

OCT 07 2022

OFFICE OF THE CLERK

No. 22A101
23-5163

IN THE
SUPREME COURT OF THE UNITED STATES

MICHAEL J. FORMICA — PETITIONER
(Your Name)

vs.

COMMONWEALTH OF VIRGINIA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

CIRCUIT COURT FOR THE COUNTY OF GREENE
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

MICHAEL J FORMICA
(Your Name)

501 CORRECTIONS WAY
(Address)

JARRATT, VA, 23870
(City, State, Zip Code)

(Phone Number)

ORIGINAL

QUESTION(S) PRESENTED

WHETHER THE CIRCUIT COURT FOR THE COUNTY OF GREENE VIOLATED FORMICA'S FOURTEENTH AMENDMENT RIGHT BY FAILING TO COMMAND THE COMMONWEALTH'S DISTRICT ATTORNEY'S OFFICE FOR GREENE COUNTY TO PRESERVE EVIDENCE THAT SHOULD HAVE BEEN DISCLOSED UNDER BRADY FOR IMPEACHMENT.

WHETHER THE COMMONWEALTH OF VIRGINIA LAWS / POLICY ARE INADEQUATE FOR POST CONVICTION RETENTION OF EVIDENCE

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

COMMONWEALTH V FOLMICA, CR12-000130 THROUGH CR12000133;
CR12000135 THROUGH CR12000137

COA 2067-13-2

SCV 150546

SCV 131760 HABEAS

USDCWDA 7:14CV000357

4th Cir CoA 15778

SCOTUS 16A580

TABLE OF CONTENTS

OPINIONS BELOW.....	1
JURISDICTION.....	
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	
STATEMENT OF THE CASE	
REASONS FOR GRANTING THE WRIT	
CONCLUSION.....	

INDEX TO APPENDICES

APPENDIX A	TRANSCRIPTS
APPENDIX B	WITHDRAW OF PLEA / VACATE JUDGMENT
APPENDIX C	MOTION TO PRESERVE EVIDENCE 2021
APPENDIX D	MOTION TO PRESERVE EVIDENCE 2018
APPENDIX E	CIRCUIT COURT ORDER
APPENDIX F	VIRGINIA SUPREME COURT ORDER
APPENDIX G	EXTENSION

TABLE OF AUTHORITIES CITED

CASES

PAGE NUMBER

STATUTES AND RULES

VIRGINIA CODE § 8.01-654

VIRGINIA CODE § 18.2-57

VIRGINIA CODE § 18.2-114

VIRGINIA CODE § 18.2-60.3

VIRGINIA CODE § 18.2-60.4

VIRGINIA CODE § 19.2-270.1

VIRGINIA SUPREME COURT RULE 1:1

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 E 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 CIRCUIT COURT FOR THE COUNTY OF GREENE court appears at Appendix E 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 _____.

☐ 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 May 13 2022.
A copy of that decision appears at Appendix F.

☐ 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 October 10, 2022 (date) on August 4 2022 (date) in Application No. 22 A 101.

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

FOURTEENTH AMENDMENT:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the states wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of the citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without the due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

On January 25, 2012, the County of Greene, Virginia incarcerated, the Petitioner, Michael J. Formica (herein known as "Petitioner" or "Formica") was incarcerated on falsified evidence/complaints of Assault, Trespassing, and Stalking. A preliminary protective order was issued on the false testimony during the arraignment. Defense Counselor, Scott B. Perryer was appointed to represent Formica. Formica was additionally charged with Violating the protection order.

Defense counselor refused to investigate the crimes, file for discovery, file for bail, interview law enforcement, depose Commonwealth witnesses, depose or subpoena potential defense witnesses and obtain transcripts of preliminary hearings.

On October 17, 2012 at jury trial, defense counselor failed to have a defense strategy, failed to know we had a jury trial, failed to file for discovery, failed to know who was testifying for the Commonwealth, failed to subpoena potential defense witnesses and gave fraudulent legal advice which forced Formica into a involuntary plea. (Trans pg 5 in 6); Trans pg 8 in 20-21 Trans pg 14 in 20-21).

On or about ~~the~~ October 23, 2012 Formica inartfully attempted to withdraw / vacate plea. (EXHIBIT B)

On January 19, 2021 Formica filed a MOTION TO PRESERVE EVIDENCE (EXHIBIT C) which was denied by Judge Warrall stating Judge Bouton previously denied the motion back in 2018. Judge Bouton wrote "See" which is a vague dismissive remark. (EXHIBIT D). The court denied to motion to preserve. (EXHIBIT E)

Formica appealed to VIRGINIA SUPREME COURT who refused to rule on the merits of the case. (EXHIBIT F)

Formica filed for extension (EXHIBIT G)

REASONS FOR GRANTING THE PETITION

This question is of National Importance for convicted criminals to obtain Brady Evidence after the fact a conviction has been rendered.

In Virginia if a plea of guilty is acquired the Commonwealth doesn't have to proceed with evidence therefore trial court has no Exhibits is must preserve by law VA CODE § 19.2-270.1. Moreover Formica cannot find any procedure that makes the District Attorney nor Sheriff's Office retain alleged evidence. Formica cannot apply under a Freedom of Information Act. ~~even~~ due to his incarceration status.

Formica has attempted to withdraw/vacate the judgement within the 21 days the court has jurisdiction which the court refused to respond. Formica attempted to command the Circuit Court to hear his reasons for withdraw/vacature of judgment by way of mandamus which was denied. COVA 21B2-14-2

Formica is now past the time limit of 10 years which trial courts must hold evidence and Formica cannot find any law/procedure that commands the District Attorney's Office / Sheriff's Department to retain alleged evidence.

Formica does have two habeas in this court 16A580 and 17A242 which correlate to the criminal cases which Formica was given appoint two defense counsel who gave him fraudulent legal advice and maintain a conflict of interest by refusing all

assistance in the criminal process.

The Transcripts ~~now~~ reflect what was going on with the first appointed defense counselor.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

A handwritten signature in black ink, appearing to be "H. J. [unclear]", written over a horizontal line.

Date: 10-5-22