COURT OF APPEALS
DECISION
DATED AND RELEASED

October 17, 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. 95-2540

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

STATE OF WISCONSIN
EX REL. STEPHEN W. JONES,

Petitioner-Appellant,

v.

ELEANOR SWOBODA,

Respondent-Respondent.

APPEAL from an order of the circuit court for Dane County: STUART A. SCHWARTZ, Judge. *Affirmed*.

Before Eich, C.J., Dykman, P.J., and Robert D. Sundby, Reserve Judge.

PER CURIAM. Stephen Jones appeals from an order substantially denying relief on his petition for a writ of mandamus. Jones was formerly an inmate at Columbia Correctional Institution (CCI). The respondent, Eleanor Swoboda, is the record custodian at CCI. Jones commenced this action because he was dissatisfied with the response to his open records requests. The only

relief the trial court provided Jones was to order access to records Swoboda had already offered to disclose. We reject Jones's arguments why further relief should be available, and therefore affirm.

Jones filed two written requests for access to cell inspection cards, warning cards and other relevant documents pertaining to searches of his cells during part of his stay at CCI. Swoboda responded to the request by telling Jones that

> Staff on [your unit] assure me that all you have to do to see your Cell Inspection Cards and Warning Cards to is ask staff to review them. Via this letter, I am instructing you to ask staff for an opportunity to see these cards; Sergeant Peebles will assist you.

She also informed him that other information was available in the unit search log. Because the log for the relevant period covered approximately sixty pages, and because Jones could only see a blacked-out copy of it to protect other inmates, Swoboda told him he could see it when he had enough money to pay the fifteen cents a page copying charge, or nine dollars.

As Swoboda instructed, Jones asked Sergeant Peebles for access to the search and warning cards. Peebles informed him that all of the cards were lost, with one exception. According to Peebles, he showed Jones that card. Jones submitted an affidavit stating that Peebles did not show him the remaining card. The card in question was subsequently destroyed, as a matter of routine procedure, after Jones was transferred to another correctional facility.

Jones construed the responses of Swoboda and Peebles to his request as denying access, and filed an administrative appeal. When that was denied, he commenced this action. In response to Jones's arguments, the trial court held that Jones was not denied access to the search log because Swoboda was allowed by statute to charge him a nine dollar copying fee. The court also held that Jones was not entitled to damages for a willful and intentional denial of access and that Jones failed to prove that the remaining search card was destroyed in violation of § 19.35(5), STATS. On appeal, Jones argues that the trial court erred by finding no violation of § 19.35(5), and by finding that Swoboda

acted reasonably when she withheld a copy of the search log until Jones paid the copying fee.

The trial court properly determined that Jones showed no violation of § 19.35(5), STATS. That section prohibits destruction of any record after a request for inspection of it is received until after the request is granted or until at least sixty days after the request is denied. Here, a dispute of fact remains as to whether the request was granted or denied as to the one card that was not lost. However, even if Peebles denied the request, Jones did not offer any evidence on when Jones received the denial or when he was transferred to another facility, thereby triggering the destruction of the card. The trial court properly denied relief under § 19.35(5) because it could only speculate as to whether the card was destroyed within sixty days of the alleged denial of access.

Swoboda did not deny Jones access to the search log by requiring prepayment of the copying fee. The record custodian may require prepayment of a copying fee if it exceeds five dollars. § 19.35(3)(f), STATS. Jones contends that the trial court should have inspected the log *in camera* to determine whether it was necessary to copy sixty pages. While the trial court could have done so, it reasonably chose to rely on Swoboda's decision to copy and disclose the entire log. Jones made a very broad request for access to all relevant documents for all searches conducted on his cells. Swoboda could reasonably conclude that disclosure of the entire search log was necessary to satisfy Jones that all the information she had on searches of his cells was disclosed to him. If Jones knew the dates of the searches he was interested in, he could have provided a more specific request to Swoboda and allowed her to respond with only portions of the log.

Jones identifies other issues in his brief but does not present any argument in support of them. An issue raised but not argued is deemed waived. ***Reiman Assocs., Inc. v. R/A Advertising, Inc.***, 102 Wis.2d 305, 306 n.1, 306 N.W.2d 292, 294 (Ct. App. 1981).

By the Court.—Order affirmed.

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