

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

December 19, 1996

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

No. 95-3322

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

**STATE OF WISCONSIN EX REL.
ANDRE MOORE,**

Petitioner-Appellant,

v.

JAMES P. MURPHY,

Respondent-Respondent.

APPEAL from orders of the circuit court for Dane County:
MICHAEL B. TORPHY, JR., Judge. *Affirmed.*

Before Eich, C.J., Vergeront and Roggensack, JJ.

PER CURIAM. Andre Moore appeals from an order dismissing his petition for a writ of certiorari and affirming a prison disciplinary committee's decision finding him guilty of making threats in violation of WIS. ADM. CODE § DOC 303.16¹ and attempted battery in violation of WIS. ADM.

¹ WISCONSIN ADM. CODE § DOC 303.16 provides: "Any inmate who intentionally does

CODE § DOC 303.12-A.² Moore also appeals from an order denying reconsideration. Because none of Moore's appellate arguments are persuasive, we affirm.

Moore, an inmate at the Green Bay Correctional Institution, received a conduct report that charged him with making a threat, battery and disruptive conduct. The conduct report alleged that an officer asked Moore to "keep his yelling down." Moore responded, "get the fuck away from my cell or I will hurt you." The officer began to leave the area, but returned when Moore made further comments. The conduct report alleged that "Moore then lunged at his cell door and slapped me through his cell door trap opening, barely striking me with an open hand on the right side of my neck. Moore then attempted to punch me with a clenched fist through his cell bars, but I was out of his arm's reach."

The disciplinary committee found Moore guilty of making threats and attempted battery. The committee wrote:

We listened to inmate Moore and his witnesses and we considered the written report of Officer Cygan. We believe that the incident occurred as described by Cygan and we believe Moore attempted to injure Cygan therefore 303.12(A) [attempted battery]. We also believe he threatened Cygan We do not consider the

(..continued)

any of the following is guilty of an offense: (1) Communicates to another an intent to physically harm or harass that person or another; (2) Communicates an intent to cause damage to or loss of that person's or another person's property; or (3) Communicates an intent to make an accusation he or she knows is false."

² WISCONSIN ADM. CODE § DOC 303.12 provides: "Any inmate who intentionally causes bodily injury to another is guilty of an offense." Under WIS. ADM. CODE § DOC 303.06(1), an inmate is guilty of attempt if: "(a) The inmate intended to do something which would have been a rule violation; and (b) The inmate did acts which showed that he or she intended to violate the rule at that time." For recordkeeping purposes, an attempted offense is differentiated from a completed offense by the suffix A. WIS. ADM. CODE § DOC 303.06(2).

witnesses to be credible because the statements appeared more rehearsed than from memory.

Moore received three days' adjustment segregation and 360 days' program segregation. Moore appealed the determination to the institution superintendent, who affirmed the committee's decision.

Judicial review of a prison disciplinary committee's decision is limited to: (1) whether the committee remained within its jurisdiction; (2) whether it acted pursuant to law; (3) whether its decision was arbitrary, oppressive or unreasonable and represented its will rather than its judgment; and (4) whether the evidence was such that it might reasonably make the decision it did. *State ex rel. Whiting v. Kolb*, 158 Wis.2d 226, 233, 461 N.W.2d 816, 819 (Ct. App. 1990). The committee's finding of facts is conclusive if supported by any reasonable view of the evidence, and a court may not substitute its view of the evidence for that of the committee. *Id.*

Moore first argues that he is "entitled to a judgment of reversal" because the "respondent failed to refute ... [the] issues or legal theories presented" to the trial court. Moore is incorrect. On appeal of a trial court order sustaining a prison disciplinary decision, we review the decision of the disciplinary committee independently of the trial court. *Id.* The respondent's failure to respond to the issues as framed by Moore in his trial court brief is immaterial to whether the action of the disciplinary committee is upheld by this court.³

Moore next argues that the trial court "abused its discretion when it failed to reverse" the decision of the disciplinary committee. Moore does not, however, challenge the sufficiency of evidence to support the committee's

³ Moore relies on the familiar proposition that a respondent on appeal "cannot complain if propositions of an appellant are taken as confessed which they do not undertake to refute." See e.g., *State ex rel. Sahagian v. Young*, 141 Wis.2d 495, 500, 415 N.W.2d 568, 570 (Ct. App. 1987) (quoting *Charolais Breeding Ranches v. FPC Sec.*, 90 Wis.2d 97, 109, 279 N.W.2d 493, 499 (Ct. App. 1979)). That proposition, however, does not require a court to accept the issues as framed by the parties nor does it require a court to accept groundless arguments.

decision nor does he posit any developed legal challenge to the committee's decision. Rather, he reiterates his belief that the respondent "failed to refute" his arguments. As we noted above, that "failure" does not mandate a reversal of the committee's decision.

Lastly, Moore claims that the trial court was "bias[ed] and prejudice[d]" against him because it upheld the committee's decision and rejected his "unrefuted" arguments. This argument is little more than a rephrasing of the same argument that we have already rejected. Bias cannot be shown simply by pointing to a court's rejection of legal argument.

Moore has not shown that the disciplinary committee acted outside its jurisdiction or not according to law. He also failed to show that the committee's decision was arbitrary, oppressive or unreasonable and represented its will rather than its judgment or that the evidence did not reasonably support its decision. Therefore, the court's orders upholding the disciplinary committee's decision must be affirmed.

By the Court. – Orders affirmed.

This opinion will not be published. See RULE 809.23(1)(b)5, STATS.