

ORDER

A Johnson County Criminal Court jury found Appellant Mike Booher guilty of possession of a controlled substance in a penal institution. As a Range II multiple offender, he received a sentence of seven years and six months 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 issues for review:

- (1) whether the trial court erred in refusing to dismiss the charge on the grounds of double jeopardy; and
- (2) whether the trial court erred in refusing to dismiss the charge on the grounds of selective prosecution.

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

On May 24, 1994, while Appellant was incarcerated at the Northeast Correctional Center in Johnson County, prison officials found marijuana in his possession. The prison disciplinary board placed Appellant in punitive segregation for a period of ten days and referred his case to the district attorney's office. Appellant was subsequently convicted of possession of a controlled substance in a penal institution.

With respect to Appellant's first issue, 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 issue, 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