

**COURT OF APPEALS
DECISION
DATED AND FILED**

October 16, 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. 03-0668
STATE OF WISCONSIN**

Cir. Ct. No. 02CV000266

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN EX REL. CHRIS J. JACOBS,

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 Dykman, Vergeront and Higginbotham, JJ.

¶1 PER CURIAM. Chris Jacobs appeals an order affirming a prison disciplinary decision. He challenges various aspects of the proceeding. We reject his arguments and affirm.

¶2 A conduct report charged Jacobs, a Waupun Correctional Institution inmate, with disobeying an order and lying about staff. The report alleged that a correction officer, Captain Muraski, interviewed Jacobs on October 16, 2001, regarding allegations of staff misconduct. Muraski ordered Jacobs not to discuss the interview with anyone. Muraski added that “because I felt Jacobs was being untruthful and due to the seriousness of the allegations and not wanting to give him the ability to compromise this investigation, I placed him in temporary lockup status.”

¶3 The next day Muraski again spoke to Jacobs, and again ordered him “not to discuss any aspect of my investigation with anyone.” On October 23, Jacobs spoke to another corrections officer, Sergeant Teresa Neibemann, and gave her information concerning Muraski’s investigation, including the names of the investigated staff members. The conduct report further alleged that Jacobs told Neibemann that Muraski had attempted to physically intimidate him.

¶4 Jacobs received a hearing before a disciplinary committee. At the hearing Jacobs admitted that Muraski gave him the orders in question, and admitted that he gave Neibemann information about Muraski’s investigation. Based on the conduct report and Jacobs’ admission, the committee found him guilty of disobeying Muraski’s order not to discuss the investigation. The committee acquitted him of lying about staff.

¶5 Jacobs exhausted his administrative remedies and commenced this judicial review proceeding. The trial court affirmed the disciplinary decision. On appeal, Jacobs contends that Muraski issued him an unlawful order and that he issued the conduct report in retaliation against Jacobs for Jacobs’ failure to cooperate in the investigation and for various complaints he had filed about

Muraski and other prison staff. He also contends that Muraski unlawfully placed him in temporary lockup, and that he had no choice but to answer Neibemann truthfully when she asked why he was in temporary lockup.

¶6 Jacobs devotes much of his appellate brief to arguments concerning the trial court's errors in deciding his petition. However, our review of a prison disciplinary decision is *de novo*. See *State ex rel. Anderson-el. v. Cooke*, 225 Wis. 2d 604, 607, 593 N.W.2d 98 (Ct. App. 1999), *reversed on other grounds*, 2000 WI 40, 234 Wis. 2d 626, 610 N.W.2d 821. Consequently, we directly review whether the Department of Corrections acted within its jurisdiction, whether its action was arbitrary or unreasonable, whether the evidence support its determination, and whether the disciplinary committee followed its own rules and procedures. *Id.*

¶7 Jacobs has failed to show why Muraski's orders were unlawful. Prison administrators may limit a prisoner's constitutional rights, including first amendment rights, for reasons that are reasonably related to valid correctional goals. See *Lomax v. Fiedler*, 204 Wis. 2d 196, 211, 554 N.W.2d 841 (Ct. App. 1996), *citing Turner v. Safley*, 482 U.S. 78, 89 (1987). Muraski's orders were reasonably related to the legitimate goal of protecting his investigation into prison staff misconduct.

¶8 The record fails to support Jacobs' allegation that Muraski issued the conduct report with a retaliatory motive. Our review is limited to the record of the prison disciplinary proceeding. See *State ex rel. Irby v. Israel*, 95 Wis. 2d 697, 703, 291 N.W.2d 643 (Ct. App. 1980). Here, the record is silent on the issue of Muraski's alleged retaliatory motive. Jacobs argues the issue extensively, but without facts.

¶9 Whether Muraski violated DOC rules by placing Jacobs in temporary lockup has no bearing on this review proceeding. As Jacobs points out, he would not have had the conversation with Neibemann, and violated Muraski's order, had he not been in temporary lockup. He therefore argues, in effect, that if the lockup was unlawful that fact somehow relieved him of the obligation to obey orders while in lockup. That is not a recognizable defense. Jacobs remained responsible for his violations of prison rules.

¶10 The record does not support Jacobs' contention that he had no choice but to tell Neibemann about Muraski's investigation. There is no evidence to support his allegation that Neibemann ordered him to provide that information.

By the Court.—Order affirmed.

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

