State of South Carolina
Court of Appeals

Carl Leon Linyard Appellant,	§ §
v.	§ §
The State of South Carolina Appellee.	§ §

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Notice of Appeal

Carl Leon Linyard, pro se Appellant hereby gives a timely notice appealing the Circuit Court's arbitrary decision denying his "Motion for Leave of Court to File Petitioner's Coram Nobis."

Appellant also moves the Court to waive all costs and fees associated with the filing of said appeal because he is a pauper with no funding to perfect his claims.

Submitted on this 24 day of July, 2015.

Carl L. Linyard

Carl Leon Linyard, pro se
#10168-171
P.O. Box 999
Butner, N.C. 27509

Court of General Sessions
County of Beaufort

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Carl Leon Linyard Petitioner,	§ § §	
v.	§ §	GS No. 91-GS-07-1493
State of South Carolina Respondent.	§ § §	

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Motion for Leave of Court to File Petitioner's Coram Nobis

Petitioner, Carl Leon Linyard, pro se in the above styled caption, hereby respectfully moves this Honorable Court for an order to reverse and strike from the record his simple possession of cocaine that exceeded the penalty authorized by statute as illegal under State v. Sumpter, 513 S.C.2d 373 (S.C. App. 1999). And asks that this Petition no matter how unskillfully pleaded must be construed liberally. Haines v. Kerner, 404 U.S. 519 (1972).

Jurisdiction

This Honorable Court has jurisdiction to adjudicate, grant, and review the merits of Petitioner's claim, because the Court has a vested legal interest pursuant to Coram Nobis and any other applicable rules in this matter.

Facts of the Case

The relevant history of Petitioner's case as a result of a grand Jury that charged him on September 9, 1991 (Indictment #91-GS07-1493) possession of cocaine and convicted him on April 6, 1992 of simple possession of cocaine. In 1991, a possession of cocaine carried a maximum statutory penalty of 2 years.

At sentencing on April 6, 1992 for the simple possession

charge, Petitioner was also sentenced on the grand larceny and receiving stolen goods (91-GS-07-1114), grand larceny carried a maximum sentence of 10 years and the receiving stolen goods carried a maximum sentence of 10 years. All the sentences, including the simple possession charge, were ordered to run concurrent to each other, inter-alia, Petitioner received a sentence of 5 years suspended for 3 years for the grand larceny and receiving stolen goods charges. It was constitutionally illegal to give Petitioner the same sentence for the possession of cocaine offense, since it could only carry a maximum of 2 years, which is the graveman of Petitioner's Corum Nobis complaint in this case.

Contention and Legal Authority

In State v. Germany, 57 S.E.2d 165 (SC 1949), the Supreme Court of South Carolina was asked to decide whether a sentence was imposed in excess of the maximum allowed by law. The Defendant had been sentenced to 5 years provided that on the service of 9 months the balance was suspended with probation for a period of 5 years. The Court held that 'sentence' means the whole of the sentence, including the suspended portion. Id. at 166. The "suspended portion is an inseparable part of appellant's sentence and... his sentence was for a term of 5 years." Id. at 167.

In, Picklesimer v. State, 176 S.E.2d 536 (SC 1970), the Supreme Court held that "[w]hen a portion of a sentence is suspended, it merely means that a person is permitted to serve a portion of his sentence at home. The sentence is the total of the part served at the prison and at home." Id. at 538.

Thus the sentence Petitioner received for the simple possession of cocaine was effectively 5 years, when the maximum possible sentence was 2 years. State v. Sumpter, 513 S.C. 2d 373 (S.C. App. 1999) (holding a "sentence that exceeds the penalty

authorized by statute is illegal, and must be reversed)." See also, Apprendi v. New Jersey, 530 U.S. 466 (2000) and Alleyne v. United States, 133 S.Ct. 2151 (2013).

Whether it was a scrivener's error that caused Petitioner to receive the same sentence on the cocaine charge as the other charges he pled to at the same time, or just negligence, it is perfectly clear that the sentence for the cocaine charge was illegal and as a result is being used to adversely affect his federal sentence, to wit (1) enhanced his sentence from a minimum of 5 years to a maximum of 40 years to a minimum of 10 years to a maximum of life... due to this adverse error, Petitioner is currently serving a 400 months imprisonment without the possibility of parole.

Likewise, a Coram Nobis provides Petitioner a conduit for immediate relief, even though the term has been served, the results of the illegal conviction persist. The Writ of Coram Nobis is used to attack invalid convictions which have continuing consequences... Here Petitioner's federal conviction carries heavier penalties as a result of the invalid conviction, McDuffie v. State, 276 S.C. 229 (1981) quoting United States v. Morgan, 346 U.S. 502, 512-13 (1954).

It is very clear that Petitioner received a sentence for possession of cocaine (case no. 91-GS-07-1493), of 5 years, when the maximum possible sentence was 2 years which makes it invalid under Sumpter. And the illegal state conviction having a significant impact on Petitioner's federal penalties that effectively violate the United States Constitution under the Sixth and Fifth Amendment.

Moreso, it has been uniform and constant in the judicial tradition for the sentencing court to consider every convicted person as an individual and every case as a unique study of human failings that sometimes mitigate, sometimes magnify the crime

and the punishment to ensue. Koon v. United States, 518 U.S. 81, 113 (1996). Under this principle that "the punishment should fit the offender not merely the crime." Williams v. New York, 337 U.S. 241, 247 (1949).

[Because] the state sentence carried the day, federal Court gave mitigating factors short thrift... essentially following its obligation to follow this Court's ruling in 1992 and ultimately ignoring Petitioner's objection to a now illegal predicate state conviction that increased his statutory penalty. Petitioner maintains that this Court's error represents a "fundamental defect which inherently results in a complete miscarriage of justice." Hill v. United States, 368 U.S. 424, 428 (1962) that can be revisited on collateral review under the Writ of Coram Nobis. Petitioner also asserts that the cumulative effects and the numerous prejudicial errors that occurred when the state conviction was premised on an illegal outcome that yielded an unreasonable federal sentence, is in fact tantamount to manifest injustice.

Conclusion

In consideration of all the foregoing reasons and case law, Petitioner prays that this Honorable Court enter an order reversing and striking from the record (Case No. 91-GS-07-1439) with prejudice under the doctrine of fundamental fairness to a reasonable resolution, or as the Court may deem appropriate and equitable.

Respectfully Submitted,

Carl L. Linyard

Carl L. Linyard

Certificate of Service

I, Carl L. Linyard, pro se Petitioner in the above aforementioned cause, hereby state that I have caused to be mailed by way of the U.S. Mail a true and correct copy of said instrument to the following party:

Clerk of Court
Beaufort County Courthouse
102 Ribaut Rd.
Beaufort, SC 29902

Carl L. Linyard

Carl L. Linyard
#10168-171
P.O. Box 999
Butner, N.C. 27509-0999

State of South Carolina
The Circuit Court of the Fourteenth Judicial Circuit

Megan C. White
Law Clerk to the Honorable Carmen Mullen

102 Ribaut Road
Beaufort, SC 29901
Phone: (843) 255-5070
Fax: (843) 522-8362

July 1, 2015

Carl Leon Linyard, #10168-171
FCI Butner Low
Federal Correctional Institution
P.O. Box 999
Butner, NC 27509

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Re: Correspondence dated December 8, 2014

Dear Mr. Linyard:

Judge Mullen's chambers is in receipt of your "Motion for Leave of Court to File Petitioner's Coram Nobis" dated December 8, 2014. The writ of *Coram Nobis* is an extraordinary remedy and infrequently used in this country. The South Carolina Supreme Court has explained the writ of *coram nobis* as follows:

> The principal function of the writ of *coram nobis* is to afford the Court an opportunity to correct its own record with reference to a vital fact not known when the judgment was rendered and which could not have been presented by a motion for a new trial, appeal or other existing statutory proceeding. It lies for an error of fact not apparent on the record, not attributable to the appellant's negligence, and which if known by the Court would have prevented rendition of the judgment. It does not lie for newly discovered evidence or newly arising facts or facts adjudicated at the trial. It is not available where advantage could have been taken of the alleged error at the trial, as where the facts complained of were known before or at the trial or where at the trial the accused or his attorneys knew of the existence of such facts but failed to present them. . . . A person seeking relief by a writ of *coram nobis* has the burden of sustaining the allegations of his petition by a preponderance of evidence.

State v. Liles, 246 S.C. 59, 73--74, 142 S.E.2d 433, 440 (1965) (citing *Shelton v. State*, 239 S.C. 535, 123 S.E.2d 867 (1962)).

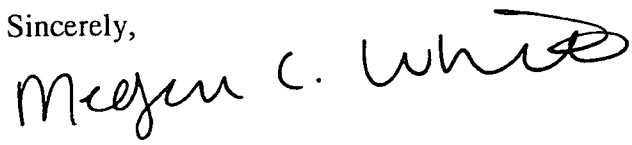
Coram nobis was and is a limited remedy. It may be utilized only if no other remedy is available. *Coram nobis* relief is appropriate only if no other remedy is available to the applicant. *Mendoza v. United States*, 690 F.3d 157 (3d Cir. 2012). Thus, the writ of *coram nobis* cannot be

asserted as an alternative for a motion for new trial, a motion to vacate a judgment, an appeal, a writ of habeas corpus, or another available action. *See id.* In other words, if an issue in the case, concerning which relief is sought by the defendant, could have been raised by a remedy other than *coram nobis*, the issue cannot be reviewed in a *coram nobis* proceeding. 18 Am. Jur Trials 1 § 4.

Ultimately, *coram nobis* is predicated on doing justice. "A writ of *coram nobis* must be allowed, where such a remedy is available, when a conviction is wrongful because it is based on an error of fact or was obtained by unfair or unlawful methods and no other corrective judicial remedy is available. The writ of error *coram nobis*, which is available on a proper showing for the purpose of reviewing a judgment after the time for an appeal has expired, meets the requirement of due process of law under the Fourteenth Amendment of the United States Constitution. Such a writ must be allowed where a conviction is wrongful because based on an error of fact or obtained by unfair or unlawful methods and no other corrective judicial remedy is available." 16C C.J.S. Constitutional Law § 1693.

Your motion does not present the extraordinary circumstances and violation of procedural due process rights required for relief under the writ of *coram nobis*. Relief through an alternative remedy other than *coram nobis* is more appropriate. Thus, your motion for leave is respectfully denied.

Sincerely,



Megan C. White
Law Clerk to the Honorable Carmen Mullen
Fourteenth Judicial Circuit

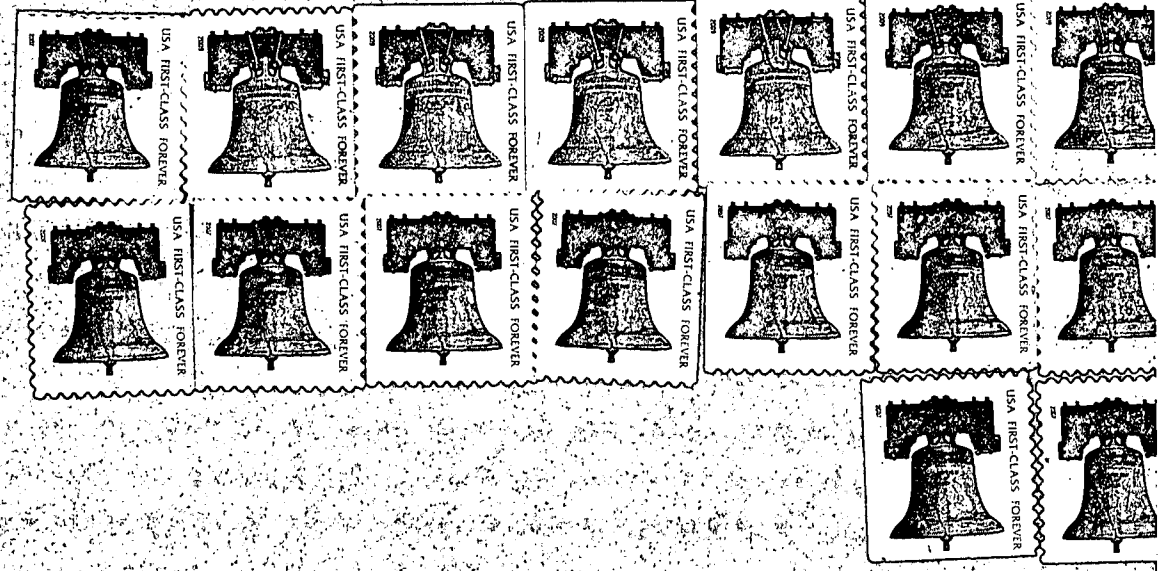
#10168-171

Linyard

Number:

Correctional Institution

7509



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CERTIFIED MAIL

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