

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

April 25, 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

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No. 95-0461

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

**STATE OF WISCONSIN EX REL.
STEVEN J. MCCONNELL-LUER,**

Petitioner-Appellant,

v.

**GARY R. MCCAUGHTRY, WARDEN,
WAUPUN CORRECTIONAL INSTITUTION,**

Respondent-Respondent.

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

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

PER CURIAM. Steven McConnell-Luer appeals from an order affirming a prison disciplinary decision. A hearing officer found McConnell-Luer guilty of using a false name, making threats to other inmates, disruptive

conduct, unauthorized communication with other inmates, and forgery.¹ The warden affirmed the hearing officer's decision. On certiorari review, the circuit court upheld the decision. We affirm.

McConnell-Luer distributed to inmates a memorandum signed with the name "Stormy." The memorandum had a caption like a legal document. In the memo, McConnell-Luer stated: "If you Bitch, Demand, Order, Threaten, and/or act generally hostile towards me, all you'll get from me is the exact opposite of what you want," and "if you scream, order, or demand ... I guarantee ya ain't got SHIT comin!" The staff member reporting the incident wrote:

I heard several inmates yelling from E-range, "what the fuck is this bullshit." I then observed pieces of crumpled paper being thrown from various cells on E-range. I then proceeded down E-range and picked up a copy of the document attached to this report. Upon further investigation I found that a copy of this document was distributed to each cell on E-range by Inmate McConnell-Luer (#104031). At 10:15 a.m. while ringing out for the noon meal several other inmates approached the desk with the document in hand, asking what it was. This caused a serious disruption to the normal operation of the cell hall.

McConnell-Luer explained during the disciplinary proceedings that he distributed this document to introduce himself to the inmates as the new "tier-tender," a job for which he had been recently trained, and to explain the rules regarding his role as tier-tender.

¹ McConnell-Luer argues that the evidence does not support any of the findings of guilt, but his brief does not address his "unauthorized communication with other inmates" violation. We will not review the disposition for this offense because McConnell-Luer has not adequately developed his argument. See *State v. Gulrud*, 140 Wis.2d 721, 730, 412 N.W.2d 139, 142-43 (Ct. App. 1987).

A disciplinary decision is reviewable by certiorari. *State ex rel. Meeks v. Gagnon*, 95 Wis.2d 115, 119, 289 N.W.2d 357, 361 (Ct. App. 1980). Judicial review on certiorari is limited to whether the committee kept within its jurisdiction, whether it acted according to law, whether its decision was arbitrary, oppressive or unreasonable, and whether the evidence reasonably supports the committee's decision. *State ex rel. Jones v. Franklin*, 151 Wis.2d 419, 425, 444 N.W.2d 738, 741 (Ct. App. 1989). Our review is identical to that of the circuit court. *State ex rel. Staples v. DHSS*, 136 Wis.2d 487, 493, 402 N.W.2d 369, 373 (Ct. App. 1987).

McConnell-Luer first argues that he should not have been found guilty of using a false name because "Stormy" is his nickname. According to the administrative rules promulgated by the department, inmates may use nicknames.²

We agree with the State that whether "Stormy" is McConnell-Luer's nickname is an affirmative defense which McConnell-Luer should have raised at the disciplinary proceedings. McConnell-Luer did not put forward

² WIS. ADM. CODE § DOC 303.31 provides:

FALSE NAMES AND TITLES. Any inmate who uses any of the following is guilty of an offense:

- (1) A title for himself or herself other than Mr., Ms., Miss, or Mrs., as appropriate;
- (2) A name other than the name by which he or she was committed to the department, unless the name was legally changed.

A note appended to ch. 303 explains:

This section is intended to protect members of the public from being misled by an inmate concerning his or her identity or status, and to avoid confusion of staff members concerning the identity of inmates. This section should not be interpreted to forbid use of common and recognizable nicknames, initials, or a shortened form of the first or last name.

any evidence that "Stormy" is his "common and recognizable" nickname. The hearing officer did not act arbitrarily in finding him guilty of this offense.

McConnell-Luer next argues that he should not have been found guilty of disruptive conduct. He concedes that his actions were the indirect cause of disruptive conduct by some of the inmates, but contends that he did not intentionally or recklessly cause that disruptive conduct to occur.³

The hearing officer reasonably concluded that McConnell-Luer acted with the requisite intent. The statements in the memo McConnell-Luer distributed to the inmates were abrasive and threatening. Even if McConnell-Luer did not intend to cause a disturbance, he acted recklessly in distributing a provocative document without prior authorization.

McConnell-Luer next argues that he should not have been found guilty of making threats.⁴ McConnell-Luer argues that the statements made in his memo were not threats because they were "merely a written version of what he had been told to say to inmates" when trained for the job of tier-tender.

³ WIS. ADM. CODE § DOC 303.28 provides:

DISRUPTIVE CONDUCT. Any inmate who intentionally or recklessly engages in, causes or provokes disruptive conduct is guilty of an offense. "Disruptive conduct" includes physically resisting a staff member, or overt behavior which is unusually loud, offensive or vulgar, and may include arguments, yelling, loud noises, horseplay, or loud talking, which may annoy another.

⁴ WIS. ADM. CODE § DOC 303.16 provides:

Any inmate who intentionally does any of the following is guilty of an offense:

- (1) Communicates to another an intent to physically harm or harass that person or another.

The document states: "Call me only 'Stormy,' and you'll find that I'm more likely to help you out when you need me to" but "if you Bitch, Demand, Order, Threaten, and/or act generally hostile toward me, all you'll get from me is the exact opposite of what you want," and "if you scream, order or demand ... I guarantee ya ain't got SHIT comin!" The hearing officer reasonably concluded that these statements convey to the other inmates McConnell-Luer's intent to harass them if they did not call him by his nickname and otherwise follow his rules.

Finally, McConnell-Luer argues that his actions did not constitute the offense of counterfeiting and forgery.⁵ McConnell-Luer made a document with a legal caption and signed it with the name "Stormy," a name characterized by the hearing officer as a "false" name. The inmates did not know who had written the document, became upset, and asked a staff member who had written it. The hearing officer acted reasonably in concluding that McConnell-

⁵ WIS. ADM. CODE § DOC 303.41 provides:

COUNTERFEITING AND FORGERY. Any inmate who does any of the following is guilty of an offense:

- (1) Intentionally makes or alters;
 - (a) Any document so it appears to have been made, signed, initialed or stamped by someone else, or at a different time, or with different provisions.

A note appended to § DOC 303.41 provides:

This section is broader in scope than the criminal statute, s. 943.38(1) and (2), Stats., since the statute only covers certain types of documents of "legal significance," such as contracts and public records. In the prison setting almost any writing is of potential legal significance, since letters are sometimes monitored, many memos are put into inmates' files, and notes might be used as evidence in disciplinary proceedings. Also, the smooth and fair operation of the prison depends on the reliability of records such as canteen books, passes, orders, prescriptions and files.

Luer was guilty of the offense because the memo appeared to have been signed by someone other than McConnell-Luer.⁶

By the Court. – Order affirmed.

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

⁶ The hearing officer based his decision that McConnell-Luer was guilty of forgery on two facts: (1) he intentionally made an official-looking document; and (2) he signed it with the false name "Stormy." Because the latter fact is sufficient to convict McConnell-Luer of the offense, we need not address whether the officer reasonably concluded that the document looked like an official document.