

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Matthew Wagoner,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff,

June 24, 2021

Court of Appeals Case No.
20A-CR-2265

Appeal from the Miami Superior
Court

The Honorable J. David Grund,
Judge

Trial Court Cause No.
52D01-1903-F5-84

Robb, Judge.

Case Summary and Issue

- [1] Matthew Wagoner is charged with three counts of battery resulting in bodily injury to a public safety officer, all Level 5 felonies. He moved to dismiss the charges 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 Wagoner’s motion for interlocutory appeal. On appeal, Wagoner 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 Wagoner’s motion to dismiss.

Facts and Procedural History

- [2] In 2019, Wagoner was an inmate at the Miami Correctional Facility. On March 3, 2019, Wagoner allegedly struck three on-duty prison guards with a metal crutch. The DOC held a disciplinary hearing regarding the allegation that Wagoner violated conduct code A-102, assault/battery, a Class A offense, three times as a result of this incident. Wagoner admitted the conduct violations and the following discipline was imposed: 360 days in the restrictive housing unit and deprivation of 180 days of credit time for each conduct violation, 90-day phone and commissary restrictions, and demotion of one credit class.

[3] Also in March, the State charged Wagoner with three counts of battery resulting in bodily injury to a public safety officer. In May 2020, Wagoner 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. The trial court held a hearing on the motion in August.

[4] Wagoner testified that under the DOC's current rules for deprivation of credit time, "no matter what you do, you stay out of trouble the rest of your time there, . . . walk the line and do . . . exactly what . . . you need to do and everything[,] you can't get that time back." Transcript, Volume II at 11. He acknowledged, however, that although he has lost good time credit, he has not been ordered to do any more time than the ten years he was originally sentenced to serve. *See id.* at 17. Wagoner described the conditions of the restrictive housing unit as, "you're in your cell for basically twenty three hours a day. You're supposed to get a[n] hour of break, [but] you're lucky [if] you do. . . . People are really literally losing their minds back there[.] . . . [I]t's something that I don't think anybody should have to live through." *Id.* at 12. Wagoner testified that over the course of every day, he goes through "every level of the emotional spectrum[.]" *Id.* at 13. "I wake up trying to be hopeful, and then I get depressed then I try to get hopeful again, I try to stay busy. And but you know a lot of times I just can't even get out of bed." *Id.* at 14.

[5] In support of his claim, Wagoner submitted several articles about the effects of solitary confinement and its restrictions. Appellant's Appendix, Volume II at

67-93. He also 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 id.* at 47-49. The Manual also describes the conditions of the restrictive housing unit, including that each offender “shall be offered one (1) hour of exercise per day outside his/her cell, five (5) days per week, unless safety or security considerations dictate otherwise.” *Id.* at 64. Wagoner argued to the trial court that 1) the fact that Wagoner’s deprived credit time can never be restored makes the deprivation a punishment because “that does increase their actual time of incarceration” and 2) the conditions of restrictive housing have “a significant effect, on mental and emotional well-being and health. And that is a sanction that rises to the level of jeopardy.” *Tr.*, Vol. II at 30, 32.

[6] The trial court issued an order on October 2, 2020, concluding that “the administrative sanctions imposed by the [DOC] against Mr. Wagoner did not constitute double jeopardy barring criminal prosecution” and denied the motion to dismiss. *Appealed Order* at 1, ¶ 3. Wagoner 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] Wagoner 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 Brief at 15. 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.¹ 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 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

¹ Wagoner 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.”).

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 Wagoner,² 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 Wagoner 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 Wagoner for his conduct violation does not preclude the State's criminal prosecution of him for the same act. Accordingly, the trial court correctly denied Wagoner's motion to dismiss the criminal charge against him on double jeopardy grounds.

[11] Affirmed.

² See also *Allen v. State*, 20A-CR-2262 (Ind. Ct. App. June 24, 2021) and *Jones v. State*, 20A-CR-2264 (Ind. Ct. App. June 24, 2021), also decided today. We do note that the facts in this case are slightly different than in *Brown*, *Jones*, or *Allen* in that in each of those cases, there was a single criminal charge that allegedly duplicated a single disciplinary action. In this case, however, Wagoner was subject to cumulative disciplinary action and has been charged with three criminal offenses. Where *Brown*, *Jones*, and *Allen* were each disciplined with 360 days of restrictive housing and 180 days of lost credit time, Wagoner was disciplined with 1,080 days of restrictive housing and loss of 540 days of credit time. However, Wagoner does not make a different argument than *Brown*, *Jones*, or *Allen* based on this factual distinction.

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