COURT OF APPEALS
DECISION
DATED AND RELEASED

May 23, 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(1), 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. 95-1245

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

STATE EX REL. SAM MULIPOLA,

Petitioner-Appellant,

v.

GARY 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., Dykman and Sundby, JJ.

PER CURIAM. Sam Mulipola appeals from an order affirming two prison disciplinary decisions. Mulipola contends that procedural errors occurred in both cases. We reject his contentions and affirm.

In the first case, the conduct report charged Mulipola with violating disciplinary rules against group resistance, conspiracy, possessing and manufacturing weapons, and attempting to incite a riot. The incident description within the report detailed information received from three

confidential informants who reported that Mulipola manufactured shanks for a gang planning a prison uprising. It also contained a report on an interrogation of Mulipola in which he confessed to making and keeping a shank taped under a table in his work place. A search revealed the shank and evidence that others had been hidden in the same spot.

The disciplinary committee found Mulipola guilty on all four charges based on the incident description and the conduct report, the statements of the three confidential informants, the confiscated weapon, and the testimony of the reporting officer. On reconsideration, the committee dismissed the group resistance charge because it was a lesser included offense of attempting to incite a riot. On *certiorari* review, the trial court then dismissed the conspiracy charge. Mulipola's appeal concerns the remaining two charges.

Mulipola first argues that the conduct report did not provide sufficient notice of the times and dates that the informants overheard he and his alleged accomplices making their inculpatory remarks. All Mulipola learned from the conduct report was that in mid-November 1993, informant number one overheard two inmates implicating Mulipola in the planned riot, that informant number two once heard Mulipola admit he was supplying shanks to the gang, and that informant number three overheard inmates discussing Mulipola's involvement in the second and last weeks of December 1993 and on January 18, 1994.

It is well established that due process requires that inmates must be provided with sufficient notice of disciplinary charges to clarify the charges, marshall facts and prepare a defense. ***Wolff v. McDonnell***, 418 U.S. 539, 563-64 (1974). However, prison officials have the discretion to balance individual due process rights with security and safety concerns. ***Id***. at 569. That discretion allows officials to withhold notice of specific times and dates if doing so jeopardizes the identity of confidential informants. ***McCollum v. Miller***, 695 F.2d 1044, 1048 (7th Cir. 1982).

Additionally, it is not readily apparent that knowing the precise dates and times would have benefited Mulipola. He and the inmates who were allegedly overheard discussing the riot plans denied the existence of such plans. The committee rejected that testimony on credibility grounds. Knowing the

specific dates of the alleged discussions would not have improved the inmates' credibility.

Mulipola next argues that the committee violated WIS. ADM. CODE § DOC 303.86(4) by allowing into evidence the confidential informants' statements. That rule requires that the statements be made under oath, that the committee make a finding that requiring witnesses to testify would subject them to a significant risk of bodily harm, and that the statements be corroborated as required by the rule. ***State ex rel. Staples v. DHSS***, 115 Wis.2d 363, 370, 340 N.W.2d 194, 198 (1983). A statement may be corroborated under the rule by a confidential statement of another informant, by other evidence which substantially corroborates the facts alleged in the statement or by evidence of a very similar violation by the same person. Section DOC 303.86(4). Here, all three criteria were satisfied. First, the informants' statements were made under oath. Second, although the committee did not specifically find that requiring the informants to testify would put them at risk, that inference is inescapable. The information they provided implicated Mulipola and his accomplices in a plan involving an armed, violent prison uprising by a prison gang. Revealing the informants' names would undeniably place them in serious jeopardy. Finally, the informants' statements corroborated each other sufficient to make each admissible. Additionally, Mulipola's admission and the results of a search of his work area substantially corroborated the statements through other circumstantial evidence. As a result, the committee did not violate the rule when it considered the informants' statements.

Mulipola's second conduct report charged him with aiding and abetting a battery, disruptive conduct and disobeying an order. The written incident description stated that Mulipola blocked the way of two officers who were trying to go to the assistance of a third who was under assault from an inmate. Mulipola refused an order to move out of the way and subsequently began yelling accusations that the officers were abusing an inmate. The officers allegedly blocked were Hautamaki and Longseth. Mulipola requested that both attend his hearing as witnesses, but only Hautamaki appeared. The request for Longseth was denied because he was not the reporting officer. The committee found Mulipola guilty of disobeying orders and disruptive conduct and he was punished accordingly.

The only issue Mulipola raises with regard to this proceeding is the claimed violation of his due process right to call Longseth as a witness. Mulipola has raised this issue for the first time in this judicial proceeding. It is therefore waived. *See* ***Saenz v. Murphy***, 162 Wis.2d 54, 65-66, 469 N.W.2d 611, 616 (1991).

By the Court.—Order affirmed.

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