No. _____

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

Patrick Ellis Cochran — PETITIONER
(Your Name)

vs.

Harold Clarke Dir. VADOC — RESPONDENT(S)
"et al."

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

Patrick Ellis Cochran #1600806
(Your Name)
Centralized Mail Distribution Center
3521 Woods Way
(Address)

State Farm, VA 23160
(City, State, Zip Code)

Housed at Augusta Correctional Center #N/A
(Phone Number)

QUESTION(S) PRESENTED

Petitioner experienced extreme prejudice for 7 months while held in continous custody 2 counties away, waiting to answer charges in Fairfax County, Virginia after requesting counsel multiple times and asking for transportation to appear.

Was Petitioner's right to a speedy trial under the 6th Amendment of the United States Constitution denied when the Courts utilized the subordinate statute: Va. Code 19.2-243?

Was Petitioner's Counsel ineffective for allowing a plea to lapse during jury deliberations when he failed to return during a most critical plea window of 2.5 hours?

LIST OF PARTIES

[ ] All parties appear in the caption of the case on the cover page.

[x] 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:

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TABLE OF AUTHORITIES CITED

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

[x] 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,
[x] is unpublished.

The opinion of the United States district court appears at Appendix N/A to the petition and is

[x] reported at was instructed by Clerk on file; 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[ ] is unpublished.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[ ] is unpublished.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

[x] For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was – Novenmber 3, 2022 –.

[ ] No petition for rehearing was timely filed in my case.

[x] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: January 18, 2023, and a copy of the order denying rehearing appears at Appendix B.

[ ] 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

6th Amendment of the United States Constitution for:
Speedy trial and ineffective assistance of counsel

Va. Code 19.2-243 Speedy trial

STATEMENT OF THE CASE

I was ultimately facing 6 life sentences in a Fairfax County Circuit Court jury trial for sexual assault charges alleged by my wife, at that time. I was convicted of abduction as a lesser included offense (LIO) and a mistrial was declared on 3 counts due to a hung jury. The jury sentenced me to 8 out of a possible 10 year term. I accepted an Alford plea cap of 5 years to nolle pros the remaining charges and was sentenced to a consecutive 5 year sentence.

I am innocent of the sexual assault charges, but do not dispute abduction or simple assault. I filed for a contested divorce against my wife (Young Cochran) in early 2014 due to marital infidelity and abandonment. During the last half of that year, we were attempting a reconciliation while she continued her affair. We were having consensual relations during that period, to which she attested to on the stand during my trial.

The morning of 12/31/14 in Lorton, VA of Fairfax County was the scene of the aforesaid incident. I left the scene and made contact with Fairfax Detective Byerson later that night arranging my surrender per recorded phone calls. Warrants for my arrest were issued prior to these calls. On the last call I clearly asked for counsel before being subjected to any further interrogation. Byerson was adamant I turn myself that night, knowing I was highly intoxicated and under duress, after I asked to do so in the morning.

I was subsequently involved in a catostrophic auto accident in Stafford County on my way to surrender. I sustained a traumatic brain injury (TBI) severe enough to cause a brief coma and show continued bleeding of the brain 3 months later via CAT scan. I was placed under arrest while unconscious for 3 of the Fairfax charges, recovered in Stafford hospital, and then housed in the Rappahanock Regional Jail (RRJ) in the custody of Stafford County.

I believe within a few days I was charged by Stafford prosecution with DUI, reckless driving, and maiming. I will first say, I am relieved no one besides myself recieved more than a minor injury. The maiming charge was found to be a sore knee when another motorist struck my vehicle after the major accident of me striking a barrier. I was arraigned and although prosecution requested bond be denied

due to the Fairfax charges, the judge said he did not believe I was a bad guy and granted a $20-k bond.

I immediately requested my Stafford public defender represent me for the Fairfax charges and they said they could not. I believe a new law passed this year addressing this type of situation. Rather than bond out and waste money being arrested again, I asked my public defender to arrange transport for the serious Fairfax allegations. The Fairfax Sherriff's office said they had no record of my warrants. A couple days later, my bond was revoked and a detainer issued. I asked the judge to arrange transportation and he said Fairfax would have to order it. This would be 2 assertions of my right to a speedy trial within the first week of January.

On 1/13/15, Det. Byerson commuted to RRJ to question me. I requested counsel and again was told Stafford counsel could not represent me. Byerson asked if I needed an attorney because that's what I learned from TV. I was under a lot of pressure and had just suffered the TBI. I did state on 12/31 that I wanted an attorney, but with clouded judgement, allowed the interrogation on 1/13. I did state I had consensual sex with Young on 12/31 and also asked to be transported to face the charges, again asserting my right to due process by a speedy trial. Byerson said they were in no hurry to come and get me. All of the above is on record in a transcript. I requested transcripts twice and was denied. My mother also called Byerson within a month to ask for transport and was told they were in no hurry. It does not sit right that they were in a hurry to question me, but not afford me tranportation or counsel when only 30 miles away and arranging multiple transports every week. I also became aware after the fact that they could have held virtual hearings.

I was held at RRJ until those charges resolved on 7/27/15. The next day I was transported, booked, charged, held, and denied bond. I was appointed Bob Frank as my attorney on 7/30/15. I immediately apprised Frank that I felt my speedy trial rights were violated. He alluded to Va code 19.2-243 reasoning, it had not. My preliminary hearing transpired on 9/3/15. Mr. Frank withdrew from the case on 9/17/15. I was indicted on 9/21/15 for the 6 charges I would face at trial. On 10/1/15 the motion to withdraw was granted and attorney Michael Sprano was appointed on 10/2/15. A jury trial was

scheduled for 1/11/15. I did mention to Sprano that I believed my speedy trial right was violated due to the 7 months at RRJ and time of an additional period until the pre-lim on 9/3. He also abided by 19.2-243 saying there was no violation. He attested in his affidavit to VA Supreme Court (State Court) that he did not know of any delays prior to his appointment on 10/2. He also stated in the affidavit that I did not object to the trial date and that is correct. The prejudice I alleged was the 7 mos. at RRJ and now at this time the subsequent month. It would be based on the U.S.Constitutional right which I was not clear on until I came across Holliday v. Commonwealth, 3 Va. App. 612 (1987).in 2022.

In my State habeas petition I listed speedy trial trial claims under the 6th Amendment and also ineffective assistance of counsel (IAC) under the same. It appears that their ruling did not include initial counsel of Bob Frank or the U.S. Constitutional right. From what I gathered, they went by Sprano's affidavit and went by 19.2-243 not granting an evidentiary hearing for a speedy trial analysis.

In my U.S. District Court for the Eastern Division (Federal Court) habeas petition it was ruled that I could have invoked my right to a speedy trial at the pre-lim, before trial, and on direct appeal. I tried to address this at the pre-lim along with another matter directly to the judge because Counselor Frank would not; and it did not go favorably on the other code in the judge dressing me down, so I did not try again. Appellate Counsel Corrine Magee told me it was a habeas isssue. Federal Court seemed to make it clear that it was barred as a constitutional issue and addressed it as IAC with Sprano and went by Va code, 19.2-243.

On the last day of trial, 1/14/16, and second day of jury deliberations around 2:49, I was presented with my first and only plea offer by Mr. Sprano: Plead guilty to abduction and malicious wounding and Commonwealth's (CW) Prosecutor Katherine Stott would nolle pros the remaining charges. Counsel believed I would recieve a 4-5 yr. sentence on a 2-6 yr. guideline because Judge Daniel Ortiz is a guidelines judge. He asked what I would accept and I asked him to negotiate from a proposal of 3 yrs. as his initial presentation. Mr. Sprano stated in his affidavit CW would not accept 3 yrs, presented it, and she declined; however, he did not return to convey if the offer was

accepted. I was under the assumption that this was a plea negotiation. I was consequently not afforded the chance of much needed further consultation, to propose a lengthier term, or accept an open plea. I did not see Sprano again until 5:22 when the jury came back as hopelessly deadlocked on some of the charges. This was my plea window.

I expected Mr. Sprano's return in no more than 15 minutes. I was locked in a holding cell with my only means of communication a bailiff who sporadically made rounds and whom I asked on 2 occasions to summon Sprano. He did not seem to think very highly of me and claimed he could not reach him. In any event, Counsel should have returned and dilligently pursued a plea with what I was facing. I was scared to death.

From the onset, this claim was taken out of context by both State and Fedral Court because of a purported plea offer I learned of from my mother and sister and who have no reason to lie. They were sitting outside the courtroom during the aforesaid plea window. At some point and time close to the end of this window, a plea offer was discussed with them not by the CW; as my mother believed she remembered at 76 yrs. young and 3 years after trial, but by Mr. Sprano with the CW in the background, is what my sister recently told me. Counsel denies this in his affidavit regarding the CW and does not volunteer that he discussed it with them either.

Federal Court rules I contradict my self because of the State petition when I swear Mr. Sprano went missing for several hours, but this is misconstrued because he did go missing for his duty of representing me. I also was told that he did leave for some time and came back. Federal Court also states that I pushed for a 3 year cap, but nowhere in my pleadings do I claim this. I checked them thoroughly and in all my pleadings I use propose, present, and negotiate in referencing this cap.

REASONS FOR GRANTING THE PETITION

I believe both of my questions are of exceptional importance for the fact that most incarcerated persons lack legal experience, are not granted an evidentiary hearing, are not appointed counsel without this hearing, and in my experience at RRJ and FCJ; only allowed about 1 hr. a week in the law library. Also in my experience; when you get to prison and begin to learn the politics/procedures, your law library access is drastically hindered, resulting in a bungled state petition that AEDPA squeezes in a vice. I was also a party to 2 yrs. of Covid when forming my federal petition. I was only provided sporadic case law until I posed to file an injunction. The week before my deadline I was brought about 30 cases from the operations manager to try to cram through. It was submitted in my unprofessional looking, terrible handwriting, due to denied typewriter access.

In Holliday's case it was 6 mos. from arrest until pre-lim, in mine it was 9. Thereafter it was 4 mos. in both of our cases. at 614-15. His claim was based on the 6th Amendment and the preju- alleged in the 6 mos. was granted analysis. The Courts denied me the U.S. Constitutional right to a speedy trial because of jurisdictional barring. As I highlighted in my statement of the case(SOC), I made claims to all counsel (Frank, Sprano, and Magee) to establish cause of why it was not presented pre-trial, at trial, or on direct appeal. It is in the pre-lim transcripts that were denied to me on 2 occasions (Ex. A) in my attempt to address the judge. I did not have the legal expertise to realize this would haunt me. I did not know what a habeas corpus even was at the time. I could not force my attorneys to raise it. I pray this Court will grant Constitutional review over Va code, 19.2-243 as established in Holliday, at 615-16.

If the Court denies the above review, I allege IAC by all 3 counsel in overlooking the speedy trial violation. Strickland v. Washington, 466 US 668, 694 (1984). I would subsequently request the case be remanded for an evidentiary hearing.

SPEEDY TRIAL

The four factor balance test and the impossibility of knowing

when speedy trial rights have been violated were established in Barker v. Wingo, 407 US 307, 320 (1971). "The period between arrest and indictment must be considered in evaluating a speedy trial claim", were set as well in Barker and hold true to this day in the more current case. US v. Macdonald, 456 US 1, 7 (1982).

Length of delay: I set out the chronology of my initial arrest and subsequent holding in the SOC. It was 7 mos. at RRJ and another 5 at FCJ until trial, totaling 1 yr. and 12 days.

Assertion of right: I asserted this right 5 times, mentioning it 4 times at RRJ in my SOC and 3 times at FCJ to all counsel. The 2 declarations on record would be on 1/13 interrogation to Det. Byerson and my mother also calling to ask him, to which she would have no problem attesting to in an evidentiary hearing or affidavit. In addition I remembered, I too sent a letter to Fairfax public defender's office that might be in their records. I would have gone back in this petition to add this, but we no longer are allowed use of the computers to type, making typing a daunting task with supersensitive 20 yr. old electric typewriters that don't even have the F/J indention.

Reason for delay: The only reason for delay that might be attributed to me was when Mr. Frank withdrew on 9/17 and Mr. Sprano assumed the case on 10/2. The 7 mo. delay at RRL would clearly lay on Fairfax CW. I was only 30 mi. away, there was almost daily transport, and virtual hearing capability. I posit prosecutorial misconduct intentional and negligent attributable to the delay. Barker established, "delays are a balancing test in which the conduct of both the prosecution and defendant are weighed."

(Extreme) Prejudice] Oppressive pre-trial incarceration: (12/31/14-9/3/15) I experienced oppressive pre-trial incarceration at RRJ and FCJ. At RRJ I was triple occupied in a double bunk cell, lost weight from a lack of food, denied recreation for lack of shoes, and was lucky to get 1-2 hrs. of pod recreation per day. At FCJ we were double occupied in single cells, locked out of our cells all day with 1 bathroom that exposed you to the whole pod of 20 inmates, and again suffered from a lack of food. I began my incarceration at a lean 5' 11" 178 lb. frame and within a year weighed 149 lbs.

I sustained assaults at both jails due to my charges, adding to the TBI. I was experiencing severe depression from the divorce/

affair, it was my first more than an overnight incarceration, contact with my son was eliminated to this very day, and I was recovering from prescription and non-prescription self-medicating. I needed treatment and anti-depressant meds like no other time in life, which were denied me until I reached FCJ 7 mos. later. I suffered sometimes multiple mental breakdowns in a day. In addition, I lost the possibility to run this sentence concurrent.

Anxiety and concern: I built a successful trucking business starting out in 2006 with 1 tractor-trailer. I made it through "The Great Recession," ultimately ending up with 6 trucks; 4 of them purchased new in 2013. I had a $323-k mortgage in addition to $490-k's worth of truck payments, insurance, and other lesser costs. In 2014 Young moved everything in our joint accounts to a seperate account in the sum of$144-k and locked me out of it. I did not want to freeze the accounts and jeopardize the business. Young ultimately wrestled control of the business; still using me as operations manager and driver. Without me there to help, we were on the way to lose everything. Young postponed our divorce so I could not recover anything and I was not appointed a desperately needed GAL. The business and home were lost within a couple years. I too, experienced tremendous anxiety from the unresolved Fairfax charges.

Impaired defense: This prejudice carries the most weight and is of exceptional importance for the judicial criminal system is not functioning properly when a defendant facing 6 life sentences and held 30 miles away in the same state, does not recieve counsel for over 7 months, after repeated requests. The funds Young absconded could have been used as well to retain an attorney adding to the prejudice. The 7 mos. was a sufficient amount of time for Young to tarnish my reputation in our community, spinning a 1 sided story. It did not help me with the charges I faced either. Young is on record at sentencing admitting she told our neighbors not to speak to anyone about the case. (tr. denied) My mother and sister tried twice being met with opposition. (Ex. β). I not only wanted to develop character witnesses, I wanted to prove Young and I's dog was still alive. Young perjured herself in an answer/grounds defense doc. (Ex. C) to circuit court for our divorce, alleging I killed this dog. My mother recently provided an affidavit (Ex. β) to me where she attended the divorce decree

hearing in 2016 in which Young recanted this statement. She was already on record to the CW recanting a sworn statement prior to trial. This would further impeach her credibility most likely to a degree sufficient to alter the outcome at trial or prior to it, in a favorable plea. Sprano claimed I gave him no leads to investigate, but I deny this. He had access to my phone, I did give him leads he told me no one responded to on Facebook, and could have made the rounds in my neigborhood, like my mom and sister, provided with the same names and addresses. I can't say if he would have been able to overcome the opposition.

On 1/13/15, when I was questioned after requesting counsel on 12/31/14, having no access to counsel, and suffering from a TBI along with the gravity of what I was facing: I made the statement of having consensual sex with Young on 12/31/14. This voided a defense of choosing not to testify; a valid strategy. I also submitted to a DNA test on 1/13 disproving we were intimate. The Courts concluded I was not prejudiced by this in a failure to suppress claim, in light of it not being introduced at trial. This does not make sense because I took the stand and admitted to it. It would only be necessary to introduce it if I plead the 5th and defense counsel could argue there is no DNA evidence, only abduction and simple assault. You would have an incredible witness with the false statements, likely resulting in a different trial outcome or more likely, a pre-trial plea.

LAPSE OF PLEA AND FAILURE TO NEGOTIATE PLEA

I want to clarify not to have this claim confused with the purported plea. The conflict arises from Counsel's abandonment after presenting the CW's confirmed open plea offer for abduction and malicious wounding. "Counsel owes the client a duty of loyalty, a duty to consult with the defendant on important decisions." Strickland, at 688. Sprano should have returned immediately after Ms. Stott refused the 3 yr. cap. The sense of urgency should have been at it's pinnacle in this critical stage with such an unpredictable window. "Prompt communication" is referenced twice as an attorneys expected duty in Missouri v. Frye, 566 US 134, 145-46 (2012).

Federal Court claims I gave contradictory accounts, but show bias in that counsel's affidavit is also contradictive and subject to ambiguous interpretation. In his affidavit he alleges he communicates all of my counters to the CW, including my 3 yr. cap proposal. There

is no "all of my counters", there is only one, proposing 3 yrs. In 2.5 hrs, I was never granted another opportunity to counter. "There was no reasoned strategy for counsel not to pursue a plea." US v Pender, 514 Fed. Appx. 359, 361 (4th Cir. 2013).

The Courts also invoke Frye regarding acceptance of the earlier plea and the results being different at 147. The guidelines were around 2-6 years and Judge Ortiz is a guidelines judge. It is not disputed that I would accept 3 yrs, but the Courts do doubt I would accept a longer sentence because I miss the simple mark in my State Petition claiming I would. That is not fair to the point of being unethical. Look at what I was facing...6 life sentences. Look at the guidelines. We were very close to an agreement. I'm fairly intelligent. Why would I roll the dice sticking to a 3 yr. cap with such a precarious trial? I did not want a trial in the 1st place.

If Mr. Sprano would have returned to represent me, I would have asked him to try a plea to stay in the guidelines or somewhere close. Should that fail; and I don't think it would have, I would have accepted the open plea. I strongly feel prejudice is presumed, because we can't know what could have been agreed upon in that 2.5 hr. window with Sprano dilligently negotiating.

My case is in conflict with so many aspects of these 3 plea cases: Frye, Lafler v. Cooper, and Steele v. US, 321 F. Supp. 3d 584 (4th Cir. 2018 Affd. 2019) that I would need to cite about a 3rd of them. Mr. Sprano is a good guy and lawyer, but he dropped the ball for certain. He fell prey to taking the cheap court appointed task of representing me; work he did not want, in the name of not disappointing the judicial circle in Fairfax that was counting on him. I know, we talked about it. He was trying to manage his normal rate clients at a very inopportune time. He lost focus of me; his client.

I ask this Court to vacate the malicious wounding charge. I've stayed infraction free and committed myself to self-improvment. I deserved incarceration and punishment, but I've served more time than necessary or warranted. I do not seek any litigation for a wrongful conviction or anything of the like, other than freedom. I desire to begin rebuilding my life with this new version. I have 3 yrs. 2 mos. to serve. Thank you for accepting my Petition. Blessed regards to all.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Patrick Ellis Cochran Signed

Date: April 18, 2023

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