

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

January 22, 1998

Marilyn L. Graves  
Clerk, Court of Appeals  
of Wisconsin

**NOTICE**

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

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.

**No. 96-3127**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT IV**

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**STATE OF WISCONSIN EX REL. THOMAS RICHMOND,**

**PETITIONER-APPELLANT,**

**v.**

**WILLIAM PUCKETT AND DONALD GUDMANSON,**

**RESPONDENTS-RESPONDENTS.**

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APPEAL from an order of the circuit court for Dane County:  
MARK A. FRANKEL, Judge. *Affirmed.*

Before Vergeront, Roggensack and Deininger, JJ.

PER CURIAM. Thomas Richmond appeals an order denying his petition for certiorari review. The issue is whether the Program Review Committee acted arbitrarily or capriciously when it denied Richmond's request to participate in a preferred treatment program because it required Richmond to admit to an allegation in the presentence investigation report (PSI) which he

insisted was false. We conclude that the committee acted reasonably and according to the law when it denied Richmond's request because: (1) it verified the disputed allegation; and (2) it reasonably concluded that Richmond's denial was incompatible with the program requirement that participants accept responsibility for their sexual misconduct. Therefore, we affirm.

Richmond, a *pro se* inmate, was convicted of sexually assaulting his daughter. When interviewed by the presentence investigator, his daughter alleged that Richmond engaged in other sexual misconduct unrelated to the conviction. At sentencing, Richmond insisted that this allegation was false. Following his incarceration, Richmond sought to participate in a preferred treatment program for sexual offenders to enhance his eligibility for discretionary parole. However, he was refused participation in that program because his denial of the allegation in the PSI was characterized as a refusal to accept responsibility for his sexual misconduct.

Richmond sought certiorari review to challenge the committee's classification and treatment decisions. The circuit court remanded the matter with directions to consider Richmond's contention that the allegation in the PSI was false.

On remand, the Department of Corrections (DOC) interviewed Richmond and the presentence investigator. The presentence investigator recalled her interviews and described Richmond "as having been in a form of denial at the time of her original [PSI]. In other words, [Richmond] attributed his behavior to drinking and drugs, but did not directly admit to anything." The presentence investigator specifically recalled the victim and Richmond's spouse who "both

unequivocally reiterated their statements about all of the behavior described in the [PSI].”

The DOC investigator concluded that “[no]thing presented by [Richmond] outweigh[ed] the credibility of the presentence writer or the information she used to formulate [the PSI].” The investigator also concluded that the program in which Richmond seeks to participate “demands acceptance of responsibility for past behavior as a requirement for entry.... Anything less than full acceptance of responsibility for all [Richmond’s] actions would defeat the purpose of the specialized treatment for which he has been deemed unsuitable.”

Judicial review of certiorari actions is limited to:

“(1) Whether the [committee] kept within its jurisdiction; (2) whether it acted according to law; (3) whether its action was arbitrary, oppressive, or unreasonable and represented its will and not its judgment; and (4) whether the evidence was such that it might reasonably make the order or determination in question.”

*Van Ermen v. DHSS*, 84 Wis.2d 57, 63, 267 N.W.2d 17, 20 (1978) (quoted source omitted). On certiorari, a reviewing court does not weigh the evidence presented, but defers to the committee’s determinations. *See id.* at 64, 267 N.W.2d at 20. This court’s inquiry is limited to whether there is substantial evidence to support the decision. *See id.*

On review following the remand, the circuit court concluded that, “the [DOC] has undertaken an appropriate review of the challenged material in the PSI and reasonably concluded that the allegation of sexual misconduct had a substantial basis in fact.” The circuit court denied the petition because it concluded that Richmond had not shown that the committee had acted arbitrarily

or capriciously when it denied his request to participate in a program which will not succeed with individuals who are reasonably believed to be in denial about significant sexual misconduct. We agree.

Richmond was entitled to dispute the allegation in the PSI. The sentencing court was aware of Richmond's insistence on the falsity of the victim's allegation, as was the committee. On remand, the DOC took reasonable steps to confirm the veracity of the allegation. Section 972.15(5), STATS., authorizes the use of the PSI for programming, treatment, parole consideration and probation placement. The committee reasonably rejected Richmond's contention that the allegation was false. This conclusion is supported by the record. The committee also reasonably concluded that Richmond's admission to that allegation was critical to his successful participation in the program. Our review persuades us that the committee's denial of Richmond's request was reasonable and in accordance with the applicable law.

*By the Court.*—Order affirmed.

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

