OFFICE OF THE CLERK
WISCONSIN COURT OF APPEALS
110 EAST MAIN STREET, SUITE 215
P.O. BOX 1688
MADISON, WISCONSIN 53701-1688
Telephone (608) 266-1880
TTY: (800) 947-3529
Facsimile (608) 267-0640
Web Site: www.wicourts.gov

DISTRICT IV

September 17, 2013

To:

Hon. Frank D. Remington
Circuit Court Judge
215 South Hamilton, Br 8, Rm. 4103
Madison, WI 53703

Carlo Esqueda
Clerk of Circuit Court
215 South Hamilton, Rm. 1000
Madison, WI 53703

Abigail Potts
Assistant Attorney General
P. O. Box 7857
Madison, WI 53707

Dept. of Justice, Civil Litigation Unit
P.O. Box 7857
Madison, WI 53707-7857

Ricardo Glover 207606
Oshkosh Corr. Inst.
P.O. Box 3310
Oshkosh, WI 54903-3310

Oshkosh Correctional Institution
P.O. Box 3530
Oshkosh, WI 54903-3530

You are hereby notified that the Court has entered the following opinion and order:

2012AP1870 State of Wisconsin ex rel. Ricardo Glover v. Judy Smith (L.C. # 2012CV909)

Before Blanchard, P.J., Lundsten and Sherman, JJ.

Ricardo Glover, pro se, appeals a circuit court order denying Glover relief on certiorari review of a prison disciplinary decision. Glover contends that: (1) the circuit court was biased and required to recuse itself; (2) the Department of Corrections (DOC) violated administrative rules and Glover's Due Process rights because the conduct report was insufficient, Glover was not provided adequate notice or evidence, including a confidential informant statement, and the disciplinary committee was biased; and (3) the evidence was insufficient to support the disciplinary committee's finding that Glover was guilty of theft. Based upon our review of the

briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21(1) (2011-12).[1] We summarily affirm.

Glover was issued a conduct report for violating WIS. ADMIN. CODE § DOC 303.34 (July 2013),[2] theft. The code defines the offense of theft as follows: "Any inmate who steals the property of another person or of the state is guilty of an offense. 'Steals' means obtains or retains possession of or title to the property of another, without consent of the owner." The conduct report alleged that prison library staff determined that Glover had received $151.50 worth of copies that he did not pay for. The conduct report also stated that an investigation revealed that inmate library workers had been providing free copies in exchange for canteen, and Glover admitted that he knew he had received free copies but had not notified staff.

Following a hearing, the disciplinary committee found Glover guilty of the offense. Glover appealed to the warden, who affirmed. Glover then initiated this certiorari action in the circuit court.

On appeal from a circuit court order denying relief on certiorari review of a prison disciplinary decision, we examine only whether the DOC's decision was within its jurisdiction, according to law, arbitrary or unreasonable, and supported by substantial evidence. *See* ***State ex rel. Anderson-El v. Cooke***, 2000 WI 40, ¶15, 234 Wis. 2d 626, 610 N.W.2d 821. Part of this analysis is whether the DOC followed its own rules and complied with due process requirements. *See* ***State ex rel. Curtis v. Litscher***, 2002 WI App 172, ¶15, 256 Wis. 2d 787, 650 N.W.2d 43.

[1] All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

[2] All references to the Wisconsin Administrative Code Ch. DOC are to the July 2013 version unless otherwise noted.

We owe no deference to the circuit court's decision on our certiorari review of the DOC's disciplinary decision. *See* ***Anderson-El***, 234 Wis. 2d 626, ¶15.

Glover argues that the conduct report should have been dismissed based on the following procedural errors: insufficiency of the conduct report to allege an offense or to provide Glover with notice to prepare his defense; a biased disciplinary committee; use of Glover's statement obtained during questioning without ***Miranda***[3] warnings; and failure to provide Glover with a statement by a confidential informant. However, as the State asserts, Glover was required to raise claims of procedural errors through the inmate complaint review system to preserve those arguments for certiorari review, and failed to do so. *See* WIS. STAT. § 801.02(7)(b) (prisoner must exhaust administrative remedies before bringing action for certiorari review); *see also* WIS. ADMIN. CODE §§ DOC 303.76(7)(d) and 310.08(3) (after exhausting appeal to warden, which concerns the sufficiency of the evidence, an inmate may raise procedural disputes through the inmate complaint review system (ICRS)). Glover does not dispute that he failed to exhaust his administrative remedies as to his procedural claims, but argues that those claims are nevertheless properly before this court because the warden's decision stated: "no procedural errors noted." However, that statement does not alter the fact that the warden's decision is final as to the sufficiency of the evidence, and procedural disputes must be raised through the ICRS. *See* §§ DOC 303.76(7)(d) and 310.08(3).

Glover also asserts that we are to liberally construe pro se pleadings, and that the DOC is required to follow its own rules, which we review de novo. *See* ***Anderson-El***, 234 Wis. 2d 626,

[3] *See* ***Miranda v. Arizona***, 384 U.S. 436 (1966).

¶29 & n.11. It appears that Glover is arguing that we should address his procedural claims despite his failure to exhaust his administrative remedies as to those claims. However, Glover has not provided any basis for us to disregard the exhaustion of remedies requirements. Glover did not exhaust his administrative remedies as to his procedural claims, and we therefore will not address them further.

Next, Glover contends that the evidence was insufficient to support the finding that he committed the offense of theft.[4] Glover argues that the evidence at the hearing—that Glover submitted disbursement requests for the copies that he received, but that the disbursement requests were not processed and money was not deducted from Glover's account for those copies—did not establish that Glover committed the offense of theft. Glover asserts that processing disbursement requests is completely under the control of library staff, and that there was no allegation or evidence that Glover had any involvement with the inmate library staff alleged to have interfered with the disbursement requests. However, the evidence that Glover knew he was receiving and retaining copies without his payments being processed and did not alert DOC staff was sufficient to establish the offense of theft. The evidence was sufficient to show that Glover retained possession of library property without permission of the owner.

Therefore,

[4] Glover notes in his reply brief that the State's brief misidentifies the charged offense as "lying." Glover asserts that the State is intentionally misleading this court. However, other than that one reference to "lying" as the charged offense, the State's brief consistently identifies the offense as theft, and uses the definition of theft in WIS. ADMIN. CODE § DOC 303.34 in its analysis of the sufficiency of the evidence. Thus, we will treat the single reference to "lying" as a typographical error.

IT IS ORDERED that the order is summarily affirmed pursuant to WIS. STAT. RULE 809.21(1).

Diane M. Fremgen
Clerk of Court of Appeals