

**COURT OF APPEALS
DECISION
DATED AND FILED**

December 10, 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. 98-0591

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN EX REL. HARLAN RICHARDS,

PETITIONER-APPELLANT,

v.

**STEPHEN PUCKETT, RUSSEL LEIK
AND MIKE JOHNSON,**

RESPONDENTS-RESPONDENTS.

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

Before Vergeront, Roggensack and Deininger, JJ.

PER CURIAM. Harlan Richards, a Wisconsin prison inmate, appeals from an order affirming a decision of the Program Review Committee at Fox Lake Correctional Institution. That decision denied his request for transfer from a medium security prison to a minimum security institution. The issues on

appeal are whether the trial court reviewed the matter on an incomplete record, and whether the committee placed undue emphasis on certain factors and unreasonably disregarded other mitigating factors. We reject Richards' arguments and affirm.

In 1984, Richards received a life sentence on a first-degree intentional homicide conviction. In 1993, the Department of Corrections transferred him from maximum security to medium security. In 1997, he applied for a transfer to minimum security. A DOC social worker gave the committee a written analysis of the request recounting Richards' criminal record and prison adjustment history, using the fourteen factors that WIS. ADM. CODE § DOC 302.14 identifies as guidelines to a classification decision:

Mr. Richards is an "old law lifer" and is reviewed under 302.14 (1-14). Parole re-hearing on 022497 re-affirmed D-48 from previous 011096 action. (1) He is incarcerated. For 1st degree Murder which involved him inflicting multiple stab wounds on the victim during an altercation. (E) Under the nature of the offense, Mr. Richards would like the committee to be aware of a file containing mitigating factors which he submitted at WCI. (2) Inmates adult criminal record indicates a 032272 crim. damage to prop. 030474 manslaughter (7 yrs.) was adjudicated delinquent in Dane Co. court on 012370 and placed in Ethan Allens School for Boys. (3) Mr. Richards is serving a life sentence. (4) He contends that the motivation for the offense was a fight in which he states he acted in self-defense. (5) He is sorry that he caused the death of a man and feels he must deal w/a life sentence the best way he can. (6) Mr. Richards does not appear vulnerable to physical assault by others. (7) Prior records show no escapes. (8) He has served 8 yrs. 6 mos. at max. WCI/DCI and 3 yrs. 9 mos. at med/flei. (9) His activity level is moderate. (10) Time served is 12 yrs. 3 mos. (11) Community reaction is not known at this time. (12) His adjustment continues to be excellent. (13) He continues to participate in the extended degree program and is making observable progress according to staff. A&E needs are met. (14) No detainers on file/spns noted at OCI and WCI. He is requesting placement at a minimum. Preferably near the

Madison area in order to be closer to his mother, whom he notes is in poor health.

Upon review of the evaluation and other information the committee ruled as follows:

Intensive sanctions review/not statutorily eligible for intensive sanctions based on life sentence.

Committee notes the S.W. comments and Mr. Richards' request for consideration for cust. reduc. Mr. Richards is an old law lifer and is evaluated under *Smart vs. Goodrich et al.*, ADMIN. CODE 302.12 items 1-14 only. S.W. has most adequately documented this information. In addition Mr. Richards notes in regards to mitigating factors that the court has determined that he did not get a fair trial at that time, but due to procedures he will receive no relief. In addition we are aware that he has been seen by the par. comm. and has rec'd D-48. Noting the information provided by the S.W. taking into consideration Mr. Richards' request, the committee at this time concurs and will continue med. cust. at FLCI. This determination is based upon the fact that Mr. Richards has served a total of 12 yrs. and 3 mos. on a life term. We note that he has completed all of his A&E recommended needs and continues to demonstrate an excellent inst. adj. noting he has remained conduct violation free since his incarceration. 11/84. However he currently is serving a life term at this time. We are aware of the mitigating circumstances that he has presented to this committee and is avail. within the soc. ser. file. However overriding factor has to do with his sent. struc., his time served. In addition to we do note the D-48 from his par. comm. We will continue in his present assignment w/the school, and we will set a full 6 mos. recall.

Richards appealed that decision to the DOC's director of offender classification, arguing various mitigating factors including his assertion that he was innocent of the crime. The director referred the appeal to Russell Leik who affirmed, stating "minimum is premature at this time. The issue of guilt or innocent [sic] is a matter for the courts to deal with."

Richards' petitioned for *certiorari review*, and the DOC submitted the administrative record. Richards moved to supplement it with his institution file, including 500 pages of documents Richards used at previous PRC hearings to show the mitigating circumstances of his crime, and other documents purportedly supporting his position. The trial court denied the motion, and subsequently affirmed the DOC decisions.

On review of administrative decisions, we determine whether the agency kept within its jurisdiction; acted according to law; reached a decision that was not arbitrary, oppressive or unreasonable, representing its will and not its judgment; and the decision was reasonable given the evidence. *State ex rel. Richards v. Traut*, 145 Wis.2d 677, 679-80, 429 N.W.2d 81, 82 (Ct. App. 1988). We directly review the agency decision, without deference to the trial court's decision. *Gordie Boucher v. City of Madison*, 178 Wis.2d 74, 84, 503 N.W.2d 265, 267 (Ct. App. 1993).

Richards first contends that the trial court erred and rendered meaningful review impossible by denying his motion to supplement the record. We disagree. There is no statutory or code provision that required the committee to review Richards' institution file, or any other documents he chose to submit. Nothing in the record indicates that the committee did, in fact, consider the documents Richards wants in the record. Our review is limited to the record of the administrative proceeding. *State ex rel. Richards v. Leik*, 175 Wis.2d 446, 455, 499 N.W.2d 276, 280 (Ct. App. 1993). Had the trial court granted the motion to supplement, it would have erroneously expanded the record beyond its proper limit.

Richards next argues that the PRC erred by relying on his life sentence and time served as the overriding factors, when the committee has assigned other lifers to minimum security prisons with less time served than Richards. He argues that nothing in his record justifies that disparate treatment, thus making arbitrary the committee's predominant reliance on those factors. However, the length of the inmate's sentence and the time served are factors the committee is expressly permitted to consider. WIS. ADM. CODE § DOC 302.14(3)(10). The weight to be given those factors, as opposed to other relevant factors that might mitigate in Richards favor, is the agency's prerogative. *Village of Menomonee Falls v. DNR*, 140 Wis.2d 579, 594, 412 N.W.2d 505, 512 (Ct. App. 1987). The committee is not required to compare Richards' circumstances to other inmates, and refusing to do so does not render its decision arbitrary or unreasonable.

Richards next argues that the committee did not give adequate consideration to his "extensive mitigating factors." Included in those mitigating factors is his claim of innocence, which was properly rejected as a consideration on Richards' administrative appeal. His guilt was established in court and judgment entered accordingly. As for the other mitigating factors in Richards' case, again it is the committee's prerogative to accord them less weight than Richards might wish.

Finally, Richards contends that the committee erroneously considered his forty-eight month parole deferral, because that is not a factor identified in WIS. ADM. CODE § DOC 302.14. However, that rule provides only discretionary guidelines. It plainly does not bar consideration of other factors relevant to security classifications, such as an inmate's parole eligibility status.

By the Court.—Order affirmed.

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

