COURT OF APPEALS
DECISION
DATED AND FILED

February 4, 1999

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

No. 97-2468

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT IV

STATE OF WISCONSIN EX REL. MICHAEL SOLOMON,

PETITIONER-APPELLANT,

V.

GARY R. MCCAUGHTRY,

RESPONDENT-RESPONDENT.

APPEAL from an order of the circuit court for Dodge County: JOSEPH E. SCHULTZ, Judge. *Affirmed.*

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

PER CURIAM. Michael Solomon, *pro se*, appeals from the trial court's order denying his petition for writ of certiorari and upholding a decision of the Waupun Correctional Institution Adjustment Committee. The issue is whether the committee acted properly in resentencing Solomon after his case was remanded to the committee. We conclude that it did and affirm.

Solomon was found guilty of lying and soliciting a prison guard for activities that occurred on November 18, 1996. The adjustment committee imposed four days' adjustment segregation and one-hundred-twenty days' program segregation as a penalty. Solomon petitioned the trial court for writ of certiorari. The trial court upheld the finding of guilt as to lying but reversed as to soliciting, remanding to the committee to impose a penalty only for the lying violation. On remand, the committee imposed a sanction of four days' adjustment segregation and sixty days' program segregation. This is nearly the maximum sentence.[1] The trial court denied Solomon's petition for writ of certiorari brought from the committee's decision.

On appeal, Solomon argues that the committee's decision was improper because it did not follow its own guidelines to determine the appropriate sentence, and because its decision was arbitrary and oppressive. Wisconsin Administrative Code § DOC 303.83 provides:

> In deciding the sentence for a violation or group of violations, the supervisor making summary disposition or the adjustment committee or hearing officer who is holding the hearing shall consider the following:
>
> (1) The inmate's overall disciplinary record, especially during the last year;
>
> (2) Whether the inmate has previously been found guilty of the same or a similar offense, how often, and how recently;

[1] The State mistakenly asserts in its respondent's brief that the maximum sentence for lying is eight days' adjustment segregation and three-hundred-sixty days' program segregation. However, the penalties to which the State refers are for "lying about staff," rather than "lying," the rule violation of which Solomon was found guilty. By the same token, Solomon mistakenly asserts in his appellant's brief that he received the maximum sentence. Actually, he received the maximum number of days of program segregation, but he received only four days of adjustment segregation, rather than the maximum penalty of five days of adjustment segregation.

> (3) Whether the alleged violation created a risk of serious disruption at the institution or in the community;
>
> (4) Whether the alleged violation created a risk of serious injury to another person;
>
> (5) The value of the property involved, if the alleged violation was actual or attempted damage to property, misuse of property, possession of money, gambling, unauthorized transfer of property, soliciting staff or theft;
>
> (6) Whether the inmate was actually aware that he or she was committing a crime or offense at the time of the offense;
>
> (7) The motivation for the offense;
>
> (8) The inmate's attitude toward the offense and toward the victim, if any;
>
> (9) Mitigating factors, such as coercion, family difficulties which may have created anxiety and the like;
>
> (10) Whether the offense created a risk to the security of the institution, inmates, staff or the community; and
>
> (11) The time he or she spent in TLU.

Based on these criteria, Solomon contends that he should not have received such a harsh penalty because he had a clean record for well over one year when the rule violation occurred, he had never been found guilty of the same offense or a similar offense, there was no serious risk of disruption based on his crime because it only "wasted the officer's time," there was no value to the property, the crime did not create a risk of serious injury to another person, and he was not aware that he was committing a crime at the time the offense occurred.

On certiorari review, we decide de novo whether the department acted within its jurisdiction, whether it acted according to applicable law, whether the action was arbitrary or unreasonable, and whether the evidence supported the determination in question. ***State ex rel. Riley v. DHSS***, 151 Wis.2d 618, 623, 445 N.W.2d 693, 694 (Ct. App. 1989). "An important component of the analysis is

whether the department followed its own rules, 'for an agency is bound by the procedural regulations which it itself has promulgated.'" ***Id.*** at 623, 445 N.W.2d at 694-95 (quoting ***State ex rel. Meeks v. Gagnon***, 95 Wis.2d 115, 119, 289 N.W.2d 357, 361 (Ct. App. 1980).

The record shows that the committee's decision about the penalty was not arbitrary and that the committee followed its sentencing guidelines. Solomon engaged in a course of lying about very serious events to get his cousin moved nearer to him. He said his cousin was in danger when he was not. Because Solomon's cousin was not really in danger, Solomon must have been aware that he was lying. Lying about matters of this sort create a risk to the security of the institution, inmates and staff. That is enough to support the committee's decision. Accordingly, we affirm.

By the Court.—Order affirmed.

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