COURT OF APPEALS
DECISION
DATED AND FILED

September 15, 2005

Cornelia G. Clark
Clerk of Court of Appeals

Appeal No. 2004AP2935 **Cir. Ct. No. 2004CV2854**

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

STATE OF WISCONSIN EX REL. MARK ANTHONY ADELL,

PETITIONER-APPELLANT,

V.

MATTHEW A. FRANK,

RESPONDENT-RESPONDENT.

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

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

¶1 PER CURIAM. Mark Adell appeals from an order affirming an Inmate Complaint Review System (ICRS) decision. The issue is whether the department can properly dismiss an ICRS complaint because the inmate refuses to attempt informal resolution. We conclude it can, and we affirm.

¶2 Adell filed a petition for certiorari review of the ICRS decision. The court conducted the initial review of the complaint as required by WIS. STAT. § 802.05(3)(a) (2003-04).[1] The court concluded that the complaint failed to state a claim, and therefore no responsive pleading was filed by the respondent and the certiorari record was not returned to the court. The standard of review for whether a certiorari petition states a claim is set forth in ***State ex rel. Luedtke v. Bertrand***, 220 Wis. 2d 574, 578-79, 583 N.W.2d 858 (Ct. App. 1998), *aff'd by divided court*, 226 Wis. 2d 271, 594 N.W.2d 370 (1999). To the extent our review of the complaint requires interpretation of administrative rules, the interpretation of an administrative rule is a question of law that we may review de novo; however, we accord deference to the agency's interpretation and application of its own administrative regulations unless the interpretation is inconsistent with the language of the regulation or is clearly erroneous. ***State ex rel. Sprewell v. McCaughtry***, 226 Wis. 2d 389, 394, 595 N.W.2d 39 (Ct. App. 1999).

¶3 Adell's complaint, in general terms, concerned the pay rate for his work assignment; the specifics are not relevant to the issue on this appeal. After Adell submitted the complaint, it was returned to him by the institution complaint examiner (ICE) for "failure to meet the filing requirements as stated in [WIS. ADMIN. CODE § DOC 310 (Nov. 2002)]." The ICE further stated: "Before this complaint is accepted, you need to attempt to resolve the issue by contacting the Jobs Committee [WIS. ADMIN. CODE § DOC 310.09(4) (Nov. 2002)]." Adell then wrote the ICE to inform her that he did not intend to contact the Jobs Committee, and that he is not required to do so in order to have his complaint reviewed. The

[1] All references to the Wisconsin Statutes are to the 2003-04 version unless otherwise noted.

ICE then accepted the complaint for filing, but recommended dismissing the complaint, with the following statement:

> While it is true that the ICE office must accept complaints in which the complainant refuses to follow the chain of command. It is not true that the ICE must investigate matters in which an inmate refuses to cooperate with the ICE office. The inmate has been asked to contact the Jobs Committee, Ms Maguire-Petke, in reference to his complaint issues. He clearly refused to do this on the letter dated 7-25-04 to Ms Parker, which is scanned into evidence. If the inmate is not willing to assist in resolving his concerns, the ICE office should not be burdened to do so.

¶4 The warden dismissed the complaint. Adell then sought review by the corrections complaint examiner (CCE), who recommended affirming the warden's decision, and stated in part:

> Clearly, the complainant had no intention of cooperating with the investigation in this instance. When one chooses to utilize the ICRS to resolve grievances, he also bears the responsibility of cooperating with ICE staff when requested to do so. On that basis, I believe the ICE's recommendation for dismissal was appropriate, and recommend this complaint be dismissed on appeal as well.

The secretary affirmed the warden.

¶5 The relevant provisions of the code are in WIS. ADMIN. CODE § DOC 310.09 (Nov. 2002), which provides in relevant part:

> (1) Complaints filed by an inmate or a group of inmates shall:
>
> (a) Be typed or written legibly on forms supplied for that purpose.
>
> (b) Be signed by the inmate.
>
> (c) Not contain language that is obscene, profane, abusive, or threatens others, unless such

> language is necessary to describe the factual basis of the substance of the complaint.
>
> (d) Be filed only under the name by which the inmate was committed to the department or the legal name if an inmate has had a name change.
>
> (e) Contain only one issue per complaint, and shall clearly identify the issue.
>
> … .
>
> (3) The ICE shall return, and not process as complaints, submissions that do not meet the requirements under sub. (1).
>
> (4) Prior to accepting the complaint, the ICE may direct the inmate to attempt to resolve the issue.

¶6 On appeal, as we stated above, the question is whether Adell's certiorari petition stated a claim. Adell argues that he stated a claim because there is no law that permits rejection of a complaint for the inmate's refusal to participate in informal resolution when directed to by the ICE. He argues that the decision in this case has the effect of rewriting the relevant rules so as to say the inmate "shall" pursue informal resolution of his complaint before it will be accepted for filing. He argues that under the existing provision, WIS. ADMIN. CODE § DOC 310.09(4) only allows the ICE to "direct" such an attempt, not to compel it. He argues that forcing inmates to comply with such a direction is not consistent with the stated purpose of the ICRS to create a system for expeditiously raising, investigating, and deciding complaints, *see* WIS. ADMIN. CODE § DOC 310.01 (Nov. 2002), because the rules provide no time limits on how long informal resolution is supposed to last, because prison staff are under no obligation to respond expeditiously to such attempts, and because informal resolution is "often used as a dilatory tactic aimed at wearing the inmate down

with useless procedure and inhibiting and deterring further pursuit of the issue or claim."

¶7 We agree with Adell's argument to the limited extent that the ICE was probably in error to have initially stated that the complaint was being returned to him for failure to comply with filing requirements. The respondent on appeal does not point to any requirement that Adell have contacted the Jobs Committee before he attempted to file his ICRS complaint. However, our conclusion on that point is not relevant to the ultimate denial of his ICRS complaint. That complaint was denied because of his refusal to attempt informal resolution *after* he was directed to, not because he did not attempt informal resolution first.

¶8 Although there is no statute or rule that expressly authorizes rejection of an ICRS complaint for refusing informal resolution, it was reasonable for the department to conclude that this authority is implied in the existing rules. The ICE is not required to investigate every complaint accepted for filing, but may immediately recommend a decision without investigation. WIS. ADMIN. CODE § DOC 310.07(2) (Nov. 2002). It is reasonable to conclude that the provision in WIS. ADMIN. CODE § DOC 310.09(4) allowing the ICE to first "direct" an attempt at informal resolution does mean that the ICE can compel the inmate to make the attempt. If the ICE could not then recommend dismissal of a complaint for failure to comply, there would be no way to enforce the examiner's authority to direct an attempt for informal resolution. Informal resolution is consistent with the purposes of the ICRS. Accordingly, we conclude that Adell's certiorari petition failed to state a claim

By the Court.—Order affirmed.

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