PCR

POSTCONVICTION RELIEF/AUTOMATIC STAYS
In re Stewart Jones, 2009 VT 39.

The Supreme Court held unanimously that V.R.C.P. Rule 62(d)(1), relating to auto stays pending appeal, does not apply to post-conviction relief cases. Because a court's discharge of a PCR petitioner, under 13 VSA § 7133, does not leave room for an enforcement action, the terms of Rule 62 relating to auto stays do not apply. Whether the judge has the power to grant a discretionary stay in a PCR decision was left unanswered by the Court. Motion to lift stay pending the state's appeal was granted.

POSTCONVICTION RELIEF/PUNISHMENT DEFINED/NUTRALOAF
Borden, et al v. Hofmann, 2009 VT 30.

In a 3-2 decision, J. Skoglund holds that Nutraloaf is punishment under 28 VSA § 851, requiring a hearing prior to imposing a Nutraloaf diet. The Court determined that Nutraloaf was designed to be "unappetizing" and a deterrence. There were also less harsh methods available to achieve the same end. Both of which evidenced the DOC's punitive intent. Case reversed.

POST CONVICTION RELIEF/GUILTY PLEA/WAIVER OF RIGHTS/DOUBLE JEOPARDY
In re Parks, 2008 VT 65

Court reversed and vacated defendant's convictions because the record lacked any evidence that defendant had knowingly and voluntarily waived constitutional rights before entering guilty pleas to assault and robbery and larceny from a person. The plea agreement permitted multiple punishments for the same crime, a double jeopardy violation that defense counsel waived. The Court held that because the violation was apparent on its face, the defendant must "deliberately relinquish" his right against double jeopardy to effectuate waiver—the Court left undecided whether counsel may relinquish this right for the defendant. Because there was no evidence that the plea was voluntary or that defendant understood the constitutional implications involved, counsel's statements were insufficient to constitute a waiver. The trial court's "wholesale failure" to follow Rule 11 requirements was a separate basis for granting the PCR. The trial judge's treatment of defendant's nonresponse to a reading of the second charge as a nolo plea was determined to be error by the Supremes. Trial court also failed to address the defendant personally and did not determine whether the pleas were voluntary or whether the defendant understood the legal consequences involved. The Court held that Rule 11 was not merely a technical litany but a procedural requirement with constitutional implications for the defendant.

PCR
In re Richard Carroll, 2007 VT 73 (mem.)

Petitioner was charged with 12 counts of illegal disposal of hazardous waste, 12 counts of illegal transport of hazardous waste, and 7 counts of illegal disposal of solid waste. All of the charges related to one incident in which petitioner dumped 24 barrels of waste into the Otter Creek. Each count had the potential of a five year sentence. The state later amended the information, charging petitioner as an habitual offender for multiple prior felonies. Petitioner moved to strike arguing that that he should only be charged with one count as all the barrels were transported and dumped as one incident. However, before the motion was ruled upon, petitioner pled guilty to 3 of the charges (one of each type) and the other 28 were dismissed. Pursuant to the plea agreement the state was capped at 5-15 years for each count and petitioner was free to argue for less. Prior to sentencing, petitioner moved to withdraw his plea arguing that he did not realize that he was subject

to the habitual offender penalty. The court rejected the argument and petitioner received three concurrent 5 to15 year sentences. A month after sentencing, petitioner filed his petition for post-conviction relief. He claimed that under the relevant statute, them State could have properly proceeded only on three charges: one charge of disposal of hazardous waste, one charge of transport of hazardous waste, and one charge of disposal of solid waste. As a result of the "severe overcharging," he claimed his plea was involuntary. The State moved for summary judgment, which the court granted. The Supreme Court affirmed essentially saying that petitioner waived this argument when he pled guilty while his motion to strike was still pending.

PCR/APPOINTMENT OF EXPERTS NOT REQUIRED; RECUSAL OF JUDGE/INSUFFICIENCY OF CLAIMS IN PETITION

In re Barrows, 2007 VT 9. J. Burgess

Summary judgment for State in PCR affirmed. The trial court properly denied the petitioner's request for provision of a legal expert under the Public Defender Act where the petitioner failed to make any particularized showing of a need for such an expert. The same is true of his requests for DNA, chemical, and investigative services. The Superior Court judge was not required to recuse himself from the PCR matter where he had only early involvement in the underlying criminal trial, and did not preside over the trial; in any event, this issue was not raised below. The Court concludes that the claims made in the petition were unsupported on their face; insufficient to change the outcome of the trial; or previously decided against the petitioner.