

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

NOTICE

July 3, 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.

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

No. 96-1750

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN EX REL. JAMES A. LOUKOTA,

PETITIONER-APPELLANT,

V.

JAMES P. MURPHY,

RESPONDENT-RESPONDENT.

APPEAL from an order of the circuit court for Dane County:
RICHARD J. CALLAWAY, Judge. *Affirmed.*

Before Dykman, P.J., Vergeront and Roggensack, JJ.

PER CURIAM. James Loukota, an inmate at Green Bay Correctional Institution, appeals from an order affirming a prison disciplinary decision. He contends that the institution's adjustment committee received insufficient evidence to find him guilty of a disciplinary rule violation, and that it imposed an improper disposition. We reject his arguments and affirm.

Loukota formally worked in the maintenance department at the institution. On April 3, 1995, he and seven other inmate workers in that division went on sick call. As a result, a corrections officer charged Loukota with group resistance. His report asserted that “this group work stoppage was planned to protest the new M.S.B. no smoking and inmate showering policies being enforced by ... Maintenance staff.”

At the adjustment committee hearing, it was undisputed that eight inmates from maintenance all requested sick call on the same day. However, Loukota submitted a written statement asserting that he was, in fact, sick on April 3, and was diagnosed as such and treated for his illness that day. The adjustment committee considered the conduct report and Loukota’s statement and issued the following decision:

We read Mr. Loukota’s written statement. The nurses assessment is a judgment of related illness and a slightly elevated temperature. We believe Loukota was not in fact sick or was actually acting as a member of an unauthorized group to interrupt maintenance. We do not believe it coincidental that so many from one worksite would report to sick call the same day. We believe it was intentional and Loukota intentionally participated.

The resulting disposition on this finding of guilty was a reprimand and referral to the program review committee.

On appeal, Loukota contends that the evidence of his actual illness precludes a finding that he reported sick as part of a group action. He also contends that a referral to the program review committee is not an authorized disposition for a disciplinary violation.

Two reasonable, conflicting inferences were available from the evidence presented at the disciplinary hearing. The committee could have found that Loukota's illness motivated his trip to sick call, with it being mere coincidence that seven of his co-workers reported on the same day. Or, the committee could have inferred that Loukota acted as a member of that group, with the coincidence being the fact that he was truly ill. We view either inference as reasonable. We must therefore accept the inference chosen by the reviewing agency. *Horton v. Haddow*, 186 Wis.2d 174, 183, 519 N.W.2d 736, 740 (Ct. App. 1994).

The committee did not impose an improper disposition. As Loukota correctly notes, inmates can only be disciplined in certain enumerated ways. *See* WIS. ADM. CODE § DOC 303.01(2). Because referral to the program review committee is not one of those listed sanctions, he contends that it was an improper disposition. We disagree. A referral is neither allowed nor precluded by the administrative provisions on discipline, because it is not discipline. It is merely a referral, and such referrals are expressly contemplated, and allowed, under WIS. ADM. CODE § DOC 302.20(2) and (3). Additionally, all Wisconsin inmates are regularly referred for program review. *See* WIS. ADM. CODE § DOC 302.18. If, as happened here, the inmate is aggrieved by the ultimate outcome of the referral, the proper remedy is review of the program committee's decision, not the disciplinary decision. In other words, an inmate may be both disciplined and separately referred to the committee in the course of a disciplinary proceeding because the referral is allowed by rule and is not punishment.

By the Court.—Order affirmed.

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

