

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**May 24, 2007**

David R. Schanker  
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. 2006AP1552**

**Cir. Ct. No. 2005CV4214**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT IV**

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**STATE OF WISCONSIN EX REL. DARYL HOLLOWAY,**

**PETITIONER-APPELLANT,**

**V.**

**RICHARD SCHNEITER AND MATTHEW FRANK,**

**RESPONDENTS-RESPONDENTS.**

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APPEAL from orders of the circuit court for Dane County:  
RICHARD G. NIESS, Judge. *Affirmed.*

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

¶1 PER CURIAM. Daryl Holloway appeals orders affirming a prison disciplinary decision. He argues error in the administrative proceeding, and in the trial court's decision denying his motion to supplement the record of that proceeding. We affirm.

¶2 A corrections officer at the Wisconsin Secure Program Facility issued a conduct report charging Holloway with violations of rules against soliciting staff, WIS. ADMIN. CODE § DOC 303.26(6); sexual contact, WIS. ADMIN. CODE § DOC 303.14; and sexual conduct, WIS. ADMIN. CODE § DOC 303.15(1)(c). The report alleged that Holloway wrote a letter to a female officer asking her for sexual favors and soliciting her to do other things as well. A disciplinary committee found him guilty of soliciting and sexual conduct, and not guilty of sexual contact.

¶3 Holloway appealed to the warden, arguing that he was found guilty twice for one violation because the soliciting rule, WIS. ADMIN. CODE § DOC 303.26(6), “covers” WIS. ADMIN. CODE § DOC 303.15(1)(c), and because both charges resulted from the same incident. The warden denied the appeal, and Holloway filed an inmate complaint challenging the decision.

¶4 The Secretary of the Department of Corrections subsequently issued a final denial of the complaint. Meanwhile, Holloway continued arguing his case to the warden and to the institution’s security director in a series of letters. He characterized these letters as appeals under WIS. ADMIN. CODE § DOC 303.76(7)(e).

¶5 Having run out of administrative remedies, Holloway commenced this judicial review proceeding. After the Department of Corrections filed the administrative record, Holloway moved to supplement it with the letters he sent to the warden and security director during and after the inmate complaint review. The trial court denied that motion and affirmed the disciplinary decision, resulting in this appeal.

¶6 Our review is limited to whether the Department acted within its jurisdiction, acted according to law, issued an arbitrary or oppressive decision, and had sufficient evidence to make the disciplinary decision in question. *See State ex rel. Ortega v. McCaughtry*, 221 Wis. 2d 376, 385, 585 N.W.2d 640 (Ct. App. 1998). We review the record in the same manner as the trial court, and we independently decide whether to uphold the agency decision. *Id.* at 385-86.

¶7 Holloway argues that finding him guilty of soliciting and sexual conduct punished him twice for the same act. We conclude, however, that the Department could properly discipline Holloway for two violations even though Holloway wrote only one letter. WISCONSIN ADMIN. CODE § DOC 303.15(1)(c) prohibits requests for sexual contact, and the letter contained explicit requests for such contact. WISCONSIN ADMIN. CODE § DOC 303.26 prohibits inmates from asking staff for favors or special attention, and Holloway asked the complaining officer for several non-sexual favors as well. For example, he asked the officer to keep him informed of her feelings about him, see him at least once a week, help with a pardon application, and contact his mother. His letter also contained numerous expressions of affection for the officer, which § DOC 303.26(6) also prohibits. Consequently, the disciplinary committee could reasonably find separate, distinct rule violations within the same letter.

¶8 Holloway has waived all remaining arguments regarding the disciplinary proceeding. A prisoner seeking review of a prison disciplinary proceeding must first exhaust all available administrative remedies. *See* WIS. STAT. § 801.02(7)(c) (2005-06).<sup>1</sup> The issue addressed above is the only issue

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2005-06 version unless otherwise noted.

Holloway raised in his appeal to the warden. Consequently, he did not exhaust his remedies for the remaining issues he raises on appeal.

¶9 Holloway attempts to circumvent the exhaustion bar by arguing that his letters to the warden constituted additional appeals, as permitted by WIS. ADMIN. CODE § DOC 303.76(7)(e), with the warden’s decisions on the “appeals” subject to judicial review. However, there is no such thing as a § DOC 303.76(7)(e) appeal. Rather, this rule provides wardens discretion to review disciplinary decisions and act on them as if a prisoner had appealed. A warden’s decision not to use his or her discretion under the rule is entirely up to the warden and is not reviewable. Therefore, the trial court properly denied Holloway’s motion to supplement the administrative record with his letters and the responses to them. His subsequent requests for discretionary relief did not cure his failure to exhaust the remedies available as of right, and provide no other grounds for relief.

*By the Court.*—Orders affirmed.

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

