

**COURT OF APPEALS
DECISION
DATED AND FILED**

May 23, 2002

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. 01-3235
STATE OF WISCONSIN**

Cir. Ct. No. 00-CV-181

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN EX REL. JIMMY BRIDGES,

PETITIONER-APPELLANT,

V.

GERALD BERGE,

RESPONDENT-RESPONDENT.

APPEAL from an order of the circuit court for Grant County:
ROBERT P. VAN DE HEY, Judge. *Affirmed.*

Before Dykman, Roggensack and Deininger, JJ.

¶1 PER CURIAM. Jimmy Bridges appeals from an order dismissing a petition for a writ of certiorari. Bridges, an inmate, sought review of his placement in administrative confinement. On appeal, Bridges raises several arguments cast in terms of due process. Because Bridges has no liberty interest in remaining in the general prison population, his due process arguments fail. We

further hold that Bridges waived any objection to the non-appearance of a requested witness at the hearing and that the evidence supports the placement. Accordingly, we affirm.

Facts

¶2 Upon Bridges' completion of a 360-day period in program segregation, the Security Director at Columbia Correctional Institution requested that Bridges be placed in administrative confinement. *See* WIS. ADMIN. CODE § DOC 308.04(1) (June 1998).¹ Bridges was placed in temporary lock-up pending review of the request. Bridges was given notice of the hearing before the Administrative Confinement Review Committee (ACRC). *See* WIS. ADMIN. CODE § DOC 308.04(4). Bridges requested that Officer Thomure attend as his witness. When Thomure was not available, Bridges agreed to proceed with the hearing without him. The ACRC decided that administrative confinement was warranted. After that decision was upheld by the warden and the secretary's designee, Bridges sought certiorari review in the circuit court. The circuit court upheld the ACRC decision.

Standard of Review

¶3 On certiorari review, this court's standard of review is the same as that applied by the circuit court. *State ex rel. Staples v. DHSS*, 136 Wis. 2d 487, 493, 402 N.W.2d 369 (Ct. App. 1987). Review is limited to determining whether

¹ "Administrative confinement is an involuntary nonpunitive status for the segregated confinement of an inmate whose continued presence in general population poses a serious threat to life, property, self, staff, or other inmates, or to the security or orderly running of the institution." WIS. ADMIN. CODE § DOC 308.04(1).

the ACRC kept within its jurisdiction, whether it acted according to law, whether the action was arbitrary, oppressive or unreasonable and represented its will and not its judgment, and whether the evidence was such that it might reasonably make the determination in question. *See State ex rel. Meeks v. Gagnon*, 95 Wis. 2d 115, 119, 289 N.W.2d 357 (Ct. App. 1980). Whether the ACRC acted according to law includes the questions of whether due process was afforded and whether the ACRC followed its own rules. *Id.*

Discussion

¶4 Bridges raises the several challenges to the ACRC decision phrased in terms of due process. First, he argues that his initial placement in temporary lock-up was improper, and therefore, the ensuing administrative confinement is flawed. Second, he asserts that the Security Director had been involved in a disciplinary matter that was cited as a reason for administrative confinement, and therefore, he was biased and should not have been permitted to request that Bridges be placed in administrative confinement. Third, Bridges asserts that the ACRC should not have considered the nature of his underlying conviction.

¶5 A prison regulation or confinement level does not implicate a liberty interest protected by the due process clause unless it “imposes atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life.” *Sandin v. Conner*, 515 U.S. 472, 484 (1995). Courts should focus on the physical characteristics of the confinement. *Chaney v. Renteria*, 203 Wis. 2d 310, 320, 554 N.W.2d 503 (Ct. App. 1996). In *Sandin*, the Supreme Court held that a prisoner had no liberty interest in remaining free from segregated confinement. *Id.* at 485-86. This court has held that placement in a “management continuum” program designed for violent inmates already in adjustment segregation did not

cause such a major change in the physical conditions of confinement so as to give rise to a liberty interest. *Kirsch v. Endicott*, 201 Wis. 2d 705, 711-14, 549 N.W.2d 761 (Ct. App. 1996). Although administrative confinement is concededly more strict than the general prison population, it does not impose any “atypical” or “significant” hardship on the inmate. See WIS. ADMIN. CODE § DOC 308.04(12). An inmate placed in administrative confinement does not forfeit good time credit, and thus, placement does not affect the duration of the inmate’s sentence. Cf. *Santiago v. Ware*, 205 Wis. 2d 295, 317-18, 556 N.W.2d 356 (Ct. App. 1996) (an inmate has a liberty interest in not having his mandatory release date extended.). Because placement in administrative confinement does not implicate a liberty interest, due process does not apply.

¶6 Although a constitutional basis for Bridges’s appeal is lacking, because an agency must follow its own procedural rules, we will consider his underlying claims of errors on certiorari review. See *State ex rel. Ortega v. McCaughtry*, 221 Wis. 2d 376, 393, 585 N.W.2d 640 (Ct. App. 1998).

¶7 Bridges’ temporary restraint ended when he was placed in administrative confinement. An error in the temporary lock-up process that does not impact the decision to place an inmate in administrative confinement is immaterial. See *State ex rel. Riley v. DH&SS*, 151 Wis. 2d 618, 621-22, n.1., 445 N.W.2d 693 (Ct. App. 1989). Because the claimed defect in this case, late notice, did not affect Bridges’s subsequent confinement, no error occurred.

¶8 Bridges complains that the Security Director who recommended administrative confinement was biased because he had personal knowledge of one of the underlying disciplinary matters. Bridges is entitled to an impartial decision-maker – the ACRC. The recommending officer’s personal knowledge of an

inmate's conduct does not mean that the ACRC will not evaluate the recommendation on the basis of the evidence presented at the hearing. *See* WIS. ADMIN. CODE § DOC 308.04(8).

¶9 Bridges complains that the ACRC considered the nature of his crime of conviction. An inmate's "history of homicidal, assaultive or other violent behavior" may justify placement in administrative confinement. WIS. ADMIN. CODE § DOC 308.04(2)(a). The nature of Bridges's crime of conviction is part of his history of assaultive behavior, just as is his disciplinary record while incarcerated. The ACRC did not violate its procedures.

¶10 Bridges next complains that one of his witnesses was not present at the hearing. The record shows that Bridges requested that Officer Thomure appear as a witness. The record also shows that when Thomure was not available at the scheduled hearing time, Bridges was offered an adjournment, but he chose to proceed without Thomure. Bridges has waived any objection to Thomure's absence.

¶11 Lastly, we conclude that the evidence supports the ACRC determination. Bridges's lengthy history of disciplinary matters while incarcerated was before the ACRC, including battery to both staff and other inmates.² Administrative confinement provides prison officials with a confinement level for those inmates "whose continued presence in general population poses a serious threat to life, property, self, staff, or other inmates, or to

² Bridges asserts that the battery could not be considered because he was ultimately acquitted on the criminal charges arising from the battery. We disagree. An acquittal does not render the incident outside the scope of consideration for purposes of institutional placement.

the security of the institution.” WIS. ADMIN. CODE § DOC 308.01. The evidence supports the Bridges’s placement in administrative confinement.

By the Court.—Order affirmed.

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

