

No. 20-7489

Supreme Court, U.S.
FILED

FEB 23 2021

OFFICE OF THE CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

MICHAEL J. FORMICA - PETITIONER
(Your Name)

VS.

DIRECTOR HAROLD W. CLARKE - RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI

Circuit Court Greenc County
(NAME OF COURT THAT LAST RULED ON THE MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Michael Joseph Formica 146 74
(Your Name)

Greenville Correctional Center 901 Corrections Way
(Address)

Jarratt VA 23870
(City, State, Zip Code)

(Phone Number)

ORIGINAL

QUESTION(S) PRESENTED

1. WHETHER THE FOURTH CIRCUIT DECISION WAS DEBATABLE TO DISMISS THE PETITION FOR HABEAS CORPUS AS UNTIMELY.
2. WHETHER THE FOURTH CIRCUIT DECISION WAS DEBATABLE NOT TO GRANT EQUITABLE TOLLING DUE TO HOSPITALIZATION AND CIRCUMSTANCES
3. WHETHER THE FOURTH CIRCUIT DECISION WAS DEBATABLE NOT TO REVIEW THE MERITS OF THE CLAIM THAT TRIAL JUDGE VIOLATED THE PETITIONER'S DUE PROCESS TO A FAIR AND BALANCED TRIAL.
4. WHETHER THE FOURTH CIRCUIT DECISION WAS DEBATABLE NOT TO REVIEW THE MERITS OF THE CLAIM THAT THE PETITIONER'S FIRST ATTORNEY WAS WHOLLY UNPREPARED FOR TRIAL UNDERMINED THE OUTCOME OF THE CASE.
5. WHETHER THE FOURTH CIRCUIT DECISION WAS DEBATABLE NOT TO REVIEW THE MERITS OF THE CLAIM THAT THE PETITIONER'S SECOND ATTORNEY WAS REFUSING TO PREPARE FOR TRIAL UNDERMINED THE OUTCOME OF THE CASE.
6. WHETHER THE FOURTH CIRCUIT DECISION WAS DEBATABLE NOT TO REVIEW THE MERITS OF THE CLAIM THAT THE PETITIONER'S DECISION TO REPRESENT HIMSELF WERE VOLUNTARY AND INTELLIGENTLY MADE.
7. WHETHER THE FOURTH CIRCUIT DECISION WAS DEBATABLE NOT TO REVIEW THE MERITS OF THE CLAIM THAT TRIAL JUDGE PREVENTED EFFECTIVE CROSS EXAMINATION OF THE DETECTIVE.

QUESTION(S) PRESENTED

8. WHETHER THE FOURTH CIRCUIT DECISION WAS DEBATABLE NOT TO REVIEW THE MERITS OF THE CLAIM THAT TRIAL JUDGE PREVENTED EFFECTIVE CROSS EXAMINATION OF THE CASE-IN-CHIEF.
9. WHETHER THE FOURTH CIRCUIT DECISION WAS DEBATABLE NOT TO REVIEW THE MERITS OF THE CLAIM THAT STANBLY COUNSEL REFUSED TO ASSIST IN PREPARATION FOR TRIAL, AND AT TRIAL
10. WHETHER THE FOURTH CIRCUIT DECISION WAS DEBATABLE NOT TO REVIEW THE MERITS OF THE CLAIM THAT PETITIONER'S APPELLATE ATTORNEY REFUSED TO INCORPORATE PETITIONER'S QUESTIONS FOR REVIEW UNDER MINVED THE OUTCOME OF THE CASE.
11. WHETHER THE FOURTH CIRCUIT DECISION WAS DEBATABLE NOT TO GRANT AN EVIDENTIARY HEARING ON THE MERIT OF THE CLAIMS AND EQUITABLE TOLLING.
12. WHETHER THE FOURTH CIRCUIT DECISION WAS DEBATABLE NOT TO GRANT DISCOVERY TO PROVE TRIAL TESTIMONY WAS FABRICATED TO SUPPORT ACTUAL INNOCENCE CLAIM.

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 subject of this petition is as follows:

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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 A 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 B 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 D 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

September 28, 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: _____, 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

SIXTH AMENDMENT

FOURTEENTH AMENDMENT

STATEMENT OF THE CASE

On January 25, 2012, the petitioner, Michael J. Formica was in the General District Court for the County of Greene, Virginia, charged with assault, trespassing after forbidden and stalking charge was served in court. The A.D.A Juan Vega calls Amanda Davis, case-in-chief, to the stand and states she met Formica at a party and found out he was a landscaper and asked him to bid on her landscaping. Formica began emailing and calling her she asked him to stop and disconnected the phone number and email address because of Formica. Formica came by her work and home. Formica left notes and on the notes left on January 14 and 16th had sexual connotations which concerned her. A.D.A Juan Vega states Formica has become delusional about having sex with Davis and with the assault and history a protective order needs to be in place and remand Formica. Formica moves to rebut and is told not to speak until spoken to then the judge orders a protective order remands Formica and appoints Scott Duryear. Set a evidence hearing on the protective order for February 8, 2012 and preliminary for the 3 crimes.

The mandatory hearing for the order of protection is continued by the judge Formica verbally moves for bail and is denied to even hear the issue. Formica has a consult with Scott Duryear and is told what evidence to obtain and who to talk to for subpoenas. On March 21, 2012, trial counselor fails to move for discovery and fails to speak to one witness so he verbally moves for a competency examination and fraudulently advises Formica the law states he "has to" agree to the protective order until the exam is done. Formica has multiple charges of violation of protection order, which he is alleged of writing and mailing letters.

On April 25 2012 Formica is brought to court for more violations of a protective order, mailing letters, and counsel is there by happenstance. Duryear verbally moves for a competence at the time of offense which the judge grants. Formica instructs Duryear to request a Franks' Hearing and refuses. Formica tells Duryear to file for the evidence and depose all witnesses. On May 2 2012 Psychologist Michael Dawson interviews Formica. Formica call Duryear and tells him to get the letter the psychologist was referring to counsel refuses.

On May 25 2012 second consult with Duryear. Formica declines plea tells counsel to get the preliminary hearing transcribed, depose all witnesses, get 911 Emergency call with deputy's report, emails and 3 letters from stalking charge and the letter from A.D.A. Juan Vega. On June 6 2012 counsel does nothing and fails to cross examine case-in-chief on her knowledge or familiarity of Formica's handwriting. At this time A.D.A. Juan Vega non prosequi Formica's assault which is how he implemented the order of protection. Counsel refused to gain insight on this event. Plus it was in front of a substitute judge who knew nothing about the case. Once again Formica tells defense counsel to get 911 call, deputy's report, emails, 3 letters, the letter from A.D.A. Vega and depose witnesses.

On June 26, 2012 the Circuit Court summons Formica to court for arraignment, Counsel once again is told to obtain Formica defense. On September 27, 2012 Formica meets with Duryear who has a plea and Formica yells at Duryear tells him to get the defense and we are going to trial. On October 15, 2012, Duryear comes to offer another plea, Formica refuses to see the attorney because there is nothing to review.

On October 17 2012, Formica is set for jury trial. Puryear comes into the bullpen and hands a motion to withdraw tells Formica to read it and he will be back. Upon return the attorney states Judge Bouton denied all subpoenas and evidence in the discovery. Formica tells Puryear to go request a continuance to get a new lawyer. He states he asked for a continuance and it was denied. Formica has to go to trial without a defense or take a plea. Formica tells Puryear to ask for less charges he refuses. Formica writes a letter to the D.A. Morris and accepts Formica's counter. The attorney tells Formica that he "has to" agree that he was satisfied with counsel and all the plea questions so he does n't have to go to trial. Formica does this. Formica learned that everything Scott Puryear told Formica was a lie!

Formica moves to vacate plea and the court refuses to call him to argue the vacature.

Formica is revoked on these charges, and Richard Morgan is appointed. Formica instructs him to file for discovery; 911 Emergency call, deputy report, email, 3 letters, letter from A.D. A Juan Vega and to follow up on the motion to vacate the plea. Morgan is told to depose all witnesses. Morgan is instructed to file a motion to get the hearing transcribed. At the hearing on March 14 2012 Morgan has failed to any of the above then refuses to cross-examine the Commonwealth's witness. The excuse for not filing for discover or subpoenaing witnesses was Formica wasn't being revoked on the plea bargain he entered into on October 17, 2012. Yes, he was! [Scotus 17A#42]

On March 27, 2013, in the Greene County General District Court in Virginia, Michael J Formica, began receiving criminal charges for violations of protective order, VA Code § 18.2-60.4, which Amanda C. Davis was the petitioner. Steve Sharrett was appointed defense counselor. Attorney Sharrett was simultaneously representing Formica for the same violations in Orange County Virginia with the same petitioner.

On March 15, 2013, in Orange County, Sharrett refused to come to any court hearing in the Orange County General District Court. Formica filed two motions to challenge venue which the court refused to hear. Sharrett filed a letter waiving Formica's preliminary hearing which was not Formica's intention.

On April 10, 2013, Formica and Sharrett had a consultation which a plea was discussed. Formica was told that the assault in Greene County would give reasonable fear for the elements of the Felony charges and that the law doesn't allow trial defense attorney's to depose Commonwealth's witnesses and the law doesn't allow the attorney to obtain evidence in different jurisdictions. Formica was in a bad place on attacking the credibility of the case-in-chief. Sharrett made a promise that he would depose case-in-chief and Detective Roun in the cases pending in Greene County and depose all defense witnesses to discover if they have collaborated. In addition Sharrett would file for discovery for 911 Emergency call, deputy's incident report, three letters mentioned in the stalking complaint, emails and the letter from A.D.A. Juan Vega to the psychologist. Furthermore Sharrett would file a motion to set verdict aside and appeal the verdict in Orange County.

On April 19, 2013, in the Circuit Court of Orange County Formica interrupted Sharrett and another inmate and told him to make sure he appeals the verdict. Before entering into court Sharrett reviews

the sentences and probation of the plea agreement. Sharett fails to notify Formica that pleading to felony's at this trial will automatically enhance the 23 misdemeanors that are pending in Greene County. Formica is called into court and just before the judge tells Sharett to sign the plea Formica tells Sharett he doesn't like the plea which Sharett dismisses Formica's concerns. Formica is questioned for the plea colloquy as Sharett answers the questions by whispering in Formica's ear. The judge allows the Commonwealth Attorney to present his side of the case and admits Formica is receiving felony charges because he has never been charged for a felony. The judge accepts the plea and Formica sentenced. [SCOTUS 17A1084] [EXHIBIT A]

Back in Greene County General District Court at the preliminary hearing for the misdemeanor charges of violation of a protective order Sharett fails to motion for discovery or get the hearing recorded. The Commonwealth Attorney enhances all of the misdemeanors to felonies at this time and this is Formica's first notification of this direct consequence of the guilty plea accepted in Orange County. Moreover, Sharett fails to cross examine case-in-chief now she is familiar of Formica's handwriting style.

On September 14, 2013 Formica is summons to the Circuit Court for Greene County for arraignment which is postponed. At this time Formica tells Sharett that he needs to file a belated appeal for the Orange County Verdict and counselor states this would "open" the door for a habeas. and refuses to comply.

On October 23, 2013 at the arraignment Formica discusses the promises which Sharett enticed Formica into a plea. Sharett was reminded to obtain 911 Emergency call, emails, deputy incident report of assault, three alleged letters and letter to Dr. Downer. Sharett was to file to get funds for a

private investigator, recuse judge and investigate the Commonwealth's and Sheriff's department file.

On December 16, 2013, Formica is summons to Circuit Court for Greene County which is to hear the motion to dismiss, motion for funds to hire a private investigator and to recuse judge. Sharrett argues that the violations of protective order are not felonies which were taken in Orange County they were a legal concession and not a factual concession therefore the criminal charges in this court are not felonies. [EXHIBIT B] The judge denies both motions. This is the same judge that has recused Formica and accepted the plea in Orange County. Once again Formica trying to find out how the Commonwealth is going to prove that the mailed letters were written by Formica. Sharrett fails to get a motion before the court about obtaining funds for a private investigator and states he will file another motion when he files for discovery. On February 13th, Formica comes before the court allegedly to hear the motions for private investigator and discovery. Sharrett once again deposes Formica and the only motion filed is to waive trial by jury. This was never discussed by Formica and attorney.

On February 25, 2014, Formica's trial jury is set to begin. Defense counsel has not file for discovery to show the jury that the assault was a fabricated charge, the police were not called therefore the deputy never came to her house to compose a report. The defense does not have the three alleged letters which mentioned in the stalking complaint, emails which would prove to case-in-chief admitted, that before the protective order was in place and, back in January of 2011 the prosecutrix did get mad at Formica and told him to quit contacting her in a email but just before Valentine's Day 2011 the alleged victim requested company from Formica therefore she can't charge Formica with a crime if she encouraged a get together. Formica believes it was for sex. In addition defense counsel has not deposed Commonwealth witnesses or defense witnesses.

The defense counselor moves for a continuance because the defense witnesses were incorrectly subpoenaed plus the attorney failed to subpoena the former Assistant District Attorney. Defense counselor notifies the court Formica has or will be filing a habeas for ineffective counsel for his representation in Orange County. The judge sets a date for hearing a motion to withdraw. On March 12, 2013 Shureff is withdrawn but he does file the motion for funds to hire a private investigator and to have access to the prosecutrix phone. The court appoints Peter K. Griffiths as defense counselor.

On March 27, 2014, Formica and Griffiths have a very detailed consultation reviewing the entire situation of false complaints and how the case-in-chief is using the law to get back at Formica for a brief sexual encounter in 2009, then telling her fiancée in 2012 when Formica met him on her front porch hence the assault and trespassing charge. The case-in-chief knowing the assault and trespassing charge might not stick she furthered her deception by filing a stalking charge using letters. Formica told Griffiths that his pleas were based on erroneous advice and he wanted the 911 Emergency Call, deputy's report, and the three letters. Formica told Griffiths to try and ascertain the emails that might be in her phone or subpoena the emails to prove that Formica was invited back to the case-in-chief's house after a argument and get the email on February 12, 2011 one year before all of this drama occurred. Griffiths was to file for funds to get a private investigator to depose the Commonwealth's witnesses and defense witnesses because the defense witnesses were all friends with the case-in-chief so they had to be vetted. Griffiths agreed. On April 1, 2014 counsel verbally moved the court for more time to prepare Formica's defense.

By June 5th, Griffiths is refusing to file for discovery, refusing to file a motion to get a private investigator, refusing to investigate the Commonwealth's

or Sheriff departments file and refusing to depose any witnesses. Formica told counsel to file a motion to move him to self-representation and him to be standby counsel. Griffith's did subpoenaed former A.D.A. Juan Vega and Jan Lawson at the wrong address.

On July 8, 2014 the judge granted Formica to move pro se and Griffith's to be standby. Denied subpoena for A.D.A. Juan Vega, and denied Formica's request for a trial continuance.

After Griffith's is moved to Standby Formica instructs counsel to either write and discovery or have his legal secretary to write a motion for discovery and a motion for a private investigator so Formica can attack the case-in-chief's testimony. Counsel refuses. Formica requests standby to physically go to the Sheriff's department and get the alleged three letters in stalking complaint, 911 call and deputy report and talk to the investigator to gain insight on how he is familiar with Formica's handwriting. Standby counsel refuses. Formica requests standby counsel to review the contemporaneous rule and standby refuses to explain the rule and at the last consult told Formica that it was not that important.

On July 29, 2014 Formica's trial by jury is to begin. Formica attempts get information on how the Commonwealth's witnesses are familiar with Formica's handwriting because no one has observed Formica write so Formica instructs standby to go speak with the witnesses and he refuses. Formica needed some copies and asked counsel to go to the clerk's office and make some copies he refuses. Before the first witness is called Formica instructs standby to kick his foot is he needs to object he refuses. Stating he is only here is the judge tells him to take over.

The Commonwealth called Detective Roach who is a Captain. He states that Formica was incarcerated at Orange County Regional Jail. This is NOT TRUE! He states the letters were from Orange County Regional Jail. This is NOT TRUE! He states he is familiar with Formica's handwriting because Formica sent him letters which letters were sent to him but he couldn't have known Formica wrote them. He states the handwriting, syntax and subject matter is consistent with the letters sent to him and victim. The handwriting is one in the same and the subject matter is consistent. Detective Roach states Formica often times will put a narrative on the outside of the envelop. EXHIBIT

The question for anyone would be how is one person familiar with a persons handwriting if out of the blue a letter from the United States Postal Service comes addressed to you? If Formica is incarcerated one can't observe Formica write the letter, address the letter, nor mail the letter!

On cross, Formica questions the detective about recognizing the handwriting, where it came from and syntax which he stated "yes". Formica asks about this story which the detective states during the interview with Formica he described a relationship that culminated into the process of of Formica writing letters. Formica questions the overview of the relationship and was it a "intimate relationship". Commonwealth objects and the judge sustain the objection because details of the subject matter discussed are not a issue. The details of the fact that whether or not Formica had a detailed discussion with the detective is relevant moreover had a discussion at all. Formica questions the knowledge of Detectives of Formica's whereabouts that Formica was incarcerated, which Formica did state the correct jail which was CRTJ. His direct knowledge

which the detective answers he had contact with Formica at the
Greene County Sheriff's office when he visited. Formica remarks
I don't remember having contact with you. [EXHIBIT D]

The Sheriff has deputy's that work directly for the court.
The jail, Central Virginia Regional Jail, has employees that are
designated for transportation to and from the courts who
have areas designated for inmates. The transportation employees
for Central Virginia Regional Jail notify the deputies when they
leave and when they are about 5 minutes away from the court house.
Formica did file a discovery after trial for the removal of sentence
for the Detective's interrogation and case file which he stated he wrote the
times when he saw Formica at Greene County Sheriff's department which
standby refused to assist. Formica never received the alleged information.
Formica also requested this information in the state and federal hearings to
prove that there wasn't a interrogation nor detective saw Formica at
Greene County Sheriff's Department.

Commonwealth case in chief, Arnold Davis, who testifies
she recognizes all the letters (evidence of mailed letters) and the handwriting
she also received from previous letters. Davis testifies the handwriting is
the same as previous known letters. The content and writing on the back is
similar as previously received letters. On cross Formica questions where the
any examples to compare these letters, victim states she believed they
where in the evidence room at Greene County Sheriff's Department, where
Formica instructed Sheriff and Griffiths to look into this through discovery
or physically going to the Sheriff's office. Formica attempt to discovery
while the letters arrived prior to the 10-17-12 protection order.
The case-in-chief confirms letters found at her house. Formica filed for

these letters in the state and federal habeas). Formica question the nature of the relationship. Davis states, Acquaintance, friendship only. (Formica received information after trial. former A.D.A. Juan Vega letter to the psychologist from March 21, 2012 the Commonwealth knew there was a intimate encounter). Formica asks if Davis has ever seen Formica write on a piece of paper or pay a bill anything where you could assimilate the handwriting from those letters. entered into ----. The court interrupts, "stop there", you have to ask questions. This give Davis ample time to think or recollect her false narrative. Davis states, there were notes left a my door. Formica retorts, that's not seeing me write. Court interrupts giving Davis time to think of narrative. Formica was very clear with the two previous question about seeing Formica write. Davis states she saw Formica take a notepad out of his vehicle and write on top of it.... The court again chimes it buying her time. Formica states "you say you saw me get out of a vehicle, what vehicle.... The court interrupts again "That's irrelevant"..... and from Formica's understanding telling Formica to go back to general relationship questions. Formica did not have any general relationship or know anything about this lady. We had a two sexual encounters and Formica was attempting to get critical pricing from the case-in-chief. The court states we have to finish up shortly. At this time this is the first morning of a two day trial. [EXHIBIT E]

During the lunch break Formica tells standby counsel to speak to the defense witness' he refuses. When Formica enters the court room the A.D.A Wilder hands Formica a letter which was in the file since March 1, 2012, which former A.D.A Juan Vega failed to give the defense stating the case-in-chief didn't know why Formica was charged with assault on me.

The reason was simple the case-in-chief filed a false claim with affidavit stating she was assaulted. The former A.D.A Juan Vega told the court on January 25, 2012 the case-in-chief was assaulted and the A.D.A requested a order of protection. [SCOTUS 16A580]

Formica calls Randy Hane who was one of the three people that came back to case-in-chief's home the night of the first sexual encounter. Randy Hane is the case-in-chief's brother and he denies the situation occurring. Since all of the defense witnesses were sitting with the case-in-chief Formica knew every defense witness would be compromised.

Formica did call one additional witness who took Formica to the case-in-chief's house for a nightcap but he can't testify about what he did not observe. William Trevillian on November 7 2009 dropped Formica off at Amanda Davis house.

Formica with no defense to attack the Detective's or Davis credibility he conceded. The jury sentences Formica to 7 months on each charge. The judges sets the pronouncement of sentence hearing on the way out of the courtroom Formica tells the Detective "ya'll lied".

Standby counsel sends Formica previously filed motions which he refused to do before trial now Formica has a proper form and Rule for discovery. Formica files for alleged interrogation by Detective Roach, 911 Emergency Call, deputy's incident report, the alleged letters the case-in-chief used to be familiar with Formica's handwriting which is allegedly in the Greene County's Sheriff's Department evidence room. And the Detective alleged notes which he said he wrote down the dates he saw Formica each and everytime Formica came for visits. The judge denied the motion stating material was not pertinent.

On November 4, 2014 at the pronouncement of sentence hearing Formica calls psychologist Michael Downer the psychologist along with former A.D.A Juan Vega colluded about this narrative that Formica was landscaper and was delusional about having sex with the case-in-chief. Formica also finally got the letter from the former A.D.A Juan Vega to Dr. Downer which stated there was a sexual encounter. [EXHIBIT F]

Formica did ask Standby to question Jon Lawson before the hearing began but he refused, so Formica took chance and called him to testify. Jon Lawson concurs with a 10 second conversation but Formica hung around on the porch for 5-10 minutes and Formica pushed him in the chest, but when the police came and a report was filed... Formica interjected, "You filed a report"? Lawson, "No, not at all", The court, once again interjected clearly hearing Mr. Lawson just lied saving the witness. [EXHIBIT G] [MAP to house]

The judge deny Formica motion to run sentences concurrent and sentences Formica to 7 months on each charge and makes Standby Counsel to appellate counsel. Formica diligently instructs appellate counsel to NOT file the appeal unless it is approved by Formica.

Appellate counselor, Griffiths fails to speak to Formica about the questions he wants presented and then Formica is transferred to prison on January 29, 2015. the jail withholds all of Formica legal paperwork. Does not let him transfer with his legal paperwork.

Appellants counselor files the unapproved appeal 2248-14-2 with three questions presented; counsel of judge, denied of a continuance and evidence was insufficient. This appeal is denied on September 8, 2015. The Virginia Supreme Court upheld the Court of Appeals dismissal. VASP 160216

Formica does not pursue certiorari on criminal charges. On July 27, 2017 he files his state habeas in the Circuit Court for the County of Greene LL17-000130, presenting 53, fifty-three, claims with discovery.

On September 22, 2017 the petitioner is move from Pocaahontas Correctional Center to Greensville Correctional Center for orthopedic surgery. Formica notifies Greene County Circuit Court. On October 28, 2017 the petitioner writes his notice of appeal and notice to transfer record and emails the motions to his father, through the prisons in house system. The prisons system of communication randoms screens electronic mail. Unbeknown to Formica the two motions gets held for screening. On November 7, 2017 Formica calls his father and Formica discovers he has not received the two motions. Formica handwrites the notice of appeal and can't find his counselor to give it to him. Formica's pod gets called for chow which is the only time he can get to the mailbox which is outside. Formica places his notice of appeal in the outside mailbox. therefore it is out of his possession. On January 21, 2018 the clerk of the Virginia Supreme Court sends a prewritten affidavit. The language within the affidavit is contrary to what occurred because the counselor never received the notice of appeal but he called the mailroom who logged the legal mail in on the 8th of November 2017, therefore he wrote the 8th day of November 2017 he was in possession of letter notice of appeal. The counselor and Formica agreed that if the counselor manipulated the affidavit they, the court, would not accept the affidavit. He could only a test to what the mailroom stated. Apparently when Formica placed the notice of appeal in the outside receptacle on

7th November 2017 the mail lady had already picked up the mail or waited to the next day to log legal mail in. The Virginia Supreme Court denied the appeal on March 14 2018 and refuses the rehearing on May 2, 2018. On May 15, 2018 Formica mails a Motion for extension with dismissal to the United States Supreme Court to extend the deadline till August 29, 2018. On June 22, 2018, Formica has emergency surgery on heart which they replace two heart valves and ascending aorta. Formica is held at Virginia Commonwealth University Hospital until July 6, 2018 then transferred to Deep Meadow Infirmary. Formica legal mail is at Greensville Correctional Center. Formica has complications and the Infirmary Doctor will not release him back to Greensville Correctional Center for population. Formica has to file three more extensions because Formica can not get out of the Infirmary and Greensville will not send his legal material or property. Finally on October 16, 2018 Formica is sent 6 hours away to Pocahontas Correctional Center with out his legal material. On November 1 2018 Formica get legal paperwork and on November 22, 2018 serves in the certiorari.

On January 10, 2019 files a federal habeas thinking the extensions filed to the United States Supreme Court would toll the federal filing but just in case Formica filed his federal 12254. The clerk denied the certiorari then the District Court denied Formica's habeas petition. Due to Formica's heart problems and being without his legal paperwork for four (4) months the court refused equitable tolling. The Fourth Circuit confirms untimeliness.

REASONS FOR GRANTING THE PETITION

The petitioner has clearly shown that the defense counsel's in the case against Formica (Commonwealth v. Michael J. Formica, CR-93 through CR13100; CR13123 through CR13137) were more than ineffective, Formica's trial defense attorney first compromised Formica in Orange County Virginia by refusing to come to General District Court proceedings then using false information to coerce Formica into felony charges which the Commonwealth Attorney states the charges are not felonies with Formica believing trial defense promises to set verdict aside and appeal the verdict with additional promises of obtaining Formica's defense in the Green County charges, since defense counsel failed to appeal, this compromised all misdemeanors in Green County felonies and minimum sentence of 6 months. Counsel still fraudulently advised petitioner up until the trial date he will have a defense which is very simple find out who is familiar with Formica's handwriting and what were the circumstances surrounding the identification.

The petitioner gets a second chance to discredit the Commonwealth's witnesses with the dismissal of defense lawyer. The new defense attorney agrees the evidence is wholly circumstantial and the defense needs to discredit the Commonwealth witnesses therefore someone has to find out what they might testify about meaning the lawyer has to investigate and depose the witnesses or move for funds to investigate and depose the Commonwealth's witnesses. Secondly, the defense has to ascertain all fraudulent testimony either witness has previously entered as fact. Defense counsel was given a complete list of fraudulent evidence on the Commonwealth's case-in-chief to ascertain. Defense counsel comes and see the petition and states he is not going to investigate the Commonwealth file, Sheriff's file, Depose any witnesses or file for discovery. Furthermore, he is not going to refute the motions for

funds for a private investigator. Due to this conflict of interest the petitioner told counsel to file a motion so the petitioner could represent himself and make him stand by.

Formica tries to get standby counsel to assist and counsel refuses. What does the petitioner mean by refusing: investigate Commonwealth "open" investigation file, investigate Sheriff's investigation file; depose Commonwealth's two witnesses; depose defense witnesses; teach the petitioner the format to write a motion for discovery or standby or his legal secretary compose the motion and send it to the petitioner, assist in writing a motion for funds for private investigator, and teach the petitioner about contemporaneous objects. Refused All of the ABOVE.

Why did the jury find the petitioner guilty?

1. The Detective said he was familiar with Formica's handwriting. Because Formica sent him letters through the mail and in his opinion the handwriting was the same as the letters mailed to the case-in-chief.

FACT: The Detective never saw Formica write the mailed letters!

2. The Detective said the subject matter was consistent with what he knew about the case and consistent with the storyline Formica provided us.

FACT: the judge prevented the Detective from answering subject matter that he allegedly recognized/familiar with.

3. The Detective said Formica writes on the envelope.

FACT: If the Detective only is familiar with mailed letters

to him that he did not observe Formica write ~~the~~ and there are not markings on the envelopes to him. It is

speculation that Formica writes on the mailed envelopes

4. The Detective said he interrogated Formica about the letters.

FACT: This never happened and if either counselor would have done their job the defense would have been able to prepare for this fabricated testimony.

5. The Detective said he saw Formica each time he was visiting Greene County Sheriff's Department.

FACT: This never happened and if either counselor would have done their job the defense would have been prepared for this fabricated testimony.

6. The Detective said Formica was at Orange County Regional Jail.

FACT: Formica was at Central Virginia Regional Jail which this fact also plays into the Detective's knowledge he stated he had.

7. The Case-in-chief said she recognized Formica's handwriting from alleged 30 letters left at her residence, which are allegedly in the Greene County Sheriff's Department's evidence room.

FACT: Formica has no knowledge about these alleged letters, and if either counselor would have done their job the defense would have been prepared for this false testimony.

8. The Case-in-chief said she saw Formica on one occasion get a notepad out of his vehicle and write on top of it and left it at the door.

FACT: This incident never occurred if either counselor had done their job the defense would have been prepared for this fabricated story.

9. The case-in-chief said Formica and her never had sex.
FACT: This is not true and Formica proved it by the letter from former A.D.A. Juan Ilego to Dr. Michael Daven at the pronouncement of sentence hearing.
10. The case-in-chief's, fiancé Jon Lawson stated Formica pushed him in the chest.
FACT: This is not true if either counselor would have done their job Formica would have never put Mr. Lawson on the stand.

MATERIAL FACTS IN DISPUTE WITH DISMISSALS

1. At state level Formica sent out a email to his father that got held up because the prison does random screening on prisoners emails. The notice of appeal email, October 28, 2017, can be ascertained through a court subpoena but it did not get to the court before the 7th day of November 2017. Once Formica found out this problem which was the 7th day of November 2017 Formica handwrote a notice of appeal and placed it in the prison's outside mailbox. Apparently, the mail had already been picked up therefore it was logged in on the 8th day of November 2017.

The Virginia Supreme Court sent Formica a affidavit to be signed by someone who could investigate the issue. Since the affidavit was pre written Formica's counselor and Formica assumed the document could not be altered. The counselor called the mailroom and said they got the

Mail on the 8th day of November 2017. The mail clerk picks up the mail in the morning and Formica placed the mail in the outside mailbox in the afternoon. Therefore the counselor could only report what he uncovered and did not want to modify, cross-out, the part the prewritten affidavit stated the notice of appeal was personally delivered to him. VASP 180039.

2. Formica goes to the law library at Greenville Correctional Center and discusses the due date with the law library clerk; Formica was told he has 90 days to file the certiorari or this is a tolling period for the state habeas. When Formica got to Pocahontas Correctional Center the law library clerk advised Formica with the 90 days from state criminal certiorari tolling period and the state habeas certiorari tolling period. Formica must file the federal habeas before January 13, 2019.

In other words the 90 day from both certioraris was a tolling and a state of limitations. The Greenville Law Library Clerk tells Formica to file for an extension to the United States Supreme Court. On March 15, 2018 the Motion for extension is filed with State dismissals.

3. Formica is hospitalized and under goes heart surgery at Virginia Commonwealth University on June 22, 2018. Formica is released on July 6, 2018 to a state Infirmary without access to lawbooks or electronic access. All of Formica legal material and property is left at Greenville Correctional Center in storage.

4. Formica has to file for more continuances the Infirmary doctor will not release Formica due to complications. Formica gets released to Pocahontas Correctional Center on October 14, 2018. On November 1, 2018 Formica receives his legal paperwork and property which was taken June 22, 2018. On November 23, 2018 state habeas certiorari filed.

1. Whether the Fourth Circuit decision was debatable to dismiss the petition for writ of habeas corpus as untimely.

Formica was diligent and went to the law library and asked at two different facilities on the deadline to file and tolling issues. Both law library clerks advised Formica that tolling period of 90 days after each dismissal counts for the period to file a federal habeas corpus.

Formica's state criminal appeal was dismissed October 19, 2016 therefore tolling on filing federal habeas stopped January 16, 2017. Once Formica filed his state habeas on July 27, 2017 tolling began leaving a balance of 174 days. Formica was told that his state habeas dismissal on May 2, 2018 would be tolled until July 29, 2018 and that is when tolling ended and Formica had until January 13, 2019 to file his federal habeas petition. In other words, tolling does not stop because the petitioner doesn't file the certiorari.

2. Whether the Fourth Circuit decision was debatable not to grant equitable tolling due to petitioner's hospitalization and circumstances.

During the time Formica was engaged with litigation Formica had to have emergency heart surgery. Formica was taken from Greensville Correctional Center to Virginia Commonwealth Hospital on June 22, 2018. Greensville Correctional Center stored Formica property and legal paperwork until his return. Formica was released from VCU and sent to state infirmary to heal release to population. Formica's legal material stayed at

Greenville Correctional Center. Formica had complications at the Infirmary therefore the doctor would not release Formica. Formica had NO ACCESS to law library or law clerk or to any forms such as writ for certiorari or 2254. Formica attempted to use a 3rd way to call the United States Supreme Court but could only access voice mail. Formica's father sent in ineffectually motions for extensions to the United States Supreme Court. For 3 months Formica had no guidance and did not know what to do. State doctors and nurses do not provide legal service.

Formica was released and sent to Poxahontas Correctional Center waited for his legal paperwork and property from Greenville and filed the certiorari from states habeas dismissal. Formica went to the law library and got confirmation that his filing for his federal habeas must be before January 13, 2014 therefore Formica filed the federal habeas January 10, 2014.

Formica requested a evidentiary hearing on the timeliness and merits of the petition the District Court refused Formica's motion.

3. Whether the Fourth Circuit decision was debatable not to review the merits of the claim that trial judge violated the petitioner's right to due process to a fair and balance trial.

The judge presiding over this case has presided over multiple issues beginning in January 21, 2012. Judge Barton received a letter from Formica notifying him that Scott.

B. Puryear refused to investigate the case. Formica had to take a plea based on erroneous legal advice. At this time of the plea Judge Bouton was not on the stand but Formica attempted to withdraw the plea and Bouton refused to summons Formica to court. Formica attempted to get defense counsel Puryear off the case and Judge Bouton refused to appoint new counsel. (16A580)

Formica goes in front of Judge Bouton for a revocation hearing for violating the terms set forth in the above matter and is found guilty. C17A

Formica goes in front of Judge Bouton for additional charges in Orange County, which another lawyer misadvised Formica, which a plea was taken. Formica filed a motion to vacate the plea because the Commonwealth Attorney stated the charges against were not felonies. The judge refused to summons Formica to court. C17A

This is the fourth case with the same violations and Formica has to move pro se based on a conflict with defense attorney. Judge refuses the former A.D.A. to be subpoenaed and denies Formica to request for a continuance after moving pro se. leaving Formica 21 days to learn the rules and procedure of trial and prepare a defense. During cross Judge Bouton prevents material questions to be answered and skillful interrupts when the case-in-chief is thinking about an answer. Disqualification is required only when the biasing influence is strong enough to overcome the presumption of honesty and integrity. that is when the influence is so strong that we may presume actual bias.

4. Whether the Fourth Circuit decision was debatable not to review the merits of the claim that petitioner's first attorney was wholly unprepared for trial undermining the outcome.

Formica was appointed, Steve Sharett, for this case on March 27, 2013. At this time Sharett was representing Formica in Orange County on the same charges with the same judge. This is the reason why the charges were enhanced from misdemeanors to felonies.

Trial was set to begin February 25, 2014 and was not prepared for trial. Assuming the answers that were given on July 29, 2014 would have been the same Sharett would not have known the false evidence either witness testified about because he refused to investigate the Commonwealth's file or Sheriff's file and refused / failed to depose Commonwealth's witness. Sharett's unpreparedness forced Formica into another situation where a lawyer refused to investigate circumstantial evidence worse this provoked Formica to defend himself which was very very risky.

5. Whether the Fourth Circuit decision was debatable not to review the merits of the claim that the petitioner second attorney was refusing to prepare for trial undermining the outcome.

Formica's second attorney, Peter K. Griffiths, was appointed on March 12, 2014. He requested a continuance to prepare for trial then refused to prepare for trial. Due to this conflict Formica had no choice but to defend himself.

6. Whether the Fourth Circuit decision was debatable not to review the merits of the claim that the petitioner's decision to

represent himself was voluntarily and intelligently made.

Formica moved pro se because trial counselor refused to investigate the case, refused to depose witness's, refused to uncover false testimony all under the guise that the law doesn't allow defense counselor's to prepare.

7. Whether the Fourth Circuit decision was debatable not to review the merits the claim that trial judge prevented effective cross examination of the subject matter undermined the outcome.

The Commonwealth Attorney questioned the Detective if the subject-matter was consistent with what you knew about the case? The Detective said "In all of these letters the subject matter is consistent with the storyline that Mr. Formica would provide to us."

On cross, Formica asked the Detective after he stated Formica talk to him in detail about the relationship. "Was it an intimate relationship?" Commonwealth objects and sustains the objection. Since standby counsel refuse to inform Formica when and how to object and refused to kick Formica's foot if a objection needed to be entered the petitioner didn't know what to do. This has two elements the fabricated interrogatory and subject matter that he allegedly recognized. Plus Formica was going to cross the case-in-chief about the sexual relationship therefore if he stated he recognized the sexual relationship Formica was going question this more which would close the door for the case-in-chief to deny it occurred. The judge was very aware that a sexual relationship occurred well Formica notified the judge. [tran 257]

8. Whether the Fourth Circuit Court decision was debatable not to review the merits of the claim that trial judge prevented effective cross examination of the case-in-chief.

Formica questions the case-in-chief, Amanda Davis, after she states there was no mailed letters. "Have you ever seen me write anything on a piece of paper or pay a bill or anything to where you could actually assimilate the handwriting from those letters entered in---. Judge interrupts, "Stop there...." this gives the case-in-chief plenty of time to think of a narrative or play back the answer she had devised. She answers "yes". The court once again interjects buying the case-in-chief time. Formica questions "where...." she answers "There were notes left at my door." Formica responds "that is not seeing me write." Judge interrupts again. Victim tells her fabricated story about witnessing Formica write a note. The judge interrupts again buying her time. Formica questioned "what vehicle" did she see Formica. Judge interjects again "That's irrelevant...." then what Formica believes what the judge meant in this interruption that questions about the general relationship are relevant and he is trying to push Formica to finish up. This is the first morning of a two day scheduled trial and this was the last witness for the Commonwealth so there was no need to push to finish up.

9. Whether the Fourth Circuit decision was debatable not to review the merits of the claim that standby counsel refused to assist in preparation for trial and at trial undermined the outcome.

Formica's understanding of standby counsel's duty is to

assist the client within a reasonable means. Formica moved pro se because of the conflict. Formica's request for material and relevant evidence was not unreasonable. Help Formica with the format of writing a motion for discovery or he or his legal secretary could write the discovery and send to Formica at the jail and get noticed and signed. Assist in getting funds for a private investigator to depose witnesses. Formica asked him on each occasion to explain contemporaneous object rule he refused. Why because he knew that if Formica lost he would be writing the appeal this would limit Formica's questions to get reviewed. Formica needed copies made just before trial he refused. Formica asked him to find the Detective and case-in-chief and try and ask them how they would identify the handwriting. He refused. When it was Formica's turn to question his witnesses Formica asked him to go and find out what they might say. He refused. At the sentencing hearing Formica asked counselor to go speak to Jon Lawson and find out what he would say about the assault. He refused. Formica would have never called him if he was going to lie.

10. Whether the Fourth Circuit decision was debatable not to review the merits of the claim that petitioner's appellate attorney refused to incorporate petitioner's questions for review to the Court of Appeals for Virginia undermined the case.

At the pronouncement of sentence the standby counsel was moved to appellate counselor. This was decided after the choice to move to self-represent Formica at trial. Since the judge

refused both continuances before and Formica's attorney refused to explain contemporaneous objects prior to trial and refused to kick Formica's foot at trial to signal Formica to object. Formica unknowingly failed to proffer a objection when one was needed. For example sustaining the Commonwealth's objection on subject matter, the court refusing to allow case-in-chief answer the identification of Formica's vehicle, Formica should have objected to the letters being entered into evidence and the protective order. Formica should have objected to the judge refusing to issue a subpoena for former A.D.A Juan Vega and denial of continuance at trial. Formica did object at the motions hearing which counselor refused to place in review. Formica should have objected when the judge interrupted Formica's questioning of Jan Lawson and motion to run sentences concurrent and denial for appeal bonds.

After the pronouncement of sentence hearing Formica told Appellate's attorney to Not file the appeal unless Formica's approves the appeal. He filed the appeal with out Formica's consent or review process and Formica attempted to get him off the case so Formica could file a Anders appeal. the Court of Appeals refused Formica's request and the appeal was denied. The court withdrew Griffith's and appointed Hallahan and he refused to argue the Court of Appeal decision not to let Formica enter a Anders' brief and the refused to file a rehearing. Hallahan sent the denial so late Formica could not move for rehearing. Formica believes this was intentional.

11. Whether the Fourth Circuit decision was debatable not to grant an evidentiary hearing on the merits of the claims in the Petition and/or untimeliness / equitable tolling issue.

Formica believes his two tolling period to file the state's criminal certiorari and state's habeas certiorari tolling the filing of the federal habeas filing. Formica had the law clerk at Pocahontas Correctional Center rereview what the Greenville Correctional Center law library clerk explained to him and Formica was shown case law by the Pocahontas Correctional Center law library clerk.

As for equitable tolling, Formica had emergency heart surgery that was during this entire time of state's habeas certiorari and federal habeas filing. Formica was without necessary legal documents for 4 months and in a state's run Infirmary because the doctor was afraid to release Formica. Formica's chest was cut open the rib cage split open and the heart surgeon replaced the heart valves and fixed the ascending aorta. Formica asked for extensions.

12. Whether the Fourth Circuit decision was debatable not to grant discovery to prove trial testimony was fabricated to support the actual innocence claim.

Formica's disputed material facts with the Commonwealth's witnesses would prove that the evidence entered at trial was untrue. The detective never interrogated Formica, the detective states he observed Formica each and everytime for visits to Greene County Sheriff's Department. Both of these events could be verified by the

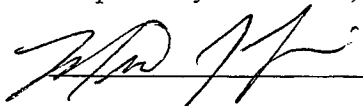
surveillance video. Formica did question the Detective about the dates which the Detective stated he logged the information in his notes. Formica attempted to get access to these notes after trial and the judge denied the motion. Formica filed for discovery at state habeas also denied by the same judge.

Formica also disputes the case-in-chief testimony on alleged 30 letters found at her door. At first it was three letters mentioned in the stalking complaint which every attorney refused to obtain and now its thirty with her observing taking a notepad out and writing on top. These alleged letters are illegally in Greene County Sheriff's Department which again Formica has told four attorneys to get any alleged letters. Formica had attempted to get these letters after trial and the judge denied the motion. Formica attempted to obtain these letters through discovery and was denied by the same judge. Formica attempted through state and federal habeas discovery to obtain these alleged letter and was denied.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully Submitted,

A handwritten signature in dark ink, appearing to be "M. J. H.", is written over a horizontal line.

Date: February 22, 2021