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DISTRICT IV

April 15, 2015

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

2014AP1286 State of Wisconsin ex rel. DarRen Morris v. Edward Wall (L.C. #2013CV3195)

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

DarRen Morris, pro se, appeals a circuit court order that affirmed a prison administrative decision on certiorari review. 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 (2013-14).[1] We summarily affirm.

[1] All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

In March 2013, Morris requested that the Department of Corrections (DOC) approve a woman identified as J. Adrian for Morris's visiting list. Morris's agent recommended against approval on the basis that Adrian had an inappropriate relationship with Morris when Adrian was a volunteer in the institution. In May 2013, the warden denied Morris's request to approve Adrian for Morris's visiting list. Morris filed an inmate complaint contending that the warden improperly denied his request. The Inmate Complaint Examiner (ICE) recommended dismissing the complaint, and the warden accepted the recommendation. Morris appealed, and the Office of the Secretary dismissed the complaint. In October 2013, Morris filed a petition for a writ of certiorari in the circuit court, seeking review of the decision dismissing Morris's inmate complaint. In May 2014, the circuit court affirmed the decision of the Secretary and denied Morris's request for relief.

Our review in a certiorari action is limited to the record created before the administrative agency. ***State ex rel. Whiting v. Kolb***, 158 Wis. 2d 226, 233, 461 N.W.2d 816 (Ct. App. 1990). We will consider only whether: (1) the agency stayed within its jurisdiction; (2) it acted according to law; (3) its action was arbitrary, oppressive or unreasonable and represented its will and not its judgment; and (4) the evidence was such that the agency might reasonably make the order or determination in question. ***Id.***

Morris contends that the decision dismissing his inmate complaint was unreasonable and arbitrary because the complaint was not investigated, contrary to law requiring the DOC to investigate all complaints against the institution or staff. *See* WIS. STAT. § 301.29(3) ("The [DOC] shall investigate complaints against any institution under its jurisdiction or against the officers or employees of the institutions."). Morris asserts that the ICE refused to investigate Morris's complaint, stating only that the ICE would not second-guess the warden's decision as to

visitation. Morris also asserts that the Office of the Secretary failed to investigate Morris's claim on review. Morris notes that the Secretary claimed to have reviewed documents and spoken with a religious coordinator; but, Morris asserts, the Secretary's investigation was insufficient because the Secretary did not specify what the documents were, who the religious coordinator was, or what the religious coordinator said. We disagree.

Morris's inmate complaint asserted that the warden improperly denied Morris's request to place Adrian on his visiting list. The warden's decision as to Morris's request, however, indicated that the warden had consulted the agent's recommendation, Morris's case file and DOC visitation policies, and determined that allowing the visits would pose a security threat to the institution. *See* WIS. ADMIN. CODE § DOC 309.08(4) (through Feb. 2015) ("The warden shall determine whether a person may be approved for visiting … based on the following: …. (d) The warden has reasonable grounds to believe the visitor … poses a threat to the safety and security of visitors, staff, inmates or the institution."). The warden noted that Adrian had been a religious volunteer in the institution and, in that capacity, began an inappropriate relationship with Morris that resulted in her removal from the institution in 2010. The warden also noted that the relationship between Morris and Adrian had resulted in two major disciplinary actions against Morris.

In response to Morris's inmate complaint, the ICE reviewed the decision of the warden and determined that there was no violation. The ICE explained that "[t]he decision of the Warden not to approve a proposed visitor per policy is both discretionary and unconditional." The ICE noted that "[t]he Warden is ultimately responsible for the safety and well-being of inmates, staff, and the general public with regards to actions within this institution." The ICE then stated it would not second guess the warden's exercise of discretion, "knowing that it is

guided by the aforementioned responsibility." Finally, the ICE explained that "[i]t is also clear that the denial of the proposed visitor is an action authorized by administrative rules." Thus, the ICE decision makes clear that the ICE reviewed the warden's decision and determined that the warden had followed the administrative rules in denying Morris's request. *See* WIS. ADMIN. CODE § DOC 310.11(3) (through Feb. 2015) ("The ICE shall use discretion in deciding the method best suited to determine the facts, including personal interviews, telephone calls, and document review…."). Morris cites no authority for the proposition that the ICE was required to conduct further investigation of any kind before issuing a decision.

Next, the Office of the Secretary's decision explained that the Secretary consulted with the religious practices coordinator and reviewed the evidence, and determined that the evidence showed that Morris and Adrian were having an inappropriate relationship while Adrian was volunteering in the institution. The Secretary dismissed the complaint on that basis. Again, Morris cites no authority for the proposition that a different treatment of the evidence was required.

Morris also contends that using Morris's two major disciplinary conduct reports as the basis to deny Morris's visiting request was a re-litigation of the conduct reports, contrary to the doctrine of issue preclusion, and further punishment, contrary to the ex post facto clause. We reject both arguments. First, issue preclusion bars a party from re-arguing an issue that the party has previously asserted and lost, ***Michelle T. v. Crozier***, 173 Wis. 2d 681, 684 n.1, 495 N.W.2d 327 (1993), not from relying on a decision that remains in place. Second, the ex post facto clause prohibits any law 'which makes more burdensome the punishment for a crime[] after its commission.'" ***State v. Thiel***, 188 Wis. 2d 695, 700, 524 N.W.2d 641 (1994) (quoted source omitted). Here, Morris was not subject to a new law making his punishment for prior acts more

burdensome. Neither issue preclusion nor the ex post facto clause are implicated by the facts before us.

Next, Morris contends that the decision denying Morris's request to add Adrian to his visiting list violated Morris's due process rights. Morris contends that he was not given notice that the conduct reports could result in denial of his request to add Adrian to his visiting list, and that he was therefore denied the opportunity to obtain meaningful review of the decision as to visiting. He also contends that it was a violation of due process for the visiting request to be denied without a full investigation and on the basis of refusing to second guess the warden's decision. Morris contends that, if the DOC had intended to impose the discipline of a permanent ban on Adrian being approved for Morris's visiting list, the time to do so was during the disciplinary proceedings. However, "[t]he denial of prison access to a particular visitor 'is well within the terms of confinement ordinarily contemplated by a prison sentence,' and therefore is not independently protected by the Due Process Clause." ***Kentucky Dept. of Corrections v. Thompson***, 490 U.S. 454, 460-61 (1989) (citation omitted). We are not persuaded that Morris's due process rights were violated when the DOC denied Morris's request to approve Adrian for Morris's visiting list.

Morris also contends that the DOC denied Morris's visiting list as retaliation for Morris's friendship with Adrian, imposing its will over its judgment. In support of his retaliation claim, Morris asserts that he was wrongfully disciplined based on his correspondence with Adrian and substituting Adrian's telephone number for the number of an approved contact on Morris's visiting list. Morris contends that the DOC's action in imposing punishment in the absence of evidence to support the allegations against him shows that it acted in retaliation against Morris. At bottom, however, Morris's retaliation argument is an attempt to challenge prior disciplinary

decisions that are not before us in this appeal. Because the disciplinary decisions are outside the scope of this appeal, we do not address this argument further.

Next, Morris argues that his agent's recommendation and the warden's decision contained false information by stating that Adrian was removed from the institution's volunteer program because of her relationship with Morris. Morris asserts that, contrary to those assertions, Adrian voluntarily resigned from her position as a volunteer. Morris asserts that this is further evidence that DOC officials asserted their will rather than their judgment in denying the visiting request. However, Morris does not cite to any record evidence establishing that Adrian was not removed from the volunteer program due to her relationship with Morris. We are not persuaded that the record contains false information.

Finally, Morris asserts that the DOC did not follow its own written procedure when it allowed Morris's agent to give an opinion as to the visiting request. Morris asserts that, under the DOC's written material on visiting requests, the agent's recommendation is only necessary if certain issues are present, none of which were present here. However, nothing in the material Morris cites prohibits an agent from submitting a recommendation to the warden, nor does the material prohibit the warden from considering the agent's recommendation. In sum, Morris has not persuaded us that the DOC acted contrary to its procedures in this case.

Therefore,

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

Diane M. Fremgen
Clerk of Court of Appeals