

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**April 3, 2003**

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. 02-2059  
STATE OF WISCONSIN**

**Cir. Ct. No. 01 CV 336**

**IN COURT OF APPEALS  
DISTRICT IV**

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**STATE OF WISCONSIN EX REL. ALLEN PAUTSCH,**

**PETITIONER-APPELLANT,**

**v.**

**PHILLIP KINGSTON,**

**RESPONDENT-RESPONDENT.**

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APPEAL from an order of the circuit court for Columbia County:  
DANIEL GEORGE, Judge. *Affirmed.*

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

¶1 PER CURIAM. Allen Pautsch appeals the circuit court's order dismissing his petition for certiorari review of a prison disciplinary decision.

Pautsch contends that the disciplinary committee improperly imposed permanent no-contact visitation on him as a penalty for a rule violation.<sup>1</sup> We affirm.

¶2 Our review of a prison disciplinary committee's decision is limited. We will reverse only if: (1) the committee did not stay within its jurisdiction; (2) the committee did not act in accord with the law; (3) the action was arbitrary, unreasonable, oppressive and represented the committee's will and not its judgment; or (4) the evidence was such that the committee could not reasonably make the order or determination in question. *State ex rel. Whiting v. Kolb*, 158 Wis. 2d 226, 233, 461 N.W.2d 816 (Ct. App. 1990).

¶3 Pautsch contends that the disciplinary committee did not act in accord with the law because it had no authority to impose upon him permanent no-contact visitation upon finding him guilty of using an intoxicant. We disagree. The prison disciplinary committee may impose a penalty for a rule violation, including the "[l]oss of a specific privilege." WIS. ADMIN. CODE § DOC 303.84(1)(e). The rules provide that "[s]pecific privileges which the adjustment committee or hearing officer may take away include *but are not limited to*: use of inmate's own TV, radio or cassette player; [and] phone calls ...." Section DOC 303.72(4) (emphasis added). Visitation is referred to as a privilege throughout the rules. *See, e.g.*, §§ DOC 309.12 and 303.68(6). Because visitation is a privilege allowed inmates and the rules specifically allow the committee to take away a

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<sup>1</sup> The State argues that we should not reach the merits of Pautsch's claim because his petition for certiorari review was not timely filed in the circuit court. We decline to decide the case on this ground because the "mail-box" rule may potentially apply to this case. Rather than having the parties provide us the information necessary to determine whether a tolling rule applies, we believe it is more expedient to address the merits.

specific privilege as punishment for a rule violation, the committee did not act contrary to law in imposing no-contact visitation on Pautsch.

¶4 Pautsch contends that no-contact visiting may only be imposed in limited circumstances because WIS. ADMIN. CODE § DOC 309.11 discusses no-contact visitation in general, and sets forth situations in which the warden may impose no-contact visitation. We reject Pautsch's claim. This rule discusses when the warden may impose no-contact visitation regardless of whether an inmate has already been found guilty of a rule violation. The rule in no way limits the disciplinary's committee ability to impose no-contact visitation as a penalty for a rule violation.<sup>2</sup>

*By the Court.*—Order affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5 (2001-02).

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<sup>2</sup> While this case was pending before us, Pautsch submitted a letter directing our attention to a recent federal case that held that a permanent ban on visitation for being found guilty of substance abuse two times violates the Eighth Amendment's prohibition against cruel and unusual punishment. *Bazzetta v. McGinnis*, 148 F. Supp.2d 813, 851 (E.D. Mich. 2001), *aff'd*, 286 F.3d 311 (6th Cir. 2002), *cert. granted in part sub nom., Overton v. Bazzetta*, 123 S. Ct. 658 (2002). This decision is not binding on this court and, even if it were, it is distinguishable because Pautsch may still have visitors, subject to the no-contact provisions imposed upon him.

