

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**September 1, 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. 2004AP1520**

**Cir. Ct. No. 2002CV1057**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT IV**

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**STATE OF WISCONSIN EX REL. TONY G. MERRIWEATHER  
AND DAVID HUDSON,**

**PETITIONERS-APPELLANTS,**

**STEVEN D. STEWART, CALVIN BANKS, ERIC M. WASHINGTON,  
WILLIAM MEDINA, RUFUS L. LYNCH AND CHRISTOPHER SCARVER,**

**PETITIONERS,**

**v.**

**GERALD BERGE, VICKIE SHARPE, JOLENE MILLER  
AND PAMELA BARTLES,**

**RESPONDENTS-RESPONDENTS.**

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APPEAL from an order of the circuit court for Dane County:  
JOHN C. ALBERT, Judge. *Affirmed.*

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

¶1 PER CURIAM. Tony Merriweather and David Hudson, inmates of the Wisconsin Secure Program Facility (WSPF), appeal the circuit court’s order dismissing their action against Gerald Berge, the warden, Vickie Sharpe, the Program Director at WSPF, and Jolene Miller and Pamela Bartles, nurses employed by a private company who work within the prison. This suit is one of many that have been brought by inmates in both state and federal courts regarding the conditions of confinement at the WSPF. For the reasons explained below, we affirm the order dismissing the action.

¶2 As a preliminary matter, we note that David Hudson has been transferred from the WSPF to a different prison. Because he is no longer an inmate at the WSPF, his claims are moot. *See Higgason v. Farley*, 83 F.3d 807, 811 (7th Cir. 1996).

¶3 Merriweather challenges the general conditions of his confinement, including sensory deprivation, lack of contact with other people, and constant lighting in the cells. He also contends he has been denied religious freedom and has received inadequate medical and dental care. The settlement in a class action suit brought in the United States District Court for the Western District of Wisconsin addressed these issues and applies to all inmates of the WSPF because they are members of the class. *See Jones’El v. Berge*, No. 00-C-421-C, 2000 WL 34237510 (W.D. Wis.). Because Merriweather is bound by the settlement in *Jones’El* with regard to conditions of confinement, he is precluded from bringing these claims. *See Jensen v. Milwaukee Mut. Ins. Co.*, 204 Wis. 2d 231, 235, 554 N.W.2d 232 (1996) (“Under claim preclusion, a final judgment is conclusive in all subsequent actions between the same parties or their privies as to all matters litigated or which might have been litigated in the former proceedings.” (quotations and brackets omitted)).

¶4 Merriweather next argues that he is deprived of due process under the United States Constitution because he may be demoted to a lower “level” within the prison, which would result in curtailed privileges, without a due process hearing. In *Merriweather v. Berge*, Dane County case no. 2001CV847, decided by oral ruling on January 30, 2002, Merriweather raised this very argument and the circuit court rejected it. Therefore, this argument is barred by claim preclusion. See *Jensen*, 204 Wis. 2d at 235.

¶5 Merriweather next challenges the level system used at the WSPF, which is set forth as WSPF Policy and Procedure No. 300, as contrary to state law because it was not properly promulgated as an administrative rule and because it constitutes punishment contrary to WIS. ADMIN. CODE § DOC 308.04(1) (June 1998). Here, too, the Dane County Circuit Court has previously addressed this claim and decided that there was no state law violation in *Merriweather*, case no. 2001CV847. This claim, too, is barred by claim preclusion. See *Jensen*, 204 Wis. 2d at 235.

¶6 Finally, Merriweather argues that WSPF’s policy requiring him to leave open his personal mail for review by prison employees violates his rights under the First Amendment. We reject this claim because Merriweather has not provided a legal basis for his claim that the mail at issue is constitutionally protected. As a general rule, inmate mail can be opened and read outside the inmate’s presence. See *Martin v. Brewer*, 830 F.2d 76, 77 (7th Cir. 1987).

¶7 In sum, most of the issues raised here have already been decided by the federal court in *Jones’El* and by the Dane County Circuit Court in *Merriweather*, 2001CV847. The only arguably new cause of action, that

regarding the outgoing inmate mail policy, does not, based on the arguments before us, state a claim on which relief can be granted.<sup>1</sup>

*By the Court.*—Order affirmed.

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

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<sup>1</sup> The circuit court's rationale for dismissing this case is different than ours, though the court based its decision in part on claim preclusion. We will affirm an order supported by the record, even though the circuit court may have reached the same result for different reasons. *See State v. Gaines*, 197 Wis. 2d 102, 109 n.5, 539 N.W.2d 723 (Ct. App. 1995). We also note that the parties have raised arguments that we do not address because those we do dispose of the appeal. *See Sweet v. Berge*, 113 Wis. 2d 61, 67, 334 N.W.2d 559 (Ct. App. 1983).

