

NO. 24-5968

In The  
Supreme Court of the United States

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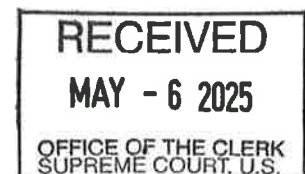
Brian Adkison - Petitioner

Vs.

Kelly Morriss, Acting --Respondents

On a petition for Rehearing of  
Order denying a  
Petition For a writ of Certiorari

Brian Adkison (pro se)  
8200 NoMoreVictims Rd.  
Jefferson City, Missouri 65101



## STATEMENT OF THE CASE

Petitioner is currently serving a 15 year sentence after conviction at an unfair and unconstitutional 2013 trial. Counsel was ineffective for failing to cross complainant with impeachment evidence that negated a necessary element of the crime. On appeal the court ruled that complainant was crossed with similar prior statements. The similar prior statements that counsel crossed complainant with, where complainant states that there was no forcible compulsion, referred to the sexual assault charge that I was acquitted of. Although similar in nature, both negating a necessary element of the crime, the stated similar prior statements refer to a different act and therefore are not considered sufficient for cross examination. The statement "It's not like he came in and held me down and like took me" made by the complainant does negate an element of the crime for which I am convicted of and the complainant must be crossed with this evidence by counsel or the counsels performance is deficient. At trial I communicated to my attorney that I had decided to testify and at the pcr evidentiary hearing counsel states that he received this communication and yet I was not afforded the opportunity to testify. On appeal the court ruled that counsel's performance was deficient relative to my expression of my decision to testify but ruled that I did not meet the content prong of the Strickland V. Washington test. However the content of what my testimony would have been had I been afforded the opportunity to testify is in fact stated in the 29.15 amended motion. In addition the substance of my testimony could easily be derived from the original police report. Certiorari denied and petitioner now seeks a rehearing.

### **Grounds Presented**

1. The Supreme Court failed to grant certiorari to correct clear error in violation of the substantial constitutional right to testify created by trial counsel's deficient performance.
2. The Supreme Court failed to grant certiorari to clarify that Counsels failure to use impeachment testimony, that negates an element of the crime for which the defendant was convicted, constitutes a violation of the substantial right to counsel.

The grounds presented are expanded on below:

1. I informed counsel prior to closing arguments that I had decided to testify verbally and via a written note. At the PCR hearing counsel acknowledges that he received this communication during the trial, prior to closing and that we never had any other communication indicating that I had changed my decision. On appeal the court ruled that I did not meet the content prong of the Strickland v. Washington test. The ruling court stated "Adkison did not testify at the PCR hearing and has not *otherwise set forth what the substance of his testimony would have been.*" This represents clear factual error as the substance of my testimony is, in fact, stated in the Amended 29.15 motion. See appendix E (wd82263 appeal document number 6 page 13). Paragraph two states, "Had petitioner been given the opportunity to testify at trial, he would have taken the stand and informed the jury that the sexual encounter on May 4 2013 was consensual and that there was no physical force used by him. He would have testified..." Not only is this information located in the 29.15 is also consistent with the information in my (Petitioners) police statement. Therefore it is clear factual error to determine that the substance of what my testimony would have been is not set forth. The presumed testimony set forth negates the element of forcible compulsion and the element of lack of consent, which would have resulted in an acquittal. The Denial of the constitutional right to testify is clearly prejudicial when the testimony would have resulted in an acquittal. The lower court acknowledges counsel's deficient performance relative to my request to testify and the content was set forth satisfying the content prong of the Strickland V. Washington test.

2. The Supreme Court failed to grant certiorari to clarify that Counsel's failure to use impeachment testimony, that negates an element of the crime for which the petitioner was convicted, constitutes ineffective assistance of counsel. Notable evidence not used in petitioner's trial consists of a recording where complainant stated "It's not like he came in and held me down and like took me" and on its face value negates the element of forcible compulsion. LC was not crossed on any similar prior statements that would negate the element of forcible compulsion for the alleged crime. However the statement on the recording does negate the element of forcible compulsion associated with the sexual intercourse and had trial counsel cross-examined her with this statement the jury would have acquitted petitioner of the charge due to the element of forcible compulsion not being met as they acquitted petitioner of the sexual assault charge where LC was cross-examined on a "similar prior statement" relating to a sexual assault charge. Counsel was clearly aware of this evidence as it was used in the prior trial where the jury returned 9-3 in favor of not guilty. The applicable law is as follows:

it is well-settled that counsel's failure to impeach a witness will not constitute ineffective assistance of counsel unless this action would have provided the defendant with a viable defense or changed the outcome of the trial. Coday v. State, 179 S.W.3d 343, 352(Mo. App. S.D. 2005); see also Payne v. State, 509 S.W.3d 830, 837(Mo. App. W.D. 2016). "Impeachment testimony that negates an element of the crime for which the movant was convicted provides a viable defense." Davidson v. State, 308 S.W.3d 79,82(Mo.App. E.D. 2010) citing Whited v. State, 196 S.W.3d 79, 82 (Mo.App.E.D. 2006)).

At the 29.15 evidence hearing counsel revealed that he "should have" used this statement on cross examination and offered no strategic reason for failing to impeach L.C. with this statement. As the applicable law states counsel's failure to impeach a witness with evidence that provides a viable defense constitutes ineffective assistance of counsel.

## Conclusion

I pray this petition for a rehearing of the denial of a writ of certiorari is granted so I can acquire an attorney and demonstrate my innocence.

Respectfully submitted,

Brian Adkison

Brian James Adkison

Doc id #1288362

Jefferson City Correctional Center

8200 NoMoreVictims Rd.

Jefferson City, Missouri 65101

### Certificate

I Petitioner, Brian Adkison Brian Adkison pro se  
certify that I placed 1 true and correct copy of the forgoing 7  
page Petition for rehearing in the internal mailbox at Jefferson  
City Correctional Center with postage paid on April 18th, 2024.  
I certify that I received the RE: Petition for Rehearing on  
April 17<sup>th</sup> 2025. I certify that the Court made clear factual  
error resulting in an estoppel. I certify that the grounds are  
limited to intervening circumstances of substantial or  
controlling effect or to other substantial grounds not  
previously presented. I certify that the petition for rehearing  
is presented in good faith and not for delay.

Addressed to:

Supreme Court of the United States

1 First Street, N.E.

Washington, DC 20543

Brian Adkison

Petitioner.