

**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. 97-3648**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT IV**

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**STATE OF WISCONSIN EX REL.  
JAMES C. DILLARD, SR.,**

**PETITIONER-APPELLANT,**

**V.**

**GARY MCCAUGHTRY,**

**RESPONDENT-RESPONDENT.**

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

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

PER CURIAM. James Dillard appeals an order affirming a prison disciplinary decision on certiorari review. The committee found Dillard guilty of fighting with a fellow inmate, and the warden affirmed that decision. Dillard contends that on review the trial court and this court should apply a preponderance

of the evidence test, rather than the substantial evidence test. Dillard also contends that the committee did not have sufficient evidence to find him guilty, and that it inadequately explained its decision. We reject Dillard's contentions and affirm.

In a prison disciplinary proceeding guilt is established by a preponderance of the evidence. See WIS. ADM. CODE § DOC 303.76(6). However, on review, the trial court and this court determine whether the committee's findings are supported under any reasonable view of the evidence. See *State ex rel. Jones v. Franklin*, 151 Wis.2d 419, 425, 444 N.W.2d 738, 741, (Ct. App. 1989). This is known as the substantial evidence test. "Substantial evidence is not equated with preponderance of the evidence. There may be cases where two conflicting views may each be sustained by substantial evidence. In such a case it is for the agency to determine which view of the evidence it wishes to accept." *Samens v. LIRC*, 117 Wis.2d 646, 660, 345 N.W.2d 432, 438 (1984) (citations omitted). Dillard is simply wrong in contending that, in effect, the reviewing court may substitute its judgment for the committee's.

The trial court, citing our decision in *Santiago v. Ware*, 205 Wis.2d 295, 327-28, 556 N.W.2d 356, 368-69 (Ct. App. 1996), *review denied*, 207 Wis.2d 284, 560 N.W.2d 273 (1996), and *cert. denied*, 117 S. Ct. 2435 (1997), applied the "some evidence" test to the evidence before the committee. When reviewing a prison disciplinary decision on certiorari, however, a reviewing court is to apply the common law "substantial evidence" test described in the preceding paragraph. See *State ex rel. Ortega v. McCaughtry*, 221 Wis.2d 376, 387, 585 N.W.2d 640, 646 (Ct. App. 1998). Since we apply the substantial evidence test de novo in this appeal, Dillard has not been prejudiced by the circuit court's erroneous application of a different standard. See *id.*

Substantial evidence supports the committee's finding of guilt. A corrections' officer reported that he observed Dillard face off with another inmate and began trading punches. At his hearing, Dillard submitted a statement asserting that he merely acted in self-defense, and two other inmates corroborated that statement. However, the committee did not believe Dillard and his witnesses, and instead accepted the reporting officer's version of the incident. That resolves the issue because the officer's version is substantial evidence of guilt, and this court does not overturn credibility determinations on review of administrative decisions. *See Samens*, 117 Wis.2d at 660, 345 N.W.2d at 438.

The committee sufficiently explained its determination. Its decision provides:

[W]e find the reporting officer credible. The inmate did not present any evidence to contradict the report other than to state that he was attacked. We do not find the inmate or his witness credible. Their statements all appear to have been rehearsed. After review of the conduct report, the inmate's statement, witness testimony, and the evidence, we find that he intentionally participated in a fight by exchanging closed fist punches with inmate Clifton. Both inmates were observed faced off against one another when they began to exchange blows.

The committee's statement of reasons need not be lengthy or detailed but must indicate the basis for the decision in an understandable manner. *See State ex rel. Staples v. DH&SS*, 130 Wis.2d 308, 311-12, 387 N.W.2d 551, 552 (Ct. App. 1986), *overruled on other grounds*, 142 Wis.2d 348, 418 N.W.2d 333 (Ct. App. 1987). The statement here is easily understood as a determination that the committee believed the officer's description of the fight in the conduct report and disbelieved Dillard's version. By so indicating, the statement sufficiently articulates its reasons for purposes of this review. *See Redding v.*

*Fairman*, 717 F.2d 1105, 1115-16 (7th Cir. 1983) (record is sufficient if the committee states that an inmate is lying).

*By the Court.*—Order affirmed.

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

