

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**December 21, 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. 2006AP1132**

**Cir. Ct. No. 2005CV2010**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT IV**

---

**STATE OF WISCONSIN EX REL. BERRELL FREEMAN,**

**PETITIONER-APPELLANT,**

**V.**

**MATTHEW FRANK AND PETER HUIBREGTSE**

**RESPONDENTS-RESPONDENTS,**

**CYNTHIA THORPE AND ROBERT COX,**

**RESPONDENTS.**

---

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

Before Dykman, Vergeront and Higginbotham, JJ.

¶1 PER CURIAM. Berrell Freeman appeals from a circuit court order which dismissed a portion of his certiorari writ petition. The petition sought review of a series of decisions by prison officials on complaints Freeman raised through the Inmate Complaint Review System (ICRS). Only two of the seven inmate complaints discussed in Freeman's initial certiorari petition are at issue on this appeal. In one of the complaints, Freeman contends that prison officials should have reimbursed him for a calendar they damaged, and in the other he challenges a decision to keep him in administrative confinement. We affirm for the reasons discussed below.

### **BACKGROUND**

¶2 In ICRS complaint WSPF-2005-3357, Freeman alleged that prison officials damaged a calendar he had received in the mail by removing the staples from it before they gave it to him. Freeman claimed he should have been asked before the staples were removed, and that the removal of the staples precluded his ability to return the calendar for a refund. He asked for reimbursement of the calendar's value pursuant to administrative code provisions dealing with the destruction of inmate property. Prison officials dismissed this complaint on the grounds that staples needed to be removed for security reasons from any item a segregated inmate wanted to possess, and that the calendar was still useable without the staples.

¶3 In ICRS complaint WSPF-2005-8286, Freeman set forth a series of objections to his continued placement in administrative confinement. These included the adjustment committee's alleged reliance on expunged incident reports, outdated information about his gang affiliation, and improperly taken confidential informant statements, as well as its denial of witnesses requested by

Freeman. Prison officials dismissed this complaint on the ground that their review of the adjustment committee documents showed no procedural errors.

### STANDARD OF REVIEW

¶4 Our certiorari review is limited to the record created before the administrative body. *State ex rel. Whiting v. Kolb*, 158 Wis. 2d 226, 233, 461 N.W.2d 816 (Ct. App. 1990). We will consider only whether: (1) the committee stayed within its jurisdiction, (2) it acted according to law, (3) its action was arbitrary, oppressive or unreasonable and represented the committee’s will and not its judgment, and (4) the evidence was such that the committee might reasonably make the order or determination in question. *Id.* The inquiry into whether the committee acted according to law includes consideration of whether due process was afforded and the committee followed its own rules. *State ex rel. Curtis v. Litscher*, 2002 WI App 172, ¶15, 256 Wis. 2d 787, 650 N.W.2d 43 (citing *State ex rel. Meeks v. Gagnon*, 95 Wis. 2d 115, 119, 289 N.W.2d 357 (Ct. App. 1980)).

### DISCUSSION

#### *Complaint WSPF-2005-3357*

¶5 Freeman initially sought payment for his calendar under WIS. ADMIN. CODE § DOC 306.16(3), which requires a correctional institution to reimburse an inmate “for damage to any property that is not contraband.” We are satisfied it was reasonable for prison officials to determine that removing staples from Freeman’s calendar did not “damage” it because the calendar could still be used for its intended purpose. Furthermore, since Freeman does not dispute that staples are contraband for segregated inmates, he could not properly claim

reimbursement under the code provision even assuming that removing the staples constituted damage.

¶6 Apparently recognizing this inherent flaw in his initial claim for reimbursement, Freeman has presented a new argument on appeal. He now claims that, if the calendar is contraband, prison officials violated their own rules by delivering it to him. This argument has two flaws. First, it would seem to be the staples, not the rest of the calendar, that are contraband, and prison officials did not deliver the staples to Freeman. Secondly, even if the calendar itself could be deemed contraband, there is no administrative rule providing reimbursement for delivery of altered or damaged contraband items.

*Complaint WSPF-2005-8286*

¶7 Freeman challenged his continued administrative confinement both by a direct appeal of the administrative confinement review committee's (ACRC) decision to the warden pursuant to WIS. ADMIN. CODE § DOC 308.04(9) and by an ICRS complaint. He raised the same fifteen issues in both procedures, and claims in his appellate brief that he is challenging both decisions. However, Freeman's petition for certiorari in the circuit court refers only to ICRS complaint WSPF-2005-8286 with regard to the administrative confinement, and did not list the warden as a respondent. We are therefore limited to considering only the ICRS decision on this appeal.

¶8 The ICRS affords inmates a procedure for raising certain "significant issues regarding rules, living conditions, staff actions affecting institution environment, and civil rights complaints." *See* WIS. ADMIN. CODE § DOC 310.08(1). It may be used to challenge the procedure used in the administrative

confinement review process after exhausting other administrative procedures for substantive review of such decisions. Section DOC 310.08(3).

¶9 The bulk of Freeman's complaints about his administrative confinement relate to the substance of the ACRC's decision, such as whether certain evidence was properly before the committee and/or sufficient to support its decision. Because such substantive complaints were outside the scope of the ICRS procedure, the prison officials were not required to address them.

¶10 The one administrative confinement issue Freeman raised in his ICRS complaint that appears to be procedural in nature is his claim that he was denied witnesses at the ACRC hearing contrary to DOC procedures. However, Freeman does not identify which administrative rule he believes was violated or otherwise explain who his requested witnesses were or why he should have been allowed to present them. We see nothing in the certiorari record to undermine the ICRS determination that the ACRC documents did not show any procedural errors in this or any other regard.

*By the Court.*—Order affirmed.

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

