COURT OF APPEALS
DECISION
DATED AND RELEASED

June 20, 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. 95-1792

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

STATE OF WISCONSIN EX REL. LENE CESPEDES-TORRES,

Petitioner-Appellant,

v.

DONALD W. GOLDMAN, WARDEN,
OSHKOSH CORRECTIONAL INSTITUTION,

Defendant-Respondent.

APPEAL from an order of the circuit court for Dodge County: JOSEPH E. SCHULTZ, Judge. *Affirmed*.

Before Gartzke, P.J., Dykman and Vergeront, JJ.

PER CURIAM. Lene Cespedes-Torres appeals from an order affirming a prison disciplinary decision finding him guilty of possession, manufacture and alteration of a weapon in violation of WIS. ADM. CODE § DOC 303.45.[1] Cespedes-Torres claims: (1) the disciplinary committee failed to

[1] WISCONSIN ADM. CODE § DOC 303.45 provides:

consider his evidence; (2) he was denied adequate assistance of a staff advocate; and (3) one of the disciplinary committee members was biased. We reject each contention and affirm.

After investigating a report that Cespedes-Torres may have had a shank in his possession, prison officers discovered an altered potato peeler (shank) in his bedsheets. The conduct report written after the investigation states that two confidential informants overheard Cespedes-Torres telling two others he intended to use a shank in his possession to harm other inmates. The reporting officer expressed confidence that the statements were credible based on prior credible information given by one of the informants. In addition, the conduct report states the violation was a major offense, that Cespedes-Torres was recently warned about the same or similar conduct, and that the violation created both a risk of serious disruption at the facility and of serious injury to another.

A disciplinary hearing was held in which Cespedes-Torres supplied the disciplinary committee with a written statement explaining that he had been "set up" by his roommate.

The adjustment committee found Cespedes-Torres guilty as charged, stating that it found the staff member's reliance on the confidential informants more credible than Cespedes-Torres's oral and written testimony.

(..continued)

> (1) Any inmate who knowingly possesses any item which could be used as a weapon, with intent to use it as a weapon, is guilty of an offense.
>
> (2) Any inmate who makes or alters any item with intent to make it suitable for use as a weapon is guilty of an offense.
>
> (3) Any inmate who knowingly possesses an item which is designed exclusively to be used as a weapon or to be used in the manufacture of a weapon is guilty of an offense.

The committee ordered eight days' adjustment segregation and three hundred sixty days' program segregation. The warden upheld the decision of the committee. Cespedes-Torres sought certiorari review in the circuit court, and the court upheld the adjustment committee's decision.

A disciplinary decision of an adjustment committee 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: (a) the agency kept within its jurisdiction; (b) it acted according to law; (c) its action was arbitrary, oppressive or unreasonable; and (d) the evidence presented was such that the agency might reasonably make the decision it did. ***State ex rel. Jones v. Franklin***, 151 Wis.2d 419, 425, 444 N.W.2d 738, 741 (Ct. App. 1989).

This court does not review the findings of the circuit court, but reviews the record of the adjustment committee to which certiorari is directed. ***Gordie Boucher Lincoln-Mercury Madison, Inc. v. City of Madison Plan Comm'n***, 178 Wis.2d 74, 84, 503 N.W.2d 265, 267 (Ct. App. 1993). The reviewing court does not weigh the evidence presented to the committee. ***Van Ermen v. DHSS***, 84 Wis.2d 57, 64, 267 N.W.2d 17, 20 (1978). Our inquiry is limited to whether any reasonable view of the evidence supports the committee's decision. ***State ex rel. Jones***, 151 Wis.2d at 425, 444 N.W.2d at 741.

Cespedes-Torres's argument that the disciplinary committee failed to consider his defense--that he was set-up--is related to his argument on the inadequacy of the investigation. He argues that the committee acted arbitrarily when it decided that he was not credible, without first having conducted an investigation to locate "critical documentation" that would have demonstrated the confidential informants' gang activity, and the identity of the two individuals with whom the confidential informants reportedly saw Cespedes-Torres discussing his "shank." Cespedes-Torres maintains that without this information, the adjustment committee could not have considered his defense.

We first consider whether the evidence before the committee and its statement of the reasons for its decision were sufficient. In addition to the "shank," the committee had before it Cespedes-Torres's oral and written testimony, the conduct report and the statements of the confidential

informants.[2] The committee was faced with conflicting evidence and chose to believe the confidential informants, based on the reporting officer's assessment of their credibility, rather than Cespedes-Torres. The committee did not "refuse to" consider his defense. Rather, after they considered all the evidence presented to them, they rejected his defense. Cespedes-Torres has not met his burden of showing that the decision is not supported by any reasonable view of the evidence.

We next consider Cespedes-Torres's argument that he was denied adequate assistance of the staff advocate because the staff advocate did not conduct an investigation as he requested. There is no evidence in the record to show whether the advocate did or did not investigate the issues in question, or what the scope or extent of the investigation was. Additionally, there is nothing in the record to show that Cespedes-Torres made any requests of the staff advocate. Nor is there a record that Cespedes-Torres objected to the adequacy of the investigation before the committee. Because a certiorari court may not consider matters outside the record, ***State ex rel. Irby v. Israel***, 95 Wis.2d 697, 703, 291 N.W.2d 643, 646 (Ct. App. 1980), we do not address this issue.

Finally, Cespedes-Torres argues that he did not receive a fair hearing because one of the adjustment committee members was biased and not impartial.[3] He states that the adjustment committee member wrote him a letter in which she established her bias by expressing her predetermination of his guilt before the hearing took place. This letter is not contained in the record. We therefore do not address this issue.

By the Court.—Order affirmed.

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

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[2] Cespedes-Torres does not argue that the statements of the confidential informants do not meet the requirements of WIS. ADM. CODE § DOC 303.86(4)

[3] Cespedes-Torres argued before the trial court that one of the adjustment committee members was biased because he placed him in temporary lock-up. The trial court rejected this argument and Cespedes-Torres does not repeat it on appeal.