

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Colleton County
The Honorable Perry M. Buckner, III, Circuit Court Judge

Appellate Case No. 2011-203246

JIMMY LEE DUNCAN,

Petitioner,

v.

STATE OF SOUTH CAROLINA,

Respondent.

BRIEF OF RESPONDENT

ALAN WILSON
Attorney General

ASHLEIGH R. WILSON
Assistant Attorney General

Post Office Box 11549
Columbia, SC 29211
(803) 734-3737
#100269

ATTORNEYS FOR RESPONDENT

TABLE OF CONTENTS

TABLE OF AUTHORITIES	ii
QUESTION PRESENTED.....	1
STATEMENT OF THE CASE.....	2
ARGUMENT.....	3
CONCLUSION.....	7

TABLE OF AUTHORITIES

Cases:

<u>Ex parte Hernandez</u> , 953 S.W.2d 275 (Tex. 1997).	5, 6
<u>Johnson v. State</u> , 294 S.C. 310, 364 S.E.2d 201 (1988).	2
<u>Pruitt v. State</u> , 274 S.C. 565, 266 S.E.2d 779 (1980).	4
<u>State v. Blick</u> , 325 S.C. 636, 481 S.E.2d 452 (Ct. App. 1997).	4, 5
<u>State v. Brandt</u> , 393 S.C. 526, 713 S.E.2d 591 (2011).	3
<u>State v. Harlin</u> , 925 P.2d 1149 (Kan. 1996).	6
<u>State v. Jolly</u> , 405 S.C. 622, 749 S.E.2d 114 (2013).	3, 5
<u>State v. Wilson</u> , 345 S.C. 1, 545 S.E.2d 827 (2001).	3

Other Authorities:

U.S. Constitution Fifth Amendment	3
South Carolina Constitution Art. I, §12	3

STATEMENT OF THE CASE

The Petitioner was indicted at the December 2009 term of the Colleton County Grand Jury for furnishing or possessing contraband in county or municipal prison (2009-GS-15-0640). The Petitioner was represented by Everett Bennett Jr., Esquire. The Respondent was represented by Robert McNair, Esquire, and Dale Scott, Esquire, both of the South Carolina Office of the Attorney General. The Petitioner proceeded to trial on January 13-14, 2010. The Petitioner was found guilty by a jury. The Honorable Perry M. Buckner, III, sentenced the Petitioner to three (3) years for possession of contraband.

The Petitioner filed an application for post-conviction relief on June 7, 2010. The Respondent filed its Return on October 14, 2010. An evidentiary hearing was convened on September 1, 2011 at the Beaufort County Courthouse. The Petitioner was present and represented by J.D. Bryan, Esquire. Matthew Friedman, Esquire, of the South Carolina Office of the Attorney General represented the Respondent. The Petitioner and trial counsel both testified at the hearing. By Order filed October 20, 2011, the Honorable D. Craig Brown denied and dismissed the Petitioner's application with prejudice.

The Petitioner appealed the lower court's denial of his application for post-conviction relief. Counsel for the Petitioner submitted a Johnson¹ petition and a motion to be relieved as counsel. By Order dated April 4, 2014, this Court denied the motion and directed the parties to address whether the Petitioner was entitled to an appeal pursuant to White v. State. This Court subsequently granted certiorari and ordered the parties to brief the issue of whether Petitioner's conviction for possession of contraband constituted a double jeopardy violation when petitioner was punished by the detention center for the offense. This Brief of Respondent follows.

¹ Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988).

QUESTION PRESENTED

I. Whether Petitioner's conviction for possession of contraband constituted a double jeopardy violation when Petitioner was punished by the detention center for the offense?

ARGUMENT

I. There is evidence to support the trial court's ruling that the Double Jeopardy Clause did not bar the Petitioner's subsequent conviction for possession of contraband after the Petitioner had been administratively sanctioned by the detention center for the same conduct.

The Petitioner asserts his conviction for possession of contraband constitutes a double jeopardy violation because he was punished for the same conduct by the detention center. The Respondent submits the trial court did not err in finding that the Petitioner's detention center sanction was an administrative sanction that did not preclude his prosecution for the same conduct in a criminal proceeding. This Court should affirm the lower court's ruling.

“The Double Jeopardy Clauses of the United States and South Carolina Constitutions operate to protect citizens from being twice placed in jeopardy of life or liberty for the same offense.” State v. Jolly, 405 S.C. 622, 749 S.E.2d 114 (2013) (citing State v. Brandt, 393 S.C. 526, 538, 713 S.E.2d 591, 597 (2011)). The United States Constitution which is applicable to South Carolina via the Fourteenth Amendment provides: “[N]or shall any person be subject for the same offense to be twice put in jeopardy of life or limb...” The South Carolina Constitution Art. I, §12 states “No person shall be subject for the same offense to be twice put in jeopardy for life or liberty.” The Double Jeopardy Clause protects against a second prosecution for the same offense after acquittal or conviction, and protects against multiple punishments for the same offense.

In criminal cases, the appellate court sits to review errors of law only. State v. Wilson, 345 S.C. 1, 5, 545 S.E.2d 827, 829 (2001). An abuse of discretion occurs when the trial court's ruling is based on an error of law or when grounded in factual conclusions, is without evidentiary support. Id. at 477-78, 716 S.E.2d at 93.

At the start of the Petitioner's trial for possession of contraband, defense counsel moved to dismiss the Petitioner's possession of contraband indictment on the basis that he was already punished by the Colleton County detention center for the offense. Counsel stated the Petitioner had been put on lockdown and isolation and was limited in his use of all the facilities for possessing a shank². Counsel claimed the indictment for possession of contraband violated the Double Jeopardy Clause. (App. 34:13-24). The Court denied the Petitioner's motion to dismiss and held the detention center's "punishments are administrative and not judicial punishments, and our Courts have formerly held that those types of administrative sanctions imposed upon a prisoner who's restrained under the law do not constitute a double jeopardy" violation. (App. 34:25-35:8).

The lower court did not err in finding the administrative sanctions issued by the prison for the Petitioner's possession of contraband did not bar subsequent criminal conviction for the same conduct of run afoul of the Double Jeopardy Clause. In Pruitt v. State, the respondent claimed prison officials violated the rules embodied in the Inmate Guide by proceeding against him administratively for his assault on a corrections officer rather than referring the charges to the solicitor for criminal prosecution. 274 S.C. 565, 567, 266 S.E.2d 779, 779 (1980). This Court held that nothing requires prison officials to defer inmate disciplinary action to the courts. 274 S.C. 565, 570, 266 S.E.2d 779, 781 (1980). In its opinion, this Court expressed the proposition that "the initiation of criminal process against [the] respondent is certainly not foreclosed by a prior administrative disposition." 274 S.C. 565, 570, 266 S.E.2d 779, 781 (1980). Id.

The South Carolina Court of Appeals in State v. Blick, expounded on this Court's proposition in Pruitt and specifically addressed the issue currently before this Court. 325 S.C.

² The Respondent notes the only evidence in the record showing the Petitioner actually received administrative sanctions in the detention center for his possession of contraband is the argument of counsel and the Petitioner's testimony. (App. 34:13-24, 292:1-2).

636, 481 S.E.2d 452 (Ct. App. 1997). In Blick, the issue before the Court was whether prosecution for the crime of escape, after being disciplined by prison authorities for the same conduct³, constituted multiple punishments for the same offense for double jeopardy purposes. Id. at 640, 481 S.E.2d at 454. The Court of Appeals answered in the negative and held the prison's imposition of administrative sanctions on the appellant did not constitute punishment for double jeopardy. Id. at 642, 481 S.E.2d at 455 (emphasis added). The Court went on to explain "the purpose of a prison disciplinary proceeding is to maintain institutional order rather than to prosecute criminal conduct." Id.

The Court of Appeals' recent ruling in State v. Jolly affirmed Blick by holding the "Double Jeopardy Clause does not prohibit the imposition of any additional sanction that could be described as punishment." 405 S.C. 622, 627, 749 S.E.2d 114, 117 (Ct. App. 2013). The Respondent submits the trial court's ruling that the Double Jeopardy Clause did not bar the Petitioner's subsequent conviction for possession of contraband after the Petitioner had been administratively sanctioned by the prison for the same conduct was proper and should be affirmed based on our State's prevailing case law.

This Court should not only consider the Court of Appeals' ruling in Blick dispositive, but also consider prevailing policy arguments in support of affirming the trial court's ruling. As mentioned by the Court in Blick, administrative sanctions serve a different purpose than criminal proceedings and should not be considered one in the same. Administrative policies and practices are "necessary to preserve internal order and discipline, and to maintain institutional security in the prison." Blick, 325 S.C. at 642. In contrast, criminal proceedings serve the purpose of punishment and the vindication of public justice. See Ex parte Hernandez, 953 S.W.2d 275, 282-

³ In Blick, the Appellant was placed in administrative segregation and suffered a loss of good time credit for his conduct.

3 (Tex. 1997). If a prison disciplinary sanction were to bar subsequent criminal prosecution, prison authorities would be forced to choose between two distinct, but equally important functions of the criminal justice system- instituting a disciplinary proceeding or awaiting criminal prosecution.

Affirming the trial court's ruling would also serve this State's interest in encouraging good conduct and the maintenance of order and safety in South Carolina prisons. Using administrative sanctions to deter misconduct allows detention centers to maintain an environment that is both safe for the inmates and the employees of the detention center. See Ex parte Hernandez; see also State v. Harlin, 925 P.2d 1149 (Kan. 1996) ("Disciplinary rules and procedures are necessary for the control of dangerous and desperate individuals unwillingly confined in such institutions, in order to protect employees, inmates, and visitors, as well as the physical structure itself.").

Lastly, the Respondent submits this Court should not consider persuasive the Petitioner's argument that the South Carolina constitutional double jeopardy prohibition is more expansive than that of the federal constitution. This Court has never held that the Art. I, §12 of the South Carolina Constitution is broader than the Fifth Amendment to the United States Constitution. The Petitioner's subsequent conviction for possession of contraband after being disciplined with administrative sanctions for the same conduct in prison does not run afoul of the South Carolina Constitution as the Petitioner suggests. The Respondent submits there is sufficient evidence to affirm the lower court's finding that the Double Jeopardy Clause did not bar prosecution for possession of contraband after the Petitioner received administrative sanctions by the prison for the same conduct. This Court should affirm the lower court's finding and adopt the Court of Appeals holding in State v. Blick.


CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the lower court's ruling should be affirmed.

Respectfully submitted,

ALAN WILSON
Attorney General

ASHLEIGH R. WILSON
Assistant Attorney General

BY: 

Ashleigh R. Wilson

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3737

ATTORNEYS FOR RESPONDENT

March 25, 2015

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM COLLETON COUNTY
In The Court of Common Pleas

The Honorable Perry M. Buckner, III, Circuit Court Judge

Appellate Case No. 2011-203246

Jimmy Lee Duncan,

Respondent,

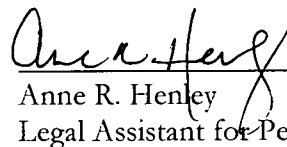
v.

State of South Carolina

Petitioner.

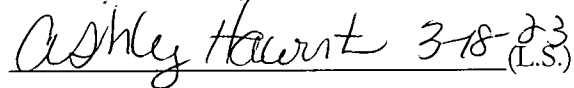
CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Brief of Petitioner has been served upon opposing counsel, Robert Pachak, by mailing two (2) copies in an envelope properly addressed this 25th day of March, 2015.



Anne R. Henley
Legal Assistant for Petitioner

SWORN to before me this
25th day of March, 2015.



Ashley Haurst 3-18-23 (L.S.)



ALAN WILSON
ATTORNEY GENERAL

March 25, 2015

RECEIVED

MAR 25 2015

S.C. Supreme Court

Via Hand Delivery

The Honorable Daniel E. Shearouse
Clerk of Court, South Carolina Supreme Court
Post Office Box 11330
Columbia SC 29211

RE: Jimmy Lee Duncan, #290546 v. State of South Carolina
2010-CP-15-0622
Appellate Case No. 2011-203246

Dear Mr. Shearouse:

Enclosed please find the original and fifteen (15) copies of the Brief of Respondent in the above-referenced matter for filing in your office. By copy of this letter we are serving opposing counsel, Robert Pachak, with two copies of this brief today.

With highest regards,

Ashleigh R. Wilson
Assistant Attorney General

ARW/arh

Enclosures

cc: Robert M. Pachak, Esquire