

SUMMARY STATEMENT

Cuc Phuoc Ho v. State of Idaho

Docket No. 44415

In 2004, Cuc Phuoc Ho pled guilty to two felonies, and the district court imposed a sentence, withheld the judgment, and placed Ho on probation. In 2007, Ho filed a motion to set aside his guilty pleas and enter a dismissal; however, the motion was never set for hearing or ruled on by the court. Ho filed a similar motion in 2012, which was granted. In 2013, Ho pled guilty to a charge of unlawful possession of a firearm on the basis that he possessed firearms knowing he was a convicted felon. Ho possessed the firearms before his 2004 felony case was dismissed. He pled guilty and the court imposed a sentence, which it suspended and placed Ho on probation.

In 2015, Ho was detained by immigration officials for being an aggravated felon. He filed a petition for post-conviction relief for ineffective assistance of counsel for failing to inform him of the severe immigration consequences of pleading guilty to unlawful possession of a firearm, advising him to plead guilty to the charge, and failing to set his 2007 motion for a hearing. The district court set aside Ho's 2013 guilty plea for unlawful possession of a firearm and vacated his conviction and sentence. The State timely appealed.

The State claims the petition for post-conviction relief as to each conviction was untimely. Ho contends that the one-year time limitation set forth in Idaho Code § 19-4902(a) does not apply in this case, as the district court held. The district court applied the concept of tolling of time to file until the consequence of the trial counsel's failings is known or felt; however, while certain collateral consequences may have arisen years later, the time to file is not determined by some unforeseen and remote consequence of counsel's failing. The district court erred in holding that the one-year limitation did not apply and, alternatively, that the time to file was not triggered until the consequences of counsel's ineffective assistance was felt. The petition was untimely and should have been dismissed; therefore, the district court's judgment granting post-conviction relief is vacated.