

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

January 14, 1999

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. 97-2732

STATE OF WISCONSIN

IN COURT OF APPEALS  
DISTRICT IV

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**KERRY D. SEVERSON,**

**PLAINTIFF-APPELLANT,**

**V.**

**DONALD GUDMANSON, WARDEN,**

**DEFENDANT-RESPONDENT.**

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APPEAL from an order of the circuit court for Jackson County:  
ROBERT W. RADCLIFFE, Judge. *Affirmed.*

Before Dykman, P.J., Roggensack and Higginbotham,<sup>1</sup> JJ.

HIGGINBOTHAM, J. Kerry Severson, an inmate at the Jackson Correctional Institution, appeals from an order affirming an adjustment

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<sup>1</sup> Judge Paul B. Higginbotham is sitting by special assignment pursuant to the Judicial Exchange Program.

committee's decision that he was guilty of various violations of the Department of Corrections' rules and regulations. Severson contends that there was insufficient evidence to support the committee's decision, and that the committee violated his due process rights by not producing two witnesses at the hearing. Because the evidence was sufficient to support the findings of guilty, and because Severson waived his objections to the nonappearance of the witnesses, we reject Severson's contentions. Accordingly, we affirm.

### **BACKGROUND**

Kerry Severson received a conduct report for violating WIS. ADM. CODE §§ DOC 303.24 (disobeying orders), DOC 303.26 (soliciting staff), DOC 303.47 (possession of contraband-miscellaneous), and DOC 303.63 (violations of institution policies and procedures). He was ultimately found not guilty of disobeying orders, but guilty of the remaining offenses.

The conduct report asserted that on February 24, 1997, Severson filed an Interview/Information request with the prison chaplain's program assistant, Terilyn Scholze, requesting certain Alcoholics Anonymous materials. Severson was permitted to review the materials but did not find what he was seeking. After reviewing a catalogue Scholze had given him, Severson requested two books, "Courage to Change" and "One Day At A Time In Al-Anon." Severson asked Scholze if she could obtain these books from the AA volunteer coordinator, "Ann." Ann delivered the books to Scholze, who gave them to Severson. Guards later searched Severson's room and found the two books. No property receipts were discovered.

Severson said he intended to give the books to his girlfriend when she visited him. But when he attempted to take them to the visiting room, an

officer informed him that he was not following proper procedure for delivering the property to a visitor. He was instructed to contact the property department.

Severson testified:

I sent a request to the chaplain's office. On the way out of the chaplain's office, I saw a book I wanted to check out but was told the book was not available to be checked out. I wrote Terilyn Scholze [and] asked for some books from "Alanon" for my girlfriend. The AODA coordinator did contact me [to] let me check out some materials.... She called me back up to the office one day [and] asked if I knew Ann the AA coordinator. I then got 2 books from Ms. Scholze. I was told to thank Ann for the books. I went to the property room asked how to get these books to my girlfriend[, and] I was told how to do so. I did see Ann and I did thank her.

Severson requested the attendance of several witnesses at the hearing, including Ann, Terry Scholze, Dick Taylor (his advocate) and, the "woman who works in property room." Because Ann was a volunteer, not a staff member, and because Severson did not provide the specific name of the "woman who works in property," those witnesses were excluded. The committee found Severson guilty of all offenses except for disobeying orders, and stated the following in its decision: "Inmate[']s statement does not directly dispute the above listed allegations. Inmate knowingly solicited staff and took advantage of the inexperience of staff to accomplish his goals. The body of the conduct report supports the allegations of DOC 303.26, .63 and .47."

The committee imposed six days of adjustment segregation and 160 days of program segregation. Warden Gudmanson affirmed the committee's decision. Severson appealed to the Jackson County Circuit Court, which affirmed the adjustment committee's decision.

## STANDARD OF REVIEW

The scope of our review on certiorari is identical to that of the trial court. *State ex rel. Staples v. DHSS*, 136 Wis.2d 487, 493, 402 N.W.2d 369, 373 (Ct. App. 1987). On certiorari, the reviewing court is limited to determining: (1) whether the committee stayed within its jurisdiction; (2) whether it acted according to law; (3) whether the action was arbitrary, oppressive or unreasonable and represented the committee's will and not its judgment; and (4) whether the evidence was such that the committee might reasonably make the order or determination in question. *State ex rel. Whiting v. Kolb*, 158 Wis.2d 226, 233, 461 N.W.2d 816, 819 (Ct. App. 1990). We also may consider whether the inmate was afforded due process and whether the committee followed its own rules in processing the violation. *State ex rel. Staples v. DHSS*, 128 Wis.2d 531, 534, 384 N.W.2d 363 (Ct. App. 1986). *State ex rel. Meeks v. Gagnon*, 95 Wis.2d 115, 119, 289 N.W.2d 357, 361 (Ct. App. 1980).

The test on certiorari review is the substantial evidence test, under which we determine whether reasonable minds could arrive at the same conclusions the agency reached. See *Whiting*, 158 Wis.2d at 233, 461 N.W.2d at 819. We are not to substitute our view of the evidence for that of the prison officials. See *Van Ermen v. DHSS*, 84 Wis.2d 57, 64, 267 N.W.2d 17, 20 (1978). The agency's factual findings are conclusive if in any reasonable view the evidence sustains them. See *Nufer v. Village Board*, 92 Wis.2d 289, 301, 284 N.W.2d 649, 655 (1979).

## SUFFICIENCY OF THE EVIDENCE

Severson contends that the evidence does not support the adjustment committee's determination that he was guilty of violating §§ DOC 303.26,<sup>2</sup> 303.47,<sup>3</sup> and 303.63.<sup>4</sup> Severson admits to requesting the books for his girlfriend. He denies ever being shown a catalogue, which he characterizes as a "book." Scholze testified that Severson "didn't look at a book." Severson admits to having possession of the books without a property receipt. He contends the books were the property of the State and therefore not contraband. Severson further admits to not purchasing the books through an approved retail outlet, as required by the JCI Inmate Handbook.

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<sup>2</sup> Wisconsin Administrative Code, § DOC 303.26 provides in part:

An inmate who intentionally does any of the following is guilty of an offense:

....

(2) Requests or accepts anything of value from a staff member .... Exceptions: state property which the staff member is authorized to issue or property belonging to the inmate which was in storage or which has been sent or brought in[.]

<sup>3</sup> Wisconsin Administrative Code, § DOC 303.47(2)(d) provides in part:

(2) Any inmate who knowingly possesses any of the following is guilty of an offense:

....

(d) Items which do not belong to the inmate, except state property issued to the inmate for his or her use, such as sheets and uniforms.

<sup>4</sup> Wisconsin Administrative Code, § DOC 303.63 states in pertinent part:

(1) Each institution may make specific substantive disciplinary policies and procedures relating to:

....

(continued)

We conclude that the evidence supports the committee's determination that Severson violated WIS. ADMIN. CODE §§ DOC 303.26, 303.47, and 303.63. According to the conduct report, Severson asked Scholze if she could obtain the books from the AA volunteer coordinator (Ann). At the hearing, Severson admitted that he intended to give the books to his girlfriend. Severson admitted he failed to follow proper procedure for obtaining the books through an approved retail outlet.

The adjustment committee could reasonably infer from this evidence that Severson did not intend to return the books. The evidence also supports the conclusion that Severson did not "check" out the books, but rather that he intended to treat the books as his own property, thereby requiring him to obtain the books in accordance with the procedures of the JCI Inmate Handbook.<sup>5</sup> Severson could not produce a property receipt for the books after a room search uncovered the books. Furthermore, no property receipt was located in his property file. In light of these facts, we conclude it was reasonable for the committee to conclude that the books did not belong to Severson, nor were they state property. Severson's conduct clearly violated the department's policy against soliciting staff, against possessing contraband, and the prison's policies and procedures for how an inmate is to obtain property through an approved retail outlet.

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(f) Personal property;

....

(2) Violations of any specific policies or procedures authorized under sub. (1) are offenses.

<sup>5</sup> The JCI Inmate Handbook, which was given to Severson upon transfer to that institution, states under "Publications" (p.7) that publications, including books, shall be purchased through approved retail outlets or through the publisher.

## DUE PROCESS CHALLENGE

Severson contends he was denied due process because his requested witnesses, Ann and the “woman in property,” were not permitted to testify at the disciplinary hearing. Gudmanson argues that Severson waived these objections because he failed to present them to the committee. *See State v. Kieth*, 216 Wis.2d 61, 80, 573 N.W.2d 888, 897 (Ct. App. 1997) (an issue not raised before the trier of fact is generally deemed waived). We agree. Accordingly, we affirm.

*By the Court.*—Order affirmed.

Not recommended for publication in the official reports.

