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Antwuan Ball's harsh drug sentence spurs petition to Supreme Court

By Jim McElhatton

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Two prominent civil libertarian groups have filed a joint petition asking the U.S. Supreme Court to take up the case of a D.C. man serving nearly 19 years in prison after his conviction on a \$600 drug deal, citing concerns about “carte blanche” powers given to federal judges.

The amicus brief by the Cato and Rutherford institutes comes as the Justice Department faces a July 28 deadline to file its brief in the appeals case of Antwuan Ball and two others convicted of drug charges in a federal trial in the District in 2008.

Attorneys for all three men — Ball, Desmond Thurston and Joseph Jones — accuse the trial judge of overreach by finding facts at sentencing that jurors expressly rejected in their verdict.

Sentencing judges are permitted to take into account charged conduct against defendants that jurors rejected or never considered at trial. But the appeals lawyers say all three defendants received “unreasonably lengthy” sentences based on charges that jurors rejected and that the judge accepted.

Ball was acquitted of murder, racketeering, conspiracy and other felonies, but he was found guilty of a lone hand-to-hand drug deal. At Ball's sentencing, however, U.S. District Judge Richard Roberts said he felt the evidence showed Ball belonged to a conspiracy — a key finding that led to a much longer sentence than what Ball would have faced otherwise.

“Sentencing then becomes the real trial, with the judge being given carte blanche to engage as fact finder,” the civil liberties groups wrote. “This is constitutionally improper.”

Sentencing expert Douglas Berman, a law professor at Ohio University, also has filed an amicus brief on behalf of Ball, Thurston and Jones. He wrote that Judge Roberts embraced the Justice Department's position that all three belonged to a conspiracy “despite a jury verdict directly to the contrary,” a finding that tripled or quadrupled their sentences.

Sentencing Ball more than three years after his trial ended, Judge Roberts said he respected the jury's verdict but still couldn't ignore what he called “clear and convincing” evidence that Ball

was part of a conspiracy to deal crack cocaine in the Congress Park section of Southeast Washington.

The Ball case was the subject of a series of articles in The Washington Times in recent years. The case was notable because it offered a rare glimpse into the perspective of a juror on sentencing. Retired federal economist Jim Caron wrote a letter to Judge Roberts after he found out prosecutors were seeking lengthy prison sentences for the defendants.

“It seems to me a tragedy that one is asked to serve on a jury, serves, but then finds their work may not be given the credit it deserves,” Mr. Caron wrote in his letter.

The Supreme Court challenge comes months after the U.S. Court of Appeals for the D.C. Circuit turned down the defendants’ appeal. All three men are serving sentences between 15 and 18 years.

Steve Leckar, an attorney for Ball, said the appeals team is pleased it’s gotten support from the Cato and Rutherford institutes and Mr. Berman, “who filed briefs urging the Supreme Court to take the case and find it fundamentally wrong to punish an offender based on an offense that a jury didn’t conclude had been violated.”