

The State of South Carolina
In The Court of Appeals

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SEP 01 2021

SC Court of Appeals

Tom R. Bailey #272470

Appellant

Docket No.
21-ALS-04-0196-AP

vs.

South Carolina Dept. of Corrections

Respondent

The appellant is appealing the decision from The Administrative Law Court. The appellant was convicted of a disciplinary hearing held March 5th 2021. The appellant filed Step One and Step Two Grievances which was denied. The appellant filed a notice of Appeal with the Administrative Law Court on May, 13th 2021. The appellant final appeal granting the Respondent's motion to Dismiss on August 12th 2021. The appellant's appeal follows:

Did The Administrative Law Court erred in Granting Respondents motion to Dismiss?

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The appellant's Fifth and Fourteenth amendment of the United States Constitution was violated. The appellant was previously charged on February, 11th 2021 with Possession of Contraband. The appellant case was dismissed. On February, 25th 2021, the appellant was charged with a 903 drug charge, using the same evidence used in the Possession of Contraband case. During the appellant's disciplinary hearing on March 5th 2021, the respondent used the exact same evidence that was used in the appellant's prior case. By using the same evidence, the respondent violated the appellant's Fifth amendment of Double Jeopardy. Double Jeopardy clause protects against second prosecution for same offense after acquittal, second prosecution for the same offense after conviction and multiple punishments for same offenses State vs. Blick 481 SE2d 452, State vs. Jolly 749 S.E.2d 114, Blick vs. State 623 SW2d 549, U.S. vs. Martin 523 F3rd 281, Yeager vs. U.S. 557 U.S. 110. In the present case the appellant was charged with Possession of Contraband. The appellant charge was dismissed. The appellant was charged again with a drug charge using the same evidence and was found guilty. By convicting the appellant, that violates the appellant's Fifth amendment rights. The appellant also created a State created liberty interest when the appellant failed to earn good time for the month the disciplinary infraction occurred. According to Furtick vs. South Carolina Dept. of Corrections 649 S.E.2d 35. The Administrative Law Court sits in an appellant capacity over prisoner appeals. It was ruled in Furtick. The Supreme Court held The ALC must hear State created liberty interest cases where an inmate lost good time for the month the disciplinary incident took place. In the instant case the appellant lost good time the month the infraction occurred which created a liberty interest, and violating the appellant's 14th amendment Due Process and Equal Protection under The U.S. Constitution.

Conclusion

The appellant case be overturned, reversed, and remanded.

Dr. A. Prull

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