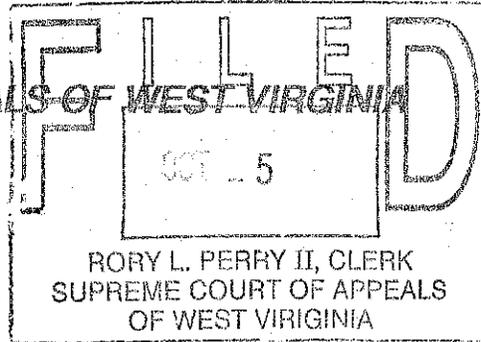


IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA  
CHARLESTON



**BOBBY GIBSON,  
PETITIONER,**

vs.

Civil Action No: \_\_\_\_\_

Civil Case No: 06-MISC-16

**CIRCUIT COURT OF WETZEL COUNTY  
JUDGE JOHN MADDEN,  
DEFENDANT,**

**PETITION FOR A WRIT OF MANDAMUS  
UNDER RULE 14 (a) AND RULE 17 (a) (b) (c) (d)**

*Petitioner now comes before this Honorable Court and ask this court to issue a rule to show cause why the Honorable Court of Wetzel County has not responded to the petition for a writ of habeas corpus and appointment of counsel that was transfer to this honorable court on June 15, 2006 by the circuit court of kanawha county. **See Petitioner Exhibit A the Transfer Order Dated June 15, 2006 From The Circuit Court of Kanawha County.***

*On April 20, 2006 petitioner filed a petition for a writ of habeas corpus in the circuit court of kanawha against the warden Thomas McBride of the Mt. Olive Correctional complex, seeking immediate release to his federal detainer. Petitioner is challenging that the name defendant is detaining him unlawfully past his discharge date. **See Petitioner Exhibit B The Original Petition Filed In The Circuit Court of Kanawha County Along With Exhibit Attached To It.***

*Petitioner has written a letter dated September 1, 2006 to the Honorable John Madden address to the circuit court of wetzel county, clerk office along with a copy of the transfer order dated June 15, 2006, asking this honorable court whether they were going to appoint counsel in*

this case. As of this date I have not received any response from this Honorable Court seeking resolution of this matter.

Petitioner now comes before this Honorable Court under statute code 53-1-2, Jurisdiction of writs of mandamus and prohibition; by whom rule to show cause or peremptory writ issued.

" Jurisdiction of writs of mandamus and prohibition (except cases whereof cognizance has been taken by the supreme court of appeals or a judge thereof in vacation), shall be in the circuit court of the county in which the record or proceeding is to which the writ relates. A rule to show cause as hereinafter provided for may be issued by a judge of a circuit court or of the supreme court of appeals in vacation.

Petitioner asked this Honorable to proceed under Rule 17 (b) Determination of motions for procedural orders. state, " Notwithstanding the provisions of the preceding paragraph as to motions generally, motions for procedural orders may be acted upon at any time, without awaiting a response thereto. Any party adversely affected by such action may request reconsideration, vacation, or modification of such action.

Therefore this petitioner prays that this Honorable Court will issue a show cause to the Circuit Court of Wetzel County, why this Honorable Court has not responded to the transfer order of the circuit court of Kanawha county or appointed counsel to represent this petitioner on the petition for a writ of habeas corpus requesting that the name defendant release this petitioner to his federal detainer and illegally holding this petitioner past his discharge date in violation of his liberty.

Bobby Gibson

Bobby Gibson #08262

Mt. Olive Correctional Complex

One Mountainside Way

Mt. Olive, WV 25185

VERIFICATION

Petitioner Bobby Gibson, being first sworn under oath states that he signed the above petition for writ of mandamus and that the statements therein are true to the best of his knowledge and belief.

Bobby Gibson  
Petitioner

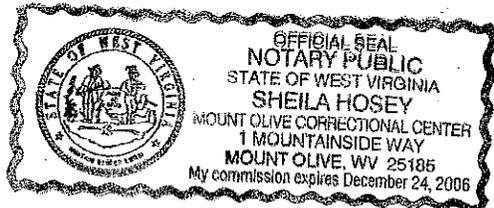
Oct. 6<sup>th</sup> 2006  
Date

STATE OF WEST VIRGINIA  
COUNTY OF FAYETTE TO-WIT:

Taken, sworn and subscribed to before me this 6<sup>th</sup> day of October 2006.

Sheila Hosey  
Notary Public

My commission expires: Dec. 24, 2006



**PETITIONER EXHIBIT A**

**TRANSFER ORDER DATED JUNE 15, 2006**

***From The Circuit Court of Kanawha County***

**FILED**  
*[Signature]*

2006 JUN 15 AM 9:30

BOBBY K. GIBSON,

Petitioner,

CATHY S. GATSON, CLERK  
KANAWHA CO. CIRCUIT COURT

v.

CIVIL ACTION NO. 06-MISC-164  
JUDGE JAMES C. STUCKY

THOMAS L. MCBRIDE, Warden,  
MOUNT OLIVE CORRECTIONAL CENTER,

Respondent.

**TRANSFER ORDER**

Pending before this Court is the "Petition for Writ of Habeas Corpus Ad Subjiciendum" filed by the *pro se* petitioner, Bobby K. Gibson. Said petition relates to the petitioner's contention that he is being unlawfully detained at Mount Olive Correctional Complex resulting from a sentence from Wetzel County, West Virginia.

Therefore, it would be more fair and efficient to bring this matter before the Circuit Court of Wetzel County, West Virginia, where he was initially sentenced.

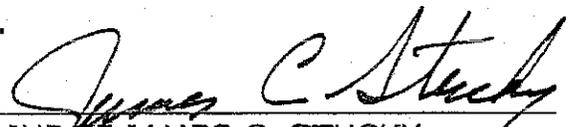
Accordingly, the Court does hereby **ORDER** that the above-styled action be **TRANSFERRED** to the Circuit Court of Wetzel County, West Virginia and thereupon **STRICKEN** from the docket of this Court.

The objections of any party aggrieved by this Order are preserved.

The Clerk of this Court is hereby **DIRECTED** to forward an attested

copy of this Order to Bobby K. Gibson, #8262, Mt. Olive Correctional Complex, One Mountainside Way, Mt. Olive, WV, 25185, Thomas, McBride, Warden, Mt. Olive Correctional Complex, One Mountainside Way, Mt. Olive, WV, 25185, and to the Wetzel County Circuit Clerk's Office, P.O. Box 263, New Martinsville, WV 26155.

Entered this 14<sup>th</sup> day of June, 2006.

  
\_\_\_\_\_  
JUDGE JAMES C. STUCKY  
THIRTEENTH JUDICIAL CIRCUIT

STATE OF WEST VIRGINIA  
COUNTY OF KANAWHA  
I, CATHY S. GATSON, CLERK OF CIRCUIT COURT OF SAID COUNTY  
AND IN SAID STATE, DO HEREBY CERTIFY THAT THE FOREGOING  
IS A TRUE COPY FROM THE RECORDS OF SAID COURT  
GIVEN UNDER MY HAND AND SEAL OF SAID COURT THIS 14<sup>th</sup>  
DAY OF June, 2006  
 CLERK  
CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

**PETITIONER EXHIBIT B**

**THE ORIGINAL PETITION FILED IN THE CIRCUIT COURT  
OF KANAWHA COUNTY ALONG WITH EXHIBIT ATTACHED**

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA  
AT CHARLESTON

BOBBY K. GIBSON,  
PETITIONER,

vs.

THOMAS L. McBRIDE, WARDEN,  
Mt. Olive Correctional Complex,  
DEFENDANT,

CIVIL ACTION NO: *06-misc164*  
*Judge Stucky*

FILED  
2006 APR 20 PM 4:24  
KAWAHA COUNTY CLERK  
KATHLEEN BOON

**PETITION FOR WRIT OF HABEAS CORPUS AD-SUBJICIENDUM**

Pursuant to Chapter 53, Article 4, Section 1, et.seq., and Chapter 53, Article 4A, Section 1, et. seq., your petitioner, **Bobby Gibson**, in support of his petition for Writ of Habeas Corpus Ad-Subjiciendum, states the following:

**1. JURISDICTION**

The original jurisdiction of the Circuit Court and the legal basis for this action is found upon Chapter 53, Article 4, Section 1, and Chapter 53, Article 4A, Section 1 (a) (e) of West Virginia Code.

Now comes the Petitioner, **Bobby Gibson**, seeking his immediate release from custody of an illegal imprisonment and asking this Honorable Court to issue A Writ of Habeas Corpus Ad-Subjiciendum, why the named defendant Thomas McBride, warden, of the Mt. Olive Correctional Complex, is restraining and detaining this petitioner of his liberty unlawfully and without authority past his discharge date as of December 25, 2005.

Petitioner was sentenced by the Circuit Court of Wetzel County, on December 6, 1991, upon Indictment No: 91-F-10, to not less than Ten (10) nor more than Twenty-Five (25) years in the penitentiary for second Degree Sexual Assault and not less than Five (5) nor more than Ten (10) years for incest to run consecutive. The Circuit Court of Wetzal County made the effective sentencing date as of December 25, 1990.

**See Petitioner's Attached Exhibits the Sentencing Order, Commitment Order and his Federal Detainer.**

The purpose of the writ of habeas corpus is to release anyone from restraint who is detained without lawful authority. See Matthews v. Wade, 2 W.Va. 464, 63 A.L.R. 1148n (1868); Pugh v. Pugh, 133 WVa. 501, 56 S.E.2d. 901, 15 A.L.R.2d. 424 (1924); State ex rel. Yokum v. Adams, 145 WVa. 450, 114 S.E.2d. 892 (1960); State ex rel. Reed v. Boles, 148 WVa. 770, 137 S.E.2d. 246 (1964); State v. Manns, 174 WVa. 793, 329 S.E.2d. 865 (1985); State ex rel. Titus v. Hayes, 150 WVa. 151, 144 S.E.2d. 502 (1965).

The petitioner contends that the principle function of the writ of habeas corpus is the determination of the legality of confinement of a person or the restraint imposed upon his liberty. State ex rel. Titus v. Hayes, 150 WVa. 151, 144 S.E.2d. 502 (1965); Habeas Corpus lies to test the legality of the restraint under which a person is detained, Tasker v. Giffith, 160 WVa. 739, 238 S.E.2d. 229 (1977):

A writ of habeas corpus ad-subjiciendum will lie to effect the release of one imprisoned without authority of law. See State ex rel. Vandal v. Adams, 145 WVa. 566, 115 S.E. 2d. 489 (1960); State v. Manns, 174 WVa. 793, 329 S.E.2d. 865 (1985); State ex rel. Harding v. Boles, 150 WVa. 534, 148 S.E.2d. 169 (1966):

### **RELIEF REQUESTED**

Therefore, petitioner prays that this Honorable Court will appoint counsel to represent this petitioner and issue a writ of habeas corpus ad-subjiciendum against the named defendant Thomas McBride, warden, ordering him to produce the body of Bobby Gibson, before this court then and their show why this Honorable Court should not issue an order directing the named defendant to release said petitioner to the custody of the United States Marshall Services, for the Southern District of West Virginia where their is a detainer pending against the petitioner.

CERTIFICATE OF SERVICE

I, Bobby K. Gibson, hereby certify that on the 17<sup>th</sup> day of April 2006, I delivered a true copy of the foregoing Petition for a Writ of Habeas Corpus Ad-Subjiciendum, to the Attorney General Darrell McGraw, Jr. at Building 1, Room E-26, 1900 Kanawha Blvd. East, Charleston, West Virginia 25305-0222.

Bobby K. Gibson

Bobby K. Gibson #8262

Mt. Olive Correctional Complex

One Mountainside Way

Mt. Olive, WVa. 25185

# PETITIONER EXHIBIT

SENTENCING ORDER, COMMITMENT ORDER,

AND DETAINER

CIRCUIT COURT OF WETZEL COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA

VS

BOBBY K. GIBSON

FELONY NO. 91-F-10

*EFFECTIVE SENTENCE* *dat*

*Dec. 25-1990*

*Discharged Sentence*  
*6-25-2003*

O R D E R

The 6th day of December, 1991, came the State of West Virginia by W. D. Lemon, Prosecuting Attorney for Wetzel County, and as well came the defendant, Bobby K. Gibson, in his own proper person at the Bar of this Court, and by Scott Reynolds, of the ~~Public Defender Corporation, his attorney.~~

Whereupon, this matter comes on for sentencing at this time.

Whereupon, the State's representative moved the Court to withdraw Recidivist Information filed in this case. There being no resistance thereto, the Court does withdraw the Recidivist Information.

Whereupon, the Probation Officer's pre-sentence report had been filed and reviewed by counsel.

Whereupon, the Court inquired of defense counsel if he had anything to say prior to imposition of sentence, to which defense counsel gave a brief statement in behalf of the defendant.

Whereupon, the Court inquired of the State's counsel if he had anything to say prior to imposition of sentence, to which the State's representative gave a brief statement.

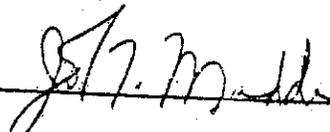
Whereupon, the Court inquired of the defendant if he had anything to say prior to imposition of sentence, to which defendant gave a brief statement in his own behalf.

It is the judgment of this Court that as to the second degree sexual assault conviction, that the defendant be sentenced to not less than ten (10) years, nor more than twenty-five (25) years in the West Virginia Penitentiary. As for the incest conviction, it is the judgment of this Court that the defendant be sentenced to not less than five (5) years, nor more than ten (10) years in the West Virginia Penitentiary. Sentences will run consecutive. The Court further informed the defendant that he has one hundred twenty (120) days to petition the Court for re-sentencing and four (4) months in which to appeal this sentence to the West Virginia Supreme Court of Appeals.

Defendant is remanded to the custody of the authorities.

It is so ordered:

ENTER: .

  
\_\_\_\_\_  
Judge

(WHEREBY COPY OF THE ANNEXED INSTRUMENT IS  
A TRUE AND CORRECT COPY OF THE ORIGINAL ON FILE  
IN MY OFFICE  
ATTEST: \_\_\_\_\_ CIRCUIT CLERK  
WEST VIRGINIA  
BY: \_\_\_\_\_ DEPUTY CLERK

Entered

19

Entered December 19, 19  
Law Order Book No. 44

Page 36-6

STATE OF WEST VIRGINIA

VS.

BOBBY K. GIBSON

RECEIVED  
DEC 16 1991  
W. VA. PENITENTIARY  
RECORDS CLERK

FELONY INDICTMENT NO.  
91-F-10

ON ~~THIS~~ the 6th December, 19 91 came the attorney  
for the state and the defendant appearing in person and represented  
by Scott Reynolds, of the Public Defender Corporation

IT IS ADJUDGED that the defendant has been convicted/ found guilty by a jury/ ~~upon plea of guilty~~ of the  
offense as charged:  
sexual assault in the second degree and incest.

and the Court having asked the defendant whether he/she has anything to say why judgement should not  
be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,  
IT IS ADJUDGED that the defendant is guilty as charged and convicted.  
IT IS ADJUDGED that the defendant is hereby committed to the custody of the Warden of the West Virginia  
Penitentiary or his authorized representative for imprisonment for a period of:  
not less than ten years nor more than twenty-five years in the West Virginia  
Penitentiary as to the second degree sexual assault conviction and not less than five  
years nor more than ten years in the West Virginia Penitentiary as to the incest convicti  
Sentences will run consecutive.

CONVICTION DATE: 10-29-91  
SENTENCE DATE: 12-06-91  
EFFECTIVE SENTENCE DATE: 12-25-90

IT IS ADJUDGED that:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

IT IS ORDERED that the clerk forthwith transmit this record, duly certified, of the judgement and commitment to  
the Warden of the West Virginia Penitentiary and that this record serve as the commitment of the defendant.

WETZEL COUNTY,

TYPE/PRINT: JOHN T. MADDEN  
JUDGE  
NELDA E. KOCHER  
CLERK  
\_\_\_\_\_  
DEPUTY CIRCUIT CLERK

SIGNATURES  
John T. Madden  
JUDGE  
Nelda E. Kocher  
CLERK  
\_\_\_\_\_  
DEPUTY CIRCUIT CLERK

A TRUE COPY. Certified this 12th day of December, 19 91

SEAL:



# DETAINER

(USMM 622.04)

UNITED STATES MARSHAL:  
Charleston, WV

Date: 6/7/95

Southern District of West Virginia

SUBJECT: Gibson, Bobby  
51764-060  
DOB: 7/20/40 w/m  
SS#: 261-68-5712  
Charge: Felon in possession of a firearm.  
J&C

TO: Mt. Olive Correctional Complex  
#1 Mountainside Way  
Mt. Olive, WV 25785  
ATTN: Lori Burford/Records

Please accept this Detainer against the above-named subject who is currently in your custody.

When the subject is to be released from your custody, please notify this office at once so that we may assume custody if necessary. If subject is transferred from your custody to another detention facility, we request that you forward our Detainer to said facility at time of transfer and advise this office.

The notice requirements of the Speedy Trial Act of 1974 (P.L. 93-619) apply if the Detainer is based on pending Federal criminal charges which have not yet been tried. The notice requirement provisions do not apply to Detainers lodged for charges which have already been tried or for which no trial is required, such as parole revocation Detainers or sentencing Detainers. Further, the notice requirement provisions would not apply to Detainers lodged against prisoners who have not yet been sentenced at the time the Detainer is lodged. If there is an "X" mark in the following space, the notice requirements of the Speedy Trial Act apply and you are requested to give a copy of the Detainer to the prisoner and to complete the attached Form USM-17, NOTIFICATION REQUIREMENTS—SPEEDY TRIAL ACT, in duplicate, and return both copies of the Form USM-17 to this office with receipted copies 2 and 3 of this Detainer.

Special instructions also apply when the Detainer is based on a warrant issued by the U.S. Parole Commission. If there is an "X" mark in the following space, please follow the instructions on the reverse of this form, acknowledge receipt on copies 2 and 3 of this Detainer and return them to this office in the enclosed self-addressed envelope.

If there are no "X" marks in the above blocks, no further action is required except you are requested to give a copy of the Detainer to the Prisoner and to acknowledge receipt of this Detainer on copies 2 and 3 and return them to this office in the enclosed self-addressed envelope.

RECEIVED  
JUN 09 1995

RECEIPT	
Date:	6/7/95
Signed:	[Signature]
Title:	Records Clerk

Very truly yours, RECORDS CLERK—MOCC

Charles M. Adkins, Jr.  
United States Marshal  
By: Robert H. Winkelman  
Chief Deputy U.S. Marshal  
(304) 347-5136

# DETAINER

MOTION FOR APPOINTMENT OF COUNSEL

*06-Misc-164*  
2006 APR 20 PM 4:01  
FILED  
CLERK OF COURT

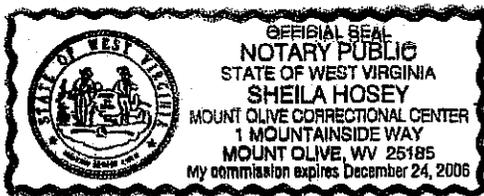
Petitioner request that this Honorable Court appoint counsel to assist this petitioner in this Petition for a Writ of Habeas Corpus. Petitioner has also attached his Affidavit of Financial Status. Petitioner is indigent and by reason of his proverty is unable to retain counsel or pay filing fee's. Petitioner needs an attorney to ensure that all relevant issues are properly presented in his Petition for A Writ of Habeas Corpus, and to conserve valuable court time. Therefore, petitioner respectfully request that this Honorable Court appoint counsel to assist petitioner.

*Bobby K. Gibson*  
BOBBY K. GIBSON #8262

State of West Virginia,  
County of Fayette, to-wit;

Taken, sworn and subscribed before me this *17<sup>th</sup>* day of April 2006.

My Commission Expires: *December 24, 2006*



*Sheila Hosey*  
NOTARY PUBLIC

AFFIDAVIT OF FINANCIAL STATUS

I, *Bobby K. Gibson*, declare that I am the petitioner in the above-entitled proceeding; that in support of my request to proceed without prepayment of fees or cost, I declare that I am unable to pay the cost of these proceedings and that I am entitled to

the relief sought in the petition.

In support of this application, I answer the following questions under penalty of perjury:

Affiant herein answer the following statements are true and correct to the best of his knowledge and belief:

1. Petitioner Bobby Gibson, is the petitioner in the foregoing civil action and the affiant herein:

2. Petitioner Bobby Gibson, is incarcerated at the Mt. Olive Correctional Complex, at Mt. Olive, West Virginia.

3. Petitioner is not employed at the institution and receives \$10.00, "old an dottle" (66 YRS. old) a month from the institution. (Been at institution for 16 YRS)

4. Petitioner is not currently employed at a job paying at least minimum wage.

5. Petitioner does not own or have an interest in any real estate, stocks, bonds, notes, automobiles or any other valuable property.

6. Petitioner has received no payments within the past twelve months from a business, profession, or other self-employment. Petitioner has not received a rent payment, interest on saving accounts, or dividends from any investment.

7. Petitioner is not currently financially supporting any individual who is dependent upon petitioner for life's necessities.

I have declared under penalty of perjury that the above information is true and correct.

17th. April 2006

DATE

Bobby K. Gibson  
BOBBY K. GIBSON #8262

**PETITIONER EXHIBIT C**

**COPY OF THE LETTER WRITTEN TO THE HONORABLE JUDGE  
JOHN MADEN ADDRESS TO THE CIRCUIT COURT OF  
WETZEL COUNTY, CLERKS OFFICE DATED SEPTEMBER 1, 06**

**TO: JOHN MADDEN, JUDGE**

*Circuit Judge of Marshall / Wetzel County*

**From: BOBBY GIBSON # 08262**

*Mt. Olive Correctional Complex*

**DATE: SEPTEMBER 1, 2006**

**RE: Transfer of Civil Action No: 06-MISC-164**

*Judge Madden,*

*I'm writing this letter in response to an order that I received from the Clerk of the Circuit Court of Kanawha County on June 14, 2006 from the Honorable Judge Stucky.*

*Back on June 14, 2006 I received an order in Civil Action No: 06-MISC-164, which stated and is attached to this letter. It stated that this civil case is being transfered back to the Circuit Court of Wetzel County.*

*In the Writ of Habeas Corpus Petition, I had stated that petitioner is entitled to appointment of counsel to proceed in this case. As of this date I have not received any correspondence from this Honorable Court nor have I received any order from this court whether their was counsel appointed in this matter.*

*At this time I'm asking this Honorable Court to appoint counsel in this case. I have attached the proper form with the writ of habeas corpus petition that was forward to this court by the circuit court of kanawha county.*

*I will like to take this time to think this Honorable court for its consideration in this matter.*

*Bobby Gibson*  
BOBBY GIBSON #08262

**SENDER: COMPLETE THIS SECTION**

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:  
 JUDGE JOHN MADDEN  
 WETZEL COUNTY CIRCUIT COURT  
 CLERK OFFICE 24927  
 PO. BOX 263  
 NEW MARTINSVILLE WV  
 26155

2. Article Number  
 (Transfer from service label) 7004 2510 0001 4701 4770

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-154

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature  
 x Brandi Briggs  Agent  Addressee

B. Received by (Printed Name) Brandi Briggs C. Date of Delivery 9-5-06

D. Is delivery address different from item 1?  Yes  No  
 If YES, enter delivery address below:

3. Service Type  
 Certified Mail  Express Mail  
 Registered  Return Receipt for Merchandise  
 Insured Mail  C.O.D.

4. Restricted Delivery? (Extra Fee)  Yes

**SENDER: COMPLETE THIS SECTION**

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

Article Addressed to:  
 RUTH S. GASTON  
 CLERK OF CIRCUIT COURT  
 VAWA COUNTY COURTHOUSE  
 BOX 2351  
 MARTINSVILLE WV  
 26155

2. Article Number  
 (Transfer from service label) 7005 1820 0000 2697 0643

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-154

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature  
 x Ruth S. Gaston  Agent  Addressee

B. Received by (Printed Name) C. Date of Delivery APR 10 2006

D. Is delivery address different from item 1?  Yes  No  
 If YES, enter delivery address below:

3. Service Type  
 Certified Mail  Express Mail  
 Registered  Return Receipt for Merchandise  
 Insured Mail  C.O.D.

4. Restricted Delivery? (Extra Fee)  Yes