

STATE OF SOUTH CAROLINA)
 COUNTY OF RICHLAND)
)
 Kenneth Rivera, #318979,)
)
 Applicant)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 FOR THE FIFTH JUDICIAL CIRCUIT

Case No.: 2020-CP-40-0791

FINAL ORDER OF DISMISSAL

RICHLAND COUNTY
 FILED
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 COURT REPORTER & VIDEO
 CORP. P.S., A.F.O.

This matter comes before the Court pursuant to an application for post-conviction relief filed by Applicant Kenneth Rivera on February 10, 2020. Respondent made its Return and Motion to Dismiss on August 5, 2020, requesting the application be summarily dismissed for failure to state a cognizable claim for relief.

Pursuant to this request, and after reviewing the pleadings in this matter and all of the records attached thereto, this Court issued a Conditional Order of Dismissal filed August 12, 2020, provisionally denying and dismissing this action, while giving Applicant twenty days from the date of service of said Order in which to show why the dismissal should not become final. Attached to this Final Order and incorporated herein by reference is an Affidavit of Service dated September 4, 2020, serving the above-mentioned Conditional Order of Dismissal on the Applicant.

Applicant filed response on September 9, 2020 titled "Response to Conditional Order of Dismissal." In his response, Applicant reiterates the claims in his application, specifically that his prison conviction after disciplinary action was a violation of his Fifth Amendment right to be free from double jeopardy. Applicant further insists that he was convicted twice for the same offense, and that the occurrence constituted a double jeopardy violation.

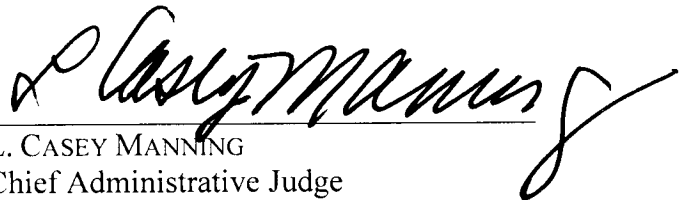
An inmate disciplinary hearing is not a criminal trial. The double jeopardy clause protects against a second prosecution for the same offense after acquittal; a second prosecution for the same offense after conviction; and multiple punishments for the same offense. *State v. Blick*, 325 S.C. 636, 639–40, 481 S.E.2d 452, 454 (Ct. App. 1997) (citing *McMullin v. South Carolina Dept. of Rev. and Tax.*, 321 S.C. 475, 469 S.E.2d 600 (1996)). The Court in *Blick* specifically reviewed whether prosecution for an offense after prison disciplinary proceedings for the same conduct constituted “multiple punishment” for double jeopardy purposes, and found the argument was without merit. *Id.* at 636, 481 S.E.2d at 454. Therefore, as a general rule, a prison disciplinary sanction will not bar subsequent criminal prosecution. *Id.* at 643, 481 S.E.2d at 456. (citing *United States v. Newby*, 11 F.3d 1143 (3d Cir. 1993) (“If a prison disciplinary sanction were to bar subsequent criminal prosecution, prison authorities would be forced to choose between instituting a disciplinary proceeding or awaiting a criminal prosecution. The difficulties and delay that may be entailed in a criminal prosecution would hinder prison administration and discipline.”)). Accordingly, this Court has reviewed Applicant’s response to the Conditional Order of Dismissal in its entirety, in conjunction with the original pleadings, and finds a sufficient reason has not been shown why the Conditional Order of Dismissal should not become final.

IT IS THEREFORE ORDERED that, for the reasons set forth in this Court’s Conditional Order of Dismissal, the application for post-conviction relief is hereby denied and dismissed with prejudice.

This Court hereby advises Applicant he must file and serve a Notice of Appeal within thirty days of the service of this Order to secure appellate review. *See* Rule 203, SCACR. Applicant’s

attention is directed to Rule 243, SCACR, for the procedures following the filing and service of the notice of appeal.

AND IT IS SO ORDERED this 1 day of June, 2021.



L. CASEY MANNING
Chief Administrative Judge
Fifth Judicial Circuit

Columbia, South Carolina