



SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

ORIGINAL

Division of Appellate Defense
1330 Lady Street, Suite 401
Columbia, South Carolina 29201-3332
Post Office Box 11589
Columbia, South Carolina 29211-1589
Telephone: (803) 734-1330
Facsimile: (803) 734-1397

Robert M. Dudek, Chief Appellate Defender
Wanda H. Carter, Deputy Chief Appellate Defender

RECEIVED

AUG 13 2015

SC Court of Appeals

August 13, 2015

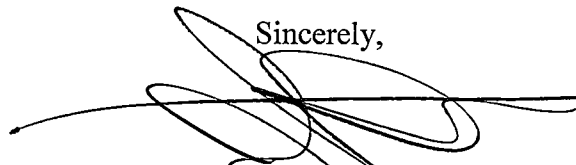
The Honorable Jenny Abbott Kitchings
Clerk, S.C. Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

Re: State v. Elder Prescott Leach, Appellate Case No.: 2014-001158

Dear Ms. Kitchings:

Enclosed is a supplemental or amended brief drafted *pro se* by the Appellant in the above-referenced case. I respectfully request that the Court please consider the arguments made therein. By copy of this letter, I am also forwarding a copy of Appellant's supplemental or amended brief to Salley W. Elliot of the Attorney General's Office. Thank you for your assistance in this matter.

Sincerely,



John H. Strom
Appellate Defender

JHS/css

Enclosure

cc: Salley W. Elliot, Esq.
Elder Prescott Leach

Statues

S.C. Code Ann. § 17-19-20

S.C. Code Ann. § 17-19-20

S.C. Code Ann. § 17-19-100

S.C. Code Ann. § 44-53-375

Table of Authorities

State V. Riddle 301 S.C. 211, 391 S.E. 2d 253 (1990)

Hope V. State 328 S.C. 78, 492 S.E. 2d 76 (1997)

Browning V. State 320 S.C. 366, 465 S.E. 2d 358 (1995)

Slack V. State 311 S.C. 415, 429 S.E. 2d 801 (1993)

Hopkins V. State 317 S.C. 7, 451 S.E. 2d 389 (1994)

Edwards v. State 372 S.C. 493, 643 S.E. 2d 738 (2007)

State V. Gentry 362 S.C. 93, 610 S.E. 2d 494 (2005)

State V. Lynch 344 S.C. 635, 641, 545 S.E. 2d 511, 514 (2001)

State V. Means 367 S.C. 374, 626 S.E. 2d 348 (2006)

3) Did the trial court erred where at the close of the trial, when the case was to be given to the jury for consideration as to the evidence and allegations charged within the indictment, in entertaining and granting the prosecutor's to amend offense charged in the indictments to a greater or more onerous offense, in chambers, thereby altering the punishment of the original offense and causing the court to lack subject matter jurisdiction to entertain the improperly amended indictment?

Elder P. Leach ("Appellant") contends the trial court lacked subject matter jurisdiction on the basis of an improper amendment to the original indictment at the close of the case and evidence at trial.

Appellant was indicted for Trafficking Crack Cocaine in violation of S.C. Code Ann. §44-53-375 © (1) - CDR Code: 450, and §44-53-375© (2) - CDR Code: 392. At the close of the case and evidence at trial the prosecutor requested that they go back in chambers to make sure the indictment numbers were correct.(Tr. p. 249) Appellant has copies of the indictment from the discovery, i.e., Rule 5 Brady, that were provided to him prior to trial, that demonstrates the indicted offense was for first offense.

After trial was concluded and Appellant was found guilty, the charge was enhanced to Trafficking Crack Cocaine in violation of S.C. Code Ann. §44-53-375 © (1) - CDR Code: 452, and §44-53-375 © (2) -CDR Code: 349. This is clear evidence that the nature of the offense were changed from first offense to third offense.

S.C. Code Ann. §17-19-100 permits the amendment of an indictment, provided the nature of the offense charged is not changed. Here the amendment increases the lesser charge of Trafficking Crack Cocaine first offense, to Trafficking Crack Cocaine third offense. Clearly the offense charged was changed, and therefore, the court lacked subject matter jurisdiction to convict-and sentence Appellant.

We must observe the appropriate analysis is whether the amendment to the indictment changed the nature of the original offense charged, not whether the amendment in any way surprised or prejudiced the Appellant. State V. Lynch, 344

S.C. 635,641, 545 S.E. 2d 511, 514 (2001); State V. Gentry, 363 S.C. 93, 610 S.E. 2d 494 (2005), applies only to permissible amendments, those which do not change the nature of the offense charged.

State V. Means, 367 S.C. 374, 626 S.E. 2d 348 (2006);

(1). When the State before trial amends an indictment previously issued or true billed by the Grand Jury, the court first should determine whether the existing indictment is sufficient to place the defendant of a particular offense, and identifying the nature of that offense; (2) The court should determine whether the amended indictment would be sufficient to place the defendant on notice of a particular offense, and if so, identify the nature of the of the offense; and (3) The court should determine if the proposed amendment changes the nature of the offense set forth in the original indictment. **If it does, the motion to amend must be denied.**

Amendments to an indictment are permissible only if: (1) they do not change the nature of the offense: (2) the charge is a lesser included of offense of the crime charged in the indictment: (3) The defendant waives presentment to the Grand Jury and pleads guilty.

The amendment of the indictment at the close of evidence clearly exceeds the terms of the statutes. State V. Riddle, 301 S.C. 211, 391 S.E. 2d 253

(1990)(Amendment of indictment at close of evidence to charge assault with intent to commit first degree criminal sexual conduct, rather than assault to commit third degree criminal sexual conduct was improper; amendment increased charge and possible punishment): S.C. code Ann. §17-19-100 (1976). Such a change to the nature of the offense has been previously held to deprive the court of subject matter jurisdiction.

The State has conceded, Hope V. State, 328 S.C. 78, 492 S.E. 2d 76 (1997), amendment was improper and deprived the court of subject matter jurisdiction; Matters of subject matter jurisdiction may be raised at any time. Browning V. State, 320 S.C. 366, 465 S.E. 2d 358 (1995); Slack V. State, 311 S.C. 415, 429 S.E. 2d 801 (1993); and Hopkins V. State, 317 S.C. 7, 451 S.E. 2s 389 (1994).

An indictment is a notice document: the primary purpose of an indictment is to put the defendant on notice of what he is called upon to answer, this is, to apprise him of the elements of the offense, and to allow him to decide whether to plead guilty or stand trial; and to enable the circuit court to know what judgment to pronounce if the defendant is convicted. **S.C. Code Ann. §17-19-20; Edwards V. State, 372 S.C. 493, 643 S.E. 2d 738 (2007).** In determining whether an indictment meets the sufficiency standard, the court must look at the indictment with a practical eye in view of all surrounding circumstances: **S.C. Code Ann. §17-19-20; and §17-19-90.**

State V. Gentry, 363 S.C. 93, 610 S.E 2d 494 (2005), the trial court lacks subject matter jurisdiction to convict a defendant for an offense, when there is no indictment charging him with that offense, when the jury is sworn. Whether the trial court has the power to hear a case, and whether the indictment is sufficient.

Appellant is of the position and belief that the indictment in question did not meet the sufficiency standard, and placed him upon trial as to allegations not indicted at the time of the swearing of the jurors. There is no record of any evidence neither presented, nor purportedly obtained that would justify any amendment for the greater offense that Appellant is aware of or tried upon. This type of circumstance has the propensity in which to cause this Appellant to be tried without benefit of notice, and present a viable defense to the purported allegations. This is a deprivation which violated the very core of the Due Process Clause and should cause this court to reverse the conviction and vacate the indictment for failing to provide the essential notice related to these types of matters.

Conclusion

Wherefore, for the foregoing reason Appellant prays this Court reverse the conviction, and vacate the indictment due to the above argued violations and deprivations.