COURT OF APPEALS
DECISION
DATED AND FILED

March 21, 2002

Cornelia G. Clark
Clerk of Court of Appeals

Appeal No. 01-1814 **Cir. Ct. No. 00-CV-2694**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT IV

STATE OF WISCONSIN EX REL. THOMAS MCPHETRIDGE,

PETITIONER-APPELLANT,

V.

JON E. LITSCHER AND STEVEN CASPERSON,

RESPONDENTS-RESPONDENTS.

APPEAL from an order of the circuit court for Dane County: STEVEN D. EBERT, Judge. *Affirmed.*

Before Dykman, Roggensack and Deininger, JJ.

¶1 PER CURIAM. Thomas McPhetridge appeals an order affirming a prison disciplinary decision. He challenges various aspects of the disciplinary proceeding. We affirm on all issues.

¶2 Correctional officers at Dodge Correctional Institution issued a conduct report that charged McPhetridge with possession of intoxicants, in violation of WIS. ADMIN. CODE § DOC 303.43. The report stated that an officer randomly searched McPhetridge's cell and discovered a jar containing foul smelling liquid with apple slices and bread chunks floating in it. McPhetridge admitted the jar was his and described the liquid inside as a fruit drink. The DCI security director reviewed the report and deemed the charge a major offense because the violations created a risk of serious disruption in the institution and created a serious risk of injury to another person.

¶3 Testing one week later showed that the confiscated drink was an intoxicant. At the disciplinary hearing, McPhetridge again stated that he made the liquid as a fruit drink and let it sit overnight to improve its taste. He denied any intent to produce alcohol. The disciplinary committee chose to disbelieve that testimony and, based on the conduct report and the test results, concluded that McPhetridge intentionally created an alcoholic drink. McPhetridge's punishment for possessing intoxicants included four days of adjustment segregation and sixty days of program segregation.

¶4 Judicial review on certiorari is limited to whether the committee's decision was within its jurisdiction, according to law, neither arbitrary nor oppressive, and supported by sufficient evidence of record. *See* ***Van Ermen v. DHSS***, 84 Wis. 2d 57, 63, 267 N.W.2d 17 (1978). We review the decision independently of the trial court. *See* ***State ex rel. Hippler v. Baraboo***, 47 Wis. 2d 603, 616, 178 N.W.2d 1 (1970). 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). We do not substitute our view of the evidence for the

committee's. ***State ex rel. Jones v. Franklin***, 151 Wis. 2d 419, 425, 444 N.W.2d 738 (Ct. App. 1989).

¶5 This opinion addresses three issues: (1) whether the security director properly and reasonably charged McPhetridge with a major offense; (2) whether the evidence was sufficient to find him guilty of possessing intoxicants; and (3) whether he received excessive discipline. Although McPhetridge raises several other issues in his appellate brief, he neglected to raise those issues on administrative review or in the circuit court. They are therefore waived.

¶6 The security director properly charged McPhetridge with a major offense. The security director's decision to charge an offense as major is a discretionary application of the guidelines set forth in WIS. ADMIN. CODE § DOC 303.68(4). *See* ***State ex rel. Staples v. Young***, 142 Wis. 2d 348, 355, 418 N.W.2d 433 (Ct. App. 1987). Under those guidelines, the director may charge a major offense if, among other reasons, the offense poses a risk of serious disruption at the institution, or it poses a risk of serious injury to another person. In this case the director gave both those reasons for classifying the offense as major. While we are not persuaded that McPhetridge's possession of the intoxicating drink posed a risk of serious injury to another person, the director reasonably, and therefore properly, concluded that possession of homemade alcohol by an inmate posed a risk of serious disruption within the prison. *See* ***id***. (Security director's classification of an offense will be upheld if reasoned and reasonable.)

¶7 The disciplinary committee heard sufficient evidence to find McPhetridge guilty of possessing intoxicants. McPhetridge contends that the results from lab tests done seven days after the drink was seized cannot reliably

determine its alcoholic content while it was still in his possession. Consequently, in his view, those results failed to disprove his contention that the drink was an innocent fruit drink, that fermented and became alcoholic only after it was seized. However, the conduct report provided additional evidence that McPhetridge intentionally concocted an intoxicant. According to the report, it was foul smelling when it was seized, and contained bread chunks, a common ingredient of homemade alcohol. Also, the committee had before it McPhetridge's implausible claim that he innocently left the drink to sit out overnight in order to improve its taste. The committee could reasonably infer from the evidence before it that the liquid was alcoholic, and intentionally so, when it was discovered in McPhetridge's cell.

¶8 The committee did not impose excessive discipline on McPhetridge. McPhetridge faced maximum punishments of up to eight days of adjustment segregation, under WIS. ADMIN. CODE § DOC 303.69(1), and up to 360 days of program segregation, under WIS. ADMIN. CODE § DOC 303.84(table). He received four days in adjustment segregation and sixty days program segregation, in each case substantially less than the maximum. Nothing of record suggests that this discipline was arbitrary, oppressive or in violation of the applicable rules.

By the Court.—Order affirmed.

This opinion will not be published. WIS. STAT. RULE 809.23(1)(b)5 (1999-2000).