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**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**

June 16, 2016

To:

Hon. Peter Anderson  
Circuit Court Judge  
Br. 17, Rm. 6103  
215 South Hamilton  
Madison, WI 53703

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

Jody J. Schmelzer  
Assistant Attorney General  
P.O. Box 7857  
Madison, WI 53707-7857

Lawrence Harris 204544  
Wisconsin Secure Program Facility  
P.O. Box 9900  
Boscobel, WI 53805-9900

Special Litigation & Appeals Unit  
P.O. Box 7857  
Madison, WI 53707-7857

Wisconsin Secure Program Facility  
1101 Morrison Dr.  
P.O. Box 1000  
Boscobel, WI 53805-1000

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

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2015AP1385

State of Wisconsin ex rel. Lawrence Harris v. Michael Meisner and  
Edward Wall (L.C. # 2014CV2796)

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

Lawrence Harris appeals a circuit court order that affirmed a prison disciplinary decision on certiorari review. After reviewing the 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 for the reasons discussed below.

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

Our certiorari review of the decision of an administrative agency is limited to considering: (1) whether the agency kept within its jurisdiction; (2) whether it proceeded on a correct theory of law; (3) whether its action was arbitrary, oppressive, or unreasonable, representing its will rather than its judgment; and (4) whether the agency could reasonably make the determination in question based upon the evidence before it. *State v. Waushara Cty. Bd. of Adjustment*, 2004 WI 56, ¶12, 271 Wis. 2d 547, 679 N.W.2d 514. We presume an agency's decision to be valid, and will not substitute our discretion for that of the agency or set aside its factual findings if they are supported by any reasonable view of the evidence. *Id.*, ¶13. However, in the context of a prison disciplinary hearing, we may independently determine whether due process was afforded as part of our inquiry into whether prison officials acted according to law. *State ex rel. Curtis v. Litscher*, 2002 WI App 172, ¶15, 256 Wis. 2d 787, 650 N.W.2d 43 (citation omitted).

Here, prison officials charged Harris with four rule violations arising out of allegations that he and another inmate had conspired to have Harris's sister smuggle marijuana into the prison. The conduct report set forth the substance of a series of phone calls that had been monitored and recorded by prison officials in which Harris, his sister, the other inmate, and others discussed the plan. Prison officials subsequently searched Harris's sister when she came to visit Harris and they found a little over ten grams of marijuana in her underwear. In addition, one confidential informant advised prison officials that he had overheard Harris and the other inmate discussing bringing marijuana into the prison, and a second confidential informant informed prison officials that Harris had in the past approached him about bringing marijuana into the prison.

Harris first complains that prison officials denied his request to have his sister attend the hearing or submit a statement in his defense. The hearing officer denied the request based upon the recommendation of the security director, who concluded that any statement from the sister would be deemed unreliable because the sister was subject to scrutiny from law enforcement (non-prison) based upon her own alleged role in the incident. It was within the hearing officer's discretion to refuse to hear or admit evidence deemed to be unreliable. *See* WIS. ADMIN. CODE § DOC 303.87(2)(b)1. (through April 2016). As noted above, we will not substitute our discretion for that of the prison officials. We therefore reject Harris's contention that prison officials violated their own rules by refusing to allow Harris's sister to make an oral or written statement.

Harris next contends that his due process rights were violated because prison officials refused to provide him with complete transcripts of the recorded phone conversations, and did not allow him access to the audio recordings of those conversations until the hearing. However, we agree with the circuit court's analysis that Harris was provided all of the process that he was due based upon the detailed descriptions of the phone conversations contained in the conduct report. Prison officials needed only to advise Harris of the nature of the charges against him with sufficient detail to allow him to marshal a defense; they were not required to provide him with evidence submitted in support of a conduct report. *See* ***Wolff v. McDonnell***, 418 U.S. 539, 564 (1974); ***State ex rel. Ortega v. McCaughtry***, 221 Wis. 2d 376, 399, 585 N.W.2d 640 (Ct. App. 1998).

IT IS ORDERED that the circuit court order dismissing Harris's certiorari petition is summarily affirmed under WIS. STAT. RULE 809.21(1).

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