

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

NOVEMBER 5, 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(1), 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. 96-1718

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

**STATE OF WISCONSIN, ex rel.
ROBIN R. ARNOLDUSSEN,**

Petitioner-Appellant,

v.

**DAVE BURTON, SUPERINTENDENT OF THE
MCNAUGHTON CORRECTIONAL CENTER,**

Respondent-Respondent.

APPEAL from a judgment of the circuit court for Oneida County:
ROBERT E. KINNEY, Judge. *Affirmed.*

Before Cane, P.J., LaRocque and Myse, JJ.

PER CURIAM. Robin Arnoldussen appeals a judgment denying two writs of certiorari. Arnoldussen challenges his transfer from the McNaughton Correctional Center (MCC) to the Oshkosh Correctional Center (OSCI), contending that the MCC Program Review Committee did not comply with departmental procedure rules, and therefore the committee's decision to reclassify and transfer him to a medium security institution should be reversed.

He further challenges a prison disciplinary committee decision that he violated prison rules by use of an intoxicant. We affirm the judgment.

Arnoldussen, an inmate at MCC, received a conduct report charging him with the use of intoxicants in violation of WIS ADM. CODE § DOC 303.59. A urine sample obtained from Arnoldussen tested positive for THC. Arnoldussen stated that he did not smoke any marijuana but was in an area where inmates were smoking and knew he should have left, but did not. Arnoldussen was found guilty of violating the rule prohibiting the use of intoxicants, resulting in a reclassification and transfer to OSCI. Because of a procedural error, a second program review committee hearing was held, reaching the same result as the first.

The second program committee hearing summary provided the following reasons for its decision:

Robin has been referred to PRC as he has been found guilty of a major conduct report. The violation being 303.59 use of intoxicants. ... Robin was tested for cause, tests showed positive for THC consumption. ... He is serving sentences that total 40 years for 2nd degree murder and armed burglary occurring 1/24/83 in Manitowoc when he entered an apartment above his sister's while armed with a hunting knife. Shortly after doing so the female victim ... was stabbed 21 times, causing her death. Robin was high on THC at the time and claimed that he entered the apartment to get more money to buy more THC. ... This present conduct violation along with the facts of the committing offense combined with an MR of 5/25/2001 and no indication from the parole commission as to early release consideration lead me to recommend reclass and transfer to medium custody.

....

... Inmate Arnoldussen was indeed interviewed at the Iron Co. jail for the purpose of PRC, he was interviewed by Ast. Supt. R. Flannery. Flannery was present at PRC and provided the views of the inmate. ...

The summary noted that Arnoldussen asked the committee to consider retaining him at MCC or Fox Lake Correctional Institution if reclassified medium. Flannery's information and input were considered by the committee, and "the committee found that reclass and transfer to medium were needed, OSCI was designated only because of bed space availability." On October 30, 1995, the same PRC convened as on July 19, 1995, as well as Flannery. All parties agreed that Arnoldussen was represented and therefore present and that the committee's decision was sound and should stand.

Arnoldussen appealed. He argued that procedural rules were not followed and there was no record that his urine specimen was refrigerated or frozen after it was collected because it was not tested immediately. The administrative appeal was denied with the finding that failure to freeze or refrigerate a sample does not alter positive or negative results.

Inmates have no fundamental right to remain in one part of the prison and not be transferred to another. *Hewitt v. Helms*, 459 U.S. 460 (1983). Given a valid conviction, the criminal defendant has been constitutionally deprived of his liberty to the extent that the State may confine him and subject him to the rules of its prison system as long as the conditions of confinement do not violate the constitution. *Irby v. Macht*, 184 Wis.2d 831, 522 N.W.2d 9 (1994).

On certiorari, review of the prison adjustment committee decision is limited to the record created before the committee. *State ex rel. Whiting v. Kolb*, 158 Wis.2d 226, 233, 461 N.W.2d 816, 819 (Ct. App. 1990). The court's review is limited to whether (1) the committee stayed within its jurisdiction, (2) it acted according to law, (3) the action was arbitrary, oppressive or unreasonable and represented the committee's will and its judgment, and (4) the evidence was such that the committee might reasonably make the order or determination in question. *Id.* "The facts found by the committee are conclusive if supported by 'any reasonable view' of the evidence and [the court] may not substitute [its] view of the evidence for that of the committee. " *Id.* (quoting *State ex rel. Jones v. Franklin*, 151 Wis.2d 419, 425, 444 N.W.2d 738, 741 (Ct. App. 1989)).

Judicial review as to whether a program review committee acted according to law requires the court to examine whether the committee followed

its own rules governing the conduct of hearings, because an agency is bound by its own procedural rules. See *State ex rel. Staples v. DHSS*, 115 Wis.2d 363, 367, 340 N.W.2d 194, 196 (1983). When an inmate is alleged to have violated a disciplinary rule, the committee may review the security classification and consider a transfer only after the disposition of the disciplinary case. WIS ADM. CODE § DOC 302.20(2). This is designed to ensure that an inmate is given an adequate opportunity to be heard on the issue whether the infraction occurred, whether the transfer is desirable and whether there is a factual basis for the transfer and that all relevant facts as to program assignment and security classification are considered.

Arnoldussen argues that the committee was not acting according to law because it violated several administrative regulations contained in §§ DOC 302.19(1), (2)(a) and (b), and (3) because he was not (1) informed of the hearing date; (2) informed of the criteria to be considered; or (3) given an opportunity to appear or provide input. He also alleges that the staff member who interviewed him never made a written recommendation to the committee.

Here, the record shows that Arnoldussen was interviewed by staff and provided an opportunity to present his views whether the infraction occurred, whether there was a basis for the transfer and on other factors relevant to program assignment and security classification. Although the staff member who interviewed him did not make a written recommendation, a written recommendation was submitted by his social worker. The record reflects, however, that Arnoldussen was not personally present before the PRC.

Program review procedure provides that the inmate shall be advised that "the inmate has the option to appear before the PRC. The inmate shall also be informed that if he or she refuses to attend the review or disrupts the review, the review may be conducted without the inmate being present." WIS ADM. CODE § DOC 302.19(1). The appendix to this rule indicates that in the center system, distances may require the personal appearance to be before only one member of the committee. Here, there is no indication that Arnoldussen was disruptive, refused to appear, or was present before just one member of the committee.

Arnoldussen, however, makes no suggestion how an appearance through an advocate, rather than personally, caused him prejudice. He makes no offer of any proof that he would have presented but for the lack of personal appearance. The decision to reclassify was based upon facts surrounding his conviction and the disciplinary committee finding. He attempts to challenge the disciplinary committee finding that he used an intoxicant. However, his only challenge is to the reliability of the testing of his urine specimen. In making the challenge, he offers no basis for his contention that failure to freeze or refrigerate a urine specimen causes it to test positive for THC.

The program review procedure is not designed to provide a procedure for attacking a disciplinary committee finding. Because the program review committee based its decision on the underlying offense, the disciplinary committee decision and the availability of bed space, Arnoldussen's failure to personally appear did not contribute to the reclassification and transfer decision. The record shows that he was interviewed, a written summary was presented by a social worker, and his views on the transfer were made known to the committee. Also, the substance of Arnoldussen's position identified at the interview was conveyed to the advocate, who accurately stated Arnoldussen's position during the inquiry. Based upon the record before us, we conclude that there are no grounds shown for overturning the judgment. We agree with the circuit court that any procedural anomalies have not been shown to affect any substantial right. The acts of the committees were within their jurisdiction, were not arbitrary or capricious and were supported by substantial evidence.

By the Court. — Judgment affirmed.

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