

THE SUPREME COURT
OF SOUTH CAROLINA

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AUG 27 2013

S.C. Supreme Court

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

-vs-

STATE OF SOUTH CAROLINA,
Respondent.

/

Victor E. Mason v. State(2)
Appellate Case No. 2013-001394
Lower Court No. 2010-CP-38-01583
Pursuant to Rule 243(c)

NOW COMES, Victor Eugene Mason (hereinafter referred to as Petitioner/Defendant to hereby request of this Honorable Supreme Court of South Carolina to hear these claims contending that the lower court's dismissal was improper.

This Petitioner filed with Superior Court an application for post-conviction relief ("PCR") on October 29, 2010. Respondent made its motion to dismiss on June 21, 2011. Petitioner thereafter filed what was termed "Applicant's Reply Attorney for Respondent's Request for Return and Motion to Dismiss". A Conditional Order was the result, A Reply to said Order ensued. Now, this application is forthwith, pursuant to Rule 243(c).

The PCR petition essentially raised the claim that his

February 9, 1988 convictions for Possession with Intent to Distribute Cocaine, Possession of Marijuana, and Carrying an Unlawful Weapon (1987-GS-03781, -03782, -03783) of which he pleaded guilty were uncounseled prior convictions that resulted in his 14th Amendment right to effective assistance of counsel. The Respondent's and the Court's ultimate disposition is that this Petitioner failed to file (the PCR) within the time mandated by the Post-Conviction Procedure Act (S.C. Code §17-27-10 to -160/§17-27-45(a)).

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; especially considering that no one informed this Defendant

that those convictions could later be used adversely in subsequent convictions.

This Petitioner presented the proper documentation showing that the priors were uncounseled during the most important parts of the criminal proceedings. This Court's ultimate decision did not refute that claim, but, instead relied procedural roadblocks to side-step the Constitutionality of the issue. Here, Petitioner contends that the issue of timeliness should also be considered along with these factors:

1) I did not become aware that I had the right to effective assistance of counsel during every stage of the criminal proceedings for those prior convictions until they effected me adversely in my current subsequent federal conviction, on September 11, 2007; 2) I then objected to the use of those prior convictions at the sentencing stage of my current conviction; 3) I then appealed to the Court of Appeals for Fourth Circuit, of which I included this claim; 4) When I'd finally heard from the Court of Appeals for the Fourth Circuit concerning my appeal- two (2) years later- I was granted oral arguments, but, not for the issue raised herein; 5) I then filed the PCR petition raising this claim in this Court. (The preceding points are provided via 28 U.S.C. §1746, under the Penalty of Perjury)

"An application for post-conviction or other collateral review is not properly filed if the application is untimely under state law", Pace v. DiGuglielmo, 544 U.S. 408, 414, 125

S.Ct. 1807, 161 L.Ed.2d 669 (2005). However, the limitations period "may be equitably tolled if the petitioner shows (1) he has been diligently pursuing his rights and (2) some extraordinary circumstance stood in his way, preventing him from timely filing his habeas petition." Holland v. Florida, 130 S.Ct. 2549, 2562, 177 L.Ed.2d 130 (2010).

This Court should review this claim for the Constitutional implications of the prior convictions being uncounseled, as well as the fact that he's exercised due diligence in presenting this claim to this Court, thus, the statute of limitations period should be tolled.

CONCLUSION

Where the uncounseled prior convictions resulted in the Defendant not being aware of the subsequent adverse consequences, he could not raise this issue until he'd become aware; which is when those uncounseled prior convictions effected him adversely. Once becoming aware of such, he objected to the use of them at sentencing and followed through on appeal. However, the federal court did not have to determine the Constitutionality of the convictions because they were not convictions that hailed specifically out of that Court; opting instead to "sweep the issue under the rug" with a haphazard denial, just to speed the guilt phase along.

This Court should not allow the "Conditional Order of Dismissal" to become final for the above reasons.

Petitioner continues to request the relief sought in the PCR petition, and any other relief deemed just and

appropriate.

RESPECTFULLY,

Victor E. Mason

RESPECTFULLY SUBMITTED THIS 18th DAY OF August, 2013.

cc: Robert Daniel Corney, Esq./8-18-2013

CERTIFICATE OF SERVICE

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

Motion Pursuant to
Rule 243(c)

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:

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

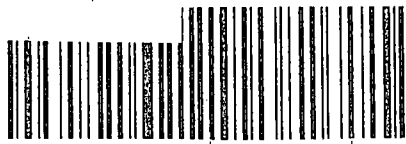
and deposited same in the United States Postal Mail at the United States Penitentiary, Lee County, Virginia, on this: 18th day of: August 2013

Victor E. Mason

#87817-071 USP-Lee

P.O. Box 305
Jonesville, VA 24263

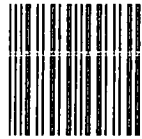
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