

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT KNOXVILLE

APRIL SESSION, 1997

FILED

June 12, 1997

Cecil Crowson, Jr.
Appellate Court Clerk

STATE OF TENNESSEE,)

Appellee,)

VS.)

EUGENE BRABSON,)

Appellant.)

C.C.A. NO. 03C01-9606-)

JOHNSON COUNTY)

HON. LYNN W. BROWN)
JUDGE)

(Certified Questions of Law)

FOR THE APPELLANT:

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OPINION FILED _____

AFFIRMED PURSUANT TO RULE 20

JERRY L. SMITH, JUDGE

ORDER

Appellant Eugene Brabson pled guilty in the Johnson County Criminal Court to possession of a controlled substance in a penal institution. As a Range I standard offender, he received a sentence of three years in the Tennessee Department of Correction. The trial court ordered the sentence served consecutively to his prior convictions. In this appeal, Appellant presents the following certified questions of law:

(1) whether the double jeopardy provisions of the Tennessee and United States Constitutions prohibit the State from prosecuting him after he has been “punitively segregated” from other inmates as part of the remedial action taken by the Tennessee Department of Correction for the act of introducing contraband into a penal institution; and

(2) whether his prosecution violates the equal protection and due process provisions of the Tennessee and United States Constitutions in that he is being prosecuted under a system of selective enforcement which is devoid of any reasonable and rational basis for determining which inmates face prosecution.

After a review of the record, we affirm the judgment of the trial court pursuant to Court of Criminal Appeals Rule 20.

On December 19, 1994, while Appellant was incarcerated at the Northeast Correctional Center in Johnson County, prison officials found approximately sixteen grams of marijuana in his possession. The prison disciplinary board placed Appellant in punitive segregation for an unspecified number of days and referred his case to the district attorney’s office. Appellant subsequently pled guilty to possession of a controlled substance in a penal institution but reserved the two certified questions of law set forth above. See Tenn. R. Crim. P. 37(b)(2)(i).

With respect to Appellant’s first certified question, the law is well settled. Double jeopardy principles do not prohibit both remedial action by prison officials and

prosecution by the district attorney's office. See Ray v. State, 577 S.W.2d 681, 682 (Tenn. Crim. App. 1978); see also State v. Moore, No. 03C01-9604-CC-00163, 1997 WL 206796, at *1 (Tenn. Crim. App. Apr. 29, 1997); State v. Bennett, No. 03C01-9607-CR-00250, 1997 WL 80965, at *2 (Tenn. Crim. App. Feb. 27, 1997).

With respect to Appellant's second certified question, the law is equally well settled. Selective enforcement violates equal protection principles only when the selection is "deliberately based upon an unjustifiable standard such as race, religion, or other arbitrary classification." Oyler v. Boles, 368 U.S. 448, 456 (1962). Absent such an arbitrary classification, which Appellant fails to even allege, state officials enjoy broad prosecutorial discretion. Cooper v. State, 847 S.W.2d 521, 536 (Tenn. Crim. App. 1992).

Accordingly, we affirm the trial court's judgment pursuant to Court of Criminal Appeals Rule 20.

JERRY L. SMITH, JUDGE

CONCUR:

JOE G. RILEY, JUDGE

CHRIS CRAFT, SPECIAL JUDGE