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Legal Sidebar

Criminal Defendant's Sixth Amendment Right to Autonomy in Maintaining Innocence

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Is the Sixth Amendment violated when defense counsel concedes his competent client's guilt despite the client's expressed objection? In a 6-3 decision, the U.S. Supreme Court answered yes. In *McCoy v. Louisiana*, the Court held that the Sixth Amendment guarantees the right to a personal defense which includes choosing to maintain innocence despite counsel's advice and trial strategy. While this decision has been described by some observers as significant or even "groundbreaking" in its recognition of a defendant's "[a]utonomy to decide that the objective of the defense is to assert innocence," others, including the three Justices who dissented in *McCoy*, have suggested that the decision's application may be limited.

McCoy was charged with three counts of murder under Louisiana law and potentially faced a sentence of death if convicted. He maintained his innocence, claiming that he was elsewhere during the commission of the murders. He pleaded not guilty and insisted on a jury trial. But McCoy's attorney believed the evidence against his client was overwhelming, and he determined that the best strategy to spare his client's life was to concede guilt and hope for leniency during the sentencing phase. McCoy was adamantly opposed to this plan. Contrary to his client's objections and testimony, the attorney told the jurors that, after reviewing the evidence, "there was no way reasonably possible" that they would reach "any other conclusion than [the defendant] was the cause of these individuals' death." The jury returned convictions for three counts of murder and sentenced McCoy to death. McCoy unsuccessfully sought a retrial. The state supreme court affirmed the trial court's ruling allowing McCoy's defense counsel to concede guilt despite McCoy's objection. The Supreme Court granted certiorari on the question of whether McCoy's Sixth Amendment rights had been violated.

The Sixth Amendment to the U.S. Constitution provides certain rights to a criminal defendant including the right of "the Assistance of Counsel for his defence." This guarantee is imposed on the states by the Due Process Clause of the Fourteenth Amendment. Generally speaking, the accused is the "master of his own defense." To this end, Supreme Court jurisprudence has distinguished between fundamental decisions reserved for the client and tactical or strategic decisions that attorneys can pursue without the client's advance knowledge or consent. These decisions include what objections to raise, which jurors to select, which motions to file, or which witnesses to present. In *McCoy*, the Court addressed which category should encompass concession of guilt.

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In an opinion by Justice Ginsburg, the Court concluded that maintaining or asserting innocence is not a strategic move left to defense counsel. Instead, it relates to what the objective of the client's defense is. The Court previously held that the Sixth Amendment confers to the accused a right to conduct his own defense as "it is he who suffers the consequences if the defense fails." To this end, the Court has recognized certain fundamental decisions left to the accused such as, whether to: (1) plead not guilty (including rejecting plea deal); (2) waive a jury trial; (3) testify at trial; (4) take an appeal; and (5) proceed pro se (i.e., self-representation). According to the Court in *McCoy*, these fundamental decisions affirm the dignity and autonomy of the accused as "they are choices about what the client's objectives in fact *are*."

While it may be ill advised to maintain innocence in the face of overwhelming evidence, the *McCoy* Court declared that the accused has the right to do so. A defendant may wish to roll the dice and have the jury decide his fate rather than admitting guilt. According to the Court, once a defendant makes his objective of maintaining innocence known, defense counsel must abide by the client's wishes. To do otherwise would negate the defendant's autonomy in protecting his own liberty as guaranteed by the Sixth amendment

In affirming the accused's right to autonomy, the Court distinguished McCoy from the accused in *Florida v. Nixon*, where the Court held that defense counsel's strategic move to concede guilt did not automatically represent ineffective assistance of counsel when the accused did not expressly consent to the strategy. In *Nixon*, the defendant remained unresponsive during strategy sessions with his attorney, never verbally approving or disapproving his attorney's proposed strategy of conceding guilt with the hope of sparing Nixon's life. In contrast, McCoy expressly took exception with his counsel's strategy of conceding guilt, and the Court believed McCoy's expressed opposition to his counsel's approach was legally significant. According to the Court, "[i]f a client declines to participate in his defense, then an attorney may permissibly guide the defense pursuant to the strategy she believes to be in the defendant's best interest. Presented with express statements of the client's will to maintain innocence, however, counsel may not steer the ship the other way."

In remanding the case for further proceedings, the Court did not apply its ineffective assistance of counsel jurisprudence, which generally requires that a convicted defendant must demonstrate that (1) the defense counsel's performance was deficient and (2) such deficiency caused prejudice to the defendant. Instead the Court concluded that by allowing defense counsel to "usurp control of an issue within McCoy's sole prerogative," the trial court had committed a structural error. Structural errors are aspects "which affec[t] the framework within which the trial proceeds" (e.g., denial of the right of self-representation or the right to a public trial). Such errors are presumed to be prejudicial and reversal is automatic. Because the Court concluded that the trial court had erred in allowing McCoy's attorney to concede his client's guilt without McCoy's consent, the Court ruled that "McCoy must therefore be accorded a new trial without any need first to show prejudice."

In dissent, Justice Alito (joined by Justices Thomas and Gorsuch) took a different view of the underlying facts at issue, and claimed that the majority's "newly discovered fundamental right simply does not apply to the real facts of this case." The dissent believed the record indicated that McCoy's counsel only conceded that McCoy killed the victims, but not that he was guilty of the first-degree murder charge because, McCoy's counsel argued, he lacked the requisite mental state to be convicted of the charge. In addition, the dissent argued that Court's decision will have limited application as the decision would only be applicable in capital cases where defendants expressly maintain their innocence and are forced to remain in the attorney-client relationship causing the conflict. According to the dissent, the case had such limited application that review should have been denied. The right recognized by the majority, the dissent argued, "is like a rare plant that blooms every decade or so. Having made its first appearance today, the right is unlikely to figure in another case for many years to come."

The implications of the *McCoy* decision for defendant autonomy are uncertain. Although the Court recognized that the Sixth Amendment provides a competent accused with the right to determine the objectives of his defense, the Court did not precisely define parameters of a defendant's right to autonomy. One particular issue that was not squarely resolved by *McCoy* concerns the relevance of a defendant's mental health to the right to autonomy. Mentally ill individuals may be competent to stand trial, but not competent to represent themselves. Some commenters have questioned how *McCoy* may affect representation on behalf of mentally ill defendants who act irrationally or contrary to their best interests. Future litigation may provide further clarity as to the degree of autonomy afforded to criminal defendants, and whether different degrees of autonomy may be afforded to defendants with different degrees of competency.

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