



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](http://www.wicourts.gov)

**DISTRICT IV**

September 28, 2015

To:

Hon. David T. Flanagan III  
Circuit Court Judge, Br 12  
Dane County Courthouse  
215 South Hamilton, Rm 8107  
Madison, WI 53703

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

Brandon Flugaur  
Assistant Attorney General  
P.O. Box 7857  
Madison, WI 53707-7857

Terrance D. Prude 335878  
Waupun Corr. Inst.  
P.O. Box 351  
Waupun, WI 53963-0351

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

---

2013AP2410

State of Wisconsin ex rel. Terrance D. Prude v. William Pollard  
and Donald Strahota (L.C. # 2013CV2888)

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

Terrance Prude appeals an order affirming a prison discipline decision. 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).<sup>1</sup> We affirm.

Prude first argues that he did not receive adequate notice of the charge. The conduct report identified the charge as a violation of WIS. ADMIN. CODE § DOC 303.20, group resistance and petitions. Prude argues that, to provide proper notice, the conduct report should have identified one or more of the three subsections of that rule.

---

<sup>1</sup> All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

Prude argues that the failure to identify a subsection was inconsistent with the procedural rule that requires the institution to inform the inmate of “[t]he rules which the inmate is alleged to have violated.” WIS. ADMIN. CODE § DOC 303.76(1)(a) (Sept. 2014). He argues that any “rule[]” he violated necessarily includes a specific subsection that he violated, not just the overall section number.

The warden responds by pointing out that the rule directing staff as to the requirements for a conduct report states that the report shall include the “sections” of ch. DOC 303 that were allegedly violated. WIS. ADMIN. CODE § DOC 303.66(2) (Sept. 2014). The warden argues that by using only the term “sections” here, the rule means that only a section number is required in the conduct report, not any subsections. And, the warden further argues, the term “rule” under the notice provision of WIS. ADMIN. CODE § DOC 303.76(1)(a) should be read to mean the same thing as this rule requiring only “sections” to be stated in the conduct report.

We agree that these two provisions should be read as meaning the same thing, so that distribution of the conduct report to the inmate satisfies the notice requirement as to this point. However, in this context, the terms “section” and “rule” both appear to be ambiguous. In common usage, “section” and “rule” can also include any applicable subsections, when necessary for proper understanding, and not just the overall section or rule number.

To resolve that ambiguity, we rely on the Department’s preprinted blank conduct report form. Under the heading “rule allegedly violated,” the form provides the preprinted number “303,” and then provides three empty boxes into which the remaining numerals of the charge can be written by staff. It is evident from this arrangement of boxes that no subsection numbers or letters are expected to be written here. That is because there is no separate set of boxes for

subsections, and the three boxes by themselves do not provide sufficient room for what could, for some violations, require four numerals if the full subsection were to be included.

We conclude that this form is evidence of the Department's interpretation of the rules regarding the content of conduct reports and notice to inmates. And, under well established case law, we defer to the agency's interpretation of its own rules. Accordingly, we conclude that the Department complied with these rules when it provided Prude with a conduct report that listed only the rule section number, and not also a specific subsection.

Prude also argues that failure to inform him of the subsection number was a violation of due process requirements regarding notice. However, the Department's compliance with the procedural provisions of ch. DOC 303 also establishes that minimum constitutional requirements were met. *Robinson v. McCaughtry*, 177 Wis. 2d 293, 303-04, 501 N.W.2d 896 (Ct. App. 1993).

Prude next argues that his inmate advocate did not adequately perform his duties under WIS. ADMIN. CODE § DOC 303.78(2) (Sept. 2014). He argues that the advocate failed to review the charges with him. However, Prude's request to the advocate shows that he actually sought the advocate's help in finding errors. Prude has not cited any law requiring the advocate to do that.

Prude next argues that the evidence was insufficient to support the finding of guilt. The committee found him guilty of violating subsecs. (1) and (3). The first of those prohibits participation in any unapproved group activity, and the second prohibits participation in any activity with an inmate gang, which includes possession of gang literature. On certiorari review, we apply the substantial evidence test, that is, whether reasonable minds could arrive at the same

conclusion reached by the department. *State ex rel. Richards v. Traut*, 145 Wis. 2d 677, 680, 429 N.W.2d 81 (Ct. App. 1988).

Without attempting to recite the evidence in detail here, we conclude that the evidence was sufficient. The committee could reasonably conclude that Prude wrote letters that contained references to gang leaders, hidden in the form of legal citations and other legal references.

Finally, Prude argues that the circuit court erred by not allowing him to proceed on a claim that the conduct report violated WIS. ADMIN. CODE § DOC 303.86(3) and (4) (Sept. 2014). This argument is largely irrelevant because, under long-standing certiorari case law, we review the decision of the agency, not the circuit court. As to the substance of the argument Prude wants to pursue, he focuses on statements in the conduct report asserting that Prude was said to be conducting certain specific gang activities. Prude argues that the conduct report fails to properly identify who said he was doing those activities, which he asserts was required under the above rule. We conclude that any error on this point was harmless because it did not substantially affect a finding of guilt. *See* WIS. ADMIN. CODE § DOC 303.87 (Sept. 2014). Even without those statements in the conduct report, the evidence was sufficient.

IT IS ORDERED that the order appealed from is summarily affirmed under WIS. STAT. RULE 809.21.

---

*Diane M. Fremgen*  
*Clerk of Court of Appeals*