

**COURT OF APPEALS
DECISION
DATED AND FILED**

March 18, 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. 03-2129
STATE OF WISCONSIN**

Cir. Ct. No. 02CV003134

**IN COURT OF APPEALS
DISTRICT IV**

JOHN L. DYE, JR.,

PETITIONER-APPELLANT,

v.

**WRC PROGRAM REVIEW COMMITTEE, JULAINE KINNARD,
CZARINA A. SANTOS BOIJA, STEVE RANDALL, IAN
GIANNUNZIO, BYRON BARTOW AND STEPHEN PUCKETT,**

RESPONDENTS-RESPONDENTS.

APPEAL from an order of the circuit court for Dane County:
ROBERT DE CHAMBEAU, Judge. *Affirmed.*

Before Dykman, Vergeront and Lundsten, JJ.

¶1 PER CURIAM. John Dye, currently incarcerated at Columbia Correctional Institution, appeals an order affirming a Department of Corrections decision to transfer him between institutions. The decision ended his one-year

stay at the Wisconsin Resource Center (WRC) and caused his transfer back to a maximum security institution. He raises six issues on appeal. We conclude none have merit and, therefore, affirm.

¶2 Dye commenced serving a forty-five year prison sentence in the year 2000, after his conviction for first-degree sexual assault. In August 2001 the DOC transferred him from Waupun Correctional Institution to WRC for treatment of major depression. After a review hearing in July 2002, the WRC Program Review Committee (PRC) recommended Dye's transfer back to maximum security. In summation, the PRC stated:

The Committee unanimously recommends maximum custody with transfer to WCI or any maximum institution for continued behavior monitoring. Mr. Dye's noncompliance with clinical staff and medication makes him inappropriate to be retained at WRC. This recommendation is based on the factors outlined in s. DOC 302.07 regarding custody classification and s. DOC 302.09 regarding program consideration—projected time to serve, refusal of treatment, medical/clinical issues, fourth incarceration, and high risk rating factor.

The committee noted that due to a lockdown status at WRC it conducted its review at Dye's cell door, over his objection. The "central office" approved the PRC recommendation for transfer.

¶3 Dye's appeal to the Director of Offender Classification was unsuccessful, and he was transferred back to maximum security. He commenced this appeal after the trial court affirmed the transfer decision on certiorari review. The issues he raises are: (1) whether he received proper treatment for his mental health needs at WRC; (2) whether the PRC provided sufficient reasons to justify the transfer; (3) whether the PRC correctly concluded that Dye had no further needs at WRC; (4) whether the PRC properly held the hearing in front of his cell

door; (5) whether his “treatment team” at WRC correctly diagnosed him upon his arrival in August 2001; and (6) whether the PRC and other WRC officials fabricated evidence to justify the transfer.

¶4 Prison transfer decisions made pursuant to PRC recommendations are reviewable by certiorari. *See State ex rel. Lomax v. Leik*, 154 Wis. 2d 735, 739, 454 N.W.2d 18 (Ct. App. 1990). Our review is limited to: (1) whether the decision was within the agency’s jurisdiction; (2) whether the agency acted according to law; (3) whether its decision was arbitrary, oppressive, or unreasonable; and (4) whether the evidence was sufficient to demonstrate a reasonable decision. *See State ex rel. Whiting v. Kolb*, 158 Wis. 2d 226, 233, 461 N.W.2d 816 (Ct. App. 1990). We review the administrative decision independently of the trial court. *Id.*

¶5 Whether Dye received proper treatment for his depression is beyond the scope of this review. There is no medical evidence of record. Our review is confined to the administrative record. *State ex rel. Richards v. Leik*, 175 Wis. 2d 446, 455, 499 N.W.2d 276 (Ct. App. 1993).

¶6 The PRC’s reasons were sufficient to cause Dye’s transfer. WISCONSIN ADMIN. CODE § DOC 302.07 sets forth a list of factors the PRC may consider, among others, in determining a custody classification. Each of the factors expressly considered by the PRC appears on that list. Taken together, they provide a reasonable basis for the transfer decision, removing it from the category of arbitrary, oppressive, or unreasonable decisions.

¶7 The PRC reasonably determined, in its written opinion, that Dye had no “further needs at WRC.” The PRC’s decision notes Dye’s refusal to cooperate

in treatment programs and in accepting medication. The PRC reasonably concluded that WRC had nothing further to offer Dye, given his non-cooperation.

¶8 The PRC did not violate due process by holding a hearing outside Dye's cell door. Nothing of record demonstrates that the place of the hearing deprived Dye of the opportunity to speak and present evidence on his own behalf or interfered with a full and fair consideration of his case. His main complaint appears to be that the location of the hearing allowed other prisoners to overhear the proceeding. That assertion is not a fact of record, nor does the possibility that it occurred amount to a due process violation.

¶9 Whether WRC personnel properly diagnosed Dye is, like his treatment complaints, beyond the scope of our review. As noted, his medical file is not of record. We also have no basis to on which to review Dye's allegation of fabricated documents. Nothing of record supports this conclusory allegation.

By the Court.—Order affirmed.

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

