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DISTRICT IV

May 27, 2015

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

2013AP2652

State of Wisconsin ex rel. Michael Matthew Reveles v. Lizzy A.
Tegels (L.C. # 2013CV1962)

Before Lundsten, Sherman and Kloppenburg, JJ.

Michael Reveles, pro se, appeals an order of the circuit court denying his petition for certiorari relief from a prison disciplinary action. 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.

Reveles seeks certiorari review of a prison disciplinary action in which he was found guilty, after a hearing held on October 6, 2011, of being in an unassigned area and disobeying orders, contrary to WIS. ADMIN. CODE §§ DOC 303.24 and 303.511 (Dec. 2006).² In addition, Reveles raises a number of other issues in his appellant's brief, including allegations of retaliation and racial discrimination by prison staff. Although Reveles may have valid claims regarding those other issues, our certiorari review is limited to the record created before the administrative agency. See *State ex rel. Whiting v. Kolb*, 158 Wis. 2d 226, 233, 461 N.W.2d 816 (Ct. App. 1990). To the extent Reveles wishes to pursue matters beyond the scope of the agency record in this prison disciplinary matter, he must follow the proper procedures to do so in a separate action or actions.

With regard to the prison disciplinary decision, Reveles argues that the disciplinary committee lacked substantial evidence to support its conclusions, that his staff advocate provided him with ineffective assistance in the proceedings, and that the committee failed to turn over exculpatory evidence in violation of *Brady v. Maryland*, 373 U.S. 83, 87 (1963). For the reasons discussed below, we reject these arguments.

We turn first to Reveles's evidentiary argument. The test on certiorari review is the substantial evidence test, under which we determine whether reasonable minds could arrive at the same conclusion reached by the committee. *Whiting*, 158 Wis. 2d at 233. The disciplinary

² All references to the Wisconsin Administrative Code are to the December 2006 register unless otherwise noted.

committee in this case relied on the conduct report and the documentary evidence submitted with it, the statements of staff members, and a statement submitted by Reveles.

Staff member Sergeant Gerald Schroeder did not attend the disciplinary hearing, but submitted a statement in response to questions prior to the hearing. According to Schroeder, he gave Reveles a direct order to return to his unit after an appointment with the education department on September 27, 2011. Schroeder informed Reveles that if he wanted to go to the law library, he could sign back in at his unit from the education department and then sign back out to the law library. The conduct report states that, after leaving the education department, Reveles went to the law library instead of coming back to his unit first. Schroeder spoke with the library officer, who confirmed that Reveles was in the library, but was not signed up on the list. The library officer, Ms. Martin, also did not attend the disciplinary hearing, but submitted a written statement in advance. Martin confirmed that Reveles had not been on the list for the library for that day.

Based on the evidence, the committee found Reveles guilty of disobeying orders and being in an unassigned area, contrary to WIS. ADMIN. CODE §§ DOC 303.24 and 303.511. The committee dismissed a charge of lying under WIS. ADMIN. CODE § DOC 303.27. The committee explained its reasoning in the decision it issued. Given the evidence in the record, as well as the fact that Reveles does not dispute that he failed to return to his unit before continuing on to the law library on September 27, 2011, we are satisfied that reasonable minds could arrive at the same conclusion reached by the committee. *See Whiting*, 158 Wis. 2d at 233.

We turn next to Reveles's argument that his staff advocate provided him with ineffective assistance in the disciplinary proceedings. The State correctly points out that, as a general

matter, there is no right to any representation in prison disciplinary cases, except in those cases where an inmate is illiterate or where the complexity of the issues makes it unlikely that the inmate will be able to collect and present the evidence necessary for an adequate comprehension of the case. See *Wolff v. McDonnell*, 418 U.S. 539, 570 (1974); *State ex rel. Ortega v. McCaughtry*, 221 Wis. 2d 376, 392, 585 N.W.2d 640 (Ct. App. 1998). Reveles has not alleged that he is illiterate; to the contrary, his written submissions in this case demonstrate his reading and writing abilities. The issues in this case are not particularly complex and, thus, we are not persuaded that Reveles was entitled to representation.

Moreover, Reveles has failed to demonstrate that his advocate failed to comply with the duties of a staff advocate set forth in WIS. ADMIN. CODE § DOC 303.78, the applicable code section that was in effect at the time of his hearing. Under § DOC 303.78(2), “the advocate’s purpose is to help the accused inmate to understand the charges against the inmate and to help in the preparation and presentation of any defense the inmate has, including gathering evidence and testimony, and preparing the inmate’s own statement.” Nothing in the record suggests that Reveles’s advocate failed to perform these duties.

Reveles also argues that the disciplinary committee failed to turn over exculpatory evidence in violation of *Brady*, 373 U.S. at 87. Specifically, Reveles argues that the committee failed to turn over a log showing when he signed in and out of a computer in the education department. As the State points out in its brief, there is no clearly established *Brady* rule for prison disciplinary actions. See *Jackson v. Buchler*, 2010 WI 135, ¶71, 330 Wis. 2d 279, 793 N.W.2d 826 (“we need not and should not decide ... whether any version of *Brady*—limited or otherwise—applies in the prison disciplinary setting”).

Even if we assume, without deciding the issue, that *Brady* does apply in this context, Reveles has failed to demonstrate that the log information is relevant, let alone exculpatory. There is no dispute that Reveles was authorized to visit the education department on September 27, 2011. At best, the logs might show the specific time at which Reveles signed out from a computer in the education department on that day. However, pinpointing the exact time he left the education department is not relevant to the material issue in the disciplinary proceedings, which is whether Reveles returned to his unit and signed back out before proceeding to the law library. As discussed above, we are satisfied that substantial evidence supports the committee's conclusion that Reveles failed to do so.

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

Diane M. Fremgen
Clerk of Court of Appeals