Duval Cooper # 340970
B.R.C.I. 4460 Broad River Rd.
Marion # 259
Columbia, S.C. 29210

December 28, 2018

The Hon. Daniel E. Shearouse
Clerk, S.C. Supreme Court
P.O. Box 11330
Columbia, S.C. 29211

RE: Notice Of Appeal And Explanation
Cooper v. State
Lower Court Case # 2017-CP-46-1923
Appellate Case # 2018-1925

Dear Hon. Shearouse;

In a letter dated December 10, 2018 I informed your office that when I received the proposed Final Order from the lower court in this (PCR) matter, I prematurely submitted my notice of appeal and explanation to your office. Also, in the December 10, 2018 letter, I asked your office if they want to hold the appeal in abeyance until the signed copy of the Order is received by your office? Or if they wanted me to resubmit the notice of appeal and explanation with the signed Order?

On December 18, 2018 I received the signed copy of the Final Order from the Hon. Daniel D. Hall. Enclosed is the signed copy of the Final Order along with the notice of appeal and explanation. If you have any concerns with this filing, please inform me in accordance.

Sincerely,
Duval Cooper
Duval Cooper #340970

CC: Janell H. Gregory Esq. (Letter Only)
(Office Of The Attorney General)

STATE OF SOUTH CAROLINA COUNTY OF YORK	IN THE COURT OF COMMON PLEAS FOR THE SIXTEENTH JUDICIAL CIRCUIT
Duval M. Cooper, #340970 Applicant, v. State of South Carolina, Respondent.	2017-CP-46-01923 **FINAL ORDER OF DISMISSAL**

This matter comes before this Court by way of an application for post-conviction relief filed by Duval M. Cooper (Applicant) on May 22, 2017. Respondent served its return and motion to dismiss on October 25, 2017, requesting the application be summarily dismissed as successive to Applicant's prior post-conviction relief action and filed beyond the statute of limitations.

Pursuant to Respondent's motion and all pleadings and records attached thereto, this Court issued a Conditional Order of Dismissal signed, October 30, 2017, and filed November 8, 2017, provisionally denying and dismissing this action, while giving Applicant twenty days from the date of service of said order to show why the dismissal should not become final. Attached to this Final Order of Dismissal and incorporated herein by reference is a certificate of service, serving the above- mentioned Conditional Order of Dismissal on Applicant on November 30, 2017.

On November 20, 2017, Applicant filed a document entitled "Petitioner's Pro-Se Opposition to State's Conditional Dismissal Order." In this response, he argued, "this is not a case for which can be summarily dismissed where there appears before this court. A challenge that questions the trial court's jurisdiction with respect to its sentencing authority. Coupled with the exposed record of; 'Prosecutorial Misconduct'. A Due Process Violation; where the Solicitor

intentionally changed the elements as charged to reflect an uncharged crime for sentencing purposes. Knowing, or should have been aware, 'his conduct amounted to outrageous government conduct'. Which is 'shocking to the Universal Sense of Justice and Fairplay'. See Bivens v. Six Unknown Agents, 403 U.S. 388, 91 S. Ct. 1999 (1970)."

S.C. Code § 17-27-45(A) states, "[a]n application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later." However, under S.C. Code § 17-27-45(c), a newly discovered evidence claim can be timely raised within one year of actual discovery or within one year of when, by the exercise of due diligence, such evidence could have been ascertained. Summary dismissal of a PCR application is appropriate when the application is filed after the statutory filing period. Leamon v. State, 363 S.C. 432, 611 S.E.2d 494 (2003). This Court finds Applicant has not set forth sufficient reason to excuse his non-compliance with the statute of limitations.

This application is successive to Applicant's previous post-conviction relief application. Courts disfavor successive applications and place the burden on applicants to establish that any new ground raised in a subsequent application could not have been raised in a previous application. See Foxworth v. State, 275 S.C. 615, 274 S.E.2d 415 (1981); Arnold v. State, 309 S.C. 157, 420 S.E.2d 834 (1992). Applicant failed to establish any sufficient reason why he could not have raised his current allegations in his previous application for post-conviction relief.

After review of Applicant's response to the Conditional Order of Dismissal, along with the pleadings, this Court finds that Applicant has failed to show why his application should not

be dismissed. Applicant has failed to provide any legal explanation that would allow him to bypass the statute of limitations and successiveness.

IT IS THEREFORE ORDERED that, for the reasons set forth in this Court's Conditional Order of Dismissal, this action is hereby denied and dismissed with prejudice.

This Court hereby advises Applicant that he must file and serve a Notice of Appeal within thirty days of the service of this order if he wishes to secure appellate review. See Rule 203, SCACR. Applicant's attention is directed to Rule 227, SCACR., for the procedures following the filing and service of the notice of appeal.

AND IT IS SO ORDERED this 3rd day of December, 2018.

DANIEL D. HALL
Chief Administrative Judge
Sixteenth Judicial Circuit

York, South Carolina.

SOUTH CAROLINA SUPREME COURT

COLUMBIA, SOUTH CAROLINA

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 consise 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.

Filed 1-2-19

~~11/19/2018~~

S/ Duval M. Cooper

Duval M. Cooper

BRCI

4460 Broad River Rd.

Columbia, S.C. 29210

STATE OF SOUTH CAROLINA)

COUNTY OF YORK)

COURT OF COMMON PLEAS

SIXTEENTH JUDICIAL CIRCUIT

Duvall M. Cooper, #340970,

Applicant,

Vs.

Case No. 2017-CP- 46-01923

State of South Carolina,

Respondent /

INTENT TO APPEAL

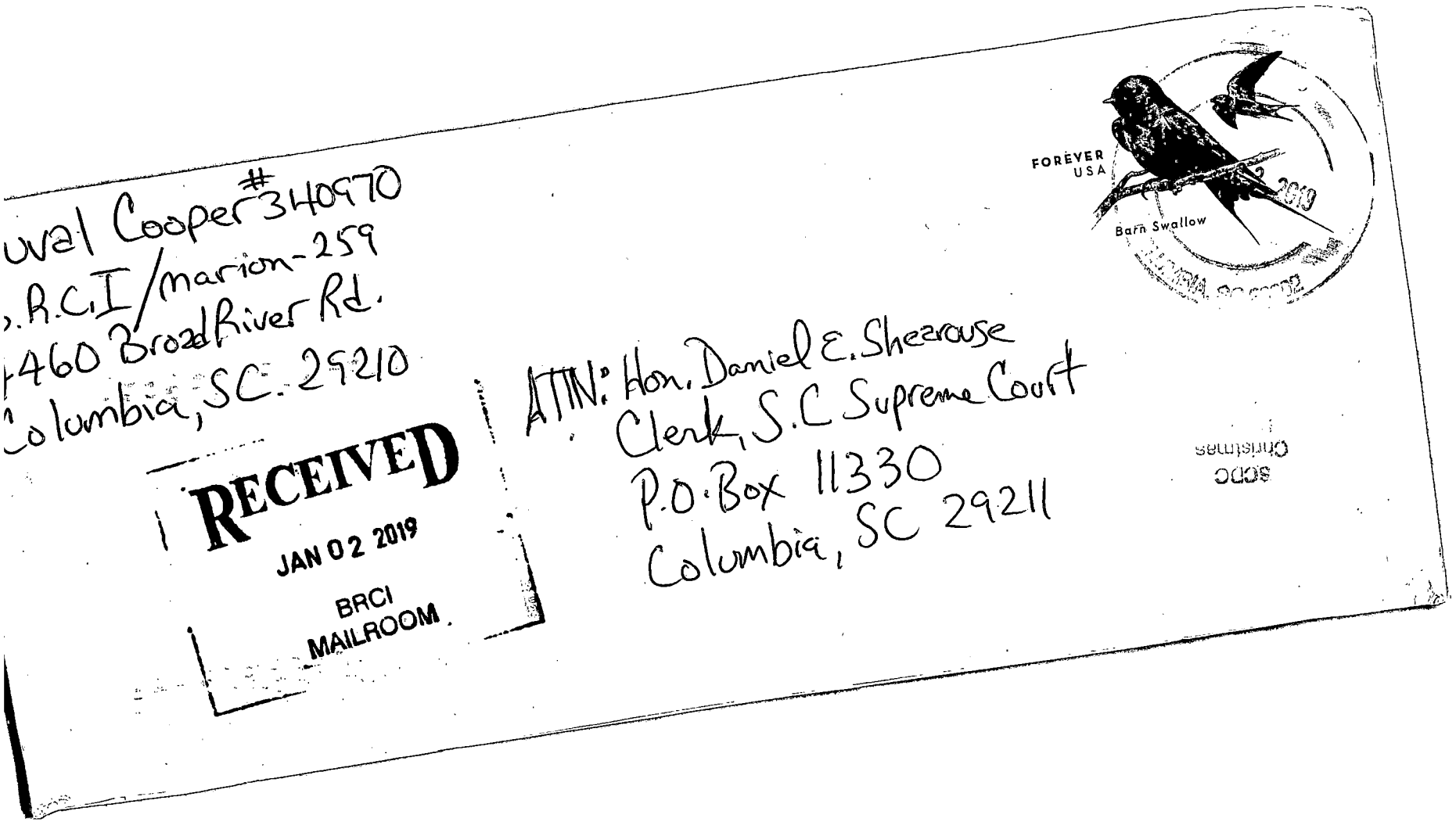
This matter is being brought to the attention of this honorable court, by way of a pro-se Applicant that intends to obtain appellate review of the final order issued in the above captioned case. Applicant brings this appeal based on the court's finding that his PCR should be summarily dismissed based on successiveness, whereas, this Court's decision for adequate reasons, may provide a basis to overcome the gatekeeping provisions of successive applications. See Robinson v. State, 418 S.C. 505, 795 S.E.2d 29 (S.C. 2016).

For these reasons, the Applicant intends on securing his appeal rights in to the above lower court ruling.

Respectfully Submitted,

s/ Duval Cooper

Duvall Cooper #340970


uval Cooper #340970
.R.C.I/marion-259
460 Broad River Rd.
Columbia, SC. 29210
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JAN 02 2019
BRCI
MAILROOM
ATTN: Hon. Daniel E. Shearouse
Clerk, S.C Supreme Court
P.O. Box 11330
Columbia, SC 29211
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