

**COURT OF APPEALS
DECISION
DATED AND FILED**

March 22, 2007

A. John Voelker
Acting 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. 2006AP2247

Cir. Ct. No. 2005CV3398

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

ARMANDO TREVINO, JR.,

PETITIONER-APPELLANT,

V.

MATTHEW J. FRANK AND RANDALL R. HEPP,

RESPONDENTS-RESPONDENTS.

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

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

¶1 PER CURIAM. Armando Trevino, Jr., appeals an order denying his motion for reconsideration. The issues are: (1) whether we have jurisdiction; (2) whether Trevino's advocate properly waived the right to call witnesses on Trevino's behalf; (3) whether the conduct report describes the alleged offense in

sufficient detail; (4) whether the disciplinary committee erred in relying on the confidential informants' statements; and (5) whether requiring Trevino to raise all of his issues in one appeal is unduly burdensome. We affirm.

¶2 The first issue is whether we have jurisdiction over this appeal from the order denying the motion to reconsider. An appeal cannot be taken from an order denying a motion for reconsideration that presents the same issues as those determined in the order sought to be reconsidered. See *Silverton Enters., Inc. v. General Cas. Co.*, 143 Wis. 2d 661, 665, 422 N.W.2d 154 (Ct. App. 1988). This rule prevents using a motion for reconsideration to extend the time to appeal from a judgment or order. *Id.*; see also *Ver Hagen v. Gibbons*, 55 Wis. 2d 21, 25-26, 197 N.W.2d 752 (1972). The State argues that we do not have jurisdiction because the issues raised in the reconsideration motion were addressed by the circuit court in its original decision. Our review discloses that some aspects of the issues Trevino raised in his motion for reconsideration were not addressed by the circuit court in its original decision. Accordingly, we conclude that Trevino's reconsideration motion, and the order denying it, are properly before us as to issues not previously raised.

¶3 The second issue is whether Trevino's advocate properly waived the right to call witnesses on Trevino's behalf. Trevino contends that he never received and personally signed the DOC-73 form, which allows an offender to request the attendance of witnesses at the disciplinary hearing. He also contends that his advocate improperly waived the right to call witnesses on his behalf by completing the form for him, indicating that no witnesses were requested. This argument fails because there is no administrative requirement that a prisoner personally receive a copy of the DOC-73 form. See WIS. ADMIN. CODE § DOC 303.81(1). There is also nothing in the rule that prevents Trevino's staff advocate

from waiving the right to call witnesses on Trevino's behalf. *See id.* We agree with the circuit court that because "the rule authorizes an advocate to request witnesses [the rule] impl[ies] that the advocate likewise can communicate that the inmate does not request any witnesses." Moreover, Trevino has not explained what the three witnesses he wanted to call would have said and why their testimony would have made any difference in the disciplinary hearing's result. Therefore, we reject this claim.

¶4 The third issue is whether the conduct report fails to describe the facts in sufficient detail in violation of WIS. ADMIN. CODE § DOC 303.66(2). Trevino never argued to the disciplinary committee or in his appeal to the warden that the conduct report did not describe the facts in sufficient detail. Therefore, he has waived this argument. *See Santiago v. Ware*, 205 Wis. 2d 295, 324, 556 N.W.2d 356 (Ct. App. 1996). Even if the argument were not waived, Trevino's complaints center on his disagreement with the facts alleged in the conduct report, not on the adequacy of the charges. We reject this claim.

¶5 The fourth issue is whether the disciplinary committee should have explained in more detail why it concluded that it would pose a risk of harm for the confidential witnesses to testify at the hearing. Trevino did not raise this argument before the committee or in the appeal to the warden and, therefore, he has waived his right to raise it. *See id.*

¶6 The fifth issue is whether it is unduly burdensome to require Trevino to raise all of his issues in one appeal to the warden. The department rules require that a prisoner appeal within a certain time period. *See* WIS. ADMIN. CODE § DOC 303.76(7) (an inmate has ten days from the date of receiving the hearing committee's decision to file an appeal). As aptly explained by the department,

“[n]othing in [this rule] allows an inmate to supplement his appeal at all, much less with [arguments made] well beyond the 10 day time limit.” Trevino amended his appeal to the warden after it was filed and attempted to raise other issues later in the circuit court. Trevino could have—and should have—raised these issues in his initial appeal. The rule strikes a reasonable balance by allowing for review of disciplinary decisions, but providing reasonable limits on what could otherwise be an endless process. We reject Trevino’s claim that the rule is unduly burdensome.

By the Court.—Order affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5. (2005-06).

