COURT OF APPEALS
DECISION
DATED AND RELEASED

September 7, 1995

No. 94-0795

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT IV

STATE OF WISCONSIN ex rel. RENATO BEATON,

Plaintiff-Appellant,

v.

JEFFREY ENDICOTT,

Defendant-Respondent.

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

Before Eich, C.J., Gartzke, P.J., and Sundby, J.

PER CURIAM. Renato Beaton appeals from an order upholding the decision of the Columbia Correctional Institution Adjustment Committee in a prison disciplinary case. Beaton, an inmate, was found guilty of aiding and abetting a battery. The issues are: (1) whether Beaton's due process rights were

violated because he did not receive adequate notice of the charges against him; and (2) whether there was sufficient evidence to support the committee's finding of guilt.[1] We affirm.

Another inmate, William Medina, attempted to murder prison warden Jeffrey Endicott. Several confidential informants implicated Beaton in the plot. After considering the statements of the informants and other evidence, the prison adjustment committee found Beaton guilty of aiding and abetting a battery for his role in the attack on the warden. The trial court affirmed.

This court's *certiorari* review is limited to whether the administrative body stayed within its jurisdiction and acted according to law; whether its decision was arbitrary or unreasonable; and whether its determination was reasonably based upon the evidence. ***State ex rel. Staples v. DHSS***, 115 Wis.2d 363, 370, 340 N.W.2d 194, 197-98 (1983).

Beaton contends that his due process rights were violated because he did not receive adequate notice of the charges, thereby preventing him from preparing a defense. We disagree.

The conduct report, the charging document, stated that Beaton helped with the planning of the attack, had a specific role to play to further the attack and was present at the scene of the battery when it occurred. The conduct report stated in part:

> Mr. Beaton was present on the Recreation Field on September 8, 1993. According to confidential informant statement #12, when the informant was asked specifically if he was aware of anyone else who approved of or helped with the plan, he replied, "The Cuban dude with the dreadlocks." This description matches Mr.

[1] In his statement of the issues, Beaton also contends that he received ineffective assistance from his assigned staff advocate. Further in his brief, however, Beaton states that he "abandons" this argument. Because Beaton has not developed the argument and has indicated that he no longer wishes to pursue it, we do not consider it.

> Beaton's.... Mr. Beaton's assignment was to hold off any help that would be coming to the aid of the Warden so Medina could have the time he needed. This is supported by confidential informant #9, who states, "He was supposed to jump on anybody comin [sic] to help the Warden. But he didn't. The guy was Cuba [Beaton]." Mr. Beaton was also in contact with Medina at the picnic as supported by confidential statements #14 and #12. Statement #12 states, "saw Medina talking with Beaton." Statement #14 states, "Medina went and talked to the Cuban [Beaton]."

Although the conduct report does not indicate exactly when and where the planning for the attack took place, it was sufficiently specific to apprise Beaton of the charges against him.

To the extent that Beaton's complaint is that he was not able to review the entire statements made by the informants, and thus not able to defend against the allegations made in the statements, this court reminds Beaton that disciplinary proceedings are administrative, not criminal. Beaton was not entitled to review the complete statements made by the confidential informants under WIS. ADM. CODE § DOC 303.86(4), which provides:

> If a witness refuses to testify in person and if the committee finds that testifying would pose a significant risk of bodily harm to the witness, the committee may consider a corroborated, signed statement under oath from that witness without revealing the witness's identity. The contents of the statement shall be revealed to the accused, though the statement may be edited to avoid revealing the identity of the witness.

As the State aptly explained, "The purpose of allowing the disciplinary tribunal to rely upon restricted informant reports is to enable the tribunal to receive reliable information that would not be otherwise available. It is reasonable to infer that in a prison environment a witness providing evidence that implicates the accused will surely be subject to retaliation." Under WIS. ADM. CODE § DOC 303.86(4), the committee acted properly in considering the

confidential statements while providing Beaton with only edited versions of the statements.

Beaton next contends that the evidence was insufficient to find him guilty of aiding and abetting a battery, "barring the constitutionally infirm statements" of the confidential informants. Where the sufficiency of the evidence to support an administrative determination is challenged, we may not weigh the evidence; we are limited to determining whether there is substantial evidence in the record to support the determination. ***Van Ermen v. DHSS***, 84 Wis.2d 57, 64, 267 N.W.2d 17, 20 (1978).

Beaton's argument that the evidence was insufficient is premised on his belief that the confidential informants' statements were not properly considered by the committee. As indicated, however, we conclude that the confidential statements were properly considered by the committee, even though Beaton was allowed to view only edited versions of the statements. *See* WIS. ADM. CODE § DOC 303.86(4); *see also* ***Franklin v. Israel***, 537 F. Supp. 1112, 1121 (W.D. Wis. 1982) (inmates have no right to see confidential information). And, including those statements, there was enough evidence to sustain the committee's determination. The statements put Beaton on the recreation field at the time Medina attacked the warden. They show that he had contact with Medina. They show that he was supposed to fend off anybody who was trying to defend the warden. These statements, in and of themselves, sufficiently support a finding of guilt on the charge of aiding and abetting a battery.[2]

By the Court.—Order affirmed.

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

[2] Beaton takes issue with a video tape made of the recreation field while the attack was occurring, denying that he is the person in the video and arguing that the committee should not have considered the video because it is too blurry. Even if we were to agree, the confidential informants' statements provide sufficient support for the committee's determination.