

DOCKET NO. 25-7023

ORIGINAL

BEFORE THE UNITED STATES SUPREME COURT

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SUPREME COURT, U.S.

WAYNE MAITLAND,

Petitioner/Appellant/Defendant,

VS.

UNITED STATES OF AMERICA,

Respondant/Appellee/Plaintiff.

On Petition for Certiorari to the United States
Court of Appeals for the Fifth Circuit

On appeal from the United States Court for the
Eastern District of Texas, Beaumont Division,
Honorable Marcia A. Crone, presiding.
Cause No. 1:18-CV-449

PETITION FOR CERTIORARI

Respectfully submitted,

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Pro se'

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ISSUE

Maitland was convicted for two counts of kidnapping under 18 U.S.C. §1201(a) et seq. The alleged victims were his wife and stepchild. The United States alleged that a domestic violence [Maitland not charged with domestic violence] sequence of events escalated into kidnaping. It is undisputed that Maitland's counsel, over Maitland's objection, stated in closing arguments that there was a "sequence of events... that obviously were domestic violence and then raised to some new level." The trial court denied Maitland's §2255 claim and denied COA. The Fifth Circuit denied COA, summarily, holding that reasonable jurists could not disagree with the trial court's ruling. The issue is:

Whether the Fifth Circuit violated this Court's teachings under Buck v. Davis, 580 U.S. 100 (2017) regarding COA, and whether elements or guidelines are required to clarify the undefined term "reasonable jurists"; and whether the court below (as many circuits have heretofore done) is eroding this Court's holding in McCoy v. Louisiana, 138 S.Ct. 1500 (2018), granting to the defendant the right to demand his counsel not to concede guilt.

LIST OF PARTIES

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IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix 1 to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished. Case No. 25-40227 (5th Cir. 2025)

The opinion of the United States district court appears at Appendix 2 to the petition and is

reported at Maitland v. United States, 2025 U.S. Dist. LEXIS 56970; or, (E.D.Tex.
 has been designated for publication but is not yet reported; or, Mar. 27, 2025)
 is unpublished.

Magistrate's Recommendation (Cause No. 1:18-CV-449) appears as Appendix 3
 For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

JURISDICTION

The Supreme Court of the United States has jurisdiction to hear this matter under 28 U.S.C. §1254. This petition is filed within 90 days of the Fifth Circuit denial of Maitland's Certificate of Appealability. This motion is filed timely.

The Fifth Circuit of Appeals had jurisdiction to hear this Application for Certificate of Appealability from the United States District Court for the Eastern District of Texas pursuant to 28 U.S.C. §1291. The opinion for United States v. Maitland, Cause No. 25-40227 (5th Cir. filed Sept. 10, 2025) (unpublished) was given on September 10, 2025.

The United States District Court for the Eastern District of Texas had subject matter jurisdiction under 28 U.S.C. §2255, United States Code, as Maitland's underlying conviction arose in that court. The opinion for Maitland v. United States, 2025 U.S. Dist. LEXIS 56970 (E.D. Tex. 2025) was given on March 27, 2025.

CONSTITUTIONAL PROVISIONS, TREATIES, AND STATUTES

CONSTITUTIONAL PROVISIONS

U.S. Const. Amend. VI. Rights of the accused.

In all criminal prosecutions, the accused shall enjoy the rights 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.

STATUTES

18 U.S.C. §1201:

§1201. Kidnapping

(a) Whoever unlawfully seizes, confines, inveigles, decoys, kidnaps, abducts, or carries away and holds for ransom or reward or otherwise any person, except in the case of a minor by the parent thereof, when --

(1) the person is willfully transported in interstate or foreign commerce, regardless of whether the person was alive when transported across a State boundary, or the offender travels in interstate or foreign commerce or uses the mail or any means, facility, or instrumentality of interstate or foreign commerce in committing or in furtherance of the commission of the offense;

(2) any such act against the person is done within the special maritime and territorial jurisdiction of the United

States;

(3) any such act against the person is done within the special aircraft jurisdiction of the United States as defined in section 46501 of title 49;

(4) the person is a foreign official, an internationally protected person, or an official guest as those terms are defined in section 1116(b) of this title; or

(5) the person is among those officers and employees described in section 1114 of this title and any such act against the person is done while the person is engaged in, or on account of, the performance of official duties,

shall be punished by imprisonment for any term of years or for life and, if the death of any person results, shall be punished by death or life imprisonment.

[...]

(g) Special Rule for Certain Offenses Involving Children. --

(1) To whom applicable. -- If --

(A) the victim of an offense under this section has not attained the age of eighteen years; and

(B) the offender --

(i) has attained such age; and

(ii) is not --

(I) a parent;

(II) a grandparent;

(III) a brother;

(IV) a sister;

(V) an aunt;

(VI) an uncle; or

(VII) an individual having legal custody of the victim;

the sentence under this section for such offense shall include imprisonment for not less than 20 years.

[Argument in this case is in loco parentis]

28 U.S.C. §2255:

§2255. Federal custody; remedies on motion attacking sentence

(a) A prisoner in custody under sentence of a court established by Act of Congress claiming the right to be released upon the ground that the sentence was imposed in violation of the Constitution or laws of the United States, or that the court was without jurisdiction to impose such sentence, or that the sentence was in excess of the maximum authorized by law, or is otherwise subject to collateral attack, may move the court which imposed the sentence to vacate, set aside or correct the sentence.

(b) Unless the motion and the files and record of the case conclusively show that the prisoner is entitled to no relief, the court shall cause notice thereof to be served upon the United States attorney, grant a prompt hearing thereon, determine the issues and make findings of fact and conclusions of law with respect thereto. If the court finds that the judgment was rendered without jurisdiction, or that there has been such a denial or infringement of the constitutional rights of the prisoner as to render the judgment vulnerable to collateral

attack, the court shall vacate and set the judgment aside and shall discharge the prisoner or resentence him or grant a new trial or correct the sentence as may appear appropriate.

[...]

(d) An appeal may be taken to the court of appeals from the order entered on the motion as from the final judgment on application for a writ of habeas corpus.

(e) An application for a writ of habeas corpus in behalf of a prisoner who is authorized to apply for relief by motion pursuant to this section, shall not be entertained if it appears that the applicant has failed to apply for relief, by motion, to the court which sentenced him, or that such court has denied him relief, unless it also appears that the remedy by motion is inadequate or ineffective to test the legality of his detention.

(f) A 1-year period of limitation shall apply to a motion under this section. The limitation period shall run from the latest of --

(1) the date on which the judgment of conviction becomes final;

(2) the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making a motion by such governmental action;

(3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or

(4) the date on which the facts supporting the claim or

claims presented could have been discovered through the exercise of due diligence.

[...]

28 U.S.C. §2253(c)(1):

§2253. Appeal

[...]

(c)(1) Unless a circuit justice or judge issues a certificate of appealability, an appeal may not be taken to the court of appeals from --

(A) the final order in a habeas corpus proceeding in which the detention complained of arises out of process issued by a State court; or

(B) the final order in a proceeding under section 2255 [28 USCS §2255].

28 U.S.C. §2253(c)(2):

§2253. Appeal

(c)(2) A certificate of appealability may issue under paragraph (1) only if the applicant has made a substantial showing of the denial of a constitutional right.

STATEMENT OF FACTS

This case arises from a denial of a Certificate of Applicability (COA). Maitland raised a series of issues in his 28 U.S.C. §2255 falling under the Strickland v. Washington, 466 U.S. 688, 687-88 (1984) standard. As the trial court explains, in denying his objections to the Magistrate's Report and Recommendation:

Movant raised these grounds for review in his motion to vacate: (1) the federal kidnapping statute, as applied to him, is unconstitutional; (2) the phrase "for ransom or reward or otherwise" in 18 U.S.C §1201(a) is unconstitutionally vague; (3) the jury instructions were unconstitutional; (4) after movant filed a motion to represent himself, the court improperly failed to hold a hearing pursuant to Faretta v. California, 422 U.S. 806, 95 S.Ct 2525, 45 L.Ed.2d 562 (1975); (5) the government's admission that his conduct would not be a crime under state law precludes a federal conviction based on the conduct; and (6) he received ineffective assistance of counsel because counsel: (a) violated his right to autonomy under McCoy v. Louisiana, 584 U.S. 414, 138 S.Ct. 1500, 200 L.Ed.2d 821 (2018), and (b) failed to argue or preserve for appeal the issues raised in his first five grounds for review.

The magistrate judge correctly concluded movant's first five grounds for review were procedurally barred. They could have been raised on direct appeal and movant failed to show cause and prejudice for the failure to raise them.

Movant's first claim of ineffective assistance of counsel relies on the Supreme Court's decision in McCoy. In that case, the Supreme Court held that when the objective of a client's defense is to maintain his innocence, his attorney must abide by that objective and not override it by conceding guilt. 584 U.S. at 422. During closing argument, defense counsel acknowledged that during an altercation between movant and his wife, there was a "sequence of events... that obviously were domestic violence and then raised to some new level." United States v. Maitland, 1:14cr116 (E.D. Tex. July 25, 2016) (#154 at 564-65). In his objections, movant continues to maintain that

counsel's statement violated his right to autonomy under McCoy. Movant correctly quotes the Supreme Court as stating: "Just as a defendant may steadfastly refuse to plead guilty in the face of overwhelming evidence... so may she insist on maintaining her innocence at the guilt phase of ... trial." 584 U.S. at 422.

See Maitland v. United States, 2025 U.S. Dist. LEXIS 56970, *2-3 (E.D. Tex. 2025) (Appendix 2)

On appeal of the denial of COA to the Fifth Circuit, Maitland only raised his McCoy v. Louisiana issue. See unpublished Fifth Circuit order being appealed. See Appendix 1. Specifically:

Maitland renews his claim that his trial counsel violated his rights under McCoy v. Louisiana, 584 U.S. 414 (2018), by admitting his guilt during closing argument, against his wishes. Specifically, he asserts that his trial counsel admitted his guilt by acknowledging that there was a "sequence of events ... that obviously were domestic violence and then raised to some new level." He argues that reasonable jurists could disagree with the district court's determination that counsel's statement did not violate McCoy

Id.

The Fifth Circuit denied COA on September 10, 2025 writing, "Maitland has not made the requisite showing. Accordingly the motion for a COA is DENIED." See Appendix 1, (emphasis in original).

Maitland's clearly defined factual predicate highlights the ongoing occurrence at the appellate courts under the COA paradigm. The first is what parameters, if any, cabin the term "reasonable jurists"? And second, and subsidiary, what, if any, carve outs are there to this Court's McCoy teaching regarding a defendant's autonomy to decide whether to plead guilty? And thereon, an attorney's overriding a defendant's demand that counsel not concede guilt?

ARGUMENT

I. The Fifth Circuit of Appeal has decided this case contrary to Buck v. Davis, 580 U.S. 100 (2017) and McCoy v. Louisiana, 138 S.Ct. 1500, 1508 (2018) and the issues impacted require this Court's intervention.

This Court teaches that at the COA stage "the only question is whether the applicant has shown that 'jurists of reason could disagree with the district court's resolution of his constitutional claims or ... could conclude the issues presented are adequate to desire encouragement to proceed further.'" Miller-El v. Cockrell, 537 U.S. 322, 327 (2003). This "threshold question" should be decided, this Court instructs, without "full consideration of the factual or legal bases adduced in support of the claims." Id. at 336.

Here the "reasonable jurists" standard is amorphous and is used by the Circuit Courts to mean whatever that particular jurist believes is reasonable. This shape shifting is addressed infra. This Court explains that "[a] claim can be debatable even though every jurist of reason might agree, after the COA has been granted and the case has received full consideration, that petitioner will not prevail." Id. at 338.

"Reasonable jurists" is not defined. "Reasonable" is defined as (1) "fair, proper, or moderate under the circumstances; (2) according to reason; (3) having the faculty of reason." Black's Law Dictionary, 11th Ed., p. 1518 (2019).

Some examples in the McCoy and Miller-El context provide:

* Davis v. United States, 2023 U.S. App. LEXIS 8582, *8-9 (6th Cir. 2023) (counsel did not concede guilt he only conceded an element of the crime).

* Allen v. United States, 2020 U.S. App. LEXIS 28043, *6 (6th Cir. 2020) (In light of the overwhelming evidence that Allen sold drugs, reasonable jurists would agree that counsel could reasonably concede that fact while attempting to establish that the government could not prove that he had sold Alvarez the fentanyl that caused her death).

* Obermiller v. Shoop, 2025 U.S. App. LEXIS 21402, *6-7 (6th Cir. 2025) (limiting the right of counsel to concede guilt over client's objections solely to capital cases).

* Walker v. Douglas, 2025 U.S. App. LEXIS 19820, *6 (6th Cir. 2025) (conceding crime elements but asserting affirmative defense is not a violation of McCoy).

There are other Circuits that allow a concession of guilt over client's objections provided the attorney asserts affirmative defenses or one or more elements were missing. See Prentice v. Crow, 2022 U.S. Dist. LEXIS 251536, *26 (W.D. Ok., Aug. 16, 2022), c.f. Jurado v. Davis, 12 F.4th 1084, 2021 U.S. App. LEXIS 27269, *31 (4th Cir. 2021) (conceding elements to second degree murder not a violation of McCoy when defendant charged with first degree murder); Stephens v. Myrick, 809 Fed. App'x 389, 390 (9th Cir. 2020) (conceded event and facts but offered alternate theory of the occurrence).

Combining the problem with the amorphous "reasonable jurist" standard, without some elemental guidance from this Court, and considering this Court's teaching in McCoy; a "reasonable jurist", Justin Jordan in Thompson v. United States, 826 Fed. App'x 721, 730 (11th Cir. 2020) (concurring in part and

dissenting in part) relates as follows:

JORDAN, Circuit Judge, concurring in part and dissenting in part:

With one exception, I agree with the court's opinion denying rehearing. I would grant rehearing on Mr. Thompson's claim under McCoy v. Louisiana, 138 S.Ct. 1500, 200 L.Ed.2d 821 (2018), because I think we made a mistake in our original panel opinion. Let me explain why. In our opinion, we rejected Mr. Thompson's McCoy claim and concluded that "counsel did not admit guilt" because, although he conceded a number of factual elements, he "denied an essential element of the crime [i.e., the interstate commerce element]." Thompson v. United States, 791 F. App'x 20, 27 (11th Cir. 2019). I believe Mr. Thompson is correct in asserting in his petition for rehearing that our McCoy analysis was flawed.

In McCoy, a capital case, the defendant "vociferously insisted that he did not engage in the charged acts and adamantly objected to any admission of guilt." 138 S.Ct. at 1505. Nevertheless, his counsel -- having concluded that the evidence against the defendant was "overwhelming" and that "absent a concession at the guilt stage," it would be "impossible to avoid" a death sentence at the penalty phase -- told the jury that the defendant had caused the victims' deaths and that he had "committed these crimes." Id. at 1506-07. The Supreme Court held that a defendant has the right, under the autonomy guaranteed by the Sixth Amendment, to refuse to admit or concede guilt. So when a defendant "expressly asserts" that he wants "to maintain innocence of the charged criminal acts, his lawyer must abide by that [decision] and may not override it by conceding guilt." Id. at 1509. See also id. at 1510 ("[W]e agree with the majority of state courts of last resort that counsel may not admit her client's guilt of a charged crime over the client's intransigent objection to that admission."). The Court also held that counsel's concession of guilt, in the face of the defendant's objection, constituted structural error that necessitated a new trial without a showing of prejudice. See id. at 1511-12. As Justice Alito's dissent pointed out, the Court reached this conclusion even though counsel had not conceded guilt as to all of the elements necessary for murder -- counsel admitted that the defendant committed one element of the offense, i.e., that he "shot and killed the three victims," but "strenuously argued that [the defendant] was not

guilty of first-degree murder because he lacked the intent (the mens rea) required for the offense." Id. at 1512 (Alito, J., dissenting). (emphasis in original)

Here, as in Thompson, the situation described by Justice Jordan, a reasonable jurist himself, is parallel as follows:

* Counsel in Thompson conceded guilt in closing arguments (Thompson: Thompson robbed the Taco Bell, but counsel argued the government had not proved the interstate commerce element); (Maitland: Counsel acknowledged that during an altercation between movant and his wife [Maitland's wife and his stepchild are who Maitland allegedly kidnapped] there was a "sequence of events ... that obviously were domestic violence and then raised to some new level.") (Supra, at Appendix 2) (emphasis added).

* No dispute in Thompson or Maitland that both defendants demanded counsel not concede guilt. However, Thompson's factual claims are unclear while Maitland's are undisputed.

As Judge Jordan relates, "[i]f Mr. Thompson rejected counsel's advice and continued to insist that there be no concessions as to the Taco Bell robbery, then counsel's unilateral choice was likely structural error that violated Mr. Thompson's autonomy as guaranteed by the Sixth Amendment." Thompson 826 Fed. App'x at 731. Here, had Maitland's counsel limited his statement to "sequence of events ... that obviously were domestic violence," Maitland's structural arguments would be tenuous. However, in this case the government's entire argument was that there was a "sequence of events that ... obviously were domestic violence and then raised to" kidnapping. Counsel's

omission of the word kidnapping and substitution of the phrase "some new level" does not obviate or cure counsel's admission of guilt, a structural error prohibited by McCoy, and Maitland was therefore entitled to a new trial based on counsel's conduct and McCoy.

In the COA context, the Fifth Circuit, without a more specifically defined "reasonable jurist" standard repeated its Buck v. Davis error. The Fifth Circuit did not hue to this Court's instructions in Buck (a "Court of Appeals should limit its examination [at the COA stage] to a threshold inquiry into the underlying merit of [the] claims, and ask only if the District Court's decision was debatable." Buck, 1375 S.Ct at 774 (citing Miller-El, 537 U.S. at 327)).

Rather, the Fifth Circuit has, as all too many Circuits have done in applying the "reasonable jurist" standard, applied a vague unknown standard (e.g. a "reasonable jurist" is whatever the particular jurist opines it is) the discernment of which defendants are left to their intuition.^{EN1} See Dubin v. United States, 599 U.S. 110, 135-136 (2023) (Gorsuch, J. concurring) ("... due process means that criminal statutes must provide rules 'knowable in advance,' not intuitions discoverable only after a prosecutor has issued an indictment and a judge [presumably a "reasonable jurist"] offers an opinion.") (citing Percoco v. United States, 598 U.S. 319, 143 S.Ct. 1130, 215 L.Ed.2d 305, 320 (2023) (Gorsuch, J. concurring in Judgment). See also 28 U.S.C. §2253(c)(2); Slack v. McDaniel, 529 U.S. 473, 484 (2000) (quoting Barefoot v. Estelle, 463 U.S. 880, 893 (1983) ("When one or more jurists [such as Circuit Justice Jordan]

believes a claim has sufficient merit to proceed, that itself 'might be thought to indicate that reasonable minds could differ ... on the resolution of the relevant claim.'" Johnson v. Vandergriff, 600 U.S. ____, ____, 143 S.Ct. 2251, 216 L.Ed.2d 1293 (2023) (Sotomayor, J. dissenting from denial of application for stay and denial of certiorari) (Slip op., 925) (internal quotation marks omitted) "Congress may well have conditioned the right to an appeal on the vote of a "circuit justice or judge" for that reason. 28 U.S.C. §2253(c)(1))**EN2**

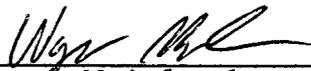
Finally, as a subset, Circuit Courts are eroding this Court's pronounced Sixth Amendment protections illucidated in McCoy. As Justice Jordan noted in Thompson, Justice Alito's dissent pointed out, "the [majority opinion in McCoy] reached [the structural error] conclusion even though Thompson's counsel had not conceded guilt as to all of the elements necessary for murder -- counsel admitted that the defendant committed one element of the offense." Thompson, 826 Fed. App'x at 730 (quoting and paraphrasing Alito, J., dissenting).

This Court's guidance is needed to clarify, cabin, or establish guidelines regarding what in fact a "reasonable jurist" is and to restrain the circuit court's erosion of Sixth Amendment rights announced under McCoy.

PRAYER

FOR THESE REASONS, Maitland prays the Court will grant certiorari and order full briefing, alternatively that the Court will GVR in light of Buck and McCoy with instructions on COA and the erosion of Maitlant's Sixth Amendment rights announced under McCoy. Maitlant requests such other and additional relief to which he is entitled, whether in equity or in law.

Respectfully submitted,



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END NOTES

- EN1: How can an inmate have proper due process (notice of a particular standard they must meet in order to get COA) when the standard itself is subject to wide interpretation?
- EN2: This case demonstrates the vague and undeterminable standard that inmates must meet. Here, an appellate jurist, Justice Jordan, makes the same argument as Maitland, yet the argument, for COA purposes, is defined by the Fifth Circuit as without merit -- and thereby, Justice Jordan is an unreasonable jurist under the amorphous Fifth Circuit application. Surely, this is not what this Court means by the "reasonable jurist" standard.

VERIFICATION

I hereby verify that the factual allegations in the Petition for Certiorari, to which this is attached, are within my personal knowledge and are true and correct to the best of my knowledge and belief. I also verify that the appendix is a true and correct copy of court documents. I make this verification under penalties of perjury and pursuant to 18 U.S.C. §1746.

12-1-2025
Date



Wayne Maitland
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