

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS)
FOR THE FIFTH JUDICIAL CIRCUIT)

Kenneth Rivera, #318979,)

Case No.: 2020-CP-40-0791)

Applicant,)

CONDITIONAL ORDER OF DISMISSAL

v.)

State of South Carolina,)

Respondent.)

RICHLAND COUNTY
FILED
2020 AUG 12 PM 2:58
COURT CLERK, RICHLAND COUNTY

This matter is before the Court by way of an application for post-conviction relief (PCR) filed by Kenneth Rivera (Applicant) on February 10, 2020. In its return and motion to dismiss, the State requested the action be summarily dismissed for failure to state a cognizable claim for which an application for post-conviction relief can remedy.

I. PROCEDURAL HISTORY

Applicant is confined in the South Carolina Department of Corrections (SCDC) pursuant to orders of commitment of the Richland County Clerk of Court. Applicant was indicted at the December 2019 term of the Richland County Grand Jury for possession of a weapon by an inmate (2019-GS-40-7909). Applicant was represented by Jonathan Cornish, Esquire. Assistant Solicitor Grayson Hill prosecuted the case.

On December 3, 2019, Applicant pleaded guilty as indicted before the Honorable Robert E. Hood. Judge Hood sentenced Applicant, as recommended by the State, to a term of one year. Applicant did not appeal.

II. CURRENT APPLICATION

Applicant timely commenced this PCR action on February 10, 2020. Applicant asserts he is being held in custody unlawfully, alleging:

1. I was convicted in SCDC prison, DHO, and court of law
 - a. I was convicted for the same offense twice.

Applicant requests relief in the form of “the contraband conviction taken off [his] record.”

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the pleadings and all relevant supporting documents. Pursuant to subsection 17-27-70(b) of the South Carolina Code (2014), this Court makes the following findings of fact and conclusions of law:

Failure to State a Claim

This Court finds the current application for post-conviction relief must be summarily dismissed because Applicant has failed to state a cognizable claim for relief. *See* Rule 12(b)(6), SCRCPP (stating a defending party may move for summary judgement based on the plaintiff’s failure to “state facts sufficient to constitute a cause of action”). Applicant argues that the punishment he received following an administrative hearing bars additional prosecution of the same offense in a court of law and constitutes Double Jeopardy. However, 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, 640, 481 S.E.2d 452, 454 (1997). Generally, “a prison disciplinary sanction will not bar subsequent criminal prosecution.” *Id.* at 642. Additionally, prison disciplinary proceedings do not constitute a double jeopardy bar to subsequent criminal prosecution based on the same acts. *Id.* at 640.

This Court finds Applicant’s Double Jeopardy claim is without merit because any punishment he received following his administrative hearing with regards to the offense of the underlying conviction does not preclude prosecution in a court of law. *Id.* Accordingly, this action must be summarily dismissed pursuant to Rule 12(b)(6), SCRCPP, for failure to state a claim.

IV. CONCLUSION

Pursuant to subsection 17-27-70(b) of the South Carolina Code, this Court intends to dismiss this application with prejudice unless Applicant provides specific reasons, factual or legal, why the application should not be dismissed in its entirety. Applicant is granted twenty (20) days from the date of service of this Order upon him to show why this Order should not become final. Applicant shall file any reasons he may have, factual or legal, with the Richland County Clerk of Court and shall serve opposing counsel at the following address:

Office of the Attorney General
Michael D. Davidson, Assistant Attorney General
Post Office Box 11549
Columbia, South Carolina 29211

AND IT IS SO ORDERED this 11th day of August, 2020.



ALISON RENEE LEE
Chief Administrative Judge
Fifth Judicial Circuit

Columbia, South Carolina.

