



Arbitration CAS 2012/A/2696 Steve Mullings v. Jamaican Anti-Doping Commission (JADCO), award of 4 March 2013

Panel: Mr David Rivkin (USA), President; Mr Christopher Campbell (USA); Prof. Richard McLaren (Canada)

Athletics

Doping (furosemide)

Conditions to allow DNA testing

Factors to be considered in assessing the appropriate sanction in a second anti-doping violation case

1. **DNA testing is complex and expensive, and it cannot be ordered whenever an athlete requests. Rather, the athlete should first be able to present some reasonable basis for questioning the lab results to justify any DNA testing.**
2. **The circumstances surrounding the first anti-doping violation are relevant factors to be considered in assessing what the appropriate sanction is in a second anti-doping violation case.**

1. THE PARTIES

- 1.1 The Appellant, Mr. Steve Mullings (“Mullings”) is an athlete competing in the sport of athletics. His specialties are the 100 and 200 metre events. In 2007, Mullings won the 100 metre dash in Zaragoza with a time of 9.91 seconds. In 2009, he placed second in the Jamaican National Championships behind Olympic champion Usain Bolt. Mullings has been ranked as high as third in the world in the 100m dash.
- 1.2 The Respondent, the Jamaican Anti-Doping Commission (“JADCO”), is the national anti-doping organization responsible for the execution of Jamaica’s anti-doping programme.

2. FACTUAL BACKGROUND

- 2.1 Below is a summary of the relevant facts and allegations based on the parties’ written submissions, pleadings and evidence. Additional facts and allegations found in the parties’ written submissions, pleadings and evidence may be set out, where relevant, in connection with the legal discussion that follows. Although the Panel has considered all the facts, allegations, legal arguments and evidence submitted by the parties in the present proceedings,

it refers in its Award only to the submissions and evidence it considers necessary to explain its reasoning.

- 2.2 In 2004, Mullings was sanctioned with a 2-year suspension for an anti-doping rule violation: namely, the presence of the prohibited substance methyltestosterone in his bodily specimen. At the time, Mullings was 21 years old and was a track athlete at Mississippi State University in the United States. Mullings initially flew to Jamaica for the hearing, but the hearing was cancelled. Mullings was unable to attend the rescheduled hearing due to financial constraints and the fact that he had to attend class. He was not represented by counsel.
- 2.3 On or about 24 June 2011, Mullings provided an in-competition sample at the National Senior Championships in Jamaica. The sample was sent to and tested at the WADA-accredited INRS Laboratoire de controle du dopage in Laval, Québec, Canada (the “Lab”), and returned an Adverse Analytical Finding (“AAF”) for the presence of the prohibited substance Furosemide. The “B” sample confirmed the presence of Furosemide.
- 2.4 On 22 November 2011, a hearing took place before the Disciplinary Panel of JADCO regarding the second anti-doping rule violation. Mullings did not call any witnesses at the hearing, nor was he present, although he was represented by counsel. Following the hearing, an oral decision was rendered, in which Mullings was found to have committed an anti-doping rule violation. Because this was a second anti-doping rule violation, he was sanctioned with a lifetime ineligibility. Mullings appeals from this decision.

3. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

- 3.1 On 19 December 2011, Mullings filed with the Court of Arbitration for Sport (“CAS”) his Statement of Appeal, requesting that the CAS rule:
 1. *The Appeal of Mr. Mullings is admissible;*
 2. *Dismiss the charge filed against Mr. Mullings and declare the lab results unreliable;*
 3. *Award costs to Mr. Mullings.*
- 3.2 In addition to his requests for relief in his Statement of Appeal, Mullings also filed a Request for Article 65.1 Determination, a Request for Discovery, and a Request for Extension of Time to Submit Appeal Brief. In this Request for Discovery, Mullings requested:
 1. Release of his urine sample from the Lab for the sole purpose of DNA testing;
 2. Information regarding the storage of and access to Mullings’ urine sample;
 3. Information regarding the transportation of Mullings’ sample from the JADCO storage facility to the Lab;
 4. Information regarding the liquids that were provided to Mullings before he gave his sample on 24 June 2011.

- 3.3 On 23 January 2012, the Respondent advised that it would not oppose the Appellant's request for an extension of time to file his Appeal Brief, and on 26 January 2012, the Respondent commented on Mullings' Request for Discovery.
- 3.4 On 26 January 2012, Mullings filed a Legal Aid Application form and supporting documentation.
- 3.5 On 17 April 2012, Mullings filed an additional submission regarding his Discovery Request and further inquired as to the status of his request for legal aid.
- 3.6 On 4 May 2012, the President of CAS issued a confidential order regarding the Appellant's request for legal aid.
- 3.7 On 10 May 2012, the CAS Court Office informed the parties that the Panel to hear the appeal had been constituted as follows: Mr. David W. Rivkin, President of the Panel; Mr. Christopher L. Campbell, arbitrator nominated by the Appellant; and Prof. Richard H. McLaren, arbitrator designated by the Respondent. On 4 December 2012, the parties were advised that Ms. Erin C. McDermid had been appointed as *ad hoc* clerk in the matter.
- 3.8 On 29 May 2012, the Panel directed:
1. JADCO to produce a copy of the complete documentation package from the Quebec laboratory within ten days;
 2. JADCO to produce a copy of the complete documentation package in relation to Mr. Mullings' 2004 sample within ten days; and
 3. The Appellant to file his Appeal Brief within ten days.
- 3.9 The Panel advised the parties that they would be given the opportunity to file additional written submissions after the production of the laboratory documentation package. The Panel further advised that it would rule on the Appellant's request for DNA testing of the urine sample after the production of the documentation package.
- 3.10 On 8 June 2012, Mullings filed his Appeal Brief with accompanying Exhibits and Witness Statements.
- 3.11 On 27 June 2012, JADCO filed its Response to the issues raised in the Appellant's Additional Submission on his Request for Discovery. JADCO further requested a suspension of the time limit to file its Answer Brief until the Panel ruled on the Request for Discovery.
- 3.12 On 4 July 2012, JADCO produced and filed the complete documentation package for the Appellant's sample taken in 2011. It further advised that it had no responsibility for Mullings' 2004 sample, and as a result it was not yet in a position to be able to deliver the documents. It advised that it would continue to make attempts to obtain the laboratory documentation from the responsible party, the Jamaican Athletics Administration Association ("JAAA").

- 3.13 On 10 July 2012, JADCO filed its Answer together with Exhibits and three Witness Statements.
- 3.14 On 19 July 2012, Mullings advised the CAS that it was his desire to have the matter decided on the written submissions only, but added that he wished for the Request for Discovery to be decided before the matter was decided on the briefs.
- 3.15 On 3 August 2012, the Panel advised the parties that it was denying the Appellant's request for DNA testing. The Panel further advised that in its opinion, if the Appellant were to maintain his "sabotage" defence, a hearing would likely be required. The Panel also granted the Appellant two weeks from the date of receipt of the laboratory package to comment on the package and to advise whether he was maintaining his sabotage defence.
- 3.16 On 16 August 2012, the complete documentation package for Mullings' 2004 sample was filed with the CAS and provided to Mullings.
- 3.17 On 7 September 2012, Mullings wrote to the CAS to advise that he was withdrawing his sabotage defence, and requested that the Panel make a reasoned decision on his discovery request and sentence on the papers only. The reasoned decision is provided in paragraph 8.4 below.
- 3.18 On 19 September 2012, Mullings filed a separate letter and email with the CAS. On 2 November 2012, counsel for Mullings wrote to the CAS to advise that Mullings' filing of 19 September 2012 was made without the knowledge of his counsel.
- 3.19 On 18 October 2012, the Respondent filed a supplementary submission on the Appellant's comments on the laboratory documentation package, as well as the 19 September 2012 statement and filings of Mullings.
- 3.20 By letter dated 9 January 2013, the parties were advised that pursuant to Article R57 of the CAS Code the Panel deemed itself sufficiently well informed and had decided, consistent with Mullings' request, not to hold a hearing.

4. JURISDICTION AND ADMISSIBILITY

- 4.1 Article R47 of the Code of Sports-related Arbitration (the "Code") provides as follows:

An appeal against the decision of a federation, association or sports-related body may be filed with the CAS insofar as the statutes or regulations of the said body so provide or as the parties have concluded a specific arbitration agreement and insofar as the Appellant has exhausted the legal remedies available to him prior to the appeal, in accordance with the statutes or regulations of the said sports-related body.

- 4.2 Article 23 of the Jamaican Anti-Doping in Sport Act provides:

Where an appeal is in respect of an international event or a case involving an international-level athlete, the decision of the Disciplinary Panel may be appealed directly to the Court of Arbitration.

4.3 Article R49 of the CAS Code provides:

In the absence of a time limit set in the statutes or regulation of the federation association or sports-related body concerned, or of a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against. [...].

4.4 Mullings' appeal was timely filed.

4.5 The parties agree that this Court has jurisdiction to hear and decide this Appeal.

5. APPLICABLE LAW

5.1 Article R58 of the CAS Code provides as follows:

The Panel shall decide the dispute according to the applicable regulations and the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law, the application of which the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision.

6. THE SUBSTANTIVE ARGUMENTS

6.1 Mullings' position is summarized as follows:

- The process of imposing the life ban was not careful and thorough. The Disciplinary Panel did not fully consider all the facts and arguments;
- Mullings was not permitted to provide evidence at the first hearing;
- Regarding the 2004 Positive Test and Hearing:
 - There were inconsistencies in documentation - control number on test results that were positive were identified as 880832, but the urine sample was recorded as being 880822¹.
 - Mullings could not afford to test his B sample at the time;
 - Mullings and staff at Mississippi State University were advised by JAAA not to worry about the positive test and not to fight it as it would make the process quicker;
 - Mullings flew down to Jamaica for the hearing. Dr. A. (JAAA medical officer) asked where he was staying and if he could meet with him. Mullings declined to meet with Dr. A. because he felt Dr. A. was trying to convince him to plead guilty to something he had not done;
 - The hearing was cancelled, and Mullings returned to school in the United States; and

¹ These inconsistencies were later cleared up, and the Appellant abandoned this point.

- The hearing was rescheduled, and Mullings could not afford to return to Jamaica for the hearing
- Regarding the 2011 Positive Test:
 - When Mullings was advised of doping control, he was unable to provide a sample. He was therefore given certain liquids to drink;
 - The Chaperones were not going to the washroom with athletes;
 - The day following the sample collection process, two athletes approached Mullings requesting he give up his spot in the race, which Mullings took to mean that certain people did not want him on the team;
 - Mullings' urine sample was not shipped to the Lab until 27 June 2011;
 - He could not have consumed any substance containing furosemide because he took and passed three drug tests in the period immediately preceding the 25 June 2011 test. The only difference in his nutritional regimen was the Tums. The Tums were tested, and it revealed that they had no furosemide;
 - There were rumours to the effect that his test was being sabotaged²;
 - Mullings did not attend the 17 November 2011 hearing because he feared for his life and could not afford the trip. The Panel did not allow Mullings' affidavit to be read at the hearing, nor did they allow any telephone or online testimony despite requests from his counsel;
- Exceptional circumstances surrounding the 2004 case should lead to a reduction in the sanction, including:
 - Doubt as to the identity of the athlete and sample in the lab documents;
 - Mullings was a college student at the time without resources to research and contest charges against him;
 - Mullings was in the United States at the time of the positive test;
 - Without the funds to hire a lawyer or lab expert, Mullings and his coach did the best they could to examine the lab docs and place into question the process;
 - The hearing to which he travelled was cancelled, and he could not afford to attend again;
 - Sample identification numbers had been scratched out, and new numbers hand written (see Mullings' Exhibit 1)
 - No answers were ever provided to him in response to his concerns regarding the irregularities.

6.2 In light of the above, Mullings requested that the 2004 sanction not be counted as a first sanction for a doping offence.

² This defence was subsequently dropped.

6.3 JADCO's position on the merits is summarized as follows:

- On 15 August 2011, both parties were advised that the disciplinary hearing was scheduled for 22 August 2011 at 2:00 p.m.;
- The Hearing took place as scheduled, with Mr. Patrick Bailey attending as counsel for Mullings. Ms. Allison Strange was also present by telephone. She advised that Mullings was present with her;
- Mr. Bailey requested an adjournment due to the short notice, advising that Mullings was unable to attend on this date, but would come at a future date;
- The adjournment was granted; orders were made for filing of particulars, and it was determined that the Hearing would take place on 19 and 20 October 2011;
- On 19 October 2011, the Hearing commenced. Mullings was absent. He was represented by Mr. Alando Terrelonge and Mr. Ryan Cipparone, by telephone. This was an unsatisfactory arrangement, as there was much difficulty hearing counsel present by telephone;
- Mullings requested an extension of sixty (60) days to file particulars. JADCO agreed, but only granted twenty-one (21) days. The Hearing was accordingly adjourned to 9 and 10 November 2011;
- The hearing commenced on 10 November 2011. Mullings was absent, but Mr. Terrelonge was present. Mr. Cipparone also called in, but counsel for JADCO did not accept the call;
- JADCO presented its case, at which time Mr. Terrelonge made an application to introduce Mullings' evidence by affidavit.
 - The affidavit had not been sent to JADCO until 8 November 2011 and was not signed. Furthermore, the affidavit that Mr. Terrelonge sought to introduce was different than the one that had been sent to JADCO. Accordingly, the Disciplinary Panel refused to allow the affidavit;
- The Hearing was adjourned to 16 November 2011 to allow for the reply of Mullings, and on 17 November 2011 the Disciplinary Panel delivered its verdict;
- On 21 November 2011, Mr. Terrelonge provided his submission regarding the sanction on behalf of Mullings;
- The Disciplinary Panel found that Mullings was liable for presence of any prohibited substance found in his body; there was sufficient proof of presence given the "B" sample confirmed the "A" sample; JADCO is not required to prove *mens rea*, intention or fault (strict liability);
- On the merits of Mullings' case, JADCO denies that:
 - Mullings was unable to provide a sample and that he was given liquids;
 - Athletes were not monitored by their chaperones;
 - Samples were placed in a vault that was accessible to other JADCO employees;
 - Dr. P.'s testimony revealed that other individuals had access to the urine sample;

- Mullings did not attend the Hearing because he feared for his life;
- Mullings' urine was switched; and
- Mullings was sabotaged;
- It is incongruous to uphold the 2004 conviction while discrediting the reliability of the evidence on which it is founded. It is also patently wrong to find that evidence on which the 2004 conviction was based is flawed, although there was no appeal from the decision;
- The CAS panel has no jurisdiction to consider and make a determination on the facts, circumstances or merits of the 2004 doping violation;
- Mere suspicion cannot be the basis on which to re-test samples. There must be flaws or errors in the sample collection, results management or testing procedures;
- There was no procedural impropriety in the conduct of the disciplinary hearing. Mullings had ample opportunity to provide his defence.

6.4 As stated above in para 3.20, consistent with the parties' positions, the Panel did not hold a hearing. Nevertheless, the Panel received and considered the following witness statements:

6.4.1. On behalf of the Appellant:

6.4.1.1 Steve Mullings. Mullings stated, *inter alia*:

- He did not consume any substance containing either Methyltestosterone in 2004, or Furosemide in 2011;
- He completed the drug test without objection or hesitation in 2004;
- He received a phone call several weeks after the Jamaican National Championships from the JAAA informing him that he had tested positive for Methyltestosterone;
- He did not know what Methyltestosterone was and had never taken the drug;
- He consulted Coach Dudley about the call;
- He observed inconsistencies in the paperwork regarding the 2004 test;
- Dr. A. of JAAA attempted to convince him to plead guilty prior to the JAAA hearing;
- He could not attend the rescheduled hearing due to severe financial problems;
- He had problems with cramping and dehydration at the 2011 Jamaican National Championships;
- He took two Tums to relieve the problem;
- He completed the drug test in 2011 without objection or hesitation;
- He won the 200m race, but was not tested;

- In two separate instances, competitors approached him about him giving up his position on the Jamaican National Team in 2011. He was insulted and walked away from both situations;
- He completed five (5) drug tests, three (3) of which were prior to 25 June 2011, and all resulted in a negative;
- He was contacted by a friend in July 2011, while overseas, who advised that there were rumours in Jamaica that he was being sabotaged and that the Jamaicans were trying to get him off the team no matter what;
- He never took any drug that contained Lasix;
- He believes the positive tests in both 2004 and 2011 were the result of tampering or switching his urine with that of another athlete.

6.4.1.2 In addition to his Witness Statement, Mullings also filed his own submission on 19 September 2012 without the knowledge of counsel. That submission, which also detailed the circumstances surrounding the 2004 positive test and hearing, has been considered by the Panel and is summarized as follows:

- He will not sign the letter submitted by his counsel in response to the Laboratory Package as it will be telling the CAS that he is guilty, but he is innocent;
- He is grateful to the CAS for granting him a legal hearing;
- He continues to appeal to the CAS for a DNA test as he is 110% certain that he did not take any prohibited substances;
- He has concerns about someone holding his urine sample for more than 24 hours;
- He questions why he was not tested when he performed in the top three in the 200 metre race;
- Only an innocent person would want a DNA test as he is requesting;
- JADCO has set him up because he is the only athlete who did not live in Jamaica or train in Jamaica. He wants to make his country proud, but he left Jamaica to help his family;
- It is not a coincidence that the only time for which he tested positive was when he was in the top three in the 100 metre final;
- He tested negative both before and after the national trials;
- G., another athlete, overheard some athletes from Jamaica talking about how Jamaica was going to do whatever it could to get Mullings off the team;
- Given that a diuretic was found in his sample, why would it have taken so long for him to provide a sample;
- Everything has been taken away from him and he is pleading with the CAS to take this into consideration;

6.4.1.3 Coach Steve Dudley. He stated, *inter alia*:

- He attended the Jamaican National Championships in 2004 and 2011 with Mullings;
- He witnessed Mullings cramping and being dehydrated during the 2011 semi-finals for the 100m race;
- He received a phone call from a doctor on the JAAA staff in late 2004 advising that Mullings had failed a drug test, having tested positive for Methyltestosterone;
- He was perplexed at Mullings testing positive because it was a very expensive drug that Mullings would not be able to afford;
- The doctor on the JAAA staff advised him to tell Mullings to lie about taking a sex drug to perform for his girlfriend;
- Mullings and he decided, however, not to lie about taking a drug he did not take;
- He contacted the IAAF in Monaco to determine the proper protocol to pursue when JAAA would not respond to his phone calls. The IAAF advised that Mullings should write a letter stating that he wanted his B sample tested;
- Mullings wrote the letter to have his B sample tested. The B sample was tested and confirmed the AAF;
- It took several weeks for the JAAA to produce the drug test results.
- He noticed that the custody number had been changed on several pages of the results;
- He attempted to contact the JAAA on multiple occasions to ask questions, but the questions were never answered;
- He was present in 2011 when Mullings took two Tums to relieve cramping and dehydration;
- He observed the JADCO testing area being disorganized and unprofessionally conducted;
- He felt it was odd that Mullings was tested only after the 100m and not the 200m race in both 2004 and 2011;

6.4.2. On behalf of the Respondent:

6.4.2.1. Dr. P., Lead Doping Control Officer (“DCO”) for JADCO. In addition to explaining the Doping Control Process and the Chain of Custody of the Sample, he stated *inter alia*:

- Mullings took more than one attempt to provide a full sample of urine. He took about 20 minutes to complete the process and was advised during that time to keep his urine sample in his possession;

- He observed Mullings select the sample kit, open the kit and remove the A and B bottles;
- Mullings indicated that he had taken no medication in the previous 7 days, and in the comments section he wrote the number seen on the outside of the resealed sample kit;
- He asked Mullings to read over the Doping Control form and to sign if he agreed that the control was conducted in accordance with the appropriate standards;
- Mullings read over the form and signed it;
- Mullings wrote his own address down on the Doping Control Forms and his ID number;
- Mullings complained about being in pain throughout the Doping Control process; however, he won the 200m race the following day;
- The times on the Doping Control Form are incorrect due to an error and complications with his watch;
- After the last sample was collected that day, he personally took charge of all the samples and transported them to the JADCO office. The samples were placed in a sample room with an electronic combination lock that was opened and closed by the site coordinator;
- The next morning, he returned to the JADCO office and took control of the sample and transported them to Federal Express;
- At Federal Express, the samples were placed in a box provided by Federal Express and sealed in his presence;

6.4.2.2. D., Chaperone. D. stated, *inter alia*:

- He notified Mullings that he had been selected for Doping Control within 2-4 minutes of him completing the 100m dash event;
- He advised Mullings that he was responsible for any substance he consumed and should be careful not to take anything from anyone he did not know;
- He told Mullings of the time of notification and had him sign the notification form;
- He kept a close eye on Mullings after his notification;
- After the medal ceremony, Mullings and a member of his team attended the doping control area for testing;
- Mullings advised that he was ready to pass his urine, and he accompanied Mullings into the testing room;
- He instructed Mullings to wash his hands thoroughly with water only, select a collection cup and proceed to a bathroom stall where he would pass his urine;
- He advised Mullings to remove his running trunks;

- He carefully observed Mullings to ensure that he had no foreign mechanism attached to his person from which the sample was taken;
- Mullings could not complete the sample collection the first time as he was unable to pass enough urine;
- He advised Mullings to keep his sample with him at all times and under observation;
- He kept Mullings under strict observation from the time he made his first attempt to the final passing of urine;
- He observed Mullings selecting the sample kit and escorted him to Dr. P.;
- At the end of the process, Dr. P. completed the forms;

6.4.2.3. C., Doping Control Results Management Coordinatory for JADCO. In addition to outlining her responsibilities as the Results Manager, she explained the process of setting up the Doping Control Station, the Chain of Custody of Samples, and stated, *inter alia*:

- On 2 August 2011, she obtained the results for Mullings' sample. The results provided that Mullings had an AAF for the presence of Furosemide in his sample;
- She conducted an initial review of the results management process and prepared the initial review report;
- The report was then submitted to Dr. F., who conducted a final review;
- On Dr. F.'s instructions she prepared the notification package for Mullings;
- She made several attempts to contact Mullings between 3 August and 8 August 2011;
- She contacted the JAAA and the IAAF in an effort to obtain contact information for Mullings;
- On 8 August 2011, she was successful in contacting Mullings, and he provided his instructions to send the notification document to his email;
- Mullings confirmed receipt of the notification package on 9 August 2011;
- Mullings indicated he wished to have his B sample analysed;
- On 18 August 2011, JADCO received the results of the B sample analysis, which confirmed the AAF.

7. THE PANEL'S FINDINGS ON THE MERITS

- 7.1 The 2011 AAF by the Lab constitutes *prima facie* evidence of doping.
- 7.2 Mullings has not presented the Panel with any basis to disregard that finding. Mullings withdrew his claim of sabotage, and the other questions that he posed in his submissions do not call into question the validity or reliability of the results.
- 7.3 The Chain of Custody of the Sample was intact; the Doping Control Process was performed in accordance with the applicable standards; and the Laboratory Package was likewise in order. Moreover, the Panel granted Mullings' request to receive the complete 2011 lab documentation package, but Mullings was unable to demonstrate any errors in that documentation.
- 7.4 Because Mullings was unable to present any basis for challenging the lab documentation and results, the Panel denied his request for DNA testing on the sample. Such testing is complex and expensive, and it cannot be ordered whenever an athlete requests it. Rather, the athlete should first be required to present some reasonable basis for questioning the lab results to justify any DNA testing. Mullings presented no such basis here.
- 7.5 The Panel has reviewed the circumstances surrounding the 2011 JADCO hearing, and finds that Mullings was represented by counsel and was given a full opportunity to be heard. Given these facts, the conclusion reached by the Disciplinary Panel that Mullings committed an anti-doping rule violation was reasonable.
- 7.6 In light of all of the above, the Panel must conclude that a second anti-doping rule violation occurred. Therefore, the only other issue to be determined is the appropriate sanction and whether or not there are circumstances that warrant imposing a sanction other than the lifetime ineligibility imposed by JADCO. Article 10.7 of the JADCO Code applies the same article of the WADA Code, which provides for ineligibility of 8 years to life for two standard violations within an 8-year period.
- 7.7 Mullings raised questions before this Panel regarding the 2004 finding and the hearing associated with it.
- 7.8 The Panel accepts that the circumstances surrounding the first offense are relevant factors to be considered in assessing what the appropriate sanction is in this case.
- 7.9 For this reason, the Panel has considered the circumstances surrounding the first anti-doping rule violation. While it appreciates the difficulties Mullings encountered, it does not find that the circumstances warrant a more lenient sanction. JAAA conducted a hearing in 2004, at which evidence was presented and considered, and Mullings had an opportunity to participate. It simply would not be appropriate for a Panel to be more lenient on an individual by virtue of the fact that he did not present his case as well as he could have in the first instance.

- 7.10 The Panel has also considered other decided cases in which an athlete was sanctioned for a second anti-doping rule violation, including CAS 2010/A/2293 where the Panel reduced the athlete's period of ineligibility from lifetime to twelve (12) years.
- 7.11 CAS 2010/A/2293 can be distinguished from the facts of this case. In CAS 2010/A/2293, it was uncontested that the first violation arose from the conduct of the coach and not the athlete. The conduct leading to Mullings' first violation, however, was clearly his own.
- 7.12 Other CAS panels have imposed lifetime bans for a second offense. See, *e.g.* CAS 2008/A/1572, 1632, 1659; CAS 2008/A/1585, 1586; and CAS 2006/A/1149 and 2007/A/1211. While Mullings has attempted to raise suspicion about his first violation, he has not presented any evidence that would lead this Panel to overlook its findings. The Panel therefore affirms the imposition of the lifetime ban by JADCO.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by Steve Mullings on 19 December 2011 against the decision issued by JADCO on 21 November 2011 is dismissed.
2. The decision of JADCO imposing lifetime ineligibility on Steve Mullings is confirmed.
- (...)
5. All further and other claims for relief are dismissed.