Court's longstanding Sixth Amendment jurisprudence.

This Court's review is manifestly warranted to confirm that *McCoy* did not announce a new rule of constitutional law. The Mississippi trial court, in rebuffing petitioner's objections to counsel's concession of guilt, ignored the Sixth Amendment principles that this Court had already clearly elucidated, and that guaranteed petitioner the right to make decisions fundamental to the defense. And the Mississippi Supreme Court compounded that error by conclusorily treating *McCoy* as a new rule rather than a confirmation of long-existing principles. Certiorari is necessary to ensure that this Court's decisions construing the Sixth Amendment retain full force in Mississippi, including with respect to convictions that became final before *McCoy*.

The question presented is also of overwhelming importance to petitioner himself. As a direct consequence of the Mississippi Supreme Court's refusal to

consider his Sixth Amendment claim, petitioner is scheduled to be executed on October 15, 2025. Petitioner expects to file an application for a stay of execution to permit the Court to consider this petition in the normal course.

STATEMENT OF THE CASE

A. Legal Background

The Sixth Amendment guarantees the accused in a criminal proceeding the right to have “the Assistance of Counsel for his defence.” U.S. Const. amend. VI. The Sixth Amendment “does not provide merely that a defense shall be made for the accused; it grants to the accused personally the right to make his defense.” *Faretta v. California*, 422 U.S. 806, 819 (1975). “The right to defend is given directly to the accused; for it is he who suffers the consequences if the defense fails.” *Id.* at 819-820. It follows that, when a defendant obtains counsel, the Sixth Amendment “contemplat[es] a norm in which the accused, and not a lawyer, is master of his own defense.” *Gannett Co. v. DePasquale*, 443 U.S. 368, 382 n.10 (1979).

Based on those bedrock principles, this Court has long held that certain fundamental decisions are reserved for the accused, rather than counsel. For instance, the accused has the right to conduct his own defense at trial, provided he is competent to do so and makes the choice knowingly and intelligently. See, e.g., *Faretta*, 422 U.S. at 819-821; *McKaskle v. Wiggins*, 465 U.S. 168, 170 (1984). So too, the Sixth Amendment embraces the right to one’s counsel of choice for a defendant who retains counsel. See *United States v. Gonzalez-Lopez*, 548 U.S. 140, 144 (2006).

And the client alone has the right to decide whether to plead guilty, waive the right to a jury trial, testify on his own behalf, and forgo an appeal. See, e.g., *Jones v. Barnes*, 463 U.S. 745, 751 (1983). That is so regardless of the wisdom of the client’s decision or the guidance provided by counsel. See *id.* In short, this Court has consistently recognized that the Sixth Amendment provides the accused “the ultimate authority to make certain fundamental decisions” about his defense. *Id.*

In *McCoy v. Louisiana*, 584 U.S. 414 (2018), this Court clarified that one of those fundamental decisions is the decision whether to concede guilt before the jury. At trial, the Court explained, “a defendant has the right to insist that counsel refrain from admitting guilt, even when counsel’s experienced-based view is that confessing guilt offers the defendant the best chance to avoid the death penalty.” *Id.* at 417. “Guaranteeing a defendant the right ‘to have the Assistance of Counsel for *his* defence,’ the Sixth Amendment so demands.” *Ibid.* (emphasis in original). This Court explained that “[j]ust as a defendant may steadfastly refuse to plead guilty in the face of overwhelming evidence against her, or reject the assistance of legal counsel despite the defendant’s own inexperience and lack of professional qualifications, so may she insist on maintaining her innocence at the guilt phase of a capital trial.” *Id.* at 422.

In *McCoy*, that constitutional minimum had not been met because McCoy “adamantly objected to any admission of guilt,” “yet the trial court permitted counsel, at the guilt phase of a capital trial, to tell the jury the defendant ‘committed three murders.’” 584 U.S. at 417 (citation omitted). This Court explained that was a cut-and-dry Sixth Amendment violation because

“[w]ith individual liberty—and, in capital cases, life—at stake, it is the defendant’s prerogative, not counsel’s, to decide on the objective of his defense: to admit guilt in the hope of gaining mercy at the sentencing stage, or to maintain his innocence, leaving it to the State to prove his guilt beyond a reasonable doubt.” *Id.* at 417-418.

B. Factual Background and Initial Proceedings

1. Petitioner was indicted in September 1993 for the murder of Kristy Ray. See *Crawford v. Mississippi*, 716 So. 2d 1028, 1031 (Miss. 1998). According to the State, petitioner kidnapped and raped Ray, and then stabbed her to death. See *id.* at 1031-1037.

After petitioner’s murder indictment, the Tippah County Circuit Court appointed James Pannell to represent petitioner in his capital murder case. See Affidavit of David O. Bell ¶ 2 (Oct. 27, 2021) (Ex. A to Petition for Post-Conviction Relief) (“Bell Affidavit”).¹ About a year later, the trial court appointed David O. Bell to assist Pannell in representing petitioner. *Ibid.*

As trial approached and petitioner’s appointed counsel had conducted no meaningful investigation, petitioner wrote letters to his counsel about the need for pre-trial investigation, trial strategy, and petitioner’s expectation that he would be acquitted. One letter, which petitioner sent in the months before trial,

¹ Petitioner’s Petition for Post-Conviction Relief and associated exhibits in the Mississippi Supreme Court are available electronically on the docket. See *Charles Ray Crawford v. State of Mississippi*, 2024-DR-01386-SCT (Miss.). The electronic docket and exhibits are accessible via Westlaw.

emphasized to counsel that “[a]ll a defendant is required to show is a *reasonable* doubt,” for which petitioner believed he had “*more* than shown sufficient evidence.” Four Page Letter from Charles Ray Crawford to Counsel at 4 (Ex. J to Petition for Post-Conviction Relief).

The month before trial, petitioner sent another letter to counsel discussing in detail potential suppression of evidence, pretrial motions that petitioner wanted his attorneys to file to put him in the best position to secure an acquittal, trial strategy, and more. See March 1994 Letter from Charles Ray Crawford to Counsel at 8-11 (Ex. F to Petition for Post-Conviction Relief). Of particular note, petitioner unequivocally instructed his attorneys that “[y]our *main* objective as my defense counsel should be to do *everything* within your power to obtain an acquittal in my case!” *Id.* at 12 (cleaned up). Petitioner closed the letter by asking his counsel, “[i]s there any reason that one or both of you cannot fully and without any restraint diligently and aggressively pursue a not guilty verdict in this case?” *Id.* at 13 (cleaned up). Petitioner thereby made it abundantly clear that he wanted his attorneys to vigorously advocate for acquittal at trial, and that under no circumstances did petitioner want them to concede guilt.

2. At trial in April 1994, petitioner’s counsel immediately and repeatedly conceded petitioner’s guilt, over his express objections. As Bell later stated in a signed affidavit, “the trial strategy was to concede the underlying facts of Mr. Crawford’s guilt and argue an insanity defense. And, if the jury rejected the insanity defense, the strategy was to argue against the death penalty during the penalty phase due to Mr. Crawford’s

mental health problems.” Bell Affidavit ¶ 3. That strategy manifested throughout trial. As early as voir dire, for example, petitioner’s attorney stated, “[w]e do not anticipate a defense or that the defense is going to be able to show or to attack the State’s case and prevent them from showing that this Defendant did in fact commit the acts that he is charged with.” Transcript Excerpts from 1994 Trial Proceedings in the Tip-pah County Circuit Court at 309-310 (Ex. M to Petition for Post-Conviction Relief) (“Tr.”).

Petitioner’s counsel’s “strategy” of conceding guilt continued through guilt-phase closing arguments. There, counsel stated:

“The what of this case is not in question[,] Kristy Ray a fine and beautiful young lady abducted, assaulted and killed; and the defendant by his own statement to law enforcement officers has never denied that he is the individual that actually did those things. * * * No one else is legally responsible for what happened here * * * . Why did Charles Ray Crawford do this?”

Tr. 1178-1180; see, *e.g.*, *id.* at 1190-1191 (defense counsel stating during closing: “Is there any question in anybody[']s mind that Charles Ray Crawford is still dangerous to the community. There is certainly not in mine and there’s certainly not in anybody’s that has been here all week during this case.”).

Petitioner vehemently objected to his lawyers’ concession of guilt throughout the trial. As Bell put it, “Mr. Crawford disagreed with our decisions concerning the objectives of representation.” Bell Affidavit ¶ 4. Indeed, “Crawford objected to the concession of

his guilt and the pursuit of an insanity defense before and during trial.” *Id.*

Petitioner brought his objections to the trial court, and they appear throughout the trial transcript. Those objections are typified by the following examples:

- Petitioner: “I have got copies of letters here that I sent my attorneys and things that I wanted them to do * * * [t]hey have not done them. They came here yesterday the same by the jury, told the jury that I was already guilty before the trial started and I do not recognize them as my attorneys any more [sic].” Tr. 409.
- Defense counsel: “Mr. Crawford disagrees with our view of how this case ought to be handled but we are going to do what it takes to do our job in this case. We were appointed to represent him in this case and we are going to use our best efforts and our best legal judgment as to what is best for him whether he agrees with us or not.” Tr. 672.
- Petitioner: “I want to make a motion for a mistrial on the grounds that the jury was tainted from the beginning as I said the other day by [counsel] opening with the statement that he didn’t intend—he didn’t expect that he could prove or disprove what the * * * prosecution was going to put on. He told that from the front out here to the jury and like I said the other day one of the members of the jury stood up and said well what you are saying is this man is already guilty.” Tr. 819.

- Petitioner: “From the time that they during the voir dire of the jury told the jury that they couldn’t prove that I was innocent. They might as well been sitting over there with the prosecution.” Tr. 819-820.

The trial court and petitioner’s counsel repeatedly rebuffed his objections. The trial court told petitioner that “I understand that you disagree with their representation of you but the court has appointed them.” *E.g.*, Tr. 821. And petitioner’s counsel simply reiterated that “we are going to use our best efforts” “as to what is best for [petitioner] whether he agrees with us or not.” *Id.* at 672.

The jury convicted petitioner of capital murder and sentenced him to death. *Crawford*, 716 So. 2d at 1031. The Mississippi Supreme Court affirmed petitioner’s conviction and death sentence on direct review. *Id.* at 1053. This Court denied certiorari. See 525 U.S. 1021 (1998).

3. Following the conclusion of his direct appeals, petitioner sought collateral relief in the Mississippi courts. One of the arguments petitioner raised was that “the failure of the attorney client relationship should have been addressed by the trial court.” *Crawford v. Mississippi*, 867 So. 2d 196, 206 (Miss. 2003). But the Mississippi Supreme Court “swiftly” rejected that argument and denied relief to petitioner on all grounds. *Id.* at 207. This Court denied certiorari. See 543 U.S. 866 (2004).

Petitioner later sought federal habeas relief, and although the Fifth Circuit concluded that petitioner’s Sixth Amendment right to counsel was violated on

grounds other than his attorneys' concession of guilt, the Court held that the constitutional error was harmless. *Crawford v. Epps*, 531 F. App'x 511, 517-519 (5th Cir. 2013). Specifically, the Fifth Circuit concluded that the Sixth Amendment violation was harmless in part because petitioner supposedly "cho[se] to pursue his insanity defense" at trial. *Id.* at 521. This Court denied certiorari. See 571 U.S. 1205 (2014).

Petitioner subsequently brought a second petition for post-conviction relief, which was denied. *Crawford v. Mississippi*, 218 So. 3d 1142 (Miss. 2016). This Court denied certiorari. See 581 U.S. 995 (2017).

C. Proceedings Below

In December 2024, petitioner filed a successive petition for post-conviction relief in state court. Petitioner contended that his trial attorneys' concession of guilt over his objections violated the Sixth Amendment. In particular, petitioner argued that this Court has held that the Sixth Amendment forbids counsel from overriding a client's decision to contest guilt. And petitioner contended that, under federal law, *McCoy* applied retroactively on collateral review primarily because, "[i]n *McCoy*, the Court did not announce a new rule of federal constitutional law[,] but reaffirmed the fundamental meaning of the Sixth Amendment[.]" Resp. to Mot. to Dismiss at 13, No. 2024-DR-01386-SCT (Miss. Feb. 7, 2025). Petitioner explained that although *McCoy* crystallized the nature of the constitutional violation that occurred at his trial, *McCoy* was merely an application of settled Sixth Amendment jurisprudence, so that decision applied retroactively to petitioner's case as a matter of federal law.

The Mississippi Supreme Court dismissed the petition on the grounds that the petition was time-barred under the one-year limitations period for capital cases and also barred as a successive petition for post-conviction relief. With regard to both the limitations period and the successive-petition rule, the court explained that “[u]nless Crawford shows that his claims are excepted,” they are procedurally barred. Pet. App. 2a. One such exception to the statute of limitations and the successive-petition bar is reliance on an intervening decision that would have altered the result. Miss. Code Ann. § 99-39-5(2)(a)(i). The court recognized that petitioner’s “primary claim” was that this Court’s decision in *McCoy* “amounts to an intervening decision and that he thus meets an exception to the bars.” Pet. App. 2a (citing Miss. Code Ann. § 99-39-5(2)(a)(i); Miss. Code Ann. § 99-39-27(9)). The Mississippi court, however, “f[ound] that Crawford has not shown that *McCoy* should be given retroactive effect.” Pet. App. 3a. The court also “note[d] that Crawford waited” to file the petition after *McCoy* was decided. *Id.* Accordingly, the decision below “conclude[d] that no relief is warranted.” *Id.*

The same day, the Mississippi Supreme Court issued a separate order setting an execution date of October 15. Pet. App. 5a.

REASONS FOR GRANTING THE PETITION

The Mississippi Supreme Court’s decision cannot be reconciled with a long line of this Court’s Sixth Amendment decisions, which culminated in *McCoy v. Louisiana*, 584 U.S. 414 (2018). In *McCoy*, this Court held that the Sixth Amendment’s provision that the accused shall “have the *Assistance* of Counsel for *his*

defence,” U.S. Const. amend. VI (emphasis added), encompasses the right to prevent trial counsel from conceding guilt over the defendant’s objection. Petitioner unquestionably was denied that right at his trial: The trial court permitted counsel to repeatedly concede his guilt to the jury, notwithstanding petitioner’s strenuous objections before and during trial. But the Mississippi Supreme Court refused to remedy that straightforward constitutional violation on the ground that *McCoy* came too late for its ruling to matter in petitioner’s case. That conclusion cannot be reconciled with this Court’s longstanding Sixth Amendment precedents, which emphasized that fundamental decisions about the objectives of the defense—such as whether to plead guilty, and whether to testify at trial—are for the defendant to make. The decision whether to concede guilt is just such a decision—as lower courts had held by the time petitioner’s conviction became final.

This Court’s review is manifestly warranted to ensure appropriate enforcement of this Court’s decisions, settle a conflict between courts over whether *McCoy* announced a new rule, and guarantee that petitioner is tried in a manner consistent with the Sixth Amendment before Mississippi may execute him. And because the Mississippi Supreme Court’s application of state-law timeliness and successive-petition bars turned entirely on its conclusion that *McCoy* announced a new rule—a question that is determined by federal law—there is no jurisdictional obstacle to this Court’s consideration. This Court should grant certiorari.

I. The Decision Below Conflicts with This Court's Decisions.

A. Petitioner's conviction was obtained in violation of his Sixth Amendment right to decide whether to concede guilt.

1. This Court has long held that the Sixth Amendment “grant[s] to the accused personally the right to make his defense.” *McCoy v. Louisiana*, 584 U.S. 414, 421 (2018) (quoting *Faretta v. California*, 422 U.S. 806, 819-820 (1975)). In speaking of “the *assistance* of counsel,” the Sixth Amendment establishes that “the accused, and not a lawyer, is master of his own defense.” *McCoy*, 584 U.S. at 421-422 (emphasis added) (quoting *Gannett Co. v. DePasquale*, 443 U.S. 368, 382 n.10 (1979)). Applying those longstanding principles, this Court confirmed in *McCoy* that the Sixth Amendment guarantees a criminal defendant the right to direct his counsel not to concede guilt at trial, regardless of whether counsel believes that conceding guilt would be the best strategy. “[A] defendant has the right to insist that counsel refrain from admitting guilt, even when counsel’s experienced-based view is that confessing guilt offers the defendant the best chance to avoid the death penalty.” *Id.* at 417. “[I]t is the defendant’s prerogative, not counsel’s, to decide on the objective of his defense: to admit guilt in the hope of gaining mercy at the sentencing stage, or to maintain his innocence, leaving it to the State to prove his guilt beyond a reasonable doubt.” *Id.* at 417-418.

As a result, when counsel is “[p]resented with express statements of the client’s will to maintain innocence, * * * counsel may not steer the ship the other

way.” *Id.* at 424. And once the defendant’s objections are made known to the trial court, “[t]he trial court’s allowance” of counsel’s “admission of * * * guilt” is “incompatible with the Sixth Amendment,” and constitutes structural error. *Id.* at 428.

2. Petitioner’s Sixth Amendment right to a personal defense was plainly violated here. Just as in *McCoy*, petitioner “adamantly objected to any admission of guilt.” 584 U.S. at 417. Indeed, petitioner’s trial counsel acknowledged that “Crawford disagreed with our decisions concerning the objectives of representation,” and that “Crawford objected to the concession of his guilt and the pursuit of an insanity defense before and during trial.” Bell Affidavit ¶ 4. The record is replete with examples of petitioner expressing his objections to the trial court both before and after trial. See pp. 7-10, *supra*. For instance, petitioner objected on the record to his attorneys’ telling “the jury that I was already guilty before the trial started,” and petitioner made clear to the court that he did “not recognize them as my attorneys any more [sic].” Tr. 409.

In light of petitioner’s objections, there is no question that the trial court violated petitioner’s Sixth Amendment rights by permitting his trial counsel to concede guilt to the jury. In *McCoy*, the constitutional violation involved McCoy’s trial counsel telling the jury that “there was ‘no way reasonably possible’ that they could hear the prosecution’s evidence and reach ‘any other conclusion than Robert McCoy was the cause of these individuals’ death.” 584 U.S. at 419 (citation omitted). Counsel’s statements in petitioner’s case are if anything even more emphatic and conclusive. As petitioner’s trial counsel confirmed, “the trial strategy was to concede the underlying facts of Mr.

Crawford’s guilt.” Bell Affidavit ¶ 3. To effectuate that strategy, petitioner’s attorney told the jury during voir dire, “[w]e do not anticipate a defense or that the defense is going to be able to show or to attack the State’s case and prevent them from showing that this Defendant did in fact commit the acts that he is charged with.” Tr. 309-310. Elsewhere, petitioner’s counsel contended that “the defendant by his own statement to law enforcement officers has never denied that he is the individual that actually did those things * * * . No one else is legally responsible for what happened here * * * . *Why did Charles Ray Crawford do this?*” *Id.* at 1178-1180 (emphasis added).

Petitioner’s case is thus indistinguishable from the scenario that this Court held constituted structural error in *McCoy*. In both cases, trial counsel “thought the objective of [the] representation should be avoidance of the death penalty,” rather than avoidance of a guilty verdict. *McCoy*, 584 U.S. at 428. But in each case, the client “object[ed] to [the] proposed strategy.” *Ibid.* Once that objection was evident, “a concession of guilt should have been off the table.” *Ibid.* Accordingly, the “trial court’s allowance of [the] admission of [the client’s] guilt despite” the client’s “objections was incompatible with the Sixth Amendment.” *Ibid.* Petitioner was therefore denied the elemental Sixth Amendment protections that this Court has expressly required, in just the same way as McCoy himself.

B. *McCoy* governs petitioner’s trial proceedings because it did not announce a new rule.

The Mississippi Supreme Court short-circuited that analysis altogether, refusing to enforce—or even

engage with—the Sixth Amendment on the theory that *McCoy* announced a new rule that is not retroactively applicable to petitioner’s conviction. But *McCoy* did not announce a new rule. Instead, it merely clarified bedrock Sixth Amendment protections that already applied by the time petitioner’s conviction became final.

1. This Court has explained that, as a matter of federal law, the retroactivity on collateral review of a criminal procedure decision turns on whether the decision announces a new rule. When this Court “appl[ies] a settled rule” in a novel context, a defendant may “avail herself of the decision on collateral review” regardless of whether the conviction was final before the decision. *Chaidez v. United States*, 568 U.S. 342, 347 (2013); accord *Whorton v. Bockting*, 549 U.S. 406, 416 (2007) (“[A]n old rule applies both on direct and collateral review.”). By contrast, when this Court “announce[s] a ‘new rule,’ a person whose conviction is already final” generally “may not benefit from the decision in a habeas or similar proceeding.” *Chaidez*, 568 U.S. at 347.

The mere fact that a decision addresses a new set of facts does not equate to announcing a new rule. Rather, “‘a case announces a new rule * * * when it breaks new ground or imposes a new obligation’ on the government.” *Chaidez*, 568 U.S. at 347 (quoting *Teague v. Lane*, 489 U.S. 288, 301 (1989)). Conversely, this Court’s cases make “clear that a case does not ‘announce a new rule, [when] it [is] merely an application of the principle that governed’ a prior decision to a different set of facts.” *Id.* at 347-348 (quoting *Teague*, 489 U.S. at 307). And “[w]here the beginning point’ of [this Court’s] analysis is a rule of ‘general application, a rule

designed for the specific purpose of evaluating a myriad of factual contexts, it will be the infrequent case that yields a result so novel that it forges a new rule, one not dictated by precedent.” *Id.* at 348 (quoting *Wright v. West*, 505 U.S. 277, 309 (1992) (Kennedy, J., concurring in judgment)). For that reason, “when all” this Court does “is apply a general standard to the kind of factual circumstances it was meant to address,” it “will rarely state a new rule for *Teague* purposes,” regardless of the novelty of the factual circumstances. *Id.* at 348.

2. *McCoy* applied settled Sixth Amendment principles to a set of facts that this Court had not previously encountered. The decision therefore applies on collateral review as a matter of federal law.

This Court has long recognized that a criminal defendant has a Sixth Amendment right to direct the most important aspects of his own defense. That right inheres in the Amendment itself, which assures the accused “the Assistance of Counsel for *his* defence.” U.S. Const. amend. VI (emphases added). The Sixth Amendment “does not provide merely that a defense shall be made for the accused; it grants to the accused personally the right to make his defense.” *Faretta v. California*, 422 U.S. 806, 819 (1975). For that reason, this Court has often stated that “[t]he right to defend is personal.” *Id.* at 834. In other words, the Sixth Amendment “contemplat[es] a norm in which the accused, and not a lawyer, is master of his own defense.” *Gannett Co. v. DePasquale*, 443 U.S. 368, 382 n.10 (1979). Being “master of [one’s] own defense” entails the right to make important decisions that are “fundamental to a personal defense.” *Rock v. Arkansas*, 483 U.S. 44, 52 (1987).

Those decisions concern choices that determine the objectives of the defense and by whom it will be conducted. See *Jones v. Barnes*, 463 U.S. 745, 751 (1983) (“the accused has the ultimate authority to make certain fundamental decisions”). For instance, defendants’ Sixth Amendment right to a personal defense has long been understood to include “the right to self-representation—to make one’s own defense personally.” *Faretta*, 422 U.S. at 819; *McKaskle v. Wiggins*, 465 U.S. 168, 176-177 (1984). Because the Sixth Amendment defense right is personal and protects the defendant’s “autonomy,” *Faretta*, 422 U.S. at 834, counsel may not override the client’s decision to represent himself, even though self-representation “usually increases the likelihood of a trial outcome unfavorable to the defendant.” *McKaskle*, 465 U.S. at 177 n.8.

Beyond the right to self-representation, the Sixth Amendment encompasses the defendant’s right to “take the witness stand and to testify in his or her own defense.” *Rock*, 483 U.S. at 49. Counsel cannot contravene that choice, which is to be made by the accused “in the unfettered exercise of his own will.” *Brooks v. Tennessee*, 406 U.S. 605, 610 (1972). As with the right to self-representation, “the structure of the [Sixth] Amendment” “necessarily implie[s]” the accused’s absolute right to testify because the “accused’s right to present his own version of events in his own words” is “fundamental to a personal defense.” *Rock*, 483 U.S. at 52 (citation omitted). The Sixth Amendment right to direct one’s defense also extends to “whether to plead guilty, waive a jury,” or “take an appeal.” *Jones*, 463 U.S. at 751. If a client insists, his counsel may not nullify those choices, no matter their wisdom or likelihood of succeeding in advancing the client’s interests. See *id.* Ultimately, “[t]he defendant, and not his

lawyer or the State, will bear the personal consequences of a conviction.” *Faretta*, 422 U.S. at 834. “It is the defendant, therefore, who must be free personally to decide” these issues, and “his choice must be honored out of that respect for the individual which is the lifeblood of the law.” *Id.* (citation modified).

By the time petitioner’s conviction became final in 1998, then, this Court had established the broad principles governing when a defendant has a Sixth Amendment right to make a personal decision concerning the defense. *McCoy* simply applied those principles to an aspect of the defense that the Court had not previously considered. The *McCoy* Court’s reasoning leaves no doubt on that score. The Court cataloged the foregoing cases (and more) to explain the overarching principle at work: although “[t]rial management is the lawyer’s province,” decisions about the “objective of the defense” are “reserved for the client.” 584 U.S. at 422. And the Court explained that “[a]utonomy to decide that the objective of the defense is to assert innocence belongs in this latter category.” *Ibid.* Indeed, few decisions are more central to the objectives of the defense than the choice whether to concede guilt before the jury. The Court therefore explained that the right to defend one’s innocence was functionally indistinguishable from the other fundamental defense decisions it had already considered: “*Just as* a defendant may steadfastly refuse to plead guilty in the face of overwhelming evidence against her, or reject the assistance of legal counsel despite the defendant’s own inexperience and lack of professional qualifications, *so may she insist* on maintaining her innocence at the guilt phase of a capital trial.” *Ibid.* (emphases added). After all, none of those decisions “are * * * strategic choices about how best to *achieve* a client’s objectives;

they are choices about what the client’s objectives in fact *are*.” *Ibid.* *McCoy*’s explanation thus made clear that in confirming the personal right to decide whether to concede guilt, the Court was merely applying settled Sixth Amendment precepts to a scenario that it had not previously encountered but that was materially indistinguishable from those it had encountered.

To deem *McCoy* a new rule would eviscerate this Court’s carefully calibrated distinction between new and settled rules. *McCoy* did not, in any meaningful sense, “break[] new ground or impose[] a new obligation’ on the government.” *Chaidez*, 568 U.S. at 347 (quoting *Teague*, 489 U.S. at 301). Rather, *McCoy* used as “the beginning point’ of [its] analysis * * * a rule of ‘general application,’” and merely applied that default rule of self-directed representation to a context this Court had not yet addressed. *Id.* at 348 (quoting *Wright*, 505 U.S. at 309 (Kennedy, J., concurring in judgment)). After *McCoy* surveyed this Court’s decisions explicating the Sixth Amendment’s demand that a defendant be able to direct the objectives of his defense, the Court recognized that it followed that the accused has an absolute right to assert his innocence at trial. In short, “[g]uaranteeing a defendant the right ‘to have the *Assistance* of Counsel for *his* defence,’ the Sixth Amendment so demands.” 584 U.S. at 417 (emphasis in original).

That conclusion is reinforced by the fact that those courts confronted with the question before *McCoy*—and even before petitioner’s trial—held that, under the Court’s pre-*McCoy* precedents, conceding guilt over a defendant’s objection violated the Sixth Amendment. See, e.g., *Francis v. Spraggins*, 720 F.2d 1190, 1194 (11th Cir. 1983) (“Even though an adverse verdict

would have the effect of precluding further argument on the issue of guilt, counsel does not have license to anticipate that effect and to concede the issue during the guilt/innocence phase simply because an adverse verdict appears likely.”); *Wiley v. Sowders*, 647 F.2d 642, 650 (6th Cir. 1981) (given the defendant’s right to determine whether to plead innocence, “attorney [must] structure the trial of the case around his client’s plea”); *Byrd v. United States*, 342 F.2d 939 (D.C. Cir. 1965); *Pennsylvania v. Lane*, 382 A.2d 460 (Pa. 1978). Even by the time of petitioner’s trial (and certainly by the time petitioner’s conviction became final), therefore, existing Sixth Amendment principles established that the defendant’s right to autonomy included the right to decide whether to concede guilt. *McCoy* simply confirmed that point when the issue finally came before this Court.

3. *Florida v. Nixon*, 543 U.S. 175 (2004), further confirms that *McCoy* did not announce a new rule. There, this Court considered whether the Sixth Amendment precludes defense counsel from conceding a capital defendant’s guilt at trial “when [the] defendant, informed by counsel, *neither consents nor objects*.” *Id.* at 178 (emphasis added). This Court held that when counsel confers with the defendant and the defendant does not object to counsel’s proposed strategy, “[no] blanket rule demand[s] the defendant’s explicit consent” to concede guilt. *Id.* at 192.

Notwithstanding its fact-bound outcome, *Nixon* reaffirmed the guiding principles that undergird *McCoy*, and merely applied them to the facts presented in *Nixon*. That decision recognized that a defendant “has ‘the ultimate authority’ to determine ‘whether to plead guilty, waive a jury, testify in his or her own behalf, or

take an appeal.” *Id.* at 187 (quoting *Jones*, 463 U.S. at 751). And *Nixon* likewise agreed that an “attorney undoubtedly has a duty to consult with the client regarding ‘important decisions,’ including questions of overarching defense strategy.” *Id.* (citation omitted). But on its peculiar facts, *Nixon* concluded that when a defendant is *silent* when given the opportunity to direct the objectives of the defense, counsel may concede guilt if doing so is otherwise reasonable. *Id.* at 178. Nothing in that decision undercuts the precepts that dictated the outcome in *McCoy*. See *McCoy*, 584 U.S. at 424 (*Nixon* “is not to the contrary” because “Nixon’s attorney did not negate Nixon’s autonomy by overriding Nixon’s desired defense objective”).

All told, *McCoy* did not announce a new rule, and the Mississippi Supreme Court should have followed the decision here. It could not be clearer that trial counsel’s concession of guilt violated petitioner’s fundamental Sixth Amendment right to a personal defense.

4. The Mississippi Supreme Court’s decision conflicts with the decisions of the two other courts to consider whether *McCoy* announced a new rule.

In *In re Smith*, 49 Cal. App. 5th 377 (Cal. Ct. App. 2020), the California Court of Appeal held that *McCoy* did not create a new rule, and thus could be applied retroactively on collateral review. Specifically, the question in *In re Smith* was whether “*McCoy* is entitled to retroactive effect as to final judgments on collateral review under *Teague* because it was dictated by pre-existing precedent.” *Id.* at 390-391. The court held that *McCoy* was dictated by precedent, reasoning that “[t]he holding of *McCoy* extended the precedent under

Nixon, drawing a conclusion clearly implied in or anticipated by that opinion.” *Id.* at 391. Because *McCoy* “was foreshadowed by *Nixon*” and other Sixth Amendment precedents of this Court, “*McCoy* did not announce a new rule.” *Id.* at 392. Accordingly, it was eligible for retroactive application on collateral review.

The Connecticut Superior Court reached the same conclusion in *Jan G. v. Comm’r of Correction*, 2023 WL 8431827 (Conn. Super. Ct. Nov. 20, 2023). There, the court “conclude[d] that, applying the principles of *Teague* and *Danforth* [v. *Minnesota*, 552 U.S. 264 (2008)], *McCoy* is retroactively applicable to Jan G. because the court f[ound] that *McCoy* does not announce a new rule.” *Id.* at *18. That conclusion was “based on a reading of *McCoy* itself,” which explained that its holding flowed from “a recitation of well-settled Sixth Amendment law.” *Ibid.* The court explained that “[w]hat the [*McCoy*] Court did, in essence, was to apply the rationale underlying to the decision in *Nixon* to a different set of facts and reached a different conclusion based on those different facts.” *Id.* at *19. As such, “*McCoy* did not announce a new rule and therefore the decision is applicable to Jan G. on collateral review.” *Id.* at *20.

The conflict between those two courts’ decisions and the decision below is apparent. Had petitioner’s case been considered by the courts that decided *In re Smith* or *Jan G.*, he would have been entitled to relief. But because the Mississippi Supreme Court adjudicated petitioner’s petition, he is instead scheduled to be executed on October 15.

II. This Court Has Jurisdiction to Review the Mississippi Supreme Court’s Refusal to Apply *McCoy* Retroactively Under Federal Law.

This Court plainly has jurisdiction to review the Mississippi Supreme Court’s federal-law determination that *McCoy* does not apply retroactively.

1. This Court may review a state court’s refusal to adjudicate a federal claim unless the state court ruling “rests on a state law ground that is independent of the federal question and adequate to support the judgment.” *Lee v. Kemna*, 534 U.S. 362, 375 (2002) (quoting *Coleman v. Thompson*, 501 U.S. 722, 729 (1991)). “A state ground of decision is independent only when it does not depend on a federal holding, and also is not intertwined with questions of federal law.” *Glossip v. Oklahoma*, 604 U.S. 226, 242 (2025) (citations omitted). “[W]hen resolution of the state procedural law question depends on a federal constitutional ruling, the state-law prong of the court’s holding is not independent of federal law, and [this Court’s] jurisdiction is not precluded.” *Ake v. Oklahoma*, 470 U.S. 68, 75 (1985). And “[w]hen the adequacy and independence of any possible state law ground is not ‘clear from the face of the opinion,’” this Court “presume[s] reliance on federal law.” *Glossip*, 604 U.S. at 242, 245 (quoting *Michigan v. Long*, 463 U.S. 1032, 1040-1041 (1983)).

2. Jurisdiction here is clear. The Mississippi Supreme Court dismissed the petition as procedurally barred on the ground that Mississippi’s “intervening decision” exception does not apply to *McCoy* because petitioner had “not shown that *McCoy* should be given retroactive effect.” Pet. App. 2a-3a. The court thus

necessarily concluded that *McCoy* stated a new rule, rejecting petitioner’s argument that *McCoy* “did not announce a new rule of federal constitutional law[,] but reaffirmed the fundamental meaning of the Sixth Amendment[.]” Resp. to Mot. to Dismiss at 13.

The Mississippi Supreme Court’s determination that *McCoy*’s federal constitutional holding does not constitute a new federal constitutional rule necessarily “depend[s] on a federal holding” and is, at minimum, “intertwined with questions of federal law.” *Glossip*, 604 U.S. at 242. Whether a U.S. Supreme Court decision interpreting the Constitution announces a “new rule” of federal constitutional law is a federal question governed by *Teague* and its progeny. The answer to that question depends entirely on interpreting the federal law “principle[s] that governed” this Court’s prior decisions to determine whether the result was “dictated by precedent” of this Court. *Teague*, 489 U.S. at 301, 307; *Chaidez*, 568 U.S. at 347-348. The Court therefore has jurisdiction.

Confirming that conclusion, this Court has reviewed state court judgments in exactly this posture. In *Yates v. Aiken*, 484 U.S. 211 (1988), this Court reviewed a state court’s refusal to apply *Francis v. Franklin*, 471 U.S. 307 (1985), retroactively in state postconviction proceedings. This Court rejected the argument that the State had the authority to “refuse to apply a new rule of federal constitutional law retroactively” in its postconviction proceedings because *Francis* “did not announce a new rule,” but merely clarified the application of this Court’s earlier decisions. *Yates*, 484 U.S. at 217-218. That is, *Francis* clarified the law as it already existed at the time of the conviction being challenged in *Aiken*, so the state court

“ha[d] a duty to grant the relief that federal law requires.” *Id.* The same is true of *McCoy*. And more generally, this Court has consistently reviewed state court holdings regarding the retroactivity of this Court’s constitutional decisions—because the retroactivity of constitutional holdings is necessarily a question of federal law. See *Montgomery v. Louisiana*, 577 U.S. 190 (2016) (reviewing state court holding regarding retroactivity of this Court’s constitutional decision on state law grounds); *Danforth v. Minnesota*, 552 U.S. 264 (2008) (same); *Ivan V. v. City of New York*, 407 U.S. 203 (1972) (same); *Hankerson v. North Carolina*, 432 U.S. 233 (1977) (same).

Lest there be any doubt, Mississippi applies the *Teague* framework to assess the retroactivity of this Court’s decisions—a framework that includes this Court’s instruction that “a case announces a new rule when it breaks new ground or imposes a new obligation on the States or the Federal Government.” *Teague v. Lane*, 489 U.S. 288, 301 (1989). Mississippi has expressly “adopted the United States Supreme Court’s retroactivity test, as outlined in *Teague*,” *Carr v. Mississippi*, 178 So. 3d 320, 322 (Miss. 2015), as to “all issues relating to the retroactive application of judicially enunciated rules,” *Manning v. Mississippi*, 929 So. 2d 885, 900 (Miss. 2006) (emphasis added). The State itself agrees. See Mot. to Dismiss at 6-7 (“This Court relies on *Teague*” in “deciding whether a new rule meets [Mississippi’s] ‘intervening decision’ exception.”). The Mississippi Supreme Court’s retroactivity holding therefore unquestionably implicates federal law.

3. The State may argue that, if *McCoy* is not a “new” rule, then Mississippi’s “intervening decision”

exception to the bar on successive petitions does not apply under state law. But that was not the Mississippi Supreme Court's basis for dismissing the petition, and so cannot provide any independent state-law basis for precluding this Court's review. See *Long*, 463 U.S. at 1040-1041.

Regardless, if the State were to advance that interpretation of the "intervening decision" exception, that justification for the Mississippi Supreme Court's decision would be wrong as a matter of state law, and therefore inadequate to prevent this Court's review. The Mississippi Supreme Court has repeatedly held that the intervening-law exception applies to intervening decisions of this Court that merely clarify settled rules of constitutional law. In *Gilliard v. Mississippi*, 614 So. 2d 370 (Miss. 1992), for example, the court held that *Maynard v. Cartwright*, 486 U.S. 356 (1988) and *Clemons v. Mississippi*, 494 U.S. 738 (1990) constituted, "as a matter of state law," "intervening decisions which would except the application of the successive writ bar," even though those decisions clarified existing Eighth Amendment principles rather than announcing "new" rules of constitutional law. 614 So. 2d at 375. Indeed, the Mississippi Supreme Court has acknowledged in another case that if the intervening-law exception only authorized claims based on new rules of constitutional law (rather than clarifications of the kind at issue here), the exception would *never* apply because new rules of constitutional law generally cannot be a basis for post-conviction relief. See *Irving v. Mississippi*, 618 So. 2d 58, 61 (Miss. 1992) (rejecting this Catch-22).

Thus, the Mississippi Supreme Court has already made clear that if a decision like *McCoy* clarifies

existing law but does not announce a new rule under *Teague*, then it can qualify as an “intervening decision” for purposes of Mississippi’s exception to the bar on successive petitions. Any argument otherwise by the State would not accurately reflect state law—and if the Mississippi Supreme Court had held that *McCoy* was not a new rule and also not an “intervening decision,” that holding would not be an “adequate” state ground precluding this Court’s review. *Lee*, 534 U.S. at 376 (to be adequate, a state ground must be “firmly established and regularly followed”).

4. The Mississippi Supreme Court’s additional ruling that petitioner’s successive habeas petition is untimely, Pet. App. 3a, likewise cannot constitute an independent state ground because it is wholly derivative of that court’s federal-law retroactivity determination. The one-year statute of limitations for post-conviction capital petitions like this one, Miss. Code Ann. § 99-39-5(2), is by its terms inapplicable to petitions raising claims based on intervening decisions. Indeed, the Mississippi Supreme Court has considered a successive petition based on an intervening decision that was filed *eight* years after the decision in question. *Bell v. Mississippi*, 66 So. 3d 90, 93 (Miss. 2011). As the court explained at that time, “[n]oticeably absent from [successive application] statute is a time limitation in which to file a second or successive application if such application meets one of the statutory exceptions.” *Ibid.* An intervening decision is one of the statutory exceptions. Miss. Code Ann. § 99-39-5(2)(a). The timeliness ruling therefore also turns on whether *McCoy*

announced a new rule, or whether it instead can qualify as an intervening decision.²

III. This Court’s Intervention Is Manifestly Warranted.

This Court’s review is urgently needed. As the decisions discussed above demonstrate, see pp. 18-21, *supra*, the question whether *McCoy* announced a new rule is a recurring one. Indeed, given the recurring nature of retroactivity questions in general, and their importance to the legitimacy of criminal convictions, this Court has regularly granted certiorari to decide whether criminal procedure decisions announce new rules and, if so, apply retroactively under *Teague*. See, e.g., *Chaidez*, 568 U.S. 342; *Montgomery*, 577 U.S. 190; *Whorton*, 549 U.S. 406.

Review is also necessary to ensure that state courts faithfully apply this Court’s decisions—not only their precise holdings, but their reasoning. By the time of petitioner’s trial, this Court had clearly elucidated the principle at stake here: the Sixth Amendment’s guarantee of a personal right to make decisions fundamental to the objectives of the defense. As a result, numerous courts had held that decisions such as *Faretta* and *Jones* indicated that counsel could not concede guilt

² That conclusion is not undermined by the Mississippi Supreme Court’s citation of *Moffett v. Mississippi*, 351 So. 3d 936, 944 (Miss. 2022), for the proposition that delays “should not be tolerated.” Pet. App. 3a. In *Moffett*, the petitioner’s successive petition did not fall within any of the statutory exceptions, and the court accordingly held that the one-year statutory limitations period applied. 351 So. 3d at 944. *Moffett* is therefore inapposite here, and the Mississippi Supreme Court’s reliance on that irrelevant decision in this case cannot constitute an adequate state ground. See *Lee*, 534 U.S. at 376.

over the defendant's objection. But not the Mississippi courts. The trial court was well aware of petitioner's vehement objections to counsel's concession of guilt, and presumptively aware of this Court's extant decisions—yet it disregarded the import of this Court's jurisprudence and forced petitioner to proceed with a defense that was irreconcilable with his personal objectives. That was a clear-cut violation of the Sixth Amendment—and *McCoy* only confirmed that conclusion.

The Mississippi Supreme Court then compounded that error by refusing to recognize that *McCoy* did not announce a new rule. That refusal had the effect of rendering the Sixth Amendment's protection of defendants' right to a personal defense illusory for all Mississippi defendants whose convictions became final before *McCoy*—despite this Court's many longstanding decisions safeguarding that right. Review is therefore necessary to ensure that state courts give this Court's decisions their proper scope—both when the Court announces general principles and when it ultimately clarifies those principles or applies them to particular factual situations.

Finally, the question presented is of the utmost importance to petitioner. The trial court denied petitioner his constitutional right to block his counsel from conceding guilt at trial. Counsel subsequently told the jury that petitioner was guilty. In petitioner's own words at trial, his attorneys "might as well [have] been sitting * * * with the prosecution." Tr. 820. Had the Mississippi courts properly enforced the Sixth Amendment, petitioner would be entitled to a new trial. *McCoy*, 584 U.S. at 427. Instead, petitioner is scheduled to be executed.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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