

**COURT OF APPEALS  
DECISION  
DATED AND RELEASED**

June 13, 1996

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

**NOTICE**

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

**No. 94-3270**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT IV**

**STATE OF WISCONSIN EX REL.  
ROBERT CARLSON,**

**Petitioner-Appellant,**

**v.**

**GARY R. MCCAUGHTRY,  
SUPERINTENDENT,**

**Respondent-Respondent.**

APPEAL from an order of the circuit court for Dodge County:  
THOMAS W. WELLS, Reserve Judge. *Affirmed.*

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

PER CURIAM. Robert Carlson appeals from an order affirming the adjustment committee's decision finding him guilty of sexual conduct and threats, in violation of WIS. ADM. CODE §§ DOC 303.15 and 303.16. The issues are whether: (1) Carlson was entitled to conduct discovery of the confidential informants and the investigator; (2) Carlson was denied the right to call

witnesses to testify at the disciplinary hearing; (3) there was substantial evidence supporting the adjustment committee's decision; and (4) his advocate had a conflict of interest. We conclude that: (1) the requisites of WIS. ADM. CODE §§ DOC 303.81 and 303.86 were met, and Carlson was not entitled to further discovery; (2) Carlson waived his right to call witnesses;<sup>1</sup> (3) there was substantial evidence supporting the adjustment committee's decision; and (4) his advocate did not have a conflict of interest, even if Carlson had timely raised the issue.<sup>2</sup> Therefore, we affirm.

The trial court applied the proper legal standards to the relevant facts and reached the correct decision. Therefore, we incorporate the trial court's memorandum decision and affirm its order.<sup>3</sup> See WIS. CT. APP. IOP VI(5)(a) (June 13, 1994) (court of appeals may adopt the trial court's opinion).

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<sup>1</sup> Exhibit E to Carlson's appendix is correspondence dated March 14 or 24, 1994, in which he requests unidentified staff members to testify as witnesses. However, we cannot consider this correspondence because it is not in the record of the disciplinary proceedings reviewed by the trial court. See, e.g., *State ex rel. Conn v. Board of Trustees*, 44 Wis.2d 479, 482, 171 N.W.2d 418, 420 (1969).

<sup>2</sup> In the correspondence written in March of 1994 (Exhibit E), Carlson alleges a conflict of interest and requests another advocate. However, we cannot consider that correspondence because it was not in the record. *State ex rel. Conn*, 44 Wis.2d at 482, 171 N.W.2d at 420.

<sup>3</sup> The trial court cites to WIS. ADM. CODE § DOC 303.81(5) at 4 in its memorandum

*By the Court.* – Order affirmed.

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

(..continued)

decision, in addressing whether it was proper to disclose only summaries of the confidential informants' statements to Carlson. WISCONSIN ADM. CODE § DOC 303.86(4) specifically addresses this issue.

AN EXHIBIT HAS BEEN ATTACHED TO THIS  
OPINION. THE EXHIBIT CAN BE OBTAINED UNDER SEPARATE  
COVER BY CONTACTING THE WISCONSIN COURT OF APPEALS.

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