

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

May 15, 1997

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. 96-0555

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN EX REL. DENNIS E. JONES,

PETITIONER-APPELLANT,

v.

GARY R. McCAUGHTRY,

RESPONDENT-RESPONDENT.

APPEAL from an order of the circuit court for Dane County:
MORIA KRUEGER, Judge. *Affirmed.*

Before Eich, C.J., Dykman, P.J., and Roggensack, J.

PER CURIAM. Dennis Jones appeals from an order affirming Waupun Correctional Institution's disciplinary decision. Jones, an inmate at the institution, was disciplined for refusing to take a mandatory drug test. He contends that: (1) he was not charged with the correct offense; (2) the disciplinary committee gave a constitutionally inadequate reason for its decision; and (3) the

committee failed to consider all of the evidence presented to it. We reject those arguments and affirm.

According to the conduct report charging Jones, he was approached by a corrections officer and ordered to produce a urine sample for analysis. In response, Jones cursed and invited the officer to write a disciplinary report. He did not subsequently produce a urine sample.

The conduct report charged Jones with violating WIS. ADM. CODE § DOC 303.59, use of intoxicants. The evidence before the disciplinary committee consisted of the report, and Jones's statement indicating that he was unable to produce a sample and denying that he cursed the officer. The committee found him guilty, stating "based on the conduct report, we find that he intentionally refused to provide a urine sample. This makes him guilty of 303.59, section (3)." On administrative review, the warden affirmed that decision. The trial court also affirmed, and Jones appeals. We conclude that Jones was properly charged and convicted under WIS. ADM. CODE § DOC 303.59(3).

Jones first contends that a conviction under WIS. ADM. CODE § DOC 303.59(3) was not authorized because the conduct report charged a violation of § 303.59, as opposed to § 303.59(3). The report plainly identified the violation as refusal to take the test. Jones cannot reasonably contend that he was confused or misled by the conduct report's identification of the violation. Harmless errors are disregarded in prison disciplinary proceedings. WIS. ADM. CODE § DOC 303.87. Jones next contends that the proper charge should have been disobeying an order. *See* WIS. ADM. CODE § DOC 303.24. Although the conduct report plainly indicated that he did, in fact, disobey an order, that order required compliance with § 303.59(3). The explanatory note to § 303.24 states that "a violation of this

section should not be charged where ... there is a more specific section which covers the same thing.” Appendix note to § DOC 303.24, at 51. We give great weight to an agency’s interpretation of its own rules unless plainly erroneous or inconsistent with the language of those rules. *Employer’s Mut. Liability Ins. Co. v. DILHR*, 62 Wis.2d 327, 334, 214 N.W.2d 587, 590 (1974). Giving due weight to the DOC interpretation, we conclude that Jones was properly charged under the more specific section.

The disciplinary committee adequately provided reasons for its decision. The prison disciplinary committee must state the evidentiary basis for its decision in a manner that allows a reviewing authority to determine if the evidence adequately supports the decision. *Saenz v. Young*, 811 F.2d 1172, 1174 (7th Cir. 1987). The statement need not be lengthy or detailed. *State ex rel. Meeks v. Gagnon*, 95 Wis.2d 115, 125, 289 N.W.2d 357, 363-64 (Ct. App. 1980). Here, the only issue was whether the conduct report truly reported the incident, or whether Jones did. By relying solely on the conduct report, the committee necessarily found that Jones was not telling the truth. A committee’s statement sufficiently articulates its reasons for purposes of our review if it plainly identifies credibility as the determining issue. *See Redding v. Fairman*, 717 F.2d 1105, 1115-16 (7th Cir. 1983), *cert. denied*, 465 U.S. 1025 (1984).

The committee adequately considered the evidence. As noted, the only evidence was the conduct report and Jones’s statement. Although the decision does not expressly refer to his statement, it does, as we have noted, necessarily reject it. That the committee implicitly rather than explicitly found Jones not credible does not affect our conclusion that the committee properly considered and rejected his statement in reaching its decision.

By the Court.—Order affirmed.

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

