

**COURT OF APPEALS
DECISION
DATED AND FILED**

February 26, 2004

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. 03-1591
STATE OF WISCONSIN**

Cir. Ct. No. 03CV001682

**IN COURT OF APPEALS
DISTRICT IV**

**STATE OF WISCONSIN EX REL.
YUSEF L. WILLIAMS,**

PETITIONER-APPELLANT,

V.

MATTHEW J. FRANK,

RESPONDENT-RESPONDENT.

APPEAL from an order of the circuit court for Dane County:
RICHARD J. CALLAWAY, Judge. *Affirmed.*

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

¶1 PER CURIAM. Pro se litigant Yusef L. Williams appeals from an order dismissing his claims for relief from prison disciplinary actions. He claims various due process and constitutional violations. He asserts numerous issues on

appeal; however, the only issue before this court concerns his conduct report and disciplinary hearing. We affirm.

BACKGROUND

¶2 A captain at Waupun Correctional Institute alleged that Williams had written an out-going letter containing gang references. The captain received the letter from a correctional officer on the second shift, who retrieved it from the mailbox. The letter did not contain Williams' name and the officer did not see Williams place the letter in the mailbox. The captain determined the letter was contraband and did not deliver it. The officer issued a conduct report that charged Williams with a major offense because "[t]he alleged violation created a risk of serious disruption at the institution or in the community." Consequently, Williams was placed in temporary lock up.

DISCUSSION

¶3 On certiorari review of a board determination, we apply the same standard of review as the circuit court, inquiring whether the board: (1) kept within its jurisdiction; (2) proceeded on a correct theory of law; (3) acted in a way that was arbitrary, oppressive or unreasonable and represented its will and not its judgment; and (4) might reasonably make the order or determination in question, based on the evidence. *Fabyan v. Waukesha County Bd. of Adjustment*, 2001 WI App 162, ¶11, 246 Wis. 2d 851, 632 N.W.2d 116.

¶4 Because of the narrow scope of certiorari review, we will only consider the issues Williams raises relating to the decision of the adjustment

committee.¹ Williams contends that the security director did not indicate in the record why he prosecuted the offense as a major, rather than minor, offense. He argues that the explanation must be sufficient to permit a reviewing court to determine why the decision was made. But on the conduct report the box in front of the statement, “[t]he alleged violation created a risk of serious disruption at the institution or in the community,” was checked. We conclude this statement sufficiently explains why the offense was a major one. We agree that gang activity risks serious disruption and endangers prisoners and the community.

¶5 Williams also asserts that he did not possess the contraband, as required by WIS. ADMIN. CODE § DOC 303.20(3), because the letter was found in the mailbox. He cites for support WIS. ADMIN. CODE § 303.02(16), which defines “possession” as “on one’s person, in one’s quarters, in one’s locker or under one’s physical control.” He argues that the committee simply accepted the officer’s word that the letter belonged to Williams, contrary to *Young v. Kann*, 926 F.2d 1396 (3rd Cir. 1991). He asserts that a handwriting expert should have determined if he wrote the letter. Moreover, he claims that the letter contained no gang references, that the prison’s censorship is a product of personal prejudices, and that he has been falsely accused of belonging to a gang.

¹ We do not consider whether the prison violated various constitutional rights when it allegedly: (1) did not give Williams notice that his mail was not delivered as required by WIS. ADMIN. CODE § DOC 309.04(4)(f); (2) did not afford him the right to appeal dismissal of his non-delivery claim; and (3) did not provide him a reason for why he was held in temporary lock up past twenty-one days, contrary to WIS. ADMIN. CODE § 303.11(2). We also do not consider whether the warden “failed to ensure the policies and procedures regarding the processing of [Williams’] mail.” Williams argues that the trial court erred in finding that these issues were beyond the scope of certiorari review. He claims that he “has stated violations every step of the way, and while being denied and/or not addressed.” But the record we are reviewing only pertains to Williams’ conduct report dated July 11, 2002, and the subsequent disciplinary proceedings. These other matters are beyond the scope of this certiorari review.

¶6 The adjustment committee found “enough similarities between the letter and the inmate’s writing in his statement that [it found] them to be written by the same person.... The committee deem[ed] that the letter was authored by the inmate.” It also found the officer and captain credible with regard to whether the letter contained gang references. We conclude that the committee based its decision on the evidence and was not arbitrary, oppressive or unreasonable. Although the committee did not employ a handwriting expert, it reasonably concluded that Williams’ handwriting was sufficiently similar to the handwriting in the letter. It also was reasonable for the committee to defer to the expertise of the prison staff about whether gang indicia was present.

¶7 Williams contends that WIS. ADMIN. CODE § DOC 309.04(4)(c) does not authorize restricting delivery of his out-going mail. But he only supports his position with the conclusion that “my out-going correspondence did not fall within the criteria” of the code. We disagree. Because a letter with gang references creates a risk of serious disruption at the institution or in the community, the prison can refuse to deliver Williams’ letter pursuant to § DOC 309.04(4)(c)(5), (8), (10) or (11).

¶8 Finally, Williams asserts that the correctional officer who reviewed his letter violated the prison’s policy and procedural manual. He alleges that the prison’s own procedures authorize the third shift cell hall staff to review the mail, but the officer who reviewed his letter was working the second shift. He argues that this procedural error violated his due process rights. Williams has not shown that the alleged error harmed him. As the trial court noted, he could only show harm by proving that the third shift staff would not have identified the gang references. The record does not contain any such evidence.

By the Court.—Order affirmed.

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

