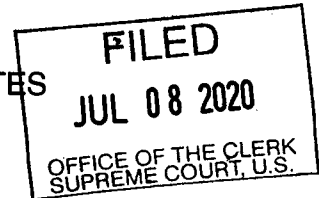


No. 19-7386

20-5288

IN THE  
SUPREME COURT OF THE UNITED STATES



EUGENE PETER SCHULER — PETITIONER  
(Your Name)

**ORIGINAL**

HAROLD CLARKE — RESPONDENT(S)  
vs.

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT  
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

EUGENE PETER SCHULER  
(Your Name)

1607 PLANTERS ROAD, LAWRENCEVILLE (LVCC)  
(Address)

LAWRENCEVILLE, VA 23868  
(City, State, Zip Code)

NA  
(Phone Number)

## QUESTION(S) PRESENTED

A. WHERE CONTRACT LAW IDENTIFIES THAT AN AGREEMENT CAN BE SIGNED UNDER "BAD FAITH" AND MADE VOIDABLE BY EITHER EXTRINSIC FRAUD, OR, AN INADVERTENT OMISSION OF PERTINENT/INJURIOUS INFORMATION ABOUT THE AGREEMENT, -- DOES ANY COURT HAVE THE GRANTING AUTHORITY TO HEAR SUCH A CASE IF THE EXPIRATION DATE TO FILE TIMELY HAS PASSED? OR, DOES IT FALL ON PETITIONER?

B. DOES LIABILITY AND ANY INJURY RESULTING FROM AN AGREEMENT SIGNED UNDER BAD FAITH, AND ITS PROVISIONS, FALL ON A LAWYER THAT INADVERTENTLY OMITTED INJURIOUS INFORMATION WITHIN THE AGREEMENT FROM A CLIENT? (WHETHER INTENTIONAL OR ACCIDENTAL) OR, DOES IT FALL ON THE PETITIONER?

C. DOES LIABILITY AND ANY INJURY RESULTING FROM AN AGREEMENT SIGNED UNDER BAD FAITH, AND ITS PROVISIONS, FALL ON A PROSECUTOR THAT INTENTIONALLY VIOLATED CLEARLY ESTABLISHED LAW FOR CONTRACTUAL DEALINGS, OR DOES IT FALL ON THE PETITIONER?

## LIST OF PARTIES

- ☒ All parties appear in the caption of the case on the cover page.
- ☐ All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

## RELATED CASES

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## STATUTES AND RULES

RESTATEMENT OF CONTRACTS § 161 (1981)  
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U.C.C. §§ 2-204

## OTHER

IN THE  
SUPREME COURT OF THE UNITED STATES  
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

**OPINIONS BELOW**

☒ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix \_\_\_\_\_ to the petition and is

- ☐ reported at \_\_\_\_\_; or,  
☐ has been designated for publication but is not yet reported; or,  
☐ is unpublished.

The opinion of the United States district court appears at Appendix \_\_\_\_\_ to the petition and is

- ☐ reported at \_\_\_\_\_; or,  
☐ has been designated for publication but is not yet reported; or,  
☐ is unpublished.

☐ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix \_\_\_\_\_ to the petition and is

- ☐ reported at \_\_\_\_\_; or,  
☐ has been designated for publication but is not yet reported; or,  
☐ is unpublished.

The opinion of the \_\_\_\_\_ court appears at Appendix \_\_\_\_\_ to the petition and is

- ☐ reported at \_\_\_\_\_; or,  
☐ has been designated for publication but is not yet reported; or,  
☐ is unpublished.

## JURISDICTION

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was April, 7, 2020.

☐ No petition for rehearing was timely filed in my case.

☒ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: April 7, 2020, and a copy of the order denying rehearing appears at Appendix \_\_\_\_\_.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including \_\_\_\_\_ (date) on \_\_\_\_\_ (date) in Application No. A\_\_\_\_\_.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☐ For cases from **state courts**:

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

☐ A timely petition for rehearing was thereafter denied on the following date: \_\_\_\_\_, and a copy of the order denying rehearing appears at Appendix \_\_\_\_\_.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including \_\_\_\_\_ (date) on \_\_\_\_\_ (date) in Application No. A\_\_\_\_\_.

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

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. RESTATEMENT OF CONTRACTS § 161; § 164(1)
2. U.C.C. §§ 2-204
3. SIXTH AMENDMENT OF THE U.S. CONSTITUTION
4. ARTICLE I, SECTION 8 AND 11 OF THE VIRGINIA CONSTITUTION



## STATEMENT OF THE CASE

1. On July 15, 2012, PETITIONER ("SCHULER"), WAS CHARGED WITH ONE COUNT OF MALICIOUS WOUNDING FOR STABBING WHITNEY SCHULER, AND ONE COUNT OF UNLAWFUL WOUNDING FOR STABBING WHITNEY SCHULER (LATER IN OCTOBER OF 2012, A DESTRUCTION OF PROPERTY CHARGE WAS ADDED, AND ON ANOTHER DATE THE ONE COUNT OF MALICIOUS WOUNDING WAS AMENDED TO AGGRAVATED MALICIOUS WOUNDING).
2. On January 7, 2013, SCHULER, ON THE ADVICE OF COUNSEL ENTERED INTO A GUILTY PLEA TO BOTH MALICIOUS WOUNDING AND UNLAWFUL WOUNDING, IN EXCHANGE FOR PLEADING GUILTY AGGRAVATED MALICIOUS WOUNDING WAS AMENDED BACK TO MALICIOUS WOUNDING; THE DESTRUCTION OF PROPERTY CHARGE WAS TO BE *NOLLE PROSEQUI*, AND INSTEAD THE COURT STIPULATED A RESTITUTION PAYMENT OF \$3,000 TO THE VICTIM POST-RELEASE.
3. SCHULER'S DIRECT APPEAL WAS DENIED BY THE VIRGINIA COURT OF APPEALS. SCHULER, PRO-SE, DID NOT SEEK REVIEW FROM THE VIRGINIA SUPREME COURT, ON DIRECT APPEAL FROM THE COURT OF APPEALS.
4. On April 25, 2015, SCHULER FILED A PETITION FOR WRIT OF HABEAS CORPUS. HE ARGUED DOUBLE JEOPARDY ON THE TWO WOUNDING CHARGES; INEFFECTIVE ASSISTANCE OF COUNSEL; AND WITHDRAWAL FROM THE AGREEMENT. ON MARCH 24, 2016, THE PETITION WAS TIME-BARRED BY THE NEWPORT NEWS CIRCUIT COURT. SCHULER DID NOT APPEAL TO THE VIRGINIA SUPREME COURT.

5. SCHULER PROCEEDED TO THE UNITED STATES DISTRICT COURT; COURT OF APPEALS FOR THE FOURTH CIRCUIT; AND THEN THE UNITED STATES SUPREME COURT. FOLLOWING THOSE DENIALS, SCHULER THEN FILED IN THE VIRGINIA SUPREME COURT, HIS HABEAS WAS DENIED AS A PETITION TIME-BARRED BY CODE § 8.01-654 (A)(2). NEXT, SCHULER FILED A RULE 60 (b) MOTION IN THE DISTRICT COURT, AND APPEALED THE DECISION TO THE COURT OF APPEALS. THE TIME-BAR WAS UPHOLD AND SCHULER NOW PROCEEDS TO THE SUPREME COURT OF THE UNITED STATES.

## REASONS FOR GRANTING THE PETITION

THIS PETITION IS TO FULLY INFORM THIS HONORABLE COURT OF A BREACH OF CONTRACT BETWEEN THE STATE OF VIRGINIA AND THE PETITIONER, WHEREAS RELIEF CAN BE GRANTED, BUT HAS NOT BEEN ADMINISTERED. PETITIONS FOR WRIT OF CERTIORARI GRANTS RELIEF IN RARE CASES WHERE QUESTIONS OF NATIONAL IMPORTANCE ARE INVOLVED, OR FOR FINALITY. PETITIONER, CLAIMS AND ASSERTS THE FOLLOWING:

A. AN AGREEMENT SIGNED UNDER BAD FAITH IS VOIDABLE BY EXTRINSIC FRAUD, OR AN INADVERTENT OMISSION OF PERTINENT / INJURIOUS INFORMATION PERTAINING TO THE AGREEMENT.

THE STATE OF VIRGINIA'S CONSTITUTION, WHICH IS A REFLECTION OF THE U. S. CONSTITUTION, GUARANTEES THAT A CITIZEN WHO IS UNABLE TO AFFORD COUNSEL WILL BE AFFORDED COURT-APPOINTED COUNSEL CAPABLE OF PROVIDING EFFECTIVE ASSISTANCE. THIS DOES NOT ENTAIL PERFECT LITIGATION, BUT ASSISTANCE EFFECTIVE ENOUGH TO PROVIDE A CLIENT WITH A FAIR PROCEEDING. THIS INCLUDES THE LAWYER BEING KNOWLEDGEABLE ENOUGH TO ADVISE AND INFORM A CLIENT OF HIS RIGHTS, AND OFFER ADVICE THAT WOULD BE BENEFICIAL AND NOT DETRIMENTAL. AT THE LEAST, A LAWYER SHOULD INFORM THEIR CLIENT OF THEIR CONSTITUTIONAL RIGHTS. IN THIS CASE, COUNSEL OFFERED THE AGREEMENT, ADVISED HER CLIENT TO SIGN, BUT OMITTED THE FACT THAT HER CLIENT WOULD BE WAIVING HIS FIFTH AMENDMENT RIGHT, AND GIVING THE TRIAL COURT AUTHORITY TO CHARGE HIM WITH A GREATER AND LESSER-INCLUDED OFFENSE FOR A SINGLE ACT. BY THE TIME THE PETITIONER DISCOVERED THE DOUBLE JEOPARDY VIOLATION, HIS APPELLATE COUNSEL HAD ALREADY FILED HIS DIRECT

APPEAL TO THE COURT OF APPEALS FOR VIRGINIA. AT NO TIME WAS THE PETITIONER INFORMED ABOUT THE WAIVING OF HIS RIGHTS, OR THAT ONE CHARGE WAS UNNECESSARY. THIS IS NOT MENTIONED IN ANY PROCEEDINGS (TRANSCRIPTS), OR WRITTEN IN THE PLEA AGREEMENT. DUE TO ONE CHARGE BEING UNNECESSARY, IT WAS NOT BENEFICIAL FOR THE PETITIONER TO BE SENTENCED TO AN UNWARRANTED CHARGE, IT WAS DETRIMENTAL TO HIS CONSTITUTIONAL RIGHTS AND FREEDOM. BY THE CONTEXT OF THE SIXTH AMENDMENT, PETITIONER'S LAWYER'S SERVICES REQUIRE THAT SHE PROTECT HER CLIENT FROM SUCH INJURIES, OR AT LEAST WARN HIM OF THE DANGERS. COUNSEL GROSS NEGLIGENCE NOW SOWS A SEED FOR "FRUIT FROM A POISONOUS TREE." IF COUNSEL KNOWINGLY HID INFORMATION OR UNKNOWNLY HID INFORMATION, HER SERVICES WERE DEFECTIVE BECAUSE SHE HAS AN OBLIGATION TO PROVIDE COMPETENT LEGAL ADVICE. THE SEQUENCE OF EVENTS THAT FOLLOWED STEMMED FROM A FAILURE TO DISCLOSE MATERIAL FACTS, AND THE QUESTION OF LAW HERE IS WHO DOES LIABILITY FALL ON. IT IS THE PETITIONER'S CONTENTION THAT HE WOULD NOT HAVE SIGNED THE AGREEMENT HAD COUNSEL INFORMED HIM HE WOULD BE WAIVING HIS RIGHTS, AND IT IS SAFE TO ASSUME THAT NO REASONABLE PERSON WOULD DESIRE AN ADDITIONAL TERM OF IMPRISONMENT. THEREFORE, THE PETITIONER WISHES TO HAVE THIS CASE / AGREEMENT REVIEWED, AND RELIEF FROM ONE OF THE SENTENCES.

AS THE SUPREME COURT NOTED IN THE CONTEXT OF A CONFIDENTIAL RELATIONSHIP, "[S]UPPRESSION OF A MATERIAL FACT WHICH A PARTY IS BOUND IN GOOD FAITH TO DISCLOSE IS EQUIVALENT TO A FALSE MISREPRESENTATION." LEIGH V. LOYD, 74 ARIZ. 84, 87, 244 P.2D 356, 358 (1952). FOR EXAMPLE, "[W]HEN ONE CONVEYS A FALSE IMPRESSION BY THE DISCLOSURE OF SOME FACTS AND THE CONCEALMENT OF OTHERS, SUCH CONCEALMENT IS IN EFFECT A FALSE REPRESENTATION THAT WHAT IS DISCLOSED IS THE WHOLE

TRUTH." STATE V. CODDINGTON, 135 ARIZ. 480, 481, 662 P.2d 155, 156 (APP. 1983). Thus NONDISCLOSURE MAY BE EQUATED WITH THE SAME LEGAL EFFECT AS FRAUD AND MISREPRESENTATION. IN BOTH CIVIL AND CRIMINAL PROCEEDINGS, SUCH REPRESENTATION IS CONSIDERED INJURIOUS AND RELIEF IS GRANTED TO THE INJURED. PREVIOUSLY, THE COURT HAS HELD THAT SUCH "INEFFECTIVE PERFORMANCE" CONSTITUTES CONSTITUTIONAL INEFFECTIVENESS AND A PETITIONER IS STILL ENTITLED TO A DECISION ON THE MERITS OF HIS CONSTITUTIONAL CLAIMS, SEE JACKSON V. LEONARDO, 162 F.3d 81 (C.A.2 (N.Y.)) (1998). LIKE IN THIS CASE, JACKSON'S COUNSEL FAILED TO DISCLOSE A DOUBLE JEOPARDY VIOLATION, AND ADVISED HIM TO ACCEPT IT WITHOUT DISCLOSING HIM WAIVING HIS FIFTH AMENDMENT RIGHT. JACKSON SUCCEEDED ON A SIXTH AMENDMENT CLAIM BECAUSE COUNSEL'S REPRESENTATION WAS DEFECTIVE, UNDER STRICKLAND V. WASHINGTON, AND THE PETITIONER WISHES FOR REDRESS AND TO BE RETRIED APPROPRIATELY.

CLAIMS B., C., IN THE QUESTIONS PRESENTED ARE BASED ON THE SAME ARGUMENT AND ANY FURTHER LITIGATION WOULD BE FUTILE. THERE IS ONE EXCEPTION IN CLAIM # C.. THE PETITIONER ASSERTS THAT PROSECUTOR ROBIN FARKAS, IN A BRIEF OF OPPOSITION, WAS MADE AWARE (POST-CONVICTION) OF THE INADVERTENT OMISSION AND CHOSE TO LITIGATE, INSTEAD OF CORRECTING AN INJUSTICE; AND PETITIONER QUESTIONS HER LIABILITY IN HIS INJURY.

## CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

A handwritten signature in black ink, consisting of a large, stylized 'B' followed by a series of loops and a long horizontal stroke.

Date: July 6, 2020