

STATE OF SOUTH CAROLINA )  
 YORK COUNTY )  
 )  
 State of South Carolina, )  
 )  
 )  
 vs. )  
 )  
 Duane Arness Harrison )  
 )  
 )  
 Defendant/Movant. )  
 \_\_\_\_\_ )

COURT OF GENERAL SESSIONS  
 SIXTEENTH JUDICIAL CIRCUIT

**ORDER DENYING DEFENDANT/MOVANT’S  
 MOTION TO VACATE CONVICTION AND  
 SENTENCE**

Amended Indictment No.: 2013-GS-46-02041

This matter came before the Court on February 16, 2021 by way of Defendant/Movant’s Motion to Vacate Conviction and Sentence. At the hearing, the State was represented by Matthew Shelton and Defendant/Movant was represented by Glenn Walters. Defendant/Movant waived his right to be present at the hearing in a writing that he provided to his attorney.

In May 2013, Defendant/Movant was indicted for trafficking in cocaine 400 grams or more. However, at his plea hearing on September 2, 2014, Defendant/Movant pled no contest to conspiracy to trafficking in cocaine 28 to 100 grams. The State did not seek a new indictment reflecting the reduced drug amount, and Defendant/Movant did not waive presentment to the grand jury on the amended charge. In his motion, Defendant/Movant argues that the State divested the Court of subject matter jurisdiction by failing to seek a new indictment.

The Court finds that the verbally amended indictment did not change the nature of the charged offense and that Defendant/Movant pled to a lesser-included offense of the crime charged. *See State v. Myers*, 313 S.C. 391, 393, 438 S.E.2d 236, 237 (1993) (finding amendments to indictments permissible “if they do not change the nature of the offense; the charge is a lesser included offense of the crime charged on the indictment; or the defendant waives presentment to

the grand jury and pleads guilty”).

First, an amendment changes the nature of an offense if it increases the penalty or changes an element of the offense. Myers, 313 S.C. 391, 393, 438 S.E.2d 236, 237; Clair v. State, 324 S.C. 144, 478 S.E.2d 54 (1996). In the instant case, the amended indictment decreased the amount of drugs and the possible penalty. Further, the amended indictment only altered the amount of drugs, rather than an element of the offense. *See* S.C. Code Ann. Section 44-53-370. As such, the verbally amended indictment did not change the nature of the charged offense.

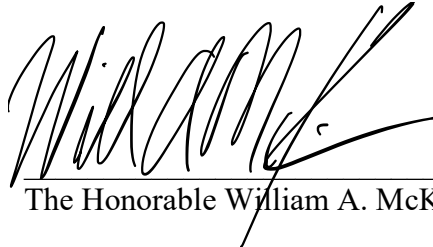
Second, the “test for determining when a crime is a lesser-included offense of the crime charged is whether the greater of the two offenses includes all the elements of the lesser offense.” State v. Suttles, 279 S.C. 87, 88, 302 S.E.2d 338 (1983) (citation omitted). Defendant/Movant was originally charged with trafficking in cocaine 400 grams or more in violation of S.C. Code Ann. Section 44-53-370(e)(2)(e). The verbally amended indictment changed the charge to conspiracy to trafficking in cocaine 28 to 100 grams in violation of S.C. Code Ann. Section 44-53-370(e)(2)(a). The plain language of S.C. Code Ann. Section 44-53-370 shows that it encompasses conspiracy drug charges. As such, the only difference between the lesser and greater charge is the reduced amount of drugs. Therefore, the greater offense includes all of the elements of the lesser offense, and Defendant/Movant was convicted of a lesser-included offense of the crime charged.

Clair v. State, relied upon by the movant, applies only to increases in possible punishment, not decreases, and has no application here.

For the reasons set forth above, Defendant/Movant's Motion to Vacate Conviction and Sentence is DENIED.

IT IS SO ORDERED.

February 18  
\_\_\_\_\_, 2021  
York, South Carolina

  
2761  
\_\_\_\_\_  
The Honorable William A. McKinnon