COURT OF APPEALS
DECISION
DATED AND FILED

August 11, 2005

Cornelia G. Clark
Clerk of Court of Appeals

Appeal No. 2004AP429 **Cir. Ct. No. 2003CV1328**

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

STATE OF WISCONSIN EX REL. DAVID A. SCHLEMM,

PETITIONER-APPELLANT,

V.

MATTHEW FRANK,

RESPONDENT-RESPONDENT.

APPEAL from an order of the circuit court for Dane County: MARYANN SUMI, Judge. *Affirmed*.

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

¶1 PER CURIAM. David Schlemm appeals from an order affirming a prison discipline decision. We affirm.

¶2 Schlemm was charged with and found guilty of battery of his cellmate. He sought certiorari review of the decision. Review on certiorari is limited to whether: (1) the agency kept within its jurisdiction; (2) the agency acted according to law; (3) the agency's action was arbitrary, oppressive or unreasonable and represented its will and not its judgment; and (4) the evidence was such that the agency might reasonably make the order or determination in question. ***Coleman v. Percy***, 96 Wis. 2d 578, 588, 292 N.W.2d 615, 621 (1980).

¶3 Schlemm argues that due process required the Department of Corrections to provide him with copies of all witness statements obtained during the investigation, not just those that may have been presented at the disciplinary hearing. Schlemm also argues that the administrative rules, such as the one defining "evidence," require the department to provide these statements. However, none of the rules he cites require the department to provide full discovery to a charged inmate. The only authority Schlemm cites for a due process claim is ***Chavis v. Rowe***, 643 F.2d 1281 (7th Cir. 1981). However, in that case the court's focus was on the release of an *exculpatory* statement. Schlemm does not argue that any of the statements he sought were exculpatory, and there is nothing in ***Chavis*** that supports an argument that all statements must be turned over.

¶4 Schlemm argues that the adjustment committee erred by deciding to give "little weight" to written statements he provided from other inmates, on the ground that the committee could not cross-examine those witnesses. Schlemm argues that he had no choice but to provide written statements because he was limited by rule in the number of witnesses he could call. However, Schlemm submitted a request for additional witnesses beyond that limit, which can be granted on a showing of good cause, but he did not include these inmate witnesses. Under these circumstances, there was no error in the committee's decision.

Furthermore, WIS. ADMIN. CODE § DOC 303.86(2)(b)1 (Dec. 2000) allows the committee to exclude unreliable evidence, and the rule offers "statements made outside of the hearing" as an example. The rule further provides that the committee may consider a written statement if the witness is unavailable or there is good cause for the witness not to testify. WIS. ADMIN. CODE § DOC 303.86(3) (Dec. 2000). Schlemm has not demonstrated that the witnesses were unavailable or that there was good cause.

¶5 Schlemm argues that the committee erred in concluding that the witnesses who appeared corroborated each other, and that the victim's injuries were consistent with a battery. This argument is essentially a challenge to the committee's assessment of whether there was sufficient evidence of guilt. On certiorari review, we apply the substantial evidence test, that is, whether reasonable minds could arrive at the same conclusion reached by the department. ***State ex rel. Richards v. Traut***, 145 Wis. 2d 677, 680, 429 N.W.2d 81, 82 (Ct. App. 1988). Notwithstanding minor inconsistencies Schlemm cites, and the fact that the victim originally denied that his injuries were the result of a battery, the statements of the victim and the staff members were sufficient to allow a reasonable person to find guilt.

¶6 Schlemm argues that the department improperly denied his request for the attendance of a witness, identified as "Detective Engle" from the Dodge County Sheriff's Department. The reason Schlemm gave for requesting this witness was that Engle had interviewed the victim and Schlemm. The staff member reviewing the request denied it because it would be cumulative testimony and the witness was not a department employee. Schlemm argues that the decision was required to be made by the security director personally, not by the captain who signed the form. However, the rules provide that "security director" means the security director or designee. WIS. ADMIN. CODE § DOC 303.02(18) (Dec. 2000). Witnesses other than inmates

or staff may not attend hearings, but advocates with the hearing officer's permission may contact them, and the adjustment committee may designate a staff member to interview any such witness and report to the committee. WIS. ADMIN. CODE § DOC 303.81(8) (July 2000). The conclusion that Engle's testimony would be cumulative was reasonable, since both Schlemm and the victim would be appearing at the hearing, and Schlemm's request gave no reason to believe that the detective would give information inconsistent with their expected testimony there.

¶7 Schlemm argues that the committee improperly limited his examination of the victim and staff members. The argument is based on his descriptions of events not contained in the record. Our review is limited to the record brought up by the writ. ***State ex rel. Richards v. Leik***, 175 Wis. 2d 446, 455, 499 N.W.2d 276 (Ct. App. 1993).

By the Court.—Order affirmed.

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