

19-8397
No.

ORIGINAL

FILED
APR 20 2020

OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN THE

SUPREME COURT OF THE UNITED STATES

Domenico Alexander Lockhart — PETITIONER
(Your Name)

vs.

Harvey, Clay, Superintendent — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Triford County Superior Court
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Domenico Alexander Lockhart

(Your Name)

75 Legend Road

(Address)

Lumberton N.C. 28358

(City, State, Zip Code)

910 618 5574

(Phone Number)

QUESTION(S) PRESENTED

- I. Whether under North Carolina and / or federal constitutional law and principles of due process, a charge of criminal conspiracy requires more than a wholly unsubstantiated assumption that the accused had an opportunity to collude, or probably colluded with someone else, to perform an unperfected criminal action.
- II. under this Court's holding in *Cole v. Arkansas*, 333 U.S. 196 (1948), where the Court left the question unanswered : Is it constitutional error to try a person for an uncharged offense at a trial of more than one charge even if the jury returns a formal verdict of not guilty on the uncharged offense?
- III. Is knowledge that a crime is being - or is about to be - committed, an element of drug-narcotic related offenses under the United States Constitution?
- IV. Is a defendant denied procedural and / or substantive due process of law when the State post-conviction court erroneously refuses to consider defendant's claim of fatally defective indictment depriving the trial court of jurisdiction, and such claim is not contingent upon preservation by objection and may be raised at any time per State Supreme Court and Court of Appeals precedent?

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

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IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix _____ to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

The opinion of the United States district court appears at Appendix _____ to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix 2 to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

The opinion of the Guildford County Superior court appears at Appendix 3 to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

JURISDICTION

For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was _____.

No petition for rehearing was timely filed in my case.

A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. __ A _____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

For cases from **state courts**:

The date on which the highest state court decided my case was 02 March, 2020. A copy of that decision appears at Appendix E.

A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. __ A _____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution, Amendment V:

No person shall be held to answer for a capital, or other infamous crime, unless on a presentment or indictment of a grand jury, . . . ; nor be deprived of life, liberty, or property without due process of law.

United States Constitution, Amendment VI:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury . . . , and to be informed of the nature and cause of the accusation; . . . and to have the assistance of counsel for his defense.

United States Constitution, Amendment XIV:

No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

Constitution of [the State of] North Carolina, Article 1, Section 1:

We hold it to be self-evident that all persons are created equal; that they are endowed . . . with certain inalienable rights; that among these are life, liberty, the enjoyment of the fruits of their own labor, and the pursuit of happiness.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Constitution of North Carolina, Article 1, Section 5:

Every citizen of this State owes paramount allegiance to the Constitution and government of the United States, and no law or ordinance of the State in contravention or subversion thereof can have any binding force.

Constitution of North Carolina, Article 1, Section 19:

No person shall be taken, imprisoned or disseized of his freehold, liberties, or privileges, . . . or in any manner deprived of his life, liberty, or property but by the law of the land. No person shall be denied the equal protection of the law; nor shall any person be subjected to discrimination by the State. . . .

Constitution of North Carolina, Article 1, Section 23:

In all criminal prosecutions, every person charged with crime has the right to be informed of the accusation . . . , and to have counsel for defense . . .

North Carolina General Statutes, Sec. 90-95 (h)(4)

North Carolina General Statutes, Sec. 90-95 (i)

STATEMENT OF THE CASE

Subsequent to a warrantless traffic stop and search, petitioner was arrested and charged with and indicted for the offenses of: (1) Trafficking Opium or Heroin by Possessing 28 Grams or More of Heroin; and (2) Conspiring To Commit Trafficking In Heroin By Possessing 28 Grams or More of Heroin, in a dual-count indictment. NO OTHER CHARGE WAS ALLEGED, AND NO OTHER INDICTMENT WAS ISSUED.

Petitioner was tried before presiding Superior Court judge Stuart Albright and a jury of twelve on July 10, 2013, on those two (2) charges upon plea of not guilty. The duly empaneled jury returned verdicts of: (1) Not Guilty, of Trafficking In Heroin; (2) Guilty, of Conspiring to Commit Trafficking In Heroin; and (3) Not Guilty, of Trafficking In Heroin B/c Transporting. (A CHARGE NEVER DIVULGED TO PETITIONER, OR DEFENSE COUNSEL, NEVER FORMALLY MADE, OR EVEN MENTIONED), whereupon, petitioner was immediately sentenced to a term of 225 month to 279 months (18.75 years to 23.25 years) in the North Carolina Department of Public Safety-Prisons. Petitioner appealed to the State Court of Appeals, which in an unpublished opinion, State v. Lockhart, — N.C. App. —, 762 S.E.2d 532 (2014), affirmed the conviction and sentence, discretionary review denied, 763 S.E.2d 385, — N.C.App. — (2014).

Petitioner's Motion for Appropriate Relief filed June 22, 2018, with amendments filed thereto on October 17, 2018 and January 9, 2019, was summarily denied by Judge Stuart Albright on January 28, 2019. His subsequent Motion for Appropriate Relief filed July 30,

STATEMENT OF THE CASE

2019, was summarily denied by Judge Susan E. Bray, Guilford County Superior Court Judge, certiorari was denied by the North Carolina Court of Appeals, on August 26, 2019, — N.C. App. — (2019). Discretionary review, was denied by the North Carolina Supreme Court. ■

REASONS FOR GRANTING THE PETITION

1. UNDER NORTH CAROLINA AND FEDERAL CONSTITUTIONAL LAW AND PRINCIPLES OF DUE PROCESS, A CHARGE OF CRIMINAL CONSPIRACY REQUIRES MORE THAN A WHOLLY UNSUBSTANTIATED ASSUMPTION THAT THE ACCUSED HAD THE OPPORTUNITY TO COLLUDE OR PROBABLY COLLUDED WITH SOMEONE ELSE, TO PERFORM AN UNPERFECTED CRIMINAL ACT.

Under both Federal and State law, a "conspiracy" is defined as "an agreement [or plan between 'two or more' persons, to perform an unlawful act, or to perform a lawful act in an unlawful manner." See *State v. Davis*, 236 N.C. App. 376 (2014); also see *Ziglar v. Abbasi*, 582 U.S. ___, ___ (2017) (slip opinion at 30) ("Conspiracy requires an agreement—and in particular an agreement to do an unlawful act—between or among two or more separate persons.").

In this instant action, the defendant-petitioner was stopped by police while driving on a public roadway, allegedly for a de minimis, non-reckless traffic violation. When permission to search the vehicle—blue Honda—was requested, it was immediately, unhesitatingly granted. While searching the vehicle's baggage compartment (trunk), the officers found within the confines of previously closed containers (suitcases, etc.) what was described by the police, as "28 or more grams of heroin, whereupon, Lockhart was arrested and jailed.

Plaintiff explained to the police that (1) the car did not belong to him, (2) that he was getting paid to drive the car to New Jersey, (3) that he had never opened or previously looked inside the car trunk or any container therein, and (4) that he had absolutely no knowledge or idea as to what was or might

be inside the trunk of the car. He also, to the best of his ability and knowledge, described to the officers, the identity of the individual that hired him to deliver the car, who, was not a close associate or friend of the petitioner. The officers had no interest in further investigating or determining the truth or falsity of such information. Based exclusively on the amount of contraband, Lockhart was charged with—and convicted of—conspiracy?

It is the law of this State that if an individual has in his possession, (or has access to) more of a particular drug than it is assumed that he can reasonably use at one time, he may be charged with conspiracy and/or trafficking in that drug. Such a law, without more, is at total odds with any concept of due process as there is absolutely no way to refute such accusation, and is wholly unconstitutional. This is apparent in the case before the Court, where the accused has adamantly, and consistently, denied any knowledge but has been held accountable because the police erroneously assumed that he possessed constructive knowledge of drugs. United States Constitution, Amnds. 5, 6, 14.

■

2. UNDER THIS COURT'S HOLDING IN THE UNANIMOUS DECISION IN COLE V.

ARKANSAS, 333 U.S. 196, IT IS CONSTITUTIONALLY PREJUDICIAL ERROR

TO TRY AN ACCUSED FOR AN UNCHARGED OFFENSE AT A TRIAL WHERE HE

IS TRIED ON MULTIPLE OFFENSES, EVEN IF THE JURY RETURNS A FORMAL

VERDICT OF INNOCENCE ON THE UNCHARGED OFFENSE.

In the case at bar, the petitioner was formally charged and

indicted on two (2) counts; however, the jury returned verdicts on three (3) counts. At no time, was the petitioner charged with the offense of "trafficking in heroin by transporting 28 grams or more of heroin," the uncharged count for which a verdict was rendered and returned in open court. Even though he was not convicted *per se*, on the unindicted charge, it is probable that, in reaching its decision on the other charges, the improperly introduced charge caused confusion for the jurors and wrongly influenced, *i. e.*, prejudiced the guilty verdict on the conspiracy charge in violation of his rights accorded by the 6th and 14th Amendments. *Accord North Carolina Constitution, Art. 1, sections 19, 23.*

This Court, in *Cole*, *supra*, unambiguously and unequivocally held that "The principle of due process is more clearly established than notice of the specific charge, and a chance to be heard in a trial of the issues raised by that charge... are among the constitutional rights of every accused in a criminal proceeding in all courts, Federal or state." *Id.*, at 2016 quoting *In re Oliver*, 339 U.S. 257, 273 (1948). See also *DeJonge v. Oregon*, 299 U.S. 353.

While not directly addressed, it is inferred in *Jonge* and *Cole* that to permit the jury to consider an offense, and return a verdict on an offense for which he was not charged constitutes a violation of procedural due process under the 14th Amendment.

III. KNOWLEDGE OF THE FACT THAT A CRIME IS BEING - OR IS ABOUT TO BE - COMMITTED IS A NECESSARY ELEMENT OF DRUG AND NARCOTICS - RELATED OFFENSES UNDER THE U.S. CONSTITUTION.

In this, our Nation of Laws, of which the U.S. Constitution and the mandates of this, the Supreme Court, are the "Supreme Law of the Land," by which all States and occupants, are bound *Hawlett v. Rose*, 496 U.S. 356, 367 (1990); Art. 1, Sec. 19, North Carolina Constitution. It is imperative that an individual accused of violating the law - State or Federal - have knowledge that he is violating a law and the intent to do so. See *North Carolina Crimes*, Chapter 24, p. 527 "Trafficking in Opium or Heroin." (U.N.C. School of Law Publication); N.C. General Statutes, Sec. 90-95(h)(4), (i). In the instant case, the petitioner's intent was simply, to deliver a vehicle, upon which he had performed mechanical maintenance, as he was being paid to do. Nothing more. A search of the vehicle by the petitioner when it was turned over to him, was never conducted - or even considered, therefore, as impleaded from the very outset, he was totally unaware and never suspected that there might be drugs or other unlawful contraband in the vehicle. Even though neither constitution, federal or state, condones such practices, under the circumstances, knowledge cannot constitutionally, be inferred. U.S. Const., Amend. XIV; N.C. Const., Art. 1, Secs. 1, 5, 19. North Carolina Gen. Stats., § 90-95(h)(4).

IV. A CRIMINALLY-ACCUSED IS DENIED PROCEDURAL AND/OR SUBSTANTIVE DUE PROCESS OF LAW WHEN A STATE POST-CONVICTION COURT

REFUSES TO CONSIDER THE PETITIONER'S CLAIM OF FATALLY DEFECTIVE
INDICTMENT DEPRIVING THE COURTS OF JURISDICTION, WHERE SUCH
CLAIM IS NOT CONTINGENT UPON PRESERVATION BY OBJECTION BY
OBJECTION AT THE TRIAL LEVEL AND LAW AND JUDICIAL PRECEDENT
PERMITS THE CLAIM TO BE RAISED AT ANY TIME.

Pursuant to applicable North Carolina State law, which is well established, *State v. Abraham*, 338 N.C. 315, 319 (1994); *State v. Ledwell*, 171 N.C. App. 328, 331 (2005), disc. review denied, 360 N.C. 73 (2005), an indictment must show every element of the charged offense. Failure to do so deprives the trial - and all subsequent - courts of jurisdiction. *Id.*, see also *State v. McCoy*, 265 N.C. 380, 381 (1965). The annals of law of this State are replete with decisions to this effect. Nevertheless, in the instant case, such plain error was presented to the trial - level court on post - conviction (Motion for Appropriate Relief), and the court denied the claim on the contention that having failed to raise the issue previously, the defendant had forfeited his right to do so. The post - conviction judge's refusal to follow such unanimously established precedent contrary thereto, constitutes no less than a constitutionally proscribed denial of due process of law, contrary to and in conflict with prior decisions of this, THE Supreme Court, and basically every court, federal and states, of the land, entitling the petitioner to relief.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Domenico A. LaChiana

Date: 20 April 2020