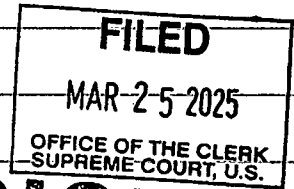


25-6214

In The
Supreme Court
Of The
United States



ORIGINAL

Pasqual Andres McMurry
Petitioner,

Case No.:

vs.

The State of Nevada
Respondent.

Petition For
Writ of Certiorari

On petition for a writ of certiorari to the Supreme
Court of the State of Nevada.

Pasqual A. McMurry Rivera
NDOC #1176607
Ely State Prison
4569 North State Route 490
P.O. Box 1989
Ely, NV 89301

Questions Presented

1. Why was trial counsel not found ineffective for advising the petitioner to not testify at trial when his testimony is the only valid defense?
2. Why was appointed counsel not found ineffective for failing to subpoena Victoria Milroe as a key witness for the defense of consensual sex?
3. How can trial counsel not be found to be ineffective when he advised the petitioner in trial to take actions he knew would be conflicting to presenting a defense?
4. Why was appellate counsel not found ineffective for failing to raise the claim of ineffective assistance of appointed counsel after he was aware of the petitioner's actual innocence and that his trial appointed counsel presented no defense at trial?
5. Why did the judge not order the State to comply with its duty under Brady to:

i) learn of Brady material within law enforcement's possession and disclose it with the defense;

ii) disclose officer-witness personnel files;

iii) disclose all judicial determinations of any law enforcement agents involved in the underlying investigation as to whether they had engaged in any violations of the petitioner's constitutional rights?

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In The
Supreme Court of the United States
Petition For Writ of Certiorari

Opinions Below

The opinion of the highest state court to review the merits appears at Appendix A to the petition and is unpublished.

The opinion of the Supreme Court of Nevada appears at Appendix E to the petition and is unpublished.

Jurisdiction

The date on which the highest state court decided my case was the Supreme Court of Nevada. A copy of that decision appears at Appendix A.

A timely petition for rehearing was returned unfilled on the 4th day of April, 2025 and appears at Appendix C to the petition and is unpublished.

Petitioner is filing the Petition for Writ of Certiorari within the 60 day time allowed that appears at Appendix A to the petition and is unpublished.

The jurisdiction of this Court is involved under 28 U.S.C 1257(a).

Constitutional Provisions Involved

The petitioner Pasqual A. McMurry claims the following:

- His 5th Amendment right to not be deprived of life, liberty, or property was violated due to ineffective assistance of counsel
- His 6th Amendment right to have effective assistance of counsel was denied due to lack of defense against the State's allegations.
- His 9th Amendment right was violated when the State construed the 14th Amendment to fit their need by conspiring to deprive him of his life, liberty, or property by holding a Kangaroo/lynching court.
- His 14th Amendment right was violated by the State for denying him Due Process and Compulsory Process.

Statement of the Case

Petitioner, Pasqual A. McMurry, has maintained that he is innocent. He was not afforded effective assistance of counsel at trial nor on direct appeal. He has faithfully pleaded and petitioned to the court to grant him relief in the form of a new trial. The on-goings of the case at hand resembles the lynching of an innocent man. The aforementioned is established by the foregoing Petition for Writ of Certiorari as well as the court records.

Petitioner's jury trial commenced on November 14, 2016 and lasted six days. On November 21, 2016, the jury returned a verdict of guilty as to all counts:

Count 1 - Coercion; Count 2 - Battery With Intent to Commit Sexual Assault; Count 3 - First Degree Kidnapping; Count 4 - Sexual Assault (Sexual Intercourse); Count 5 - Sexual Assault (Sexual Intercourse); Count 6 - Sexual Assault (Fellatio); Count 7 - Sexual Assault (Anal Intercourse); Count 8 - Battery Constituting Domestic Violence - Strangulation.

On March 29, 2017, petitioner was sentenced to the Nevada Department of Corrections for the aggregated sentence of the eight counts for

240 months to Life. Dewayne Nobles, appointed counsel, was withdrawn as counsel of record and William Brown, Esquire was appointed appellate counsel. The Judgement of Conviction was filed on April 7, 2017. Petitioner filed a Notice of Appeal on April 7, 2017, and an Ammended Notice of Appeal on April 10, 2017. Petitioner's Judgement of Conviction was affirmed on February 22, 2019. Remittitur issued on April 19, 2019.

On April 20, 2020, petitioner filed a Petition for Writ of Habeas Corpus (Post-Conviction). Petitioner filed a Motion for Appointment of Counsel on May 29, 2020. On July 28, 2020, the Court granted petitioner's Motion for Appointment of Counsel. On February 3, 2022, petitioner filed a Supplemental Post-Conviction Petition for Writ of Habeas Corpus. The decision of the Courts appears in all Appendixes.

1. Why was trial counsel not found ineffective for advising the petitioner to not testify at trial when his testimony is the only valid defense?

Dewayne Nobles, appointed counsel for petitioner at trial, advised petitioner Pasqual A. McMurry to not testify because counsel claimed his testimony would weaken the defense. Appointed counsel did not present a defense as is shown by the record.

The petitioner stated that per the advice of his appointed counsel he asserted his 5th Amendment right. The assertion of the petitioner's 5th Amendment right is supported by the record.

The petitioner stated "... per my attorney's advice I am not going to testify..."

An evidentiary hearing is needed to examine the appointed counsel as to the truthfulness of his advice to the petitioner to assert his 5th Amendment right. The petitioner testifying in trial of the consensual sex between him and the alleged victim is a recognizable defense. The petitioner and the alleged victim had consensual sex on the day of the alleged offenses and both days prior to the alleged offenses. The petitioner and the alleged victim were in a domestic relationship as boyfriend and girlfriend. Appointed counsel advising the petitioner to not testify is proof that the advice of appointed counsel was deficient.

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Counsel's error prevented the trial from having a different outcome. Counsel's performance fell below the standard of effective assistance. Counsel at trial did not present a set of facts or a legal argument that if accepted by the court would have relieved the petitioner from criminal liability of having been accused for committing an act defined as a crime.

The petitioner's testimony allows the following four reasons for the jury to consider during trial deliberations:

- (1) hearing the petitioner's testimony before making a decision;
- (2) the petitioner's demeanor at trial could have concluded the alleged victim was untruthful;
- (3) the petitioner admitted they had sex, and the sex was consensual, so his description of the events of their sex acts, being rough and without protection, could have given the jury more information to determine the accuracy of the State's expert witness' findings of the injuries sustained during the consensual sex act by the petitioner on the alleged victim's vagina and anus;
- (4) Petitioner's testimony concerning the alleged victim being involved in another criminal case along with him would have shed light on the possibility of the alleged victim's testimony not being credible.

2. Why was appointed counsel not found ineffective for failing to subpoena Victoria Mulroe as a key witness for the defense of consensual sex?

Victoria Mulroe, a key witness for the defense was not issued a subpoena to appear in court as a witness for the defense. She possessed exculpatory evidence and plausible testimony to impeach the alleged victim's testimony. The alleged victim notified her as to her intentions to "set up" the petitioner. The alleged victim's motive to set up the petitioner was due to jealousy and anger towards the witness who is the mother of his children. The defense's key witness has a phone record implicating the alleged victim's actions and intent for her accusations against the petitioner in the form of text messages.

Appointed counsel at trial was ineffective for his negligence for not having the key witness and the phone record subpoenaed by the court. His choice to not subpoena Victoria falls below a reasonable standard of effectiveness. Counsel's error prevented the trial from having a different outcome.

"A petitioner may not merely allege that certain unidentified witnesses 'might' have supplied relevant testimony, but must state

exactly what testimony they would have supplied and how such testimony would have changed the result."

United States v. Marshall, 080-68-3959, Aviation Machinist Third Class (U.S. NAVY)

Appointed counsel's failure to adequately investigate, present a witness with considerable evidence that would have impeached the alleged victim demonstrates a reasonable probability of a different outcome. Further negligence to conduct an adequate pre-trial investigation to present considerable evidence, or obtain an expert witness to verify the petitioner's claim of actual innocence, due to the sex acts being the result of consensual sex have:

- 1) deflected the jury's finding of guilt on the sexual assault counts;
- 2) provided insufficient evidence to impeach the alleged victim's testimony;

Jennings v. Woodford, 290 F.3d 1006

- 3) provided insufficient evidence to defect and invalidate the testimony of the State's expert witness;
- 4) given the jury inadequate information that prejudiced the outcome of the trial.

Habeas petitions have been granted for petitioner's being prejudiced by their attorney's ineffectiveness in failing to contact or elicit trial testimony from alibi witnesses.

Brown v. Meyers, 137 F.3d 1154 (9th Circuit 1998)

Petitioner's attorney were deficient for failing to personally interview three witnesses who claimed to see a murder victim alive after the time when the prosecution claimed the petitioner killed her.

Lord v. Wood, 184 F.3d 1083, 1095 (9th Circuit 1999)

3. How can trial counsel not be found to be ineffective when he advised the petitioner in trial to take actions he knew would be conflicting to presenting a defense?

Appointed counsel neglected to prepare pre-trial to present a consensual sex defense at trial. Counsel advised the petitioner to waive the evidentiary hearing for the Motion In Limine To Allow Testimony Of Sexual Relations Between Defendant And Victim Under Rape Shield Law; then, presented no line of questioning nor cross-examination concerning the petitioner and the alleged victim's previous consensual sex acts with one another. The line of

questioning, as well as, a proper cross-examination of the alleged victim and the State's expert witness would have offered a finding of facts that the injuries sustained by the alleged victim to her vagina and anus were caused by rough and unprotected consensual sex.

The State's expert witness upon hearing or knowing the answers to the line of questioning that was to be provided by either the Motion In Limine or the line of questioning presented to the alleged victim would have made for a possible different conclusion. She may have concluded her findings to be consistent with information presented by the petitioner through his testimony that the alleged victim sustained the injuries to her vagina and anus during consensual sex. Appointed counsel's deficient performance is the result of him advising the petitioner to not testify, as well as, advising him to waive the evidentiary hearing for the Motion In Limine. The jury was left with an incomplete presentation of information of the case at hand. The deficiency and ineffectiveness of counsel highly prejudiced the outcome of the trial.

With proper preparation pre-trial for the defense of consensual sex at trial the jury would have been provided with sufficient evidence to defect and invalidate their verdict of guilty. The jury

receiving adequate information concerning the innocence of the petitioner would have resulted in the petitioner being acquitted of all charges against him. Appointed counsel offered ineffective assistance pre-trial and at trial.

Appointed counsel neglected to present a defense for the petitioner. A defense of consensual sex or the attack of the credibility of the witness could have been used as a defense yet was not. Neither defense was presented thus, violating the petitioner's 6th Amendment right to effective assistance of counsel and the petitioner's 14th Amendment right to Due Process. Advising the petitioner not to testify was not a tactical and reasonable decision because nothing on his criminal record could have been used to support the case of the prosecutor. Appointed counsel advised petitioner to not testify under the guise that his testimony would undermine the case.

The record clearly shows appointed counsel's ineffectiveness. The petitioner has shown counsel's performance was deficient — appointed counsel presented no defense. The petitioner has shown that appointed counsel's deficient performance prejudiced the outcome of the trial. Nothing on the record shows that appointed counsel pursued any defense for the allegations against the petitioner. The record clearly shows appointed counsel to be ineffective — clearly in violation of the

petitioner's 14th Amendment right to effective assistance of counsel.

Strickland v. Washington, 464 U.S. 688, 687, 104 S.Ct. 2552 80 L. Ed2d 1674 (1984)

Appointed counsel advising petitioner to waive the evidentiary hearing for the Motion In Limine is a clear violation of the 14th Amendment's Due Process Clause. There was not anything strategic about petitioner waiving the evidentiary hearing per advice of his appointed counsel. Counsel presented no line of questioning supporting the advising of the petitioner to waive the evidentiary hearing that could be considered strategic in an approach to presenting, either a consensual sex defense or a defense of attacking the credibility of the alleged victim, that would impeach her testimony.

4. Why was appellate counsel not found ineffective for failing to raise the claim of ineffective assistance of appointed counsel after he was aware of the petitioner's actual innocence and that his trial appointed counsel presented no defense at trial?

Pasquale A. McMurry, the petitioner, notified appellate counsel William H. Brown of his actual innocence and that trial appointed counsel presented no defense at trial. An ineffective assistance of counsel claim may be raised on direct appeal when an evidentiary hearing is conducted.

Pellegrini v. State, 117 Nev. 860, 883, 34 P.3d 519, 534 (2001)

Appellate counsel should have motioned the court for an evidentiary hearing in order to expand on the record of trial appointed counsel's ineffectiveness.

The deficient performance of trial appointed counsel for failing to:

- (1) present a defense at trial;
- (2) render reasonable advice,

was in violation of the petitioner's 6th and 14th Amendment rights. The claim of ineffective assistance being raised on direct appeal is a colorable claim. Neither trial appointed

counsel or appellate counsel acted with reasonable diligence or adequacy when representing the petitioner at trial and on appeal. Appellate counsel's failure to present the issue of ineffective assistance of counsel on direct appeal is gross error.

Burke v. State, 110 Nev. 1364, 1368, 887 P.2d 267, 268 (1994)

The errors of both counselors denied the petitioner his 6th Amendment right to effective assistance of counsel. Their errors further deprived the petitioner of his 14th Amendment right which is secured by the Due Process Clause.

The failure for trial appointed counsel to subpoena key witness for the defense, Victoria Mulroe, for her testimony concerning the alleged victim's threat to "set-up" the petitioner was gross error. The failure for trial appointed counsel to subpoena Victoria Mulroe's phone records which contained a text message threat by the alleged victim of her intent to "set-up" the petitioner was gross error. Appellate counsel was ineffective in his representation of petitioner on appeal.

5. Why did the judge not order the State to comply with its duty under Brady to:

- 1) learn of Brady material within law enforcement's possession and disclose it with the defense;
- 2) disclose of officer-witness personnel files;
- 3) disclose all judicial determinations of any law enforcement agents involved in the underlying investigation as to whether they had engaged in any violations of the petitioner's constitutional rights?

Before trial the petitioner filed a Bradmotion seeking three things:

- (1) an order from the district court directing the State to comply with its duty to learn of Brady material within law enforcement's possession;

Kyle v. Whitley, 514 U.S. 419, 437 (1995)

- (2) disclose of officer-witness personnel files to the extent they revealed any information that could "cast doubt upon their credibility..."

- (3) disclose of all judicial determinations of law enforcement agents involved in the underlying investigation as to

whether they had engaged in violations of the petitioner's constitutional rights.

The State has a duty to comply with a Brady request.
Brady v. Maryland, 373 U.S. 83 (1963)

The State failed to address the two most important issues:

- (1) whether the State had a duty to learn of Brady material in law enforcement's possession;
- (2) whether the State would comply with that duty in relation to Las Vegas Metropolitan Police Department (LVMPD).

The State made it clear that it would not seek to learn of Brady material in LVMPD's possession.

The disclosure of Brady evidence in LVMPD's personnel files was not given by the State to the defense. The petitioner's request was expressly limited to Brady evidence in the LVMPD's personnel files.

(i.e., whether there was any misconduct in the personnel files related to the personnel involved with the investigation for the case at-hand.)

The Brady material relating to prior constitutional

violations by officers involved in the investigation was not met. The State's response to the request was that they would only conduct the standard "truthfulness inquiries". The court should have ordered the State to comply with the requested Brady request.

Each of the Brady requests would have possibly given the defense information to impeach the State's officer-witness, Detective Pritchard. Evidence of an officer-witness' misconduct is exculpatory and material evidence. The State's failure to comply with the Brady request prejudiced the outcome of the trial. The State's failure to comply with the Brady request deprived the petitioner of his 6th Amendment right to the Compulsory Process for obtaining witnesses in his favor; thus, violating the petitioner's 5th Amendment right to not be deprived of life, liberty, or property. The State's failure to comply with the Brady request deprived the petitioner of his 9th Amendment right when the State constructed the 14th Amendment to fit their need further depriving the petitioner of his 14th Amendment right protected by the Due Process Clause, and Equal Protection Clause.

All of the Amendments are secured by the United States of America's Constitution.

Conclusion

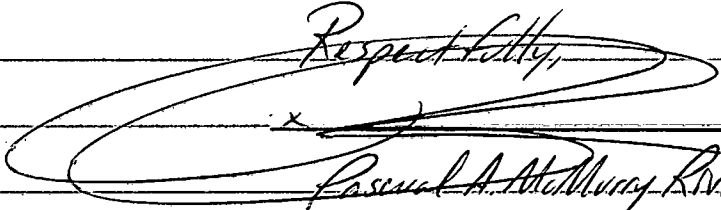
This Honorable Court must grant this Extraordinary Writ of Certiorari. Petitioner was deprived of life, liberty, and property unlawfully. The lower courts conducted a kangaroo court in which they conspired collectively to deprive both Keaston Jackson and Pascual A. McMurry Rivera of Justice.

I swear under penalty of perjury that the foregoing is true and correct.

Dated this 18th day of August, 2025.

Respectfully,
x
Pascual A. McMurry Rivera

Respectfully,


Pascual A. McMuray Rivera

Petitioner

8.14.2025