

**COURT OF APPEALS
DECISION
DATED AND FILED**

July 7, 2005

Cornelia G. Clark
Clerk of Court of Appeals

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 WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2004AP2482

Cir. Ct. No. 2003CV2704

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN EX REL. ROBERT E. TALIAFERRO, JR.,

PETITIONER-APPELLANT,

V.

JUDY SMITH, MATTHEW FRANK AND MOLLY OLSON,

RESPONDENTS-RESPONDENTS.

APPEAL from an order of the circuit court for Dane County:
MICHAEL N. NOWAKOWSKI, Judge. *Affirmed in part and cause remanded.*

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

¶1 PER CURIAM. Robert Taliaferro, Jr., appeals a circuit court order that affirmed a temporary lockup and subsequent prison disciplinary decision on certiorari review. We affirm the circuit court on all issues related to those administrative actions. Taliaferro points out, however, and the Respondents

concede, that the circuit court failed to address an additional issue that Taliaferro had raised in his certiorari petition regarding his transfer to the Wisconsin Secure Program Facility. We therefore remand to allow the circuit court to address that issue.

BACKGROUND

¶2 Taliaferro has been serving a life sentence in the custody of the Wisconsin Department of Corrections since 1984. The Department contracted to have Taliaferro housed for a time at the Prairie Correctional Facility in Minnesota. Taliaferro was returned to Wisconsin and placed at the Oshkosh Correctional Institution in January of 2003.

¶3 On January 31, 2003, Oshkosh prison officials placed Taliaferro in temporary lockup “pending investigation of disruptive conduct.” On February 14, 2003, Taliaferro received a conduct report alleging that he had violated Wisconsin prison rules prohibiting sexual conduct and solicitation of staff by having “a personal, physical relationship with a female staff member” at the Minnesota facility where he had previously been housed. WIS. ADMIN. CODE §§ DOC 303.15 (Dec. 2000) and 303.26 (May 2003).

¶4 Following a disciplinary hearing held on February 18, 2003, the adjustment committee found Taliaferro guilty of both infractions. It sentenced him to eight days of adjustment segregation and 360 days of program segregation, and also referred him to the program review committee. The warden remanded the conduct report to the adjustment committee for further consideration, noting there was insufficient evidence to support the sexual conduct violation. Upon remand, the adjustment committee found insufficient evidence to support the

sexual conduct charge, but still found Taliaferro guilty of soliciting staff because he had the former Minnesota guard's name and address in his phone book.

¶5 Taliaferro exhausted his administrative remedies, then filed the present certiorari action.

DISCUSSION

¶6 Our certiorari review is limited to the record created before the committee. *State ex rel. Whiting v. Kolb*, 158 Wis. 2d 226, 233, 461 N.W.2d 816 (Ct. App. 1990). With regard to the substance of a prison disciplinary decision, we will consider only whether: (1) the committee acted within its jurisdiction, (2) it acted according to law, (3) its action was arbitrary, oppressive or unreasonable and represented the committee's will and not its judgment, and (4) the evidence was such that the committee might reasonably make the order or determination in question. *Id.*

Temporary Lockup

¶7 Taliaferro alleges procedural errors surrounding his confinement in temporary lockup. We agree with the Respondents, however, that the temporary lockup decision was a separate administrative action from the discipline imposed for the conduct report. *See State ex rel. Riley v. DHSS*, 151 Wis. 2d 618, 445 N.W.2d 693 (Ct. App. 1989). Therefore, Taliaferro needed to file a separate complaint seeking review of his lockup within fourteen days after its occurrence, under WIS. ADMIN. CODE § DOC 310.09(6) (Nov. 2002). He did not do so. Taliaferro's failure to properly exhaust his administrative remedies with regard to the temporary lockup precludes this court's review of that issue. WIS. STAT. § 801.02(7)(b).

Conduct Report

¶8 Taliaferro contends the Department of Corrections lacked jurisdiction to discipline him for rule violations which occurred out of state. However, the Wisconsin Administrative Code explicitly provides that “[t]he department may discipline inmates in its legal custody,” so long as the inmates have not already been disciplined for the same incident in another jurisdiction. WIS. ADMIN. CODE § DOC 303.01(1) (Dec. 2000). The department retains legal custody of inmates who are transferred to out-of-state facilities pursuant to contract. *State ex rel. Griffin v. Litscher*, 261 Wis. 2d 694, 705, 659 N.W.2d 455 (Ct. App. 2003). Minnesota did not discipline Taliaferro for his relationship with the Minnesota prison staff member. Therefore, the department could properly discipline Taliaferro once he returned to this state.

¶9 Taliaferro next argues that there was insufficient evidence to find him guilty of staff solicitation, which occurs when an inmate “[c]onveys affection to, or about staff verbally or in writing whether personally written or commercially written or by drawings; or asks for addresses, phone numbers, favors or requests special attention of a staff member....” WIS. ADMIN. CODE § DOC 303.26(6) (May 2003). Taliaferro did not deny that he had the Minnesota staff member’s address and phone number. The adjustment committee was not required to accept Taliaferro’s assertion that the staff member had given him her personal information after she had left the prison.¹ It could reasonably infer, as it did, that

¹ Although Taliaferro provided this court a letter from the Minnesota staff member that supports his account, which he claims to have provided to the warden during his administrative appeal, he did not provide that letter to the adjustment committee at his initial hearing. Prison officials were not required to accept additional evidence that Taliaferro attempted to submit in an untimely manner, and this court cannot consider the letter because it was not included in the certiorari return.

“there must have been a significant relationship between the accused and the staff member for him to be in possession of her address.” While that was not the only conclusion that might have been reached, this court cannot substitute its view of the evidence for that of the committee on our limited certiorari review.

¶10 Taliaferro also asserts that the adjustment committee was biased against him. This claim appears to be wholly based on the theory that the committee’s current decision and past decisions were so obviously wrong — to Taliaferro’s way of thinking — that they could only have resulted from bias. However, Taliaferro has provided nothing to explain why any member of the committee would have personal animosity toward him. An adverse result, standing alone, is insufficient to demonstrate bias.

Transfer

¶11 Finally, Taliaferro claims that the program review committee failed to follow proper procedures before transferring him to the Wisconsin Secure Program Facility. Specifically, he claims he did not receive notice of the date that a program review was to be held, or the criteria and factors upon which his transfer was based.

¶12 Although the circuit court noted in the preface to its discussion that Taliaferro claimed “his PRC hearing was improperly conducted,” the court did not separately address that issue in its decision. We suspect this oversight resulted from Taliaferro’s combination of the issue with the temporary lockup issue in his certiorari petition and arguments to the court. Nonetheless, the Respondents concede that Taliaferro raised the issue, and ask for a remand and possible supplementation of the certiorari return to allow the circuit court to address it. We agree a remand on this issue is appropriate.

¶13 Accordingly, we affirm the temporary lockup and discipline imposed by the adjustment committee, but we remand this matter to allow the circuit court to consider Taliaferro's claim that the program review committee committed procedural errors when transferring him to the Wisconsin Secure Program Facility. The circuit court may order supplementation of the certiorari record if necessary. It may also consider whether the issue has become moot by Taliaferro's subsequent transfer to Green Bay, or whether the transfer may have some future consequences with regard to future assessments of Taliaferro's security risk.

By the Court.—Order affirmed in part and cause remanded.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5 (2003-04).

