

**COURT OF APPEALS
DECISION
DATED AND FILED
February 22, 2006**

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. 2005AP795

Cir. Ct. No. 2004CV505

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

STATE OF WISCONSIN EX REL. KATHY DAVIS,

PETITIONER-APPELLANT,

v.

**JODINE DEPPISCH, WARDEN, TAYCHEEDAH CORRECTIONAL
INSTITUTION, AND MATTHEW FRANK,**

RESPONDENTS-RESPONDENTS.

APPEAL from an order of the circuit court for Fond du Lac County:
STEVEN W. WEINKE, Judge. *Affirmed.*

Before Snyder, P.J., Brown and Anderson, JJ.

¶1 PER CURIAM. Kathy Davis appeals pro se from an order dismissing her petition for certiorari review of a prison disciplinary decision. She basically challenges the sufficiency of the evidence on which the prison

adjustment committee based its finding of guilt. We affirm the order dismissing the review proceeding.

¶2 On March 19, 2004, a conduct report was written against Davis, an inmate at the Taycheedah Correctional Institution, for conduct that occurred on March 9, 2004, in a meal line at the institution. The conduct report indicated that Davis had called another inmate “trailer trash” and other derogatory terms, threatened the other inmate, and struck the other inmate at least twice. The report stated that it was based on interviews. The report repeated Davis’s own statement to the investigating officer that she had told the other inmate she was “going to run her head into the wall.” At the disciplinary hearing, Davis denied having made that statement to the investigating officer and denied ever hitting or threatening the other inmate. The adjustment committee found Davis guilty of battery and making threats. As a result of review via the inmate complaint review system, the conduct report was returned to the adjustment committee for completion of the record. The amended decision of the committee indicates that it looked at the investigation file and that the investigation “unequivocally substantiates the conduct report.”

¶3 Before the circuit court on certiorari review, the confidential informant statements from the investigation file were submitted to the circuit court for in camera review. The circuit court determined that the statements obtained during the investigation of the incident, the victim’s statement, and Davis’s statement to the investigating officer confirm the findings of the adjustment committee.

¶4 Our review of the action of the prison adjustment committee is de novo and 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). We determine whether the committee stayed within its jurisdiction, whether it acted according to law, whether the action was arbitrary, oppressive or unreasonable and represented the committee's will and not its judgment, and whether the evidence was such that the committee might reasonably make the determination appealed from. *Id.* The evidence is sufficient to sustain the decision if reasonable minds could rely on it to reach the same conclusion as the committee. *See State ex rel. Richards v. Traut*, 145 Wis. 2d 677, 680, 429 N.W.2d 81 (Ct. App. 1988).

¶5 Davis first argues that it is improper for any reviewing body to consider the confidential informant statements because at the original hearing before the adjustment committee on March 30, 2004, the committee did not consider those statements and the conduct report did not set forth that such statements existed. On the decision form, the committee indicated that the physical evidence relied on was the conduct report. From that notation it is impossible to determine whether the committee reviewed the confidential informant statements. *See Franklin v. Israel*, 558 F. Supp. 712, 715 (W.D. Wis. 1983). However, Davis fails to appreciate that as a result of the inmate complaint review, the matter was returned to the committee for completion of the record. The committee then clarified that it reviewed the entire investigation file. Davis contends it was wrong to add the evidence to the record four months after the original hearing. But returning the matter to the adjustment committee was an appropriate remedy for Davis's inmate complaint.

¶6 Davis now complains that it was error for the matter to be returned to the adjustment committee and that the disciplinary action should have been expunged when procedural errors were found during the inmate complaint review. She also complains that the adjustment committee failed to follow its own rules

when it considered the unsworn statements of confidential informants, made no finding that testifying posed a risk of harm to any of the witnesses, and failed to disclose edited statements to her. Davis was required to test the adjustment committee's amended decision by administrative review. *See State ex rel. Hensley v. Endicott*, 2001 WI 105, ¶16, 245 Wis. 2d 607, 629 N.W.2d 686 (prisoners must exhaust all their administrative remedies prior to commencing a civil action because an administrative appeal may help to narrow a dispute or avoid the need for litigation). Indeed she raises the issues described above for the first time on appeal. The issues are waived because they were not raised before the appropriate tribunal, and we do not address them. *See State ex rel. Peckham v. Krenke*, 229 Wis. 2d 778, 795, 601 N.W.2d 287 (Ct. App. 1999).

¶7 We turn to consider whether there was sufficient evidence to sustain the adjustment committee's finding that Davis was guilty of battery and making threats. Certainly the corroborating effect of the confidential informant statements provided sufficient evidence to sustain the committee's determination. We further observe that even without the statements, there was sufficient evidence. The conduct report indicated that witnesses to the incident reported that Davis had struck the other inmate at least twice. Although the conduct report does not indicate injury to the victim, a reasonable inference can be drawn that striking another person causes that person pain and harm. A factual finding may be based on inferences from the evidence in the record. Davis herself stated to the investigating officer that she had threatened to run the other inmate's head into the wall. The committee rejected Davis's testimony that she did not hit the other inmate or make any threats as not credible. That credibility determination is not subject to review. *See American Mfrs. Mut. Ins. Co. v. Hernandez*, 2002 WI App 76, ¶11, 252 Wis. 2d 155, 643 N.W.2d 584.

¶8 Finally, we do not address a number of issues Davis frames as being error by the circuit court, e.g., it was error for the circuit court to consider her history of misconduct and to not rule on her motion to suppress the confidential statements. Our review is of the action of the prison adjustment committee and is independent of the circuit court. *Whiting*, 158 Wis. 2d at 233. Claims of error by the circuit court are irrelevant.

By the Court.—Order affirmed.

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

