

IN THE SUPREME COURT
STATE OF NORTH DAKOTA

George Robert Lyons, Petitioner/Appellant, v. State of North Dakota, Respondent/Appellee.	Case No.: 18-2020-CV-591 Supreme Court Case No: 20200333 PETITION FOR REHEARING
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PETITION FOR REHEARING

Petition for Re-hearing on the Judgment entered on the 20th day of May, 2021 by the

North Dakota Supreme Court

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PETITION FOR REHEARING

[¶1] COMES NOW the Petitioner/Appellant George Robert Lyons and petitions the court for a rehearing.

JURISDICTION

[¶2] Petitioner/Appellant Lyons timely petitions for rehearing in accordance with N.D. R. App. P. 40.

STATEMENT OF THE ISSUES

[¶3] **ISSUE I.** Does a Defendant in a criminal case have the ultimate right to determine reasonable trial strategy at his trial?

LAW AND ARGUMENT

ISSUE I. Does a Defendant in a criminal case have the ultimate right to determine reasonable trial strategy at his trial?

[¶4] In this case the Petitioner/Appellant Lyons and his attorney disagreed on the way one of the state's witnesses should be cross examined at his trial. The Petitioner/Appellant Lyons, because of information given to him by the prosecution, wanted the witness to be fully cross examined and believed such cross examination would impeach her. His attorney disagreed and believed such cross examination would fail because it wouldn't blow her out of the water.

[¶5] In criminal cases in North Dakota the Defendant makes the ultimate decision as to the plea he enters, whether or not to plead guilty, and whether or not to accept any plea bargain offered by the prosecutor.

[¶6] When the Defendant in a criminal case is found guilty, he, not the attorney, pays the fine and does the time. In this case the procedure that Petitioner/Appellant Lyons

requested was reasonable. He wanted to have a witness cross examined and impeached. His attorney said no because he didn't believe he could blow the witness out of the water.

[¶7] As to whether or not the case could have been won by vigorous cross examination we will never know. All we know is Defendant/Petitioner Lyons was found guilty and he was sentenced to prison.

[¶8] According to Noorlun v. State, 2007 ND 118, 736 N.W.2d 477 (N.D. 2007):

“[¶12] On appeal, we do not second guess matters of trial tactics, such as the decision to call certain witnesses, hire private investigators, or how to question certain witnesses. State v. Austin, 2007 ND 30, ¶32, 727 N.W.2d 790; Rummer v. State, 2006 ND 216, ¶ 12, 722 N.W.2d 528. "Strategic choices by trial counsel 'made after thorough investigation of law and facts relevant to plausible options are virtually unchallengeable.'" Rummer, at ¶12 (quoting State v. Schlickemayer, 364 N.W.2d 108, 112 (N.D. 1985)). As to the matters of trial strategy, courts do not impose their collective judgment upon trial counsel, or apply the distorting effect of hindsight. Rummer, at ¶¶10, 13. Merely because a defendant does not prevail in a criminal prosecution that involves strategic choices by trial counsel does not mean those choices constitute ineffective assistance of counsel.”

[¶9] The above language doesn't apply to the factual situation in this case because the facts in this case deal with Petitioner/Appellant Lyons and his attorney disagreeing before trial about how a witness should be cross examined. The position Petitioner/Appellant Lyons took was reasonable and his attorney should have either cross examined the witness the way Petitioner/Appellant Lyons requested or withdrawn from the case.

CONCLUSION

[¶10] Petitioner/Appellant Lyons petition for rehearing should be granted.

Dated this 8th day of June, 2021.

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Supreme Court File No.
20200333
Grand Forks County File No.
18-2020-CV-00591

**CERTIFICATE OF
COMPLIANCE**

[¶1] This Petition complies with the pages limit set forth in Rule 40 of the North Dakota Rules of Appellate Procedure, as the petition does not exceed 10 pages.

Dated this 8th day of June, 2021.

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CERTIFICATE OF SERVICE

[¶1] I certify that a true and correct copy of the following, specifically:

1. Petition for Rehearing
2. Certificate of Compliance
3. Certificate of Service

by electronically serving the same through the North Dakota Supreme Court e-filing system and that e-filing will provide service to the following:

North Dakota Supreme Court
supclerkofcourt@ndcourts.gov

Rachel Rae Egstad
Grand Forks County States Attorney
sasupportstaff@gfcounty.org

and by U.S. postal service with proper postage affixed to:

George Robert Lyons
c/o Rush City Correctional Facility
Inmate ID#260021
7600 – 525th Street
Rush City, MN 55069
Petitioner/Appellant.

Dated this 8th day of June, 2021.

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