



sanctioned, criminally charged and denied an earlier parole date upon conviction for the same conduct would not on its face violate the double jeopardy clause. See U.S. v. Woods, 127 F.3d 990, 993 (11th Cir. 1997); U.S. v. Hernandez-Fundora, 58 F.3d 802, 806 (2d Cir. 1995); U.S. v. Newby, 11 F.3d 1143, 1144-45 Cir. 1993), cert. denied, 114 S. Ct. 1841 (1994).

Plaintiff also asserts that no state court relief is available because the Board did not mail its notice of decision until the thirty day period to appeal to the Commonwealth Court had expired and prison authorities further delayed the delivery of the notice to plaintiff. There is, however, a difference between an absence of state remedies and a failure to exhaust them. Plaintiff does not allege that he filed an appeal or petition for review in the Commonwealth Court with a motion to proceed nunc pro tunc on the ground he had not received timely notice of the adverse Board decision. See Smith v. Pa. Bd. of Probation & Parole, 683 A.2d 278, 282 (Pa. 1996) (rules regarding time and method of appeal from Board decisions not to be "so rigidly applied as to result in manifest injustice" or to bar appellant who "did all that he could reasonably be expected to do"); Bradley v. Bd. of Probation & Parole, 529 A.2d 66, 67 (Pa. Cmwlth. 1987) (appeal nunc pro tunc proper where Board fails timely to send notice of decision or appellant fails timely to receive notice due to negligence of third party); Dinkins v. Com.

