

SOUTH CAROLINA SUPREME COURT
COLUMBIA, SOUTH CAROLINA

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S.C. SUPREME COURT

In re: Duval M. Cooper v. State, 2018-001925

To This Honorable SUPREME COURT;

In accordance with this Court's rule regarding filing an appeal from the particular type and kind of final order by a lower court. Appellant was asked to file sufficient explanation pursuant to Rule 243, in order for this Court to determine whether a appeal should be allowed.

First the error here being in violation of Appellant's Fifth, Fourteenth, and Sixth Amendment Constitutional rights, under Federal law, is not and should not be a new phenomenon in the understanding of any judiciary. At least since the groundbreaking decision in Appendix v. New Jersey, 530 U.S. 466 (2000); Blakeley v. Washington, 542 U.S. 296 (2004); and Booker v. United States, 543 U.S. at 244 (citing Appendix v. New Jersey).

In Appellant's case here, " he was notified under the Indictment Clause of the Fifth and Fourteenth Amendment, of the United States Constitution", he would be tried or, could plead guilty under the South Carolina drug trafficking statute (44-53-370(e)), of possessing "*four grams or more of heroin*", and "*10 grams or more of methamphetamine*". However, at sentencing, the court held the Appellant responsible for "*28 to 100 grams of meth*", *as well as an increased amount of heroin*, which exposed the Appellant to a mandatory minimum sentence of twenty-five years.

Because the established laws on this subject is clear and unambiguous. The error in this case is a "**jurisdictional one**", when considering the plain language of the United States Supreme Court, while carving out these constitutional protections and guarantees. In the Court's language of Blakeley v. Washington, 2004, for which presented as here, a statutory dilemma of what an accused could be held responsible for. The Court clearly referred to the "**charging instrument**", as the gateway for the proper

introduction of evidence, and the finding by the jury beyond a reasonable doubt.

In drug cases, the United States Supreme Court instructed, “ **specific drug quantities**” must be **treated as elements of the drug offense, included in the Indictment, submitted to the jury, and proven beyond a reasonable doubt. See U. S. v. Promise, 255 F.3d 150 (4th Cir. 2001).**

Here, the Due Process Clause of the Fifth and Fourteenth Amendment, under the United States Constitution. Required prosecutors to compile a Indictment to be a plain concise statement on the elements of the offense charged without confusion. And without any confusion, the Indictment in this case charged **10 grams or more**. To which controls the sentence exposure being **“3 to tens years”**.

Yet the sentencing sheet without proper **authority or jurisdiction**, changed the terms of the Indictment to this new heightened amount of drugs from **“10 to 28” to a new “28 to 100”**. Which is a blatant disregard for federal law and Appellant’s constitutional protections and guarantees.

Finally, the states would argue that the evidence coupled with the jury's finding allowed for the increased amount. Such an argument failed under the United States Supreme Court, when the defendant **“was not so charged”**. In the plain language of **Blakeley**; “ when the sentence is based on facts not charged, or the jury failing to find, the court exceeds it's proper role of authority” if the sentence exceeds what the accused is exposed to according to the indictment.

Finally, the state's reliance on the 10 gram or more, to mean over 28 grams. Minimizes the legislative function of South Carolina's General Assembly. Where they enacted the 10 grams or more to mean up to, but not in excess of 28 grams. Giving the prosecutors a graduated statutory scheme, if the evidence intending to be introduced involved graduated amounts of drugs. What the law does not do is give them the power to charge “ breaking and entering, then on the sentencing sheets, change it to first degree burglary”. For that would be deemed an impermissible constructive amendment of the Indictment, outside the presence of the grand jury.

Wherefore, under either circumstance above, nothing charged in this case permits the court to have imposed a **“ mandatory 25 years”**. And based on the questionable authority to have done so, is why this Court should allow an appeal to further brief this matter. Or any immediate relief this Honorable Court may find necessary, in the interest of justice.

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s/ Duval M Cooper

Duval M. Cooper

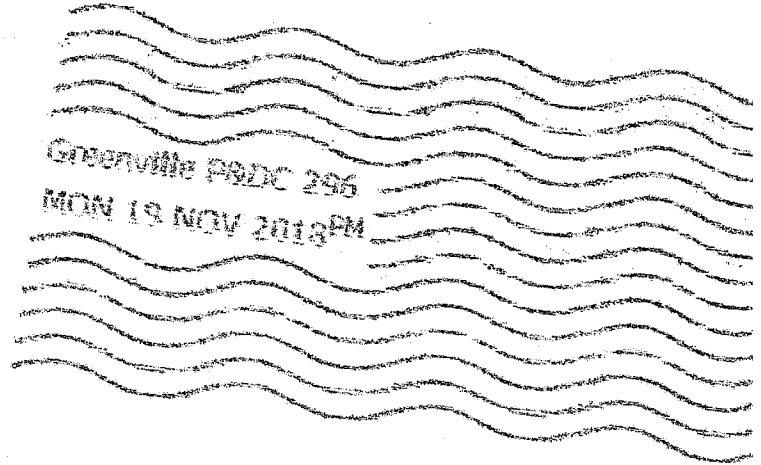
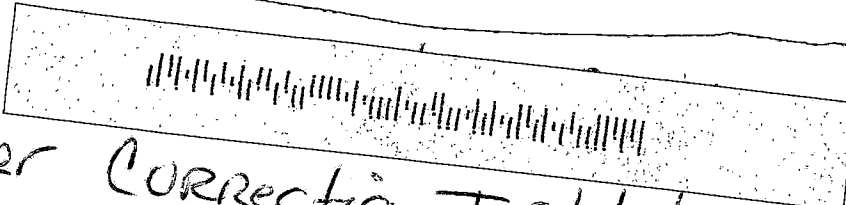
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