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The State Of South Carolina
For The State Supreme Court

Antonio Jacobs,
Applicant.

vs.

South Carolina,
Respondent.

North Judicial Circuit S.C. SUPREME COURT

Motion For New Trial And Relief From
Judgement

2015-CP-18-2086

Honorable Supreme Court Justices:

Please Take Notice, that applicant files this motion Pursuant too South Carolina Code Ann. Sec. 18-7-160(cum. Supp. 17) South Carolina Civil Procedure Rule 60(b) Seeking court too remand case for hearing in lower, or in alternative, order full briefing on question herein. As this is a novel question of law and has exceptional importance.

Question Presented:

Whether Threshold Drug Amount Constitutes An Element Of Drug Trafficking Which Must Be Charged In Indictment And Proved Beyond A Reasonable Doubt?

Applicant argues that Apprendi v. New Jersey, 530 U.S. 466 (2000) renders South Carolina Code Ann. Sec. 44-53-375(cum. Supp. 16) facially unconstitutional.

In Apprendi, the Supreme Court held that "other than the fact of a

Prior conviction, any fact that increases the Penalty for a crime beyond the Prescribed statutory maximum must be submitted to the Jury, and Proved beyond a reasonable doubt" Apprendi, id.,.

The conviction and sentence, or at a minimum this sentence is invalid because a specific threshold drug quantity was not alleged in the indictment and the Jury was not required to make a finding regarding specific threshold drug quantity beyond a reasonable doubt. See, United States v. Cotton, 535 U.S. 625(2002)

The error at issue in this case is a sentencing error only in the sense that it can be remedied by vacating applicant sentence and remanding for re-sentencing. But, unlike the usual sentencing error, the root of this error is not a simple failure to calculate the correct sentence for the crime which applicant has been charged and convicted. Rather, the error here rests on the General Sessions court decision to impose a sentence for a crime which he was never charged or convicted. Imposition of such a is antithetical to our system of Justice. Deprives applicant of the most fundamental of rights. The right to be tried and convicted only on charges Presented in an indictment returned by a Grand Jury.

Moreover, because the Sixth Amendment demands that an accused "be informed of the nature and cause of accusation" against him the "indictment must set forth every ingredient of which the offense is composed" See, United States v. Cruikshank, 92 U.S. 542(1875) This notification allows the accused to prepare a defense as to every element of the indicted crime, or, after considering the charged elements and maximum Penalty Permitted under indictment, allows him to forgo trial and Plead Guilty. See, Cole v. Arkansas, 333 U.S. 196(1948)