COURT OF APPEALS
DECISION
DATED AND FILED

January 30, 2003

Cornelia G. Clark
Clerk of Court of Appeals

Appeal No. 02-0193 **Cir. Ct. No. 01-CV-56**

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

STATE OF WISCONSIN EX REL. JAMES C. DILLARD, SR.,

PETITIONER-APPELLANT,

V.

GARY R. MCCAUGHTRY,

RESPONDENT-RESPONDENT.

APPEAL from an order of the circuit court for Dodge County: ANDREW P. BISSONNETTE, Judge. *Affirmed*.

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

¶1 PER CURIAM. James Dillard, Sr., pro se, appeals from the trial court's order dismissing his petitions for certiorari review of two prison disciplinary decisions. We affirm.

¶2 Dillard filed petitions for certiorari review in the circuit court seeking review of two separate decisions of the prison adjustment committee, one finding him guilty of battery and one finding him guilty of inciting a riot. The circuit court considered the petitions together and issued a written decision dismissing the petitions on the merits.

¶3 Dillard first argues that prison officials failed to comply with court orders and agency rules because the return to the writ of certiorari was not complete. However, Dillard does not explain what is missing from the return. Because Dillard has not adequately developed this argument, we reject it. ***State v. Pettit***, 171 Wis. 2d 627, 647, 492 N.W.2d 633 (Ct. App. 1992). Dillard also appears to argue that the prison officials did not comply with agency rules because the corrections officer who entered his cell, where the battery occurred, was not authorized to do so. Even assuming that the officer was not authorized to enter Dillard's cell, an issue we need not decide, we reject Dillard's claim that this alleged rule violation had bearing on the disciplinary decision because, as aptly explained by the State, Dillard has cited "no authority … for the proposition that he was entitled to commit a battery on the officer because of the officer's allegedly improper entry to [his] cell."

¶4 Dillard next contends that there was insufficient evidence to sustain a finding of guilt on the battery. At the time Dillard's conduct report was issued, WIS. ADMIN. CODE § DOC 303.12 provided: "[a]ny inmate who intentionally causes bodily injury to another is guilty of an offense."[1] In reaching the finding of

[1] The administrative code has since been amended to slightly change the wording of this offense.

guilt, the committee concluded that the reporting staff member was credible. He reported that Dillard kicked him, striking him in the left eye and cheek area, causing pain and discomfort. The committee stated that Dillard did not provide any evidence to the contrary except to state that he was asleep and did not know what was happening. The committee also stated that it did not find Dillard's testimony to be credible. Dillard complains that the committee relied in part on photos of the officer after the battery which, according to the committee, document injury. Dillard contends that the photos do not show an injury. However, our review of the photos shows a darker area in the middle of the officer's cheek consistent with a mark from being hit. We conclude that there was adequate evidence to sustain the finding of guilt.

¶5 Dillard next argues that the adjustment committee improperly relied on evidence outside the record in finding him guilty of battery because it mentioned the fact that Dillard's cellmate had complied with the officer's directions when the officer entered the cell. However, Dillard's cellmate's compliance can be inferred from the fact that no charges were brought against him. More importantly, whether Dillard's cellmate complied is not relevant to whether Dillard was guilty of battery. Even if the committee made an improper observation concerning the cellmate's compliance, it was not prejudicial to Dillard because there was adequate evidence to find Dillard guilty of battery.

¶6 Dillard next argues that he was improperly denied pre-hearing access to copies of the evidence to be used at the hearing on the battery charge. However, Dillard does not have a right to pre-hearing copies of evidence to be presented at the hearing. *See* ***State ex rel. Ortega v. McCaughtry***, 221 Wis. 2d 376, 398-400, 585 N.W.2d 640 (Ct. App. 1998) (there is no requirement that an

inmate be given copies of statements or access to evidence submitted in support of charges contained in a conduct report prior to the disciplinary hearing).

¶7 Turning to the committee's decision that Dillard was guilty of inciting a riot, Dillard first argues that he did not receive a second notice of hearing pursuant to WIS. ADMIN. CODE § DOC 303.81(9). We reject this claim because Dillard was not entitled to a second notice of hearing under that rule. An amendment to the administrative code eliminated the notice requirement of § DOC 303.81(9). That amendment was effective August 1, 2000. The conduct report was issued August 14, 2000, after the amendment took effect. Therefore, no notice was required under the rule.

¶8 Dillard also argues that the evidence was insufficient to sustain a finding of guilt on the charge of inciting a riot. The committee relied on information in the conduct report about an extensive investigation into gang activity in prison and statements from three confidential informant statements, all of whom corroborate one another. Based on our review of the evidence, we conclude that there was sufficient evidence for the committee to conclude that Dillard was a member of a gang and, in a position of authority from that gang, directed inmates to participate in a disturbance.

¶9 Finally, Dillard argues that his prison advocate did not provide him with sufficient assistance in defending himself on both charges. Dillard has not preserved this issue for judicial review because he did not raise it before the adjustment committee. ***McCaughtry***, 221 Wis. 2d at 396 (an inmate who fails to clearly present for the record before the adjustment committee the basis for a claim that the advocate failed to perform the duties outlined in WIS. ADMIN. CODE § 303.78(2) waives judicial review of that claim).

By the Court.—Order affirmed.

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