

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM COLLETON COUNTY
Court of Common Pleas

Honorable Perry M. Buckner, III, Circuit Court Judge

Case No. 2016-CP-15-0626
Appellate Case No. 2016-001624

RECEIVED

SEP 12 2016

SC Court of Appeals

State of South Carolina,

Respondent,

v.

- Daniel Glen Hieronymus,

Appellant.

RETURN TO RESPONDENT'S MOTION TO DISMISS

Nancy Bloodgood, Esq., SC Bar No. 6459
BLOODGOOD & SANDERS, L.L.C.
895 Island Park Drive, Suite 202
Charleston, SC 29492
Telephone: (843) 972-0313
Facsimile: (843) 377-8997
Email: nbloodgood@bloodgoodsanders.com

Attorneys for the Appellant

INTRODUCTION

This matter comes before the Court as a result of an appeal of a Magistrate decision regarding a DHEC ticket filed against Appellant Hieronymus on May 11, 2016. On June 30, 2016 Circuit Court Judge Perry M. Buckner denied the appeal. Appellant filed a Notice of Appeal in this Court on August 2, 2016. Respondent filed a Motion to Dismiss on August 17, 2016. Appellant filed a Motion for Extension of Time to file a Return. The Motion was granted and extended Appellant's time to file a Return until September 8, 2016.

ARGUMENT

Respondent has moved to dismiss this appeal as it contends that the underlying action is criminal in nature, rather than civil, so the criminal statute of limitations should apply to Appellant's appeal to the Circuit Court. However, the issue of whether the underlying proceeding is criminal or civil is the very issue on appeal and which statute of limitations applies depends on the Court's decision regarding that issue.

St. Jude Farms is a business that harvests, transports and sells oysters and clams in Colleton County. Appellant Hieronymus is the manager of St. Jude Farms. On December 18, 2015, DHEC officer T.M. Donahue issued an Official Summons & Arrest Report (hereafter "ticket") to Daniel Glenn Hieronymus, for "improper shell stock ID (22 bags)" pursuant to Regulation 61-47.

S.C. Code § 44-1-15 provides for both civil and criminal penalties for violations of DHEC Regulations. Section (A) of S.C. Code § 44-1-15 states, "Except as provided in Section 44-1-151, *a person who after notice* violates, disobeys, or refuses, omits, or neglects to comply with a regulation of the Department of Health and Environmental

Control, made by the department pursuant to Section 44-1-140, is guilty of a misdemeanor and, upon conviction, must be fined not more than two hundred dollars or imprisoned for thirty days.” (emphasis added) Section (B) of S.C. Code § 44-1-150 states, “A person who after notice violates a rule, regulation, permit, permit condition, final determination, or order of the department issued pursuant to Section 44-1-140 is subject to a civil penalty not to exceed one thousand dollars a day for each violation.” There is no indication on the face of the ticket at issue as to whether section (A) or (B) of S.C. Code §44-1-150 is being pursued and the circumstances surrounding the issuance of the ticket indicate the ticket was issued under section (B).

At the Magistrate hearing, Mr. Hieronymus testified he did not know a mistake had been made labeling the clam bag until he noticed the mistake while he was with DHEC Officials during an inspection at St. Jude Farms. At the Magistrate hearing, DHEC agreed that Appellant Hieronymus was not the person who violated the DHEC Regulation 61-42. Officer Donahue testified, “one of [Mr. Hieronymus’] workers who does the tags doesn’t speak English well miswrote some of the tags.” (Ex. A, Transcript, pp. 6, 14)

It is elementary that criminal penalties cannot be imposed against a person whom Respondent knows and, in this case, has admitted did not commit the alleged crime. The Supreme Court acknowledges criminal charges must be brought against a person the prosecutor believes has committed a crime. See, e.g., *State v. Inman*, 395 S.C. 539, 562, 720 S.E.2d 31, 44 (S.C. 2011) citing *State v. Needs*, 333 S.C. 134, 145, 508 S.E.2d 857, 862 (1998).

Here, it is undisputed that Appellant Hieronymus was not the person who violated the DHEC regulations by mislabeling the clams. Nevertheless, Respondent contends it brought criminal charges against Mr. Hieronymus rather than assessing a civil fine against him in his capacity as a representative of the business. Criminal penalties available under S.C. Code § 44-1-150 (A) must be assessed against the person who actually committed the violation. As Respondent admits Mr. Hieronymus is not the person who mislabeled the clam tags, it is Appellant's position that Mr. Hieronymus is the wrong person against whom the assessment of criminal charges should be brought and he cannot be guilty of a misdemeanor.

The statute that was allegedly violated provides for both criminal and civil penalties for the violations of the same regulations, evidently leaving the choice to Respondent. However, Respondent cannot attempt to dismiss an appeal on the basis that a criminal statute of limitations has run when the gist of Appellant's appeal is Respondent cannot maintain a criminal proceeding against Mr. Hieronymus. Using Respondent's rationale, Appellant can similarly argue that as it believes Respondent's actions were civil in nature, the civil statute of limitations must apply. In fact, the issue of which statute of limitations should apply is entirely dependent on the outcome of the appeal. Dismissing the case at this stage would *defacto* result in the Court deciding in favor of one party over the other and an adjudication on the merits.

Defendant respectfully requests the State's Motion to Dismiss be denied so the Court can consider the case on its merits as the State's action of attempting to bring criminal charges against persons who have not acted in a criminal manner has serious ramifications for other private citizens besides this Defendant.

CONCLUSION

For the reasons stated herein, Appellant respectfully requests that this Court deny the Motion to Dismiss and allow Appellant to proceed with this appeal.



Nancy Bloodgood, Esq., SC Bar No. 6459

BLOODGOOD & SANDERS, L.L.C.

895 Island Park Drive, Suite 202

Charleston, SC 29492

Telephone: (843) 972-0313

Facsimile: (843) 377-8997

Email: nbloodgood@bloodgoodsanders.com

Attorneys for the Appellant

Exhibit A

STATE OF SOUTH CAROLINA) IN THE FOURTEENTH
MAGISTRATE'S COURT) JUDICIAL CIRCUIT

State of South Carolina,)
) SHELLFISH TICKET
) 22603
v.)
)
Daniel Glenn Hieronymus,)
)
Defendant.)

TRANSCRIPT OF RECORDED HEARING

TRANSCRIBED BY: MARY ANN RIDENOUR, RPR, CLR
Registered Professional Reporter,
Certified LiveNote Reporter
and Notary Public

POST OFFICE BOX 21784
CHARLESTON, SC 29413-1784

1 And then another ground where they can collect clams,
2 it's a culture ground, 137. So, basically, the
3 State -- State owns S-140, then St. Jude Farms pays a
4 fee to the State for -- allowing them to pick on C-137.

5 THE COURT: Okay.

6 OFFICER DONAHUE: So I asked Mr. Hieronymus
7 why he had two different areas tagged in the same bin?
8 He explained that one of his workers who does the tags
9 doesn't speak English well and miswrote some of the
10 tags. So they should have been all S-140. He said he
11 was certain they were all from S-140, it was just a
12 mistake that some had the C-137. So we tried to work
13 with him and see if he could prove -- provide some sort
14 of proof that -- or documentation that they all came
15 from S-140. And he was unable to do so.

16 We have a -- there's a receiving log. And,
17 basically, it's a requirement in DHEC's HACCP plan that
18 they fill out the receiving log within a reasonable
19 amount of time. So, basically, when of those clams
20 come off the water, they need to put in the receiving
21 log what area they came from, the time, the date, stuff
22 like that. So that way, if we have -- if somebody gets
23 sick -- we've already had illnesses this -- just this
24 year, two illnesses of people getting sick. We can go
25 back. If they say, Okay, we got them from St. Jude

1 different --

2 OFFICER DONAHUE: -- he went to the receiving
3 log --

4 THE COURT: That's a different story. Okay.

5 OFFICER DONAHUE: Okay. So went to the
6 receiving log to, like, try to verify that he was right
7 about them being all from S-140. So the receiving log
8 was really --

9 THE COURT: Okay. So the -- the guy who
10 couldn't speak English mislabeled them, is what --

11 OFFICER DONAHUE: Correct.

12 THE COURT: -- Mr. Hieronymus told you?

13 OFFICER DONAHUE: Yes.

14 THE COURT: So they all should have been from
15 S-140?

16 OFFICER DONAHUE: Yes, Your Honor.

17 THE COURT: I got you. Okay.

18 OFFICER DONAHUE: Yeah.

19 THE COURT: Okay. All right. Now I get it.
20 Now I understand. Okay. Got you. Anything else?

21 OFFICER DONAHUE: Do you guys --

22 THE COURT: Well, I'll ask them later.

23 OFFICER DONAHUE: Okay.

24 THE COURT: So --

25 OFFICER DONAHUE: No. No, Your Honor.

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**PROOF OF SERVICE FOR APPELLANT'S RETURN TO RESPONDENT'S
MOTION TO DISMISS APPEAL FOR LACK OF JURISDICTION**

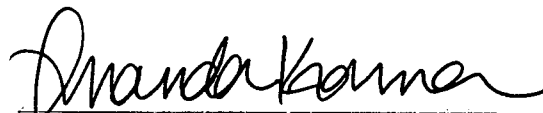
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Bloodgood & Sanders, LLC
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Charleston, SC 29492
Telephone: (843) 972-0313
Facsimile: (843) 377-8997
Email: nbloodgood@bloodgoodsanders.com

Attorneys for the Appellant

I hereby certify that on September 8, 2016 I served a copy of the Return to Respondent's Motion to Dismiss to the following:

Nicole Wetherton, Esquire
Assistant Attorney General
Office of the Attorney General
PO Box 11549
Columbia, SC 29211
Attorneys for the Respondent

by placing a copy of said documents in the United States mail with sufficient postage thereon.


Amanda Kramer

Charleston, South Carolina

Date: 9/8/16



September 8, 2016

The Honorable Jenny Kitchings
Clerk, South Carolina Court of Appeals
PO Box 11629
Columbia, SC 29211

RECEIVED
SEP 12 2016
SC Court of Appeals

RE: State of South Carolina v. Daniel Glen Hieronymus
Our File No.: 10709
Appellate Case No: 2016-001624

Dear Ms. Kitchings,

Enclosed please find the original and seven copies of Appellant's Return to Respondent's Motion to Dismiss. I have also enclosed the Certificate of Service. Please file the original and return a clocked-in copy of the same to me in the enclosed self-addressed stamped envelope.

By copy of this letter to all counsel of record, I am likewise providing them with a copy of the same.

Thank you for your assistance in this matter.

With kindest regards, I am

Sincerely,

A handwritten signature in black ink that reads "Nancy Bloodgood". The signature is written in a cursive, flowing style.

Nancy Bloodgood

NB/alk
Enclosures

cc: Nicole Wetherton, Esquire

Bloodgood & Sanders, LLC
895 Island Park Drive, Suite 202
Charleston, SC 29492

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SC Court of Appeals



The Honorable Jenny Kitch
Clerk, South Carolina Court of
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THE HONORABLE JENNY KITCHINGS
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