

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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S.C. SUPREME COURT

Certiorari To Richland County  
L. Casey Manning, Circuit Court Judge

Kenneth Rivera,  
Petitioner,

v.  
State Of South Carolina,  
Respondent

APPELLATE CASE No. 2021-000654

PRO SE RESPONSE TO PETITION FOR  
WRIT OF CERTIORARI

November 24, 2021

Kenneth Rivera #318979  
BRCI-Wateree B #225  
4460 Broad River Rd.  
Columbia, SC 29210  
Pro Se

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## ISSUE PRESENTED

Petitioner was convicted of the same offense twice in violation of the 5th Amendment to the United States Constitution.

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## STATEMENT

During its December 2019 term, a Richland County grand jury indicted Petitioner for Prisoner / Contraband, Possession By Prisoner, Furnishing or Attempt TO Furnish (2019-GS-40-07909). On December 3, 2019, Petitioner entered guilty pleas to that charge. He was represented by Jonathan S. Comish. Byron E. Gipson represented the state. The Honorable Robert Hood accepted the guilty plea. Judge Hood sentenced Petitioner to one year imprisonment for Possession OF Contraband. Petitioner did not file a direct appeal.

On February 10, 2020, Petitioner filed an application for post-conviction relief (PCR). The state filed a return and a conditional order of dismissal. On June 11, 2021 Chief Administrative Judge L. Casey Manning found that Petitioner had not met his burden and dismissed the application with prejudice.

Petitioner filed a Notice OF Appeal. This Pro Se Response follows.

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# ARGUMENT

Petitioner was convicted of the same offense twice in violation of the 5th Amendment to the United States Constitution.

## Relevant Facts

A Richland County Grand Jury indicted Petitioner for possession of contraband (2019-GS-40-07909). Although Petitioner was also charged with possession of a weapon in the South Carolina Department of Corrections (SCDC), and convicted in the prison D.H.O with a loss of 3 days of Good time.

On March 9, 2019, Petitioner was found guilty in SCDC DHO, for possession of a weapon. On April 16, 2019 Petitioner was issued a warrant for Prisoner/Concealing weapons (2019A4010500071). On December 3, 2019 Petitioner was found guilty by the Honorable Robert Hood for Possession of Contraband. Judge Hood sentence Petitioner to 1 year to be served concurrently.

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In State v. Benally, 2021 WL 2010092 the Court held:

"In the multiple punishment context, the Double Jeopardy Clause does no more than prevent the sentencing court from prescribing greater punishment than the legislature intended..."

The PCR Judge erred in concluding Petitioner application is dismissed with prejudice. By record and law Petitioner 5th Amendment to be free from Double Jeopardy was violated. As a result, this court should reverse the PCR Court and grant the relief in Petitioner's PCR.


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## CONCLUSION

Petitioner respectfully requests this Court grant the Pro se Response and order full briefing on the issue presented. In the event this Court decides to grant the petition and dispense with further briefing, Petitioner respectfully requests this Court reverse his conviction, and remand for a new trial.

November 24, 2021

  
Kenneth Rivera  
Pro se

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