

JTHRC

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
IN THE COURT OF COMMON PLEAS

JUDGM. IN A CIVIL CASE

CASE NUMBER: 2010CP4007673

State of South Carolina

RECEIVED

Victor E Mason

JUL 16 2013

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: _____

Attorney for : Plaintiff Defendant Supreme Court Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON): Rule 12(b), SCRPC; Rule 41(a), SCRPC (l. Nonsuit); Rule 43(k), SCRPC (Settled); Other _____
- ACTION STRICKEN (CHECK REASON): Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other _____
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX): Affirmed; Reversed; Remanded; Other _____

2013 JAN 17 AM 10:28
RICHLAND COUNTY
FILED
JEANETTE W. MORRIS
C.C.P. & G.S.

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order: _____

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge _____ Judge Code _____ Date _____

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this 17 January 2013 to attorneys of record or to parties (when appearing pro se) as follows:

Victor E Mason

Brian T. Petrano

Victor E Mason

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Jeanette W. Morris

Court Reporter _____

Clerk of Court _____

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS)
FOR THE FIFTH JUDICIAL CIRCUIT)

2010-CP-40-07673)

MASON Victor Eugene,)
FCI # 87817-071,)
Applicant,)

v.)

CONDITIONAL ORDER OF DISMISSAL)

State of South Carolina,)
Respondent.)

RECEIVED)

JUL 16 2013)

S.C. Supreme Court)

RICHLAND COUNTY
FILED
2013 JAN 17 AM 10:22
JEANETTE W. MERRIDGE
C.C.P. & G.

This matter comes before this Court by way of an application for post-conviction relief filed October 29, 2010. Respondent made its Return and Motion to Dismiss on June 21, 2011, requesting this Court summarily dismiss the current application with prejudice as untimely filed and for failing to set forth a genuine issue of material fact for this Court to consider. Respondent thereafter submitted a response to Respondent's motion, dated July 15, 2011, entitled "Applicant's Reply to Attorney for the Respondent's Request for Return and Motion to Dismiss". Having reviewed the entirety of these previous pleadings, this Court now issues the following Conditional Order of Dismissal.

Applicant is presently confined in the Federal Bureau of Prisons at the United States Penitentiary - Lee in Jonesville, Virginia, serving a life sentence on unrelated charges. Concerning the currently challenged charges, Applicant was true bill indicted at the November 1987 term of the Richland County Grand Jury for Possession with Intent to Distribute Cocaine, Possession of Marijuana, and Carrying Unlawful Weapon (1987-GS-40-03781, -03782, -03783). On February 9, 1988, Applicant pled guilty as indicted before The Honorable Frank Eppes, and was sentenced as follows: two (2) years imprisonment suspended to five (5) years probation for

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PWID Cocaine and one (1) year imprisonment suspended to one (1) year probation to run consecutively for the Weapon charge. The Marijuana charge was *nolle prossed* by the State in exchange for the plea. Applicant did not appeal his conviction or sentence.

In making its decision, the Court had before it the available records of the Richland County Clerk of Court regarding the subject convictions, and/or the Applicant's records from the South Carolina Department of Corrections, the current PCR application, *Respondent's Return and Motion to Dismiss*, and Applicant's July 15, 2011 "Reply" to Respondent's motion.

In his current Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

9. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) UNCOUNSELED PRIOR CONVICTION, SUSPENDED SENTENCE. SEE MEMO. ATTACHED.
 - (b) _____
 - (c) _____

ISSUE NUMBER ONE

THAT 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.6TH. (MOTION TO VACATE JUDGEMENT)

Findings of Fact and Conclusions of Law

Timeliness – S.C. Code §17-27-45(a)

This Court agrees with the Respondent that this Application for Post-Conviction Relief should be summarily dismissed for failure 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 Peloquin Court went on to say “those convicted prior to the effective date of the statute”, such as Applicant, “should be allowed one year after [the statute’s] effective date to file an application” for post-conviction relief. The effective date of the one year statute of limitations set forth in S.C. Code § 17-27-45(a) was July 1, 1995. Adding one (1) year per S.C. Code § 17-27-45(a) and one (1) day per Rule 6(a), SCRPC means that this PCR application had to be filed on or before July 2, 1996. **The current application was filed October 29, 2010, more than fourteen (14) years after the statutory filing period had expired on Applicant’s claims.** Applicant has failed to set forth any reason he could not have raised the current allegations within the one (1) year time for filing, or why the statutory time limit should not apply to his claims. In fact, it would seem Applicant was well aware of the alleged “uncounseled” and/or “involuntary” nature of his 1989 guilty pleas at the time he entered them over two (2) decades ago. Accordingly, Applicant’s current challenge of the 1989 convictions is untimely raised.

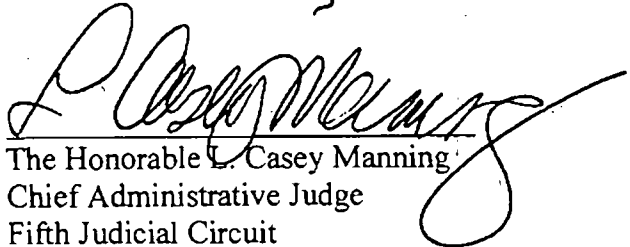
A motion for summary judgment may properly be used to raise the defense of statute of limitations. McDonnell v. Consolidated School District of Aiken, 315 S.C. 487, 445 S.E.2d 638 (1994). In addition, S.C. Code Ann. § 17-27-70(c) (1985) authorizes the Court to “grant a motion by either party for summary 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.” Therefore, this Court shall summarily dismiss the application for

post conviction relief for failure to file within the time mandated by the Post Conviction Procedure Act.

Based upon its review of the pleadings in this matter, this Court does not see the need to appoint counsel to represent the Applicant and expresses its intent to summarily dismiss this matter unless the Applicant advises this Court with specific reasons, factual or legal, why it should not dismiss the matter in its entirety. The Applicant is granted thirty (30) 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 Richland County Clerk of Court and shall serve opposing counsel at the following address:

Assistant Attorney General
Robert D. Corney
Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211

AND IT IS SO ORDERED this 15 day of January, 2012₃


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

Columbia, South Carolina