

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Memorandum to Charleston County
Honorable Maite Murphy, Circuit Court Judge

ANTHONY JEROME HEYWARD, PETITIONER

V.

RECEIVED

DEC 17 2018

STATE OF SOUTH CAROLINA,

RESPONDENT

S.C. SUPREME COURT

APPELLATE CASE NO 2018 000733

Memorandum

STATEMENT

In May of 2010, the Charleston County Grand Jury indicted petitioner, Anthony Jerome Heyward, for trafficking Cocaine in excess of 28 grams, and possession with intent to distribute within the proximity of a park, Indictment #2010-GS-10-3194, 3195. On May 16, 2011, petitioner appeared before the Honorable Deadra L. Jefferson and pled guilty to trafficking Cocaine 10-28 grams, Second offense. Marybeth Mullaney represented petitioner at the guilty plea. Stephanie Linder prosecuted the Case. Pursuant to negotiation between petitioner and the State, Judge Jefferson sentenced petitioner to twelve (12) years and the State dismissed the proximity charge. Petitioner did not appeal the conviction or sentence.

On April 18, 2012, petitioner filed an application for post-conviction relief (PCR). The State filed a return on November 7, 2017. On February 2, 2018, an evidentiary hearing was held before the Honorable Maite D Murphy. Christopher L. Murphy represented petitioner at the PCR hearing. Rasheeda Cleveland represented the state. In a written order signed on March 29, 2018, Judge Murphy denied relief and dismissed the application. A timely notice of intent to appeal was served on April 19, 2018. This petition for writ of memorandum follows.

Issue Presented

Did the PCR Judge err in refusing to find plea Counsel ineffective for failing to move to quash the indictment. Where the Court lacked subject matter jurisdiction, because the evidence don't support the indicted Offense code of law, due to the quantity involved.

Argument

Petitioner alleged the Counsel was ineffective for failing to move to quash the indictment and trial Court lacked subject matter jurisdiction to accept his guilty plea. Petitioner indicted on excess 28 grams which stated in the language in the body indictment (App p3) Petitioner indictment is defective which the evidence don't support the indicted offense Code of Law. That's the point petitioner is making about his indictment. Petitioner was apprehend with 143.8 grams of cocaine. According to Charleston police Department forensic Services Divison, laboratory examination Result of Cocaine is 137.78 grams. Which petitioner evidence inside the bracket of excess hundred grams or more, but less than two hundred grams. The Grand jury indicted petitioner more than 28 grams third offense. Which petitioner face the minimum of 25 years on a violent crime. But due to petitioner sentence sheet in the Court of General Session in violation of 44-53-370(e)(2)(B) 1 (App p4) The bracket petitioner indicted on (B) Twenty eight grams or more but less than hundred grams. (1) for a first offense a term of imprisonment of not less than seven years nor more than twenty-five year, so 7 years should be the minimum petitioner should be facing on a violent crime. But Grand Jury indicted petitioner on third offense. According to the Charleston police Department General Session Court information

form. Charge title: Trafficking Cocaine over hundred grams. Therefore, the information don't agree with indicted offense either. The evidence is adduced for proof to show court lacked Subject matter jurisdiction to ~~impose~~ sentence. Counsel Marybeth Mullaney have knowledge of that Counsel stated "I think over 140 gram of cocaine that was in that bag" (App p32 line 15-16) Counsel could have made the challenge to the sufficiency of indictment Counsel made petitioner plead guilty knowing the element of the offense is not intended to be charged. The indictment fail to state the necessary element of the offense. Plea Counsel testified at the PCR hearing. When asked if she saw any basis for challenging the indictment she answered "I did not, no" (App p33 line 22-24) In the order of dismissal the PCR Judge wrote:

Counsel also testified that she saw no basis for challenging the indictment and felt it was in Applicant [sic] best interest to take the plea deal. This Court finds that where an indictment is phrased substantially in the language of the statute that creates and define the offense is ordinarily sufficient. *Koon v. State*, 358 S(359 (2004) Moreover, an indictment is sufficient to convey jurisdiction if it appraises the defendant of the element of the offense intended to be

Charged and circumstances he must be prepared to defend. The Court further finds that the indictment in Applicant's case were sufficient.

The PCR Judge erred. When ruling that Counsel was not ineffective in accordance with Strickland when Counsel did not timely object to indictment failing to move to quash indictment. Knowing that petitioner was illegally charged, the Court lack subject matter jurisdiction from this point and sentence is therefore null and void.

The guilty plea in the present case was not entered voluntarily, knowingly and intelligently because petitioner was unaware of the ability to challenge the indictment. Counsel's failure to move to quash the indictment affected the outcome of the plea process. There is a reasonable probability that if petitioner had been advised about challenges to the indictment, he would have made the challenges.

S.C. Code 17-19-90

Of the S.C. which provides; every objection to any indictment for any defect apparent on the face thereof shall be taken by demurrer or on motion to quash such indictment before the jury shall be sworn and not afterward

"The true test of the sufficiency of an indictment is not whether it could have been more definite and certain but whether it contains the necessary elements of the offense intended to be charged and sufficiently apprise the defend of what he must be prepared to meet."

Due to the counsel testimony it don't even add up when ask just the underlying facts, just briefly. Counsel stated: "Anthony had, I believe it was, a brown paper bag in his pocket"

(App p 32 line 13-14) According to petitioner affidavit it was separate plastic bags in his pocket. At the time of apprehend petitioner didn't even had dollar in his possession.

Following to the last question also asked, did you feel it would be in Mr. Heyward's best interest to take the plea? Counsel stated:

"I did" Well do to Counsel defense for petitioner was all a cover up. Due to the facts, Judge Jefferson, Solicitor Stephanie Linder and Counsel Mary Beth Mullaney. The judge told them to step inside her Chamber. Were petitioner heard them discussing that petitioner wasn't fit for S.C code of law. Attending to petitioner prior drug conviction judge told the the solicitor she couldn't bring it up in trial. All that was said before the jury was selected so they had knowledge of my insufficient indictment. As petitioner look at his record 400 grams of cocaine petitioner never had went to a possession and petitioner got 18 months probation for that.

Conclusion

Based on the above argument, this Court should grant the petition for written memorandum. To rule the petitioner has proven that he was deprived due process and equal protection of law in accordance to the Constitution. This Case should be reversed and remanded.

Dated:
December 5, 2018

Respectfully Submitted,
Anthony J. Heywood

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DEC 17 2018

S.C. SUPREME COURT

20100200983



Charleston Police Department GENERAL SESSION COURT INFORMATION FORM

(Cover/Bond Hearing/Charge)

Case Number 1002764	Team or Unit T-1
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DEFENDANT	Name (Last, First, Middle) Heyward, Anthony Jerome	Sex Male	Race Black	DOB 07-27-1986	ID-Number
	Address 2328 Cambridge Street	City N. Charleston	State SC	Zip 29405	Phone
	Arrest Location 130 North Romney Street Charleston, SC 29403			Time 1530	Date 02-18-2010

BOND HEARING & CHARGE INFORMATION	Charge Title/ Location	Statute	Case #	Warrant/ Ticket	Bond Amount
	Trafficking Cocaine over 100 gr. 130 N. Romney St. Chas, SC 29403	44-53-370	1002764	K609954	75.000
	P.W.I.D. Cocaine Close Prox. to Park 130 N. Romney St. Chas, SC 29403	44-53-445	1002764	K609955	25.000

Bond Hearing Magistrate <i>Lombard</i>	GS Roll Call Date 4-23-10	Preliminary Hearing Magistrate <i>Gosnell</i>
--	-------------------------------------	---

Checklist	<input checked="" type="checkbox"/> Cover Sheet (3 Copies)	<input type="checkbox"/> All Supplemental Reports	<input type="checkbox"/> Victim Statement	<input type="checkbox"/> Additional Supl. Info.
	<input checked="" type="checkbox"/> Booking Sheet (4 Copies)	<input type="checkbox"/> Victim Information Sheet (White Copy)	<input type="checkbox"/> Defendant Statement	<input type="checkbox"/> NCIC Record Check (DL Record if Applicable)
	<input checked="" type="checkbox"/> Affidavit (4 Copies)	<input checked="" type="checkbox"/> Witness List	<input type="checkbox"/> Served Warrant: Front & Affidavit (4 Copies)	<input type="checkbox"/> M/C Package (If G/S Related)
	<input checked="" type="checkbox"/> Incident Report (1 Copy)	<input type="checkbox"/> Co-Defendants	<input type="checkbox"/> Traffic Ticket (green & 2 Copies)*	<input type="checkbox"/> Bond Condition Request Form (Optional)
				<input type="checkbox"/> Copy of Property Sheet (Optional)

Arresting Officer(s) (Type Name & Sign) P.O. Bailey
Reviewing Supervisor (Type Name & Sign) Sgt. McBrayer
Bond Hearing transport officer. Upon return to CPD distribute copies to ID, press board and return to originating Team for review:
Transport Officer (sign)

All arresting officers are to be notified for Preliminary Hearings, Grand Jury or other court appearances:
Originating Team review. Review package and ensure all required documents are present for Solicitor case preparation. Submit a complete package to Central within 48 hours of Bond Hearing.
Reviewing Team Supervisor (sign)

10 FEB 2010 2:48



CHARLESTON POLICE DEPARTMENT
FORENSIC SERVICES DIVISION

180 Lockwood Boulevard
 Charleston, SC 29403
 (843) 792-4588

SUB 20100700983



CASE NUMBER: 1002764	LAB NUMBER: 050100305	DATE 19 February 2010	Page: 1 of 1
TO: Officer Thomas Bailey Team 1	LOCATION: 130 North Romney Street	SUBJECT(S): Anthony Heyward	
		VICTIM(S): N/A	

CONFIDENTIAL This is an official report of the Charleston Police Forensic Laboratory and is to be used in conjunction with an official criminal investigation. The items and the results of laboratory examinations are reported below:

ITEM(S) SUBMITTED	RESULTS OF EXAMINATION(S)	METHODS
Plastic bags with white powder (5)	Cocaine 137.78 grams	3, 4, 5

On 19 February, 2010, the above item(s) were received from Linda Wilson

to the Laboratory for examination(s). This (these) item(s) was (were) tested using accepted reliable forensic procedures and the above results reflect conclusions based on the examination(s).

Methods:

1 - Visual Examination	2 - Published Literature	3 - Color Test
4 - FT-IR	5 - GC/MS	6 - IR
7 - Microscopy	8 - Catalytic Test	9 - AB Spot Test
10 - ABACard PSA Test	11 - ABACard Hema Trace	12 - N/A

Elizabeth A. Wiggins-Mitchell
Chemical Analyst

19 February 2010

Date

Property / Evidence (View)

Case # 10-02764 Agency CPD

Page 1 Page 2 Page 3 DRUG / NARCOTICS VIOLATION 4888

Category: EVID PR # 3344 1 1 Ref'g Class: DRUGS Case Officer: DALEY, THOMAS B

Owner: HEYWARD, ANTHONY JER Race B Sex M DOB 07/27/1986 Age 23

Property: COCAINE Make: Model: Yr: 0 Color: Serial #: Qty: 57.200 UM OM Value: Lic #/SI: Caliber: Drug Test Y No Hazardous N

Building: MAIN Room: DRUG Bin: BOX4 OAN: Status: GS 02/18/2010 Next Action: 08/18/2010 TO BE FOLLOWED UP Offense Code: 35A

Disposition: // :: Next Regal Option View Edit Such

LINDA FAY WILSON (WILSON-CPD) Copyright © 1994-2011, SunGard Public Sector, Inc.

Property / Evidence (View)

Case # 10-02764 Agency CPD

Page 1 Page 2 Page 3 DRUG / NARCOTICS VIOLATION 4888

State # Property Code Received: WILSON, LINDA M 02/18/2010 05:14

NIC # NOIC Code Re-submit // ::

Voucher # 3048 CCR Sol / Clear Default Barcode Printer

Sz From: HEYWARD, ANTHONY JER Race B Sex M DOB 07/27/1986 Age 23

Officer Assignment: Bureau Divan Team Shift

Audit Info: Add 02/18/2010 15:48 BAILEY

Disposition: // :: Next Regal Option View Edit Such

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Property / Evidence [View]

Case # 10-02764 Agency CPD
 Involve Maps Barcode Barcode Label Custody Tracking Report

Page 1 Page 2 Page 3 DRUG / NARCOTICS VIOLATION 4899

Category EVID PR # 3345 2 1 RefPg Check DRUGS CaseOfficer BAILEY, THOMAS B

Owner HEYWARD, ANTHONY JER Race B Sex M DOB 07/27/1986 Age 23

Property COCAINE Make Model Yr 0 Color

Serial # Qty 72,900 LM CM Value

Lic #/St Color Drug Test Y Bio Hazardous N

Building MAIN Room DRUG Bn BOX OAN

Status OS 02/18/2010 Next Action 06/18/2010 TO BE FOLLOWED UP Offense Code 35A

Disposition //

Need Request Option View Edit Scrn

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Property / Evidence [View]

Case # 10-02764 Agency CPD
 Involve Maps Barcode Barcode Label Custody Tracking Report

Page 1 Page 2 Page 3 DRUG / NARCOTICS VIOLATION 4899

State # Property Code Received WILSON, LINDA M 02/18/2010 05:15
 NIC # NOC Code Re-submit //

Voucher # 3049 CCB Set / Clear Default Barcode Printer

Se From HEYWARD, ANTHONY JER Race B Sex M DOB 07/27/1986 Age 23

Officer Assignment Bureau Division Add 02/18/2010 19:51 BAILEY T
 Team Shift

Disposition //

Need Request Option View Edit Scrn

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Property/Evidence [View]

Case # 10-02764 Agency CPD
 Page 1 Page 2 Page 3 DRUG/NARCOTICS VIOLATION 4990

Category EVD PR # 3346 3 1 (Ref) Class DRUGS Case Officer DALEY, THOMAS B

Owner HEYWARD, ANTHONY JER Race B Sex M DOB 07/27/1986 Age 23

Property COCAINE Make Model Yr B Color
 Serial # Qty 13.700 LM OM Value
 Lic #/St Caliber Drug Test Y Bio Hazardous N

Building MAIN Room DRUG Bn B0X4 OAN
 Status OS 02/19/2010 Next Action 08/19/2010 TO BE FOLLOWED UP Offense Code 35A

Disposition // : : [Next] [Reset] [Option] [View] [Epl Scrh]

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Property/Evidence [View]

Case # 10-02764 Agency CPD
 Page 1 Page 2 Page 3 DRUG/NARCOTICS VIOLATION 4990

State # Property Code Received WILSON, LINDA M 02/19/2010 05:17
 NC # NOC Code Re-submit // : :
 Voucher # 3050 OCB Sol / Clear Default Barcode Printer

Sz From HEYWARD, ANTHONY JER Race B Sex M DOB 07/27/1986 Age 23

Officer Assignment
 Bureau Division
 Team Shift

Aux Info
 Add 02/18/2010 19:55 BAILEY T

Disposition // : : [Next] [Reset] [Option] [View] [Epl Scrh]

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Property / Evidence [View] 4891

Case # 10-02764 Agency CPD

Page 1 Page 2 Page 3 DRUG / NARCOTICS VIOLATION

Category EVID PR # 3347 4 1 RePkg Class OTHER WEAPONS CaseOfficer DALEY, THOMAS D

Owner _____ Race _____ Sex _____ DOB / / Age _____

Property LASER CARTRIDGE Make _____ Model _____ Yr 0 Color _____

Serial # H09-133051 Qty 1.000 UM DU Value _____

Lic #/SI _____ Caliber _____ Drug Test _____ No Hazardous Y

Building MAIN Room _____ Bin _____ OAN _____

Status TED 02/19/2010 Next Action 02/19/2010 Offense Code 35A

Disposition DESTROYED 02/19/2010

Next Reset Option View Exit Strch

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Property / Evidence [View] 4891

Case # 10-02764 Agency CPD

Page 1 Page 2 Page 3 DRUG / NARCOTICS VIOLATION

State # _____ Property Code _____ Received WILSON, LINDA M 02/19/2010 05:17

NIC # _____ NOC Code _____ Re-entrant / /

Voucher # 3050 CCEI _____ Set / Clear Default Barcode Printer

Se From _____ Race _____ Sex _____ DOB / / Age _____

Officer Assignment Bureau _____ Divn _____

Team _____ SNR _____ Audit Info Add 02/18/2010 19:55 BALEYT

Disposition DESTROYED 02/19/2010

Next Reset Option View Exit Strch

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User: WILSONL.

CHARLESTON POLICE DEPARTMENT

01/28/2011 09:17:00

Chain of Custody Report

Control Number: 3344 Case #: 10-02764

Date/Time	In/Out	Released By	Released To	Purpose
02/19/2010 07:37	O	WILSON, LINDA M	MITCHELL, ELIZABETH N	LAB
03/08/2010 09:11	I	MITCHELL, ELIZABETH N	WILSON, LINDA M	STORAGE
08/16/2010 09:02	O	WILSON, LINDA M	LINDER, STEPHANIE	INVESTIGATION
08/16/2010 09:10	I	LINDER, STEPHANIE	WILSON, LINDA M	STORAGE
09/07/2010 09:10	O	WILSON, LINDA M	KELLY, RYAN	GENERAL SESSION COURT
11/19/2010 14:04	I	KELLY, RYAN	ROE, LORI	STORAGE

Chain of Custody Report

Control Number: 3345 Case #: 10-02764

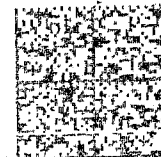
Date/Time	In/Out	Released By	Released To	Purpose
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03/08/2010 09:11	I	MITCHELL, ELIZABETH N	WILSON, LINDA M	STORAGE
08/16/2010 09:02	O	WILSON, LINDA M	LINDER, STEPHANIE	INVESTIGATION
08/16/2010 09:10	I	LINDER, STEPHANIE	WILSON, LINDA M	STORAGE
09/07/2010 09:10	O	WILSON, LINDA M	KELLY, RYAN	GENERAL SESSION COURT
11/19/2010 14:04	I	KELLY, RYAN	ROE, LORI	STORAGE

Chain of Custody Report

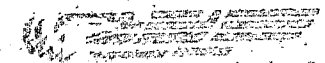
Control Number: 3346 Case #: 10-02764

Date/Time	In/Out	Released By	Released To	Purpose
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03/08/2010 09:11	I	MITCHELL, ELIZABETH N	WILSON, LINDA M	STORAGE
08/16/2010 09:02	O	WILSON, LINDA M	LINDER, STEPHANIE	INVESTIGATION
08/16/2010 09:10	I	LINDER, STEPHANIE	WILSON, LINDA M	STORAGE
09/07/2010 09:10	O	WILSON, LINDA M	KELLY, RYAN	GENERAL SESSION COURT
11/19/2010 14:04	I	KELLY, RYAN	ROE, LORI	STORAGE

J Heyward #345985
C.I Oak A 32
d Mine HWY
SC 29067



U.S. POSTAGE PITNEY BOWES



ZIP 29223 \$001.63⁰
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