

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

CASE NUMBER: 2010CP4007673

Victor E Mason

State of South Carolina

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: \_\_\_\_\_

Attorney for :  Plaintiff  Defendant or  Self-Represented 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 (Vol. 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 \_\_\_\_\_

RICHLAND COUNTY  
FILED  
27 MARCH 2013  
PM 4:08  
JENNIFER W. BRIDGE  
& ASSOCIATES  
P.A.

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 27 March 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)

Court Reporter \_\_\_\_\_

Clerk of Court

*Jeanette W. McBride*

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

RICHLAND COUNTY  
 FILED  
 2013 MAR 27 PM 4:05  
 JEANETTE W. McBRIDE  
 C.C.P. & G.S.

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.

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION: ON DELIVERY	
<ul style="list-style-type: none"> <li>Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.</li> <li>Print your name and address on the reverse so that we can return the card to you.</li> <li>Attach this card to the back of the mailpiece, or on the front if space permits.</li> </ul>		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 Box 305 Jonesville, VA 24263		B. Received by (Printed Name) Tom Coleman C. Date of Delivery 2-5-13	
2. Article Number (Transfer from service label) 7005, 1820 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 1/31/13	
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		10229-02-10-1340	

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...". In the document, Applicant set forth the following<sup>1</sup>:

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

<sup>1</sup> 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 be 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 26 day of March, 2013.

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

Columbia, South Carolina.

STATE OF SOUTH CAROLINA )

COUNTY OF RICHLAND )

Victor E. Mason )  
 Plaintiff )

v. )

State Of South Carolina )  
 Defendant. )

IN THE COURT OF COMMON PLEAS

CASE NO.  
2010-CP-400-7673

MOTION AND ORDER INFORMATION  
FORM AND COVER SHEET

RICHLAND COUNTY  
FILED  
2013 MAR 27 PM 4:05  
JEANNETTE N. MCBRIDE  
C.C.P. & G.S.

Plaintiff's Attorney:  
Victor E. Mason, Bar No.  
Address:  
USP Lee  
United States Penitentiary  
Post Office Box 305  
Jonesville, VA 24263  
phone: fax:  
e-mail: other:

Defendant's Attorney:  
Robert D. Corney, Bar No.  
Address:  
Post Office Box 11549  
Columbia, South Carolina 29211  
phone: 803-734-3737 fax: 803-734-4113  
e-mail: rcorney@scag.gov 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.

Rut  
Signature of Attorney for  Plaintiff /  Defendant

3/14/13  
Date submitted

**SECTION III: Motion Fee**

- PAID - AMOUNT:
- EXEMPT: (check reason)
  - Rule to Show Cause in Child or Spousal Support
  - 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: