

**COURT OF APPEALS
DECISION
DATED AND FILED**

September 22, 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. 2004AP2140

Cir. Ct. No. 2003CV2700

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN EX. REL. EFRAIN SANCHEZ, JR.,

PETITIONER-APPELLANT,

V.

GARY R. McCAUGHTRY,

RESPONDENT-RESPONDENT.

APPEAL from orders of the circuit court for Dane County:
STUART A. SCHWARTZ, Judge. *Affirmed.*

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

¶1 PER CURIAM. Efrain Sanchez, Jr., pro se, appeals the circuit court order denying his petition for writ of certiorari review of a prison disciplinary decision and its order denying his motion for reconsideration. Sanchez argues: (1) that he was not given proper copies of the confidential informant statements;

(2) that the adjustment committee should have made an independent determination that the confidential informants would be placed at risk if they testified at the disciplinary hearing; (3) that the informants' statements were not adequately corroborated and the committee should have independently assessed the reliability of the informants; (4) that there was insufficient evidence to find him guilty; and (5) that the return to the writ was not timely and properly filed. We reject each of these arguments and affirm.

¶2 Sanchez first argues that the adjustment committee did not provide him with copies of the statements made by the confidential informants that comply with WIS. ADMIN. CODE § DOC 303.81(5) (July 2000). The rule provides:

If the institution finds that testifying would pose a risk of harm to the witness, the committee may consider a corroborated, signed statement under oath from that witness without revealing the witness's identity or a corroborated signed statement from a staff member getting the statement from that witness. The adjustment committee shall reveal the contents of the statement to the accused inmate, though the adjustment committee may edit the statement to avoid revealing the identity of the witness.

Sanchez was provided with summaries of the witness statements. The statements were typewritten and redacted in part to ensure that the identity of the informants could not be traced. Although the statements were not in their original form, the rule requires only that the contents of the statements be revealed to the accused inmate, which is what happened here. The rule does not require that the inmate receive an exact duplicate of the statement in its original form.

¶3 Second, Sanchez argues that the adjustment committee should have made an independent determination that the confidential informants would be placed at risk if they testified at the disciplinary hearing, instead of relying on an assertion in the conduct report to this effect. *See* WIS. ADMIN. CODE § 303.86(4)

(Dec. 2000). We reject this claim. In addition to the conduct report, in which a prison staff member said the informants feared reprisal, two of the three confidential informants specifically averred in their statements that they feared harm should their statements and their identity be exposed. These statements sufficiently support the conclusion that the informants would be at risk should their identities be revealed.

¶4 Third, Sanchez argues that the informants' statements were not adequately corroborated and that the committee should have independently assessed the reliability of the informants. We disagree. Our review shows that all three of the statements corroborate each other. The rules do not require the adjustment committee to make an independent reliability finding before considering the statements. *See* WIS. ADMIN. CODE § 303.86(4) (Dec. 2000).

¶5 Fourth, Sanchez argues that there was insufficient evidence to support the finding of guilt. We conclude the statements of the three confidential informants provided a sufficient basis for the committee's finding of guilt.

¶6 Fifth, Sanchez argues that the return to the writ was improperly filed. We disagree. The return to the writ was timely filed but for the handwritten original statements by the confidential informants. The cover letter to the return stated that the original confidential informant statements would be submitted separately. They were submitted a few days after the deadline for the return to the writ with a motion requesting that the court consider them in camera, which the court granted. Sanchez has not shown that the circuit court erroneously exercised

its discretion by allowing statements to be filed separately a few days after the deadline.¹

By the Court.—Orders affirmed.

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

¹ We usually do not accept reply briefs that are belatedly filed. Because Sanchez is pro se, we have chosen to exercise our discretion to allow the brief and we considered it in making our decision.

