

**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. 02-2344  
STATE OF WISCONSIN**

Cir. Ct. No. 02-CV-21

**IN COURT OF APPEALS  
DISTRICT IV**

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**STATE OF WISCONSIN EX REL. CARLOS D. HOPE,**

**PETITIONER-APPELLANT,**

**V.**

**PHIL KINGSTON AND JON LITSCHER,**

**RESPONDENTS-RESPONDENTS.**

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

Before Dykman, Roggensack and Deininger, JJ.

¶1 PER CURIAM. Carlos Hope, a Wisconsin prison inmate, appeals an order affirming a prison disciplinary decision. He raises various procedural issues concerning the disciplinary proceeding, and challenges the sufficiency of the evidence used to find him guilty of disciplinary infractions. We affirm.

¶2 Hope was formerly incarcerated at Columbia Correctional Institution (CCI). He was charged with violating Department of Corrections (DOC) rules by sending two anonymous letters threatening the death of a CCI officer. The letters consisted of words cut from printed sources and pasted on flattened cardboard toilet paper roll holders. The evidence against Hope included a written statement from a Columbia County sheriff's deputy stating that Hope's fingerprints were found on "one, or both" of the letters, and that the number of latent fingerprints caused the deputy to believe that Hope sent the letters. Hope denied guilt, asserting that he must have touched the roll holder or holders in the course of his prison job, which included handling toilet paper rolls. He also identified another inmate by name as the likely culprit, based on hostile statements he heard the latter make concerning the officer in question.

¶3 The disciplinary committee did not accept Hope's explanation of the fingerprints and found him guilty of the charged infractions. Hope's subsequent appeal to the warden challenged the sufficiency of the evidence of his guilt. The warden determined that the fingerprint evidence was sufficient to find guilt and affirmed the committee's decision.

¶4 Hope then sought relief on several procedural issues using the inmate complaint review system (ICRS). However, the DOC's complaint examiner concluded that there were no procedural errors of consequence in the proceeding. The DOC secretary accepted the examiner's report and dismissed Hope's complaint. Hope then commenced this judicial review proceeding.

¶5 Hope has waived review on the procedural issues he raises on certiorari review. Court review of a prisoner’s certiorari petition requires exhaustion of all administrative remedies. WIS. STAT. § 801.02(7)(b) (2001-02).<sup>1</sup> WISCONSIN ADMIN. CODE § DOC 310.04 (amended Nov. 2002) provided during Hope’s administrative proceeding that “with respect to procedures used ... in a prison disciplinary action under ch. DOC 303, an inmate shall appeal to the warden under § DOC 303.76 *and* file an inmate complaint under § DOC 310.08(3) in order to exhaust administrative remedies” (emphasis added). Hope raised procedural issues only in the ICRS stage of his administrative appeals.

¶6 Consequently, the only issue Hope adequately preserved for review was his challenge to the sufficiency of the evidence used to determine his guilt. A disciplinary committee may find guilt if it is more likely than not that the inmate committed the charged infractions. *See* WIS. ADMIN. CODE § DOC 303.76(6)(b). Our review is limited to whether any reasonable fact finder could find guilt under this standard. *See State ex rel. Ortega v. McCaughtry*, 221 Wis. 2d 376, 386, 585 N.W.2d 640 (Ct. App. 1998). We do not substitute our view of evidence for the committee’s. *Id.* We do not defer to the trial court’s decision on the issue. *Id.*

¶7 Here, Hope’s explanation that he accidentally touched the roll holders in the course of his work was not outside the realm of possibility. However, a reasonable fact finder in the committee’s position could conclude that it was far more likely that Hope left several prints on the holders in the course of using them as alleged. The evidence of the fingerprints was therefore sufficient.

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2001-02 version unless otherwise noted.

*By the Court.*—Order affirmed.

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

