

## MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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## IN THE COURT OF APPEALS OF INDIANA

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Jacques J.D. Allen,  
*Appellant-Defendant,*

v.

State of Indiana,  
*Appellee-Plaintiff,*

June 24, 2021

Court of Appeals Case No.  
20A-CR-2262

Appeal from the Miami Superior  
Court

The Honorable J. David Grund,  
Judge

Trial Court Cause No.  
52D01-1904-F5-131

**Robb, Judge.**

## Case Summary and Issue

- [1] Jacques Allen is charged with battery resulting in bodily injury to a public safety officer, a Level 5 felony. He moved to dismiss the charge against him on the basis that double jeopardy bars this criminal prosecution because he has already been subject to administrative sanctions by the Indiana Department of Correction (“DOC”) for the same actions that give rise to this charge. The trial court denied the motion to dismiss, and this court granted Allen’s motion for interlocutory appeal. On appeal, Allen raises a single issue: whether the trial court erred in denying his motion to dismiss because the criminal prosecution constitutes double jeopardy. Concluding the administrative punishment does not preclude a subsequent prosecution, we affirm the trial court’s denial of Allen’s motion to dismiss.

## Facts and Procedural History

- [2] In 2019, Allen was an inmate at the Miami Correctional Facility. Allen allegedly struck an on-duty prison guard in the head and shoulder area on March 14, 2019. The DOC held a disciplinary hearing regarding the allegation that Allen violated conduct code A-102, assault/battery, a Class A offense, as a result of this incident. Allen admitted he committed the conduct violation and the following discipline was imposed: 360 days in the restrictive housing unit, a

45-day commissary restriction, deprivation of 180 days of credit time, and demotion of one credit class.<sup>1</sup>

[3] In April, the State charged Allen with battery resulting in bodily injury to a public safety officer based on the March 14 incident. In September 2020, Allen filed a motion to dismiss the charge, arguing that the prosecution is barred by state and federal principles of double jeopardy because he was already punished by the DOC through its administrative disciplinary proceedings for the same conduct.

[4] At the hearing on the motion, Allen testified DOC policies state that “[y]ou cannot . . . gain your time back once you have got a class A . . . write up. Any class A write up, you can’t get your time back.” Transcript, Volume II at 23. He explained his perspective on the loss of his credit time:

If . . . I have . . . a behavior issue and I get a write up and you all . . . recommend that I lose . . . my good time and . . . it don’t make no sense why I should have [an] extra charge giving me years upon not getting my good time back[.]

*Id.* at 24. He also testified that “being in seg[regation,] it messes up your mental health if you’re not mentally strong.” *Id.* He was personally depressed for “weeks and weeks, just . . . looking at our circumstances as in how . . . we’re

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<sup>1</sup> Allen also received discipline for a second A-102 conduct violation based on his attempt to batter a second prison guard during the same incident. The State filed no charges related to the incident with the second guard.

treated. We're not treated like we're human beings. . . . I feel like it's unfair.”  
*Id.* at 25.

[5] In support of his claim that the DOC discipline was a punishment, Allen submitted the Disciplinary Code for Adult Offenders and Disciplinary Restrictive Status Housing sections of the DOC Manual of Policies and Procedures. The Manual indicates that offenders found to have violated certain conduct codes, including A-102, are not entitled to have deprived credit time restored. *See* Appellant's Appendix, Volume II at 51-53. With respect to his time in the restrictive housing unit, he argued to the trial court that “the D.O.C. itself in it's [sic] forms in the report of disciplinary hearing calls this *disciplinary* restrictive housing. It's clearly a discipline. It's clearly a punishment.” *Tr.*, Vol. II at 31 (emphasis added). And he submitted several articles about the effects of solitary confinement and its restrictions. Appellant's App., Vol. II at 71-98.

[6] The trial court issued an order on October 2, 2020, concluding that “the administrative sanctions imposed by the [DOC] against Mr. Allen did not constitute double jeopardy barring criminal prosecution” and denied the motion to dismiss. *Appealed Order* at 1, ¶ 3. Allen now appeals that decision.

# Discussion and Decision

## I. Standard of Review

[7] Generally, we review a trial court’s ruling on a motion to dismiss for abuse of discretion. *State v. Durrett*, 923 N.E.2d 449, 453 (Ind. Ct. App. 2010).

However, whether a prosecution is barred by double jeopardy is a question of law, *State v. Allen*, 646 N.E.2d 965, 972 (Ind. Ct. App. 1995), *trans. denied*, and we therefore apply a de novo standard of review, *Austin v. State*, 997 N.E.2d 1027, 1039 (Ind. 2013).

## II. Double Jeopardy

[8] Allen contends that the criminal prosecution for battery resulting in bodily injury must be dismissed because otherwise, he will be subjected to multiple punishments for the same act due to the disciplinary action already taken by the DOC. *See* Appellant’s Amended Brief at 14. Pursuant to the Fifth and Fourteenth Amendments to the United States Constitution, a defendant has a constitutional right to not be put in jeopardy twice for the same offense.<sup>2</sup> But the United States Supreme Court has “long recognized that the Double Jeopardy Clause does not prohibit the imposition of all additional sanctions that could . . . be described as punishment. The Clause protects only against

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<sup>2</sup> Allen cites Article 1, section 14 of the Indiana Constitution as well, but does not advance a separate argument with respect to the state constitution. Any state constitutional argument is therefore waived. *See White v. State*, 772 N.E.2d 408, 411 (Ind. 2002) (“Because the defendant does not argue that the search and seizure provision in the Indiana Constitution requires a different analysis than the federal Fourth Amendment, his state constitutional claim is waived, and we consider only the federal claim.”).

the imposition of multiple *criminal* punishments for the same offense[.]” *Hudson v. U.S.*, 522 U.S. 93, 98-99 (1997) (citations omitted).

[9] “An administrative punishment by prison officials does not preclude a subsequent prosecution arising out of the same act.” *Williams v. State*, 493 N.E.2d 431, 432 (Ind. 1986). In certain circumstances, however, even a penalty intended to be civil may be so punitive either in purpose or effect so as to transform into a criminal penalty. *Hudson*, 522 U.S. at 95 (citing *United States v. Ward*, 448 U.S. 242, 248-49 (1980)). But as we decide today in *Brown v. State*, No. 19A-CR-2261 (Ind. Ct. App. June 24, 2021), a case raising identical issues to those raised by Allen,<sup>3</sup> neither the deprivation of credit time that cannot be restored nor the placement in restrictive housing is *so* punitive that it constitutes a criminal punishment. For the reasons stated in *Brown*, we conclude that Allen has not already been subjected to a criminal punishment and therefore, the trial court did not err in denying his motion to dismiss the criminal charge against him.

## Conclusion

[10] The disciplinary action taken by the DOC against Allen for his conduct violation does not preclude the State’s criminal prosecution of him for the same

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<sup>3</sup> See also *Jones v. State*, 20A-CR-2264 (Ind. Ct. App. June 24, 2021) and *Wagoner v. State*, 20A-CR-2265 (Ind. Ct. App. June 24, 2021), also decided today.

act. Accordingly, the trial court correctly denied Allen's motion to dismiss the criminal charge against him on double jeopardy grounds.

[11] Affirmed.

Bailey, J., and May, J., concur.