

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Victor E. Mason,
Petitioner,

-vs-

State of South Carolina,
Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

2010-CP-07673

NOTICE OF APPEAL/
R. 203, SCACR.

NOW COMES, Victor E. Mason (herein referred to as Petitioner), to put this Honorable Court of the Common Pleas for the Fifth Judicial Circuit on Notice of the Intent to Appeal this Court's "Final Order" denying the application for post conviction relief (PCR).

While the "Final Order of Dismissal" states that a certified mail receipt confirming service on Applicant here at U.S.P. Lee County on February 5, 2013, was issued, this Petitioner did not receive the actual Order until March 19, 2013 (See photocopy of front of envelope, showing a "received" date of 3-19-2013). Assistant Attorney General's correspondence to Honorable L. Casey Manning, Judge of the Fifth Judicial Circuit, shows a date of March 14, 2013, informing of the "Final Order of Dismissal". Due to those circumstances, please, consider this Notice of Appeal timely.

Petitioner respectfully maintains the assertion that this Court is wrong in its determination that the claims within the PCR petition has no merit and fails to set forth a cognizable ground for relief. This Court is bound by the same Constitutional limitations, when it concerns the effective assistance of counsel, as other courts, in other states. The February 9, 1988 convictions of Possession with Intent to Distribute Cocaine, Possession of Marijuana, and Carrying an Unlawful Weapon (1987-GS-40-03781, -03782, -03783) were uncounseled during pertinent stages of the plea and sentencing processes, denying this Petitioner of his right to effective assistance of counsel.

Petitioner requests of this Honorable Court to forward the appropriate papers to the Court of Appeals for appellant purposes. And any other action deemed and appropriate.

Thank you.

Humbly & Respectfully,

/s/ Victor E. Mason

Victor E. Mason #87817-071

U.S.P. Lee County

P.O. Box 305

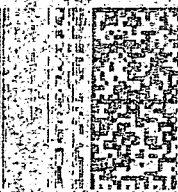
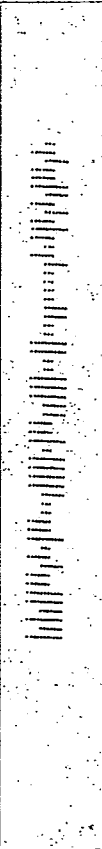
Jonesville, VA. 24263-0305

This _____ Day of _____, 2013.

RECEIVED

JUN 24 2013

S.C. SUPREME COURT



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\$00.660

South Carolina Attorney General's Office
Post Conviction Relief Division
Post Office Box 11549
Columbia, S C 29211

Victor MASON, #87817-071
USP Lee
United States Penitentiary
Post Office Box 305
Jonesville, VA 24263

h

*Received
3-19-13*

CERTIFICATE OF SERVICE

I, Victor E. Mason hereby certify that I have served a true and correct copy of the following:

Correspondence to the Supreme Court
Concerning Mistake in This Petitioner's
Filing of Notices of Appeals in
Case Nos. 2010-CP-38-1583 (Orangeburg County &
2010-CP-40-07673 (Richland County)

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JUN 24 2013

S.C. SUPREME COURT

Which is deemed filed at the time it was delivered to prison authorities for forwarding to the court, Houston v Lack 101 L.Ed.2d 245 (1988), upon the court and parties to litigation and or his/her attorney(s) of record, by placing same in a sealed, postage prepaid envelope addressed to:

RICHLAND COUNTY)	ORANGEBURG COUNTY)	ASSISTANT ATTORNEY GENERAL,
Clerk of Court)	Clerk of Court)	Robert D. Corney &
P.O. Box 2766)	P.O. Box 9000)	Brian T. Petrano
Columbia, S.C. 29202)	Orangeburg, S.C. 29115)	P.O. Box 11549
				Columbia, S.C. 29211

and deposited same in the United States Postal Mail at the United States Penitentiary, Lee County, Virginia, on this: 17th day of: June 2013

Victor E. Mason

87877-071

P.O. Box 305
Jonesville, VA 24263

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)
Victor E. Mason, FCI #87817-071,)
Applicant,)
v.)
State of South Carolina,)
Respondent.)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

2010-CP-40-07673

FINAL ORDER

This matter comes before this Court by way of an application for post conviction relief (PCR) filed October 29, 2010. The Respondent made its Return and Motion to Dismiss on June 21, 2011, requesting that the Application be summarily dismissed as untimely filed and for failing to set forth any genuine issue of material fact for this Court to consider. Pursuant to this request, and after reviewing the pleadings in this matter and all of the records attached thereto, this Court issued a Condition Order of Dismissal on January 17, 2013, provisionally denying and dismissing this action, while giving the Applicant thirty (30) days from the date of said Order in which to show why the dismissal should not become final.

Copied herein is the certified mail receipt confirming service on Applicant at the United States Penitentiary in Jonesville, Virginia, on February 5, 2013.

RECEIVED

JUN 24 2013

S.C. SUPREME COURT

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
<ul style="list-style-type: none"> Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. Print your name and address on the reverse so that we can return the card to you. Attach this card to the back of the mailpiece, or on the front if space permits. 		A. Signature <input checked="" type="checkbox"/> Agent <input type="checkbox"/> Addressee	
1. Article Addressed to: Victor Mason #87817-071 USP Lee United States Penitentiary Post Office Bldg 305 Jonesville, VA 24263		B. Received by (Printed Name) Tom Cochran	C. Date of Delivery 7-5-13
2. Article Number (Transfer from service label) 70051820 0006 4868 8346		D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No 11/31/13	
PS Form 3811, February 2004		3. Service Type <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D. 4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes	
Domestic Return Receipt		102595-09-14-1540	

Applicant responded to the Court's Conditional Order by way of several *pro se* filings. The first was a letter dated June 11, 2011, addressed to Respondent in which Applicant requested the status of his pending PCR action.

The next was a *pro se* document dated July 15, 2011, entitled "Applicant's Reply to 'Attorneys for Respondents' Request for Return and Motion to Dismiss...'" It the document, Applicant set forth the following¹:

While the respondents rephrased this Applicant's issue in their response as "That his conviction/sentence should be vacated because he was not represented by counsel and that he did not knowingly and voluntarily waive his right to counsel", this Applicant's issue leans more towards that unconstitutionality of the uncounseled plea of guilt: "That Petitioner's Prior State Felony Judgment Was

¹ This is not an exhaustive or all-inclusive list of the objections contained in the document submitted by Applicant. This Court had the entirety of the file before it and undertook a thorough review of the documents contained therein prior to making a final determination of the current summary dismissal.

Unconstitutionally Entered, Where It Was Based On Uncounseled Guilty Plea, For Which Pet. Did Not Voluntarily or Knowingly Waive His Right to Counsel, U.S.C.A. 6th. (Motion to Vacate Judgment)" Simply put, the ultimate issue in the Post-Conviction Relief application is that the guilty plea was uncounseled and that that is what caused the 6th Amendment violation of the right to effective counsel. While the motion also has in parenthesis "Motion to Vacate Judgment" that is simply the relief requested; the primary issue still has to be addressed.

Although the respondents rephrased the issue in their response, they are very much aware of what the primary issue is, which is evidenced by the fact that throughout the rest of the motion they raise the defenses of Timeliness and Laches.

The "genuine" issue of material fact in this case is the right to effective assistance of counsel. More intimately, this Applicant's right to effective assistance of counsel at the stage where that right was needed most. This Applicant notices that the respondents do not address whether the Defendant was represented by counsel for the 1988 convictions. They do not address the matter because it is obvious by the face of the records provided by this Applicant and those provided via Richland County Clerk of Courts effectively show that the Applicant was not represented by counsel. That is why the respondents lean so heavily on "timeliness" and "laches" to try to have this Court dismiss the claim, without having to address the "genuine" issue of material

The third and final response was a *pro se* document dated January 18, 2013, entitled "Reply to Order of Dismissal". In it, Applicant set forth the following:

Here Petitioner contends that when he pleaded guilty to the 1988 charges out of this Court he'd had no idea that he was to be afforded effective assistance of counsel at every stage of his criminal proceedings. The issue didn't become well-rounded until well after those prior convictions, in the Supreme Court case of Nichols v. United States, 511 U.S. 738, 748-749, 114 S.Ct. 1921, 128 L.Ed.2d 745 (1994) when the South Carolina Court of Appeals held that "use of uncounseled misdemeanor conviction, as to which no prison term was imposed, to enhance prison term for subsequent offense held consistent with Sixth and Fourteenth Amendments". However, Nichols also held that "In felony cases, in contrast to misdemeanor charges, the Federal Constitution's Sixth Amendment requires that an indigent accused be offered appointed counsel (period) unless that right is intelligently and competently waived." Nichols, *id.* at 747 (emphasis mine). The aforementioned priors were felony convictions to which this Petitioner was not afforded the right to effective assistance of counsel at every stage;

After conducting a thorough review of the entirety of the record, all relevant documents contained therein, and the **entirety** of the *pro se* packet submitted by Applicant, this Court finds no sufficient reason has been set forth why the Conditional Order should not become final, dismissing the current action with prejudice.

Through the current action, Applicant is attempting to challenge the propriety of the federal court's use of a 1988 South Carolina conviction for enhancement purposes at the federal level as he entered that plea without the assistance of counsel. Such a challenge is improperly

before this Court as this Court has no authority to review the propriety of a federal sentencing judge's actions. Applicant further attempts to challenge the validity of the underlying 1988 conviction now being used for enhancement purposes on the basis that it was entered unintelligently and involuntarily. Such a claim is, in fact, untimely raised through the current action as Applicant has failed to set forth any *sufficient* reason why he was unable to raise that claim within one-year of the enactment of the statute of limitations.

Finally, Applicant argues he was not afforded effective assistance of counsel at the 1988 plea hearing because he was never advised that plea could be used later for enhancement purposes of a later conviction and/or sentence. Such a claim is entirely without merit and fails to set forth a cognizable ground for relief as a defendant need not be actively advised of such a collateral consequence in the event that the defendant continues to participate in criminal activity after his/her release from the Department of Corrections. Applicant has encountered the penalties associated with sentence enhancement in the federal court because he has elected to continue to commit criminal acts; had Applicant avoided such continued criminal activity, his 1988 conviction would not be of no detriment to him. Therefore, this claim is equally without merit and untimely raised.

Accordingly, for all of the reasons set forth herein as well as in the previous Conditional Order, this Court must summarily dismiss the action with prejudice.

IT IS THEREFORE ORDERED that, for the reasons set forth in the Court's Conditional Order of Dismissal as well as herein, the application for PCR is hereby denied and dismissed with prejudice.

This Court hereby advises Applicant that he must file and serve a Notice of Appeal within thirty (30) days of the service of this Order to secure appellate review. See Rule 203, SCACR. Applicant's attention is directed to Rule 243, SCACR, for the procedures following the filing and service of the notice of appeal.

AND IT IS SO ORDERED this _____ day of _____, 2013.

The Honorable L. Casey Manning
Chief Administrative Judge
Fifth Judicial Circuit

Columbia, South Carolina.

SUPREME COURT
STATE OF SOUTH CAROLINA
1231 Gervais Street
Columbia, SC 29201

RECEIVED

JUN 24 2013

S.C. SUPREME COURT

Victor E. Mason
#87817-071
U.S.P. Lee County
P.O. Box 305
Jonesville, VA. 24263-0305

6-16-2013

RE: Case No(s): 2010-CP-38-1583 (Orangeburg County) &
2010-CP-40-07673 (Richland County)

Dear, Clerk of Court (or Whomever This Concerns):

How are you? Enclosed, please find attached, Notices of Appeals that I have forwarded to the County of Orangeburg and the County of Richland concerning the abovementioned case numbers. (Attached Sheets)

I am an inmate in the federal penitentiary in Lee County (Jonesville, VA), and I do not have access to state law. Therefore, when both courts (Richland and Orangeburg counties) notified me in their "FINAL ORDER(s) OF DISMISSAL(s)" about filing Notices of Appeals within thirty (30) days of those Orders, I was not aware that those Notices of Appeals were supposed to be filed in this Supreme Court.

Although the "FINAL ORDER(s)" did notify me of Rule 203, SCACR, I had no way of knowing what that rule implied without having access to state law. Therefore, the procedure I followed was to send the Notices of Appeals to the Courts where the PCR petitions were filed; as is done in federal court {In federal court the Notice of Appeal is filed in the District Court, who then forwards everything to the Appeals Court}.

Hence, I respectfully ask this Court for the opportunity to appeal the abovementioned cases by reinstating the appellate process, or any relief deemed just and appropriate.

Please, respond as soon as possible.

Thank you.

Humbly & Respectfully,

/s/ Victor E. Mason

Victor E. Mason

#87817-071

**** P.S.**

Please note that the attached Notices of Appeals are my own very copies of the ones submitted to Orangeburg County and Richland County. The Notices of Appeals sent to these Courts had the correct dates on them; although my copies (which are enclosed) do not show the correct dates. The Orangeburg County copy of the Notice of Appeal has an incorrect date, and the Richland County copy of the Notice of Appeal has no date.

**** Attached Sheets****
Notices of Appeals
Richland & Orangeburg Counties

**** Attached Sheets****
Notices of Appeals
Richland & Orangeburg Counties

**** Attached Sheets****
Notices of Appeals
Richland & Orangeburg Counties

CERTIFIED MAIL



George H. Mason
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7007 2680 0000 8293 1595

SUPREME COURT
STATE OF SOUTH CAROLINA
1231 Geneva St
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