

Dismissed

*[Handwritten signature]*

STATE OF SOUTH CAROLINA

COUNTY OF ORANGEBURG

Victor Eugene Mason, 87817-071

Plaintiff

v.

State Of South Carolina

Defendant.

IN THE COURT OF COMMON PLEAS

RECEIVED

CASE NO.

JUL 12 2011 3P-38-1583

MOTION AND ORDER INFORMATION  
S.C. Supreme Court  
FORM AND COVER SHEET

Plaintiff's Attorney:

Victor Eugene Mason, Bar No.

Address:

USP Lee Post Office Box 305 Jonesville VA  
24263

phone: fax:

e-mail: other:

Defendant's Attorney:

Robert Corney, Bar No.

Address:

Post Office Box 11549 Columbia SC 29911-1549

phone: (803) 734-3737 fax: (803) 734-4111

e-mail: other: -

- MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
- FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
- PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion:

Estimated Time Needed: Court Reporter Needed:  YES /  NO

SECTION II: Motion/Order Type

Written motion attached

Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

*[Signature]*  
Signature of Attorney for  Plaintiff /  Defendant

July 8, 2011  
Date submitted

SECTION III: Motion Fee

PAID - AMOUNT:

EXEMPT:  Rule to Show Cause in Child or Spousal Support

(check reason)  Domestic Abuse or Abuse and Neglect

Indigent Status  State Agency v. Indigent Party

Sexually Violent Predator Act  Post-Conviction Relief

Motion for Stay in Bankruptcy

Motion for Publication  Motion for Execution (Rule 69, SCRPC)

Proposed order submitted at request of the court; or,  
reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter:

Other:

JUDGE'S SECTION

Motion Fee to be paid upon filing of the attached order.

Other:

JUDGE

CODE: Date:

CLERK'S VERIFICATION

Collected by: \_\_\_\_\_

Date Filed:

ATTEST: TRUE COPY

MOTION FEE COLLECTED: \_\_\_\_\_

CONTESTED AMOUNT DUE: \_\_\_\_\_

*[Signature]*

CLERK OF COURT

ORANGEBURG COUNTY, SC

RECEIVED

JUL 16 2013

STATE OF SOUTH CAROLINA )  
COUNTY OF ORANGEBURG )

S.C. Supreme Court  
IN THE COURT OF COMMON PLEAS

Victor Eugene Mason, #87817-071, )

2010-CP-38-1583

Applicant, )

v. )

CONDITIONAL ORDER OF DISMISSAL

State of South Carolina, )

Respondent. )

FILED  
JUL 27 10:47  
2013

This matter comes before the Court by way of an Application for Post-Conviction Relief filed November 1, 2010. In its Return, Respondent requested that the application be summarily dismissed.

**PROCEDURAL HISTORY**

The records before this Court indicate that the Applicant is currently in Federal custody in Virginia on unknown charges. The Applicant was indicted at the February 1988 term of the Orangeburg County Grand Jury for Possession of Cocaine With Intent to Distribute (1988-GS-38-0239), Trafficking in Cocaine (1988-GS-38-0240) and Possession of Marijuana With Intent to Distribute (1988-GS-38-0241). Marshall B. Williams, Esquire, represented him. On July 22, 1988, Applicant pled guilty before the Honorable John H. Walker, Jr. to Possession of Cocaine With Intent to Distribute, and was sentenced by to five (5) years imprisonment, suspended upon eight (8) months or payment of \$1,000.00 and three (3) years probation. The remaining charges were *nolle prossed* pursuant to the plea. Applicant did not appeal his conviction and sentence.

In his current application for post conviction relief the Applicant alleges that he is being held

in custody unlawfully for the following reason:

1. "Uncounseled Prior Conviction, Suspended Sentence."
  - a. "Petitioner's prior State felony judgement was 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.6<sup>th</sup>. (Motion to Vacate Judgement)."

### FINDINGS OF FACT AND CONCLUSIONS OF LAW


The Court has reviewed the pleadings and all relevant supporting documents. Pursuant to S.C. Code Ann. § 17-27-70(b), the Court makes the following findings of fact and conclusions of law:

This Court finds that this matter should be summarily dismissed because Applicant has failed to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. § 17-27-10 to -160. S.C. Code Ann. § 17-27-45(a) reads as follows:

An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later.

The South Carolina Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). The Applicant was convicted of the offense(s) he challenges in this Application on July 22, 1988. The deadline for him to file an application for PCR was July 23, 1989. This Application was filed on November 1, 2010, over two decades beyond the expiration of the statutory filing period.

A motion for summary judgment may properly be used to raise the defense of statute of limitations. McDonnell v. Consolidated School District of Aiken, 315 S.C. 487, 445 S.E.2d 638



(1994). In addition, S.C. Code Ann. § 17-27-70(c) (2003) authorizes the PCR Court to "grant a motion by either party for summary disposition of [an] application when it appears from the pleadings . . . that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law."

### CONCLUSION

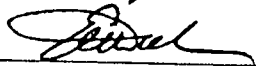
S.C. Code Ann. § 17-27-70(b) states in pertinent part:

When a court is satisfied, on the basis of the application, the answer or motion, and on the record, that Applicant is not entitled to post-conviction relief and no purpose would be served by any further proceedings, it may indicate to the parties its intention to dismiss the application and give its reasons for so doing. Applicant shall be given an opportunity to reply to the proposed dismissal.

Pursuant to S.C. Code Ann. § 17-27-70(b), the Court intends to dismiss this Application with prejudice unless the Applicant provides specific reasons, factual or legal, why the Application should not be dismissed in its entirety. The Applicant is granted twenty (20) days from the date of service of this Order upon him to show why this Order should not become final. The Applicant shall file any reasons he may have with the Orangeburg County Clerk of Court and shall serve opposing counsel at the following address:

Office of the Attorney General  
Attn: Rob Corney, Esquire  
P.O. Box 11549  
Columbia, South Carolina 29211

AND IT IS SO ORDERED this 8<sup>th</sup> day of Sept, 20 11.

  
EDGAR W. DICKSON  
Chief Judge for Administrative Purposes  
First Judicial Circuit Court

Orangeburg, South Carolina.