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DISTRICT IV

December 22, 2015

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

2015AP1070

State of Wisconsin ex rel. Tommy Brown v. William Pollard,
Warden (L.C. # 2014CV304)

Before Lundsten, Higginbotham and Blanchard, JJ.

Tommy Brown, pro se, appeals a circuit court order denying Brown relief on certiorari review of a prison disciplinary decision. Brown contends that he was denied the procedural right to present evidence at the disciplinary hearing. 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.

Brown was issued a conduct report for violating WIS. ADMIN. CODE §§ DOC 303.25, disrespect, and 303.26(6), soliciting staff.² The conduct report alleged that Brown wrote a sexually suggestive story as his response to a class assignment, directed toward the female instructor. Brown attempted to submit exhibits in his defense at the disciplinary hearing, but the hearing officer refused to consider the exhibits on grounds that they were not relevant. The hearing officer found Brown guilty of both rule violations. Brown filed an inmate complaint, arguing that his procedural rights had been violated, and the complaint was rejected. Brown then initiated this certiorari action in the circuit court.

On appeal from an order dismissing a petition for certiorari review of a prison disciplinary decision, we examine only whether the decision of the Department of Corrections (DOC) 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 Curtis v. Litscher*, 2002 WI App 172, ¶15, 256 Wis. 2d 787, 650 N.W.2d 43. 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.

Brown contends that he was denied his administrative and due process right to present evidence when the hearing officer refused to accept Brown's exhibits. *See* WIS. ADMIN. CODE § DOC 303.76(1)(e)1. (inmate may present evidence at disciplinary hearing); *Wolff v. McDonnell*, 418 U.S. 539, 566 (1974) ("Ordinarily, the right to present evidence is basic to a fair

² All citations to the Wisconsin Administrative Code are to the version in effect through September 2014.

hearing.”). Brown contends that the hearing officer erred by rejecting three exhibits Brown offered in his defense because, according to Brown, those exhibits were relevant to show that Brown was not guilty of disrespect and soliciting staff. *See* § DOC 303.86(1)(b) (“Evidence is relevant if that evidence makes it appear more likely or less likely that the inmate committed the offense of which the inmate is accused.”). We disagree.

Brown was accused of committing the rule violations of disrespect and soliciting staff by submitting a sexually suggestive writing to his female teacher as a class assignment. The three exhibits that Brown argues should have been considered in his defense are class materials that Brown argues tend to show that Brown’s writing complied with the general requirements of the homework assignment. However, Brown does not argue that his exhibits would have tended to show that the assignment required Brown to write a sexually suggestive story targeted toward the teacher of the prison writing class. Brown was not accused of failing to follow the general requirements of the writing assignment; he was accused of using the writing assignment to write a sexually explicit story targeting his writing teacher. Because nothing in the exhibits makes it appear more likely or less likely that the subject matter of Brown’s writing assignment violated the rules against disrespect and soliciting staff, those exhibits were properly rejected as not relevant to the issues at the disciplinary hearing. *See id.* We discern no violation of the administrative rules or Brown’s due process rights by the exclusion of irrelevant evidence at the disciplinary hearing.

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