

**COURT OF APPEALS
DECISION
DATED AND FILED**

June 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. 2005AP910

Cir. Ct. No. 2004CV1743

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN EX REL. SHIRELL WATKINS, SR.,

PETITIONER-APPELLANT,

V.

GERALD A. BERGE,

RESPONDENT-RESPONDENT.

APPEAL from orders of the circuit court for Dane County:
ROBERT DE CHAMBEAU, Judge. *Affirmed.*

Before Dykman, Deininger and Higginbotham, JJ.

¶1 PER CURIAM. Shirell Watkins, Sr., appeals the circuit court's order denying his petition for writ of certiorari review of a prison disciplinary proceeding. He also appeals the circuit court's order denying his motion for reconsideration. We affirm.

¶2 Watkins first challenges the circuit court's decision allowing the prison to separately submit under seal twenty-three pages of items in the return to the writ. The documents, letters written by Watkins, were submitted for *in camera* review by the circuit court because they contained gang references. We reject Watkins' claim that the sealed submission prevented him from adequately presenting his case because the prison afforded Watkins an opportunity to review the letters under supervision, providing him the means to prepare his defense. The sealed submission did not hamper the circuit court's review of the certiorari claims because the circuit court was able to consider the letters in making its decision, as are we. There was no due process violation.

¶3 Watkins next argues that prison officials violated his First Amendment right to freedom of speech by unlawfully censoring his outgoing mail to persons outside the prison. Watkins did not raise this claim before the prison disciplinary committee or to the warden on appeal. Therefore, Watkins has waived his right to raise this argument. *Santiago v. Ware*, 205 Wis. 2d 295, 327, 556 N.W.2d 356 (Ct. App. 1996); *Omernick v. DNR*, 100 Wis. 2d 234, 248, 301 N.W.2d 437 (1981).

¶4 Watkins next argues that the conduct report did not contain adequate notice of the charges against him because it did not specifically refer to the subsections of the rules that he was accused of violating. WISCONSIN ADMIN. CODE § DOC 303.66 requires that the conduct report contain the *sections* of the prison disciplinary code that have allegedly been violated but does not state that the conduct report must list the *subsections* to each rule. WIS. ADMIN. CODE § DOC 303.66(2) (Apr. 2006). Because the conduct report listed the sections of the code that were allegedly violated, which is all that it was required to do, we reject this argument.

¶5 Watkins next argues that the charge that he violated WIS. ADMIN. CODE § DOC 303.20 (Apr. 2006), which prohibits group petitions and resistance, was unconstitutionally vague. Once again, Watkins did not raise this argument before the prison disciplinary committee or to the warden on appeal. Therefore, Watkins has waived his right to raise this argument. *Santiago*, 205 Wis. 2d at 327; *Omernick*, 100 Wis. 2d at 248.

¶6 Watkins next argues that he was denied due process because Lieutenant L. Brown, the prison's Disruptive Groups Coordinator, provided evidence against Watkins, but did not appear at the disciplinary hearing. Watkins cannot claim his right to confront the witnesses against him was violated because Watkins chose not to attend the hearing. Watkins is not entitled to relief for another reason as well. The administrative code provides: "If a witness is unavailable to testify, the adjustment committee may consider a written statement.... Unavailability means ... being on a different shift in the case of a staff member." WIS. ADMIN. CODE § DOC 303.81(4) (Apr. 2006). Brown's shift did not coincide with the time when the hearing occurred. Therefore, Brown was excused by the code from attending.

¶7 The State argues that the petition for writ of certiorari should have named the Secretary of the Wisconsin Department of Corrections as a respondent. Because the arguments we have addressed dispose of this case, we do not address this issue. See *Sweet v. Berge*, 113 Wis. 2d 61, 67, 334 N.W.2d 559 (Ct. App. 1983) (if decision on some points disposes of the appeal, we will not decide the other issues raised).

By the Court.—Orders affirmed.

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

