

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

September 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

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

No. 95-1577

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

**STATE OF WISCONSIN ex rel.
LEON COLEMAN,**

Petitioner-Appellant,

v.

DAN BUCHLER,

Respondent-Respondent.

APPEAL from an order of the circuit court for Racine County:
DENNIS FLYNN, Judge. *Affirmed.*

Before Anderson, P.J., Nettesheim and Snyder, JJ.

PER CURIAM. Leon Coleman appeals from an order dismissing his petition for a writ of certiorari to review a prison disciplinary committee's decision finding that Coleman aided and abetted the possession of intoxicants. He claims his right to due process was violated because he was not given adequate notice of the charges against him and that the decision was not supported by sufficient evidence and adequate reasons. We reject his claims and affirm the order appealed from.

On February 23, 1994, Coleman, an inmate at the Racine Correctional Institution, was issued a conduct report for a violation of the rule prohibiting the aiding and abetting of the possession of intoxicants. The report referred to the conduct "further outlined and detailed in the text of the attached Criminal Complaint filed by the Racine County District Attorney's Office." The criminal complaint relates that on August 30, 1993, another inmate was furnished with a \$50 bill for the purpose of purchasing marijuana from Coleman. The inmate paid Coleman with the \$50 bill and obtained a bag of marijuana which was turned over to an agent with the Division of Narcotics Enforcement with the Wisconsin Department of Justice. On September 1, 1993, prison officials discovered a \$50 bill being sent out by Coleman in the mail. A comparison of the serial number on the bill revealed that it was the same \$50 bill used to purchase the marijuana.

At the hearing before the disciplinary committee, Coleman "made it clear that [he] wasn't going to participate in the process because [he] was unable to marshal the facts and prepare a proper defense, due to the vague and insufficient information in the conduct report." Coleman was found guilty of the violation and a sanction was imposed.

We first address the respondent's argument that the appeal should be dismissed for Coleman's failure to exhaust administrative remedies. The respondent contends that a prison inmate is required to utilize the Inmate Complaint Review System (ICRS), WIS. ADM. CODE § DOC 310, to redress alleged procedural errors in disciplinary hearings. We disavow any notion that the ICRS is the exclusive method of addressing alleged errors in disciplinary proceedings.

The administrative provisions pertaining to disciplinary proceedings provide a method of review. *See* WIS. ADM. CODE §§ DOC 303.75(6) and 303.76(7). Although § DOC 310.04(3) indicates that the ICRS may be used to challenge the procedures used by the adjustment committee, the language is permissive only. The ICRS applies to complaints that originate with the inmate for the purpose of changing institutional procedures. *See* DOC § 310.01 (purpose of ICRS) and DOC § 310.05 (filing of complaints by inmate). DOC § 310.04(2) provides that the ICRS may not be used to challenge the finding of guilt or penalty imposed by the adjustment committee. That is the true nature of Coleman's appeal. We conclude that the exhaustion of

administrative remedies under the ICRS was not a prerequisite to Coleman's appeal from the adjustment committee's decision.

Turning to Coleman's brief, he first argues that the circuit court erred in failing to address the issue of adequate notice and that it erroneously exercised its discretion in ruling that the committee's decision was supported by substantial evidence and adequate reasons. He also claims that the circuit court erroneously failed to take judicial notice of other circuit court decisions. We do not address the issues in the context of what the circuit court did. Our review of the action of the prison disciplinary committee is de novo and is limited to the record created before the committee. *State ex rel. Whiting v. Kolb*, 158 Wis.2d 226, 233, 461 N.W.2d 816, 819 (Ct. App. 1990). We determine whether the committee stayed within its jurisdiction, whether it acted according to law, whether the action was arbitrary, oppressive or unreasonable and represented the committee's will and not its judgment, and whether the evidence was such that the committee might reasonably make the determination appealed from. *Id.*

Coleman argues that his right to due process was violated when he did not receive a copy of the criminal complaint. He failed to make an adequate record as to his receipt or nonreceipt of the criminal complaint. The conduct report indicates that the complaint was attached. Although he filed a written statement at the hearing which asserted that he did not receive a copy of "alleged attachments," he offered no evidence at the hearing on that point. He could have called the staff member who delivered a copy of the conduct report to him. He refused to answer questions about whether he had received a copy of the criminal complaint. We cannot review the claim of error in light of Coleman's "boycott." *State ex rel. Jones v. Franklin*, 151 Wis.2d 419, 426, 444 N.W.2d 738, 741 (Ct. App. 1989). Moreover, that the committee did not believe Coleman's assertion that he did not receive a copy of the complaint does not require a reversal of the decision. "The facts found by the committee are conclusive if supported by 'any reasonable view' of the evidence." *Id.* at 425, 444 N.W.2d at 741 (quoted source omitted).

Coleman also claims that the six-month gap between the alleged conduct and the service of the conduct report prejudiced his ability to prepare a meaningful defense. He would like to ignore the reason for the delay and proceed directly to the conclusion that the delay was a denial of due process.

The record establishes that the delay occurred because of an ongoing extensive investigation in the institution which involved many individuals. Further, WIS. ADM. CODE § DOC 303.66, which Coleman cites, does not establish any time limits between the date of the occurrence and service of the conduct report. Indeed, the note to that administrative provision makes clear that there is no "statute of limitations" for writing the report. WIS. ADM. CODE § DOC 303 Appendix at 57 (June 1994). Finally, Coleman made no showing at the hearing before the committee that the delay prejudiced him.

Coleman challenges the sufficiency of the evidence supporting the committee's finding of guilt. His principal complaint is that the committee relied on the allegations in the criminal complaint and did not have before it the \$50 bill, the audio tape of the drug transaction, the baggie of marijuana or the drug analysis report. At the hearing, Coleman offered no challenge to the reliability of the evidence obtained during the investigation as described in the criminal complaint. Captain Ronald Molnar was involved in the drug investigation, recovered the \$50 bill from Coleman's outgoing mail and authored the conduct report. The record reflects that he was available at the hearing to give testimony. Coleman did not ask any questions of Molnar.

The conduct report incorporated the criminal complaint. Statements in a conduct report may be relied upon by the committee as a basis for a determination of guilt, particularly when the only issue is an assessment of the relative credibility of the conduct report and the inmate's version of the incident. *Culbert v. Young*, 834 F.2d 624, 631 (7th Cir. 1987), *cert. denied*, 485 U.S. 990 (1988). The criminal complaint established the elements of the violation. There was substantial evidence to support the committee's determination.

Additionally, the committee's recitation of the facts outlined in the complaint in its decision provided adequate reasons for the determination of guilt. The committee's decision reflects what it considered as proof of Coleman's guilt and forecloses any claim that the decision was arbitrary or capricious. *See id.*

By the Court. — Order affirmed.

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