

**COURT OF APPEALS
DECISION
DATED AND FILED**

June 24, 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. 03-2272-CR

Cir. Ct. No. 02CF000087

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

JASON S. HEIDER,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Adams County: RICHARD O. WRIGHT, Judge. *Affirmed.*

Before Deininger, P.J., Lundsten and Higginbotham, JJ.

¶1 PER CURIAM. Jason Heider appeals a judgment convicting him of one count of attempted robbery and one count of robbery, both with threat of force and while concealing identity, and two counts of possessing a firearm as a felon, while concealing identity, all four counts as a repeater. He also appeals an order denying his postconviction motion. Heider contends his Fourth Amendment rights

were violated when letters he wrote confessing his guilt were seized by jail staff and introduced during his jury trial. We reject this argument and affirm.

¶2 A sergeant at the Adams County jail testified that she intercepted Heider's letters because they were sealed in violation of jail rules. The Adams County jail rules provided:

OUTGOING MAIL

All correspondence written by inmates will be sent through the U.S. Mail. The jail staff will not censor any outgoing mail. All unprivileged outgoing mail will be left unsealed by the inmate, with proper postage attached to the envelope. Privileged mail may be sealed by the inmate.

¶3 Whether the jail staff's conduct "constitute[d] an unreasonable search and seizure in violation of the state and federal constitution depends ... on whether the defendant had a legitimate, justifiable or reasonable expectation of privacy that was invaded by the government action." *State v. Rewolinski*, 159 Wis.2d 1, 12, 464 N.W.2d 401 (1990) (footnote omitted). "The determination of whether the defendant had a reasonable expectation of privacy depends on two separate questions." *Id.* at 13. "The first question is whether the individual by his conduct exhibited an actual, subjective expectation of privacy." *Id.* "The second question is whether such an expectation is legitimate or justifiable in that it is one that society is willing to recognize as reasonable." *Id.* "A legitimate expectation of privacy is an expectation which society is prepared to recognize as reasonable, *i.e.*, viewed objectively, it is justifiable under the circumstances." *Id.* at 17.

¶4 We focus on the second prong of the test, whether Heider’s expectation of privacy was reasonable. This question, which we consider under a de novo standard of review, is easily answered.¹ Jail inmates, who are told that unprivileged mail has to be submitted to authorities unsealed, cannot reasonably expect that the contents of their letters will be private. To the contrary, the very reason the letters must be left unsealed is so that they may be searched. Heider contends that his expectation of privacy was reasonable because the jail rule states that the prison officials will not “censor” the letters, even though they must be presented to jail staff unsealed. Heider would have us conclude that the jail staff may search the unsealed letters for contraband, but studiously avoid glancing at any words on the pages themselves. This reading of the rule is not reasonable. Viewed objectively, Heider’s expectation that his outgoing jail mail would be private is simply not justified, a result that has been repeatedly reached by other courts presented with situations similar to the one here. *See, e.g., United States v. Whalen*, 940 F.2d 1027, 1035 (7th Cir. 1991) (holding jail staff’s review of inmates’ outgoing mail to ensure that it does not interfere with orderly running of prison, contains no threats, and does not facilitate criminal activity not violative of Fourth Amendment). The censorship portion of the rule means only that, after reviewing unprivileged outgoing mail, the prison staff will send it, uncensored, or will not send it and take appropriate action.

By the Court.—Judgment and order affirmed.

¹ “[W]hether there was a search or seizure, *i.e.*, whether those facts and undisputed facts give rise to a legitimate expectation of privacy on the part of the defendant is a matter of law which this court independently determines.” *State v. Rewolinski*, 159 Wis. 2d 1, 17, 464 N.W.2d 401 (1990).

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

