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IN THE
SUPREME COURT OF THE UNITED STATES

Adam Carson : No. 19-8172
Petitioner, :
vs. : PETITION FOR
United States of America : REHEARING FOR
Respondent : WRIT OF CERTIORARI

Now comes the Petitioner, Adam Carson, pro se, who respectfully requests that this most honorable court grant this petition for rehearing for writ of certiorari. The grounds contained in this petition are limited to intervening circumstances of substantial effect.

Carson proves in this petition how he was prejudiced when his original petition for writ of certiorari was filed, that his Constitutional rights were violated, and the opinion of the Sixth Circuit regarding his case is in conflict with other circuit's opinions.

The Petitioner asserts that when his original petition for writ of certiorari was filed, the wrong copy was submitted to the court. The petition contained several clerical errors and missing paragraphs which caused him to be severely prejudiced.

On April 16, 2020, the Petitioner attempted to file a motion to submit an amended petition for writ of certiorari to the court. The clerk returned the motion and stated in a letter to the petitioner that a petition may not be altered after docketing.

On May 1, 2020, a conference was held and the petition containing all of the clerical errors was presented to the court for consideration. The petitioner was extremely prejudiced because four of the questions presented contained typographical errors that listed the wrong statutes which resulted in Mr. Carson's Constitutional issues not being presented accurately.

Additionally, paragraphs and pages were missing from the Petitioner's reasons for granting the petition section. This caused his arguments to be unconcise and difficult to understand. Carson was deprived the opportunity to present his Constitutional concerns to the court and the clerical errors could have caused him to be biased by the Court.

1 Although all of Carson's original questions presented to the Court had merit and contained great issues of
2 Constitutional importance and concern, the petitioner would like to re-present the following questions and
3 bring to the Court's attention the conflicting circuit opinions regarding the issues presented.

4 1. Can a conviction for witness tampering be upheld when a Defendant did not ask a witness to lie for
5 him; and can a Court of Appeals change the interpretation of 18USC 1512(b)(1) to allow a conviction to be
6 sufficient based upon a witness' impression of a letter?

7 2. Whether the District Court should have provided a substitution of counsel when the Defendant made
8 several timely and good faith motions which evidenced his dissatisfaction and communication issues with
9 his appointed counsel?

10 3. Can a District Court ignore a Defendant's Fifth Amendment Due Process rights and violate Federal
11 Rules of Criminal Procedure 43(a) by denying him the right to be present at every trial stage as the law
12 requires?

13 4. Under Federal Rules of Evidence 404(b), can a Parole officer testify at a trial without poisoning the jury
14 panel and create bias against the Defendant?

15 A miscarriage of justice has occurred and the integrity of the Judicial system requires that a petitioner have
16 a fair chance to present his issues and have them heard so his liberty can possibly be restored. Carson
17 asserts that after a sincere reading of the questions presented, any jurist could easily determine that
18 Carson's Constitutional rights were violated and his conviction must be vacated.

19 The reasons for granting this Petition for Rehearing for Writ of Certiorari are as follows:

- 20 1. **Can a conviction for witness tampering be upheld when a Defendant did not ask a witness to lie for**
21 **him? and; can a Court of Appeals change the interpretation of 18 U.S.C. 1512 (b)(1) to allow a**
22 **conviction to be sufficient based upon a biased witnesses impression of a letter, even after that same**
23 **witness testified to being under the influence of drugs, while perjuring herself in front of a Federal**
24 **Grand Jury, and also admitted to lying to police officers, federal agents, and government attorneys.**

25 On appeal Carson explained that the jury lacked sufficient evidence to support a conviction for witness
26 tampering. The conviction stems from a letter Carson sent his ex-girlfriend Karin Deeb. It was the
27 Government's position that Carson tried to "corruptly persuade" Deeb, even though he never directly or

1 indirectly asked her to lie for him in his letter.

2 At trial, regarding the letter, when Deeb was asked specifically if Carson ever asked her to lie for him,
3 Deeb replied, "no". (R.102: Trial Trans. Page ID#1140-41) Deeb also testified that she was convicted of
4 providing false testimony to a Federal Grand Jury, admitted to lying to police officers, Federal Agents and
5 Government Attorneys, and also reached a 5K1 Agreement with the Government to testify against Carson.
6 The Court of Appeals upheld Carson's conviction based upon Deeb's impression of a letter, and wrongfully
7 cited *United States v. Burns* 298 F.3d 523, 540 (6th Circuit) as their authority to back up their position.

8 In *Burns*, the Defendant encouraged the witness to lie. "Burns attempted to corruptly persuade Walker by
9 urging him to lie about the basis of their relationship, to deny that Walker knew Burns was a drug dealer,
10 and to disclaim that Burns was Walker's source of crack cocaine.

11 The Court also cites *United States v. Montgomery*, 358 F. Appx 622, 628-30 (6th Cir. 2009) which
12 concluded that the evidence was sufficient to sustain a conviction for corruptly persuading a witness where
13 the Defendant sent letters to another urging him to lie about their relationship, to deny he knew the
14 Defendant was a drug dealer, and to say the Defendant was not the source of his cocaine.

15 Then the Court finds a case from the Fifth Circuit, *United States v. Bedoy*, 827 F. 3d 488, 510 (5th Cir.2016)
16 which concluded that the evidence was sufficient to show corrupt persuasion when the Defendant
17 suggested that the witness misrepresented their relationship to conceal wrong doing.

18 None of these cases apply to Carson. *Burns* and *Montgomery* urged witnesses to lie, and *Bedoy* urged a
19 witness to misrepresent their relationship. Carson states in his letter to Deeb that "I couldn't believe that
20 someone I treated so good, that I would do anything in the world for, could lie on me and get me indicted
21 for something I didn't do." (Id at 1099) He never once asked Deeb to lie for him in his letter.

22 The Court of Appeals admits this in their opinion stating, "Thus, although Carson may not have expressly
23 asked Deeb to lie, she nonetheless understood his letter as such a request. We do not think 1512 (b)(1)
24 requires that a Defendant directly state his request that a witness lie. There was sufficient evidence here
25 including Deeb's own impression of the letter."

26 There are several problems here:

27 A. How can the Court of Appeals use *Burns* and *Montgomery* to uphold Carson's conviction when these cases

1 were based on Defendant's urging witnesses to lie for them?

2 B. How can you justify taking away a person's liberty based upon a biased witness' impression, when that
3 same witness was working with the Government to convict the Defendant?

4 C. How much weight does a Government witness' impression hold when they testified to being under the
5 influence of drugs while perjuring themselves to a Federal Grand Jury, and also admitted to lying to police
6 officers, federal agents, and government Attorneys and have a 5K1 agreement to testify against the
7 Defendant?

8 D. Can a Court of Appeals change the meaning of 18 U.S.C. 1512 (b)(1) to uphold a conviction based upon an
9 impression of "corrupt persuasion?"

10 E. Shouldn't the contents of the letter be the basis for the witness tampering count? The AUSA sought and
11 received an indictment based upon a letter that was sent to Deeb. Shouldn't the letter be taken at face value
12 to support a conviction?

13 F. Was 18 U.S.C. 1512 (b)(1) the appropriate statute to charge under? Not only is Carson contesting his
14 conviction under 1512(b)(1), but he also feels that he was charged under the wrong statute. Carson
15 received a maximum 20 year sentence for sending a letter to Deeb that expressed his love towards her and
16 for asking her to tell the truth. If the conviction were to stand, the conviction should be considered
17 substantially unreasonable and on abuse of judicial discretion.

18 The principal debate is over the meaning of the term "corruptly persuades. All Courts considering the issue
19 have found the phrase to be ambiguous.

20 *United States v. Boldridge*, 559 F. 3d 1126,1142 (10th Cir 2009) See also: *United States v. Turcks*, 41 F. 3d
21 893, 901 (3rdCir. 1984). Quoting *Hugley v. United States*, 495 U.S. 411, 422,109 L. Ed. 2d 408, 110 S.Ct.
22 1979 (1990) *United States v. Pollen*, 978 F.2d 78, 85 (3rd Cir. 1982) The Supreme Court has cautioned that
23 Courts should give meaning to all statutory terms, especially those that "describe one element of a criminal
24 offense." *Ratzlaf v. United States*, 510 U.S. 135,141,126 L. Ed. 2d 615, 114 S.Ct. 655 (1994).

25 Legislative history also does not provide much assistance in defining "corruptly" to determine what
26 Congress intended the "corruptly persuades" clause to prescribe. In a report discussing the amendment, the
27 House Judiciary Committee noted the 1512 (b) did not criminalize "non-coercive" conduct that does not
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1 fall within the definition of misleading conduct, and explained that the addition of the “corruptly
2 persuades” clause amended 18 U.S.C. 1512 (b) to proscribe corrupt persuasion. It is intended that culpable
3 conduct that is not coercive or misleading conduct be prosecuted under 18 U.S.C. 1512(b). H.R. Rep. No.
4 100-169 at 12 (1987). No explanation of what is meant by “culpable conduct” is provided. The report does
5 cite, as an example of “culpable corrupt persuasion” what would be punishable under the amended 1512
6 (b), a case involving a defendant who offered to reward financially a co-conspirator’s silence and attempted
7 to persuade the co-conspirator to lie to law enforcement officers about the defendant’s involvement in the
8 conspiracy. *United States v. King*, 762 F. 2d 232, 236-37(2d Cir 1985).

9 The example of the witness tampering that the House Judiciary Committee cited in *King* involved the
10 defendant asking his co-conspirator to lie. It is Congress’ position that asking a witness to lie constitutes as
11 corrupt persuasion and is punishable under 1512 (b). Carson’s conduct did not rise to the level of corrupt
12 persuasion. The Sixth Circuit admits Carson never asked Deeb to lie in his letter. Congress states that
13 asking a witness to lie is sufficient for a witness tampering conviction. Since Carson never asked Deeb to
14 lie, and the Sixth Circuit acknowledges Carson never asked Deeb to lie, his conviction should be vacated.
15 The Sixth Circuit’s decision conflicts with what Congress intended. There are other examples that conflict
16 with the Sixth Circuit’s opinion as well.

17 In *United States v. Thompson*, 76 F. 3d 442, 452 (2nd Cir. 1986), the Second Circuit stated that “the
18 inclusion of the qualifying term corrupt means that the government must prove that the defendant’s
19 attempts to persuade were motivated by improper purpose.” The Eleventh Circuit also agreed with the
20 reasoning in *Thompson* in *United States v. Shorts*, 126 F. 3d 1289, 1301 (11th Cir. 1998).

21 Also, the Third Circuit stated in *United States v. Farrell*, 126 F. 3d 484, 489 (3d Cir. 1997) that more
22 culpability is required for a statutory violation. *Farrell* involved a defendant discouraging a co-conspirator,
23 who possessed a Fifth Amendment right to remain silent, from revealing information to authorities. The
24 Third Circuit held that this conduct did not violate the statute. Carson, like Farrell explained in his letter to
25 Deeb that she was entitled to invoke her Fifth Amendment right. His conduct did not violate the witness
26 tampering statute.

27 Because of the conflicting circuit opinion regarding witness tampering and the ambiguous nature of the
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1 term "corruptly persuades". Carson is entitled to relief. Carson was convicted of witness tampering due to
2 a biased witness' impression of a letter he wrote. The House Judiciary Committee cited an example of
3 what would be considered corrupt persuasion and described a defendant asking a witness to lie as being
4 such. Carson never asked a witness (Deeb) to lie and the Sixth Circuit's opinion conflicts with Congress
5 and the other Circuit Court's opinions.

6 To take a relatively young man away from his family and deprive him of his liberty and freedom for 20
7 years for writing a non-threatening letter is a miscarriage of justice. From the onset of this case Carson's
8 Constitutional rights have been trampled on and ignored by everyone in the judicial system. Carson prays
9 that this Court intercedes on his behalf and prevents a miscarriage of justice from occurring. This
10 Honorable Court has the power to right the wrongs that have been committed in this case.

11 The petitioner respectfully requests that his convictions be vacated and that the case be remanded back to
12 the District Court for further proceedings.

13 2. **Whether the trial Court should have provided a substitution of counsel when the Defendant made**
14 **several timely and good faith motions which evidenced his dissatisfaction and communication issues**
15 **with his appointed counsel?**

16 The issue presented on appeal was that the District Court's denial of a Motion to Substitute Counsel
17 violated Carson's right to counsel under the Sixth Amendment.

18 Carson explained how he filed various motions and spoke up at hearings about the lack of communication
19 between himself and Court appointed counsel, Donald Butler, and gave specific reasons how he would be
20 severely prejudiced if Butler were to continue to represent him. He also explained how the District Court
21 abused it's judicial discretion by not inquiring into the matter.

22 Questions solely of law and mixed questions of law and fact are reviewed under *de novo* standard. *United*
23 *States v. Layne*, 324 F 3d 464,468(6th Cir. 2003). In reviewing a District Court's denial of a Motion to
24 Substitute Counsel, the Sixth Circuit generally considers: timeliness of a motion; the adequacy of the
25 Court's inquiry into the matter; the extent of the conflict between the attorney and client and whether it was
26 so great it resulted in a total lack of communication preventing an adequate defense; and the balancing of
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1 these factors in the prompt and efficient administration of justice. *United States v. Mack*, 258 F. 3d
2 548,556 (6th Cir. 2001).

3 The Sixth Circuit previously stated, “the need for an inquiry will not be recognized where the Defendant
4 has not evidenced his dissatisfaction or wish to remove his appointed counsel” *United States v. Iles*, 906
5 F.2d at 1131 (6th Cir. 1990).

6 The failure of the District Court to make an inquiry as to Carson’s dissatisfaction with counsel was an
7 abuse of the Court’s discretion resulting in the denial of Appellant’s right to counsel.

8 The Sixth Circuit denied Carson’s claims based on erroneous factual findings. Two of his Substitution of
9 Counsel Motions were not even addressed by the Court, the opinion erroneously claims the District Court
10 said things that were not listed on the transcript, and no judicial inquiry was made on the issues Carson
11 raised.

12 Carson explained all of the erroneous factual findings in regard to his substitution of counsel issues in his
13 Petition for Rehearing En Banc. (Copy enclosed)

14 To briefly summarize Carson’s concerns, if you review the four factors.

15 1) Carson made several timely requests to substitute counsel. Three motions were filed and he spoke out at
16 two hearings. 2) The transcript of the hearings prove no judicial inquiry was ever made in regard to
17 Carson’s concerns. Carson, who is indigent, was continually made fun of and mocked by the Judge for not
18 having any money, and told if he is not happy with Butler he can hire whomever he wants even though he
19 was a CJA appointment. 3) Carson listed numerous issues that demonstrate a breakdown in
20 communication. (not visiting Carson in person, not responding to letters or returning phone calls, memory
21 issues). 4) The people would have had efficiency and effectiveness in the justice system if Carson’s
22 concerns were addressed when raised.

23 The opinion of the Sixth Circuit in regard to the substitution of counsel issues raised in Carson’s
24 Brief is in conflict with the opinion of the other Circuits. In *United States v. Adelzo-Gonzalez*, 268 F. 3d
25 772, U.S. App LEXIS 20972, (9th Cir. 2001), the defendant’s sentence was vacated because the district
26 Court’s inquiry was inadequate. The Circuit Court’s opinion explained that compelling reasons raised by
27 the defendant were never investigated.

1 *United States v. D'Amore*, 56 F. 3d at 1206 stated "A court may not deny a substitution motion simply
2 because it thinks current counsel's representation is adequate.

3 When Carson filed his first motion to dismiss Attorney Donald Butler, the Court stated in a Marginal Entry
4 that, Attorney Butler is an outstanding attorney with over 40 years of experience, if defendant wishes new
5 counsel he can retain his own." This is the type of behavior from District Court Judges that *D'Amore*
6 prohibited and conflicts with the reasons given by the Sixth Circuit denying Carson's claims.

7 Additionally, *United States v. Araiza-Reyes*, 1997 U.S. App. LEXIS 4045 (9th Cir. 1997) vacated a
8 Defendant's sentence when the District Court did not ask either Defense counsel or the defendant why the
9 conflict existed. Another sentence was vacated in *United States v. Mullen*, 32 F. 3d 891 (4th Cir. 1994)
10 because the defendant demonstrated a total breakdown of communication when the district Court abused
11 its' discretion by not appointing a new lawyer.

12 Carson demonstrated a total breakdown of communication in his motions to the Court, explaining how
13 Attorney Butler would not visit him, return his phone calls, or respond to his letters. The Court never asked
14 Carson or Butler why the conflict existed even after Carson put his concerns on the record at the December
15 27, 2017 hearing. Carson's issues were ignored, and the Sixth Circuit did not apply the correct precedent in
16 regard to Carson's concerns.

17 Lastly, *United States v. Musa*, 220 F. 3d 1096, 1102 (9th Cir. 200) explained that even if Defense counsel is
18 competent, a serious breakdown in communication can result in an inadequate defense. Carson thoroughly
19 demonstrated the total breakdown in communication between him and Attorney Butler while addressing the
20 court at hearings and in his three written motions requesting substitution of counsel. The District Court
21 abused its' discretion which caused Carson to be severely prejudiced, and the Sixth Circuit Court of
22 Appeals' opinion on the substitution of counsel issue is in conflict with the opinions of the 4th and 9th
23 Circuit.

24 Because Carson's Sixth Amendment rights were clearly violated. He asks that this Honorable Court vacate
25 his sentence and remand the case back to the District Court for further proceedings.

26 3. **Can the District Court ignore a Defendant's Fifth Amendment Due Process rights and violate the**
27 **Federal Rules of Criminal Procedure (43a) by denying him the right to be present at every trial stage**

1 violated and he was affected by the outcome of the proceedings. If Carson would have learned of the
2 alleged identification before trial, he could have opted to take a plea deal and received a substantially lesser
3 sentence.

4 Additionally, the Sixth Circuit didn't even address the 43(a) issue in their opinion. You can't change the
5 Rules of Criminal Procedure to fit your own biased set of facts. A Defendant is entitled to be present for
6 every minute of their trial. Period. The transcript clearly shows Carson was not, which caused his
7 Constitutional rights to be affected.

8 A Defendant's Constitutional right to be present at every stage of his criminal proceeding is grounded in
9 the Confrontation Clause of the Sixth Amendment and the Due Process Clause of the Fifth Amendment.
10 *United States v. Gagnon*, 470 U.S. 522, 526, 84 L. ed 2d 486, 105 S. Ct. 1482 (1985). The right is also
11 mandated by Fed. R. Crim. P. 43 (a). "one of the most basic rights guaranteed by the Confrontation Clause
12 is the accused's right to be present in the courtroom at every stage of his trial." *Illinois v. Allen*, 397 U.S.
13 337, 338, 25 L. Ed. 2d 353, 30 S. Ct. 1057 (1970).

14 The Rule 43(a) error in this case implicates constitutional concerns. *United States v. Bertoli*, 40 F. 3d 1384,
15 1397 (3d Cir. 1994) "The Due Process clauses of the Fifth Amendment grants criminal defendants the right
16 to be present at all stages of the trial where his absence might frustrate the fairness of the proceedings."
17 *Faretta v. California*, 422 U.S. 806, 819 n. 15, 45 L. Ed 2d 562, 95 S. Ct. 2525 (1975)

18 The Sixth Circuit did not follow the precedents established by the Supreme Court in regards to Carson's
19 right to be present in the courtroom for every trial stage. His Constitutional rights were disregarded and he
20 was severely prejudiced because he was not present to hear Attorney Butler address the court trying to get
21 the bank teller's identification excluded. If Carson were present in the courtroom as the Constitution and
22 Fed. R. Crim. P. 43 (a) required, he would have been able to let the court know that Attorney Butler never
23 disclosed to him that the bank teller was going to be able to identify him as the bank robber. Carson was
24 deprived of the opportunity to explain Attorney Butler's deceit and dishonesty to the court. A mistrial could
25 have been declared. The withheld information about the identification was material to guilt and
26 punishment and Carson would not have proceeded to trial if it were disclosed to him.

1 Carson has shown this Honorable Court that his Constitutional rights were violated and that the Federal
2 Rules of Criminal Procedure were blatantly ignored. Carson is entitled to a new trial and asks that this
3 sentence be vacated and that case be remanded back to the District Court.

4 **4. Under Federal Rules of Evidence 404(b), can a parole officer testify at trial without poisoning the**
5 **jury panel and create bias against the Defendant?**

6 On appeal Carson explained references to his past criminal history and the testimony of his parole officer
7 violated his due process rights and the Federal Rules of Evidence.

8 Carson explained how the District Court violated Federal Rules of Evidence 404(b) by allowing his parole
9 officer to testify which, by definition, insinuates prior conviction and how that testimony from the parole
10 officer poisoned the jury panel.

11 The Fifth and Fourteenth Amendment provide the right to Due Process. Questions solely of law and mixed
12 questions of law and fact are reviewed de novo, while pure questions of fact are reviewed for clear error.

13 *United States v. Layne*, 324 F. 3d464,468 (6th Cir. 2003).

14 In *Holbrook v. Flynn*, 475 U.S. 560 (1986) this Court established that the right to a fair trial includes having
15 the verdict to be determined by the evidence introduced. Federal Rules of Evidence 403 provides that
16 although relevant, evidence may be excluded if its probative value is substantially outweighed by the
17 danger of unfair prejudice, confusion of the issues, or misleading the jury.

18 *United States v. Calhoun*, 544 F. 2d 291,297 (6th Cir. 1976) decided that putting a parole officer on the
19 stand is prejudicial, creates bias against the Defendant, and is improper. Convictions obtained by a parole
20 officer's testimony must be vacated.

21 The Sixth Circuit erroneously stated that Carson's parole officer's testimony did not violate Federal Rules
22 of Evidence 404(b) because he testified he worked for a State Agency and didn't identify himself as such.

23 The trial transcript proves otherwise. (R.100: Trial trans. Page ID#758-764)

24 Officer Worchol made references with his dealings with law enforcement officers, conducting
25 investigations and Carson having to report every month. Any lay juror could easily figure out that a state
26 employee who deals with law enforcement, conducts investigations and monitors an individual monthly is
27 obviously a parole officer.

1 If there were any doubts as to Officer Worchol's occupation, AUSA Elzein referred to him as an Officer in
2 her closing argument. (R. 103: Trial trans. Page ID#1355-1356) which prejudiced Carson to the jury.
3 Carson's rights were violated under Federal Rules of Evidence 404(b), his Constitutional rights were
4 violated and the Court of Appeals refused to follow their own precedent set in *Calhoun*. The parole
5 officer's testimony was prejudicial, improper, unethical, created bias, and poisoned the jury panel. Because
6 of the aforementioned facts, Carson asks that this Honorable Court vacate his sentence, and remand the
7 case back to the District Court for a new trial.

8
9 Conclusion

10 Based on the aforementioned reasons, in the interest of fairness and justice, the petitioner respectfully
11 requests that his Honorable Court Grant this Petition for Rehearing for Writ of Certiorari and that his case
12 be remanded to the lower court for further proceedings.

13 Respectfully submitted,

14  Date 6-15-20

15 Adam Carson 64595-060

16 Petitioner pro se

17 AUSP Thomson


18 PO Box 1002

19 Thomson, IL 61285

20 Certificate of Service

21 I Adam Carson, do hereby certify that a copy of this Petition For Rehearing For Writ of Certiorari was sent
22 to Noel Francisco, Office of the Solicitor General, United States Department of Justice, 950 Pennsylvania
23 Ave., Washington D.C. 20530-0001 via registered U.S. mail on this 15 day of June 2020.

24 Respectfully submitted,

25 

26 Adam Carson 64595-060

27 Petitioner pro se