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DISTRICT IV

April 4, 2017

To:

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

2016AP189

State of Wisconsin ex rel. Sylvester Jackson v. Michael Dittman
and Edward F. Wall (L.C. # 2014CV3098)

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

This appeal arises from a conduct report given to an inmate, Sylvester Jackson. Jackson was found guilty of misuse of prescription medication and was ordered to pay \$500 in restitution. On certiorari review, the circuit court upheld the Adjustment Committee's finding of guilt and remanded the issue of restitution to the Committee for further review. Jackson appeals. 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 (2015-16).¹ We affirm.

Jackson was an inmate at Columbia Correctional Institution when he ingested three "blister packs" of prescription medication, leading to his hospitalization. Subsequently, Jackson

¹ All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

was cited for a violation of WIS. ADMIN. CODE § DOC 303.57 (Dec. 2006).² Jackson was found guilty, placed in 120 days of disciplinary segregation, and ordered to pay \$500 restitution. The order was upheld through the requisite administrative review process. After exhausting his administrative remedies, Jackson filed a petition for a writ of certiorari in the circuit court.

On certiorari review, this court's standard of review is the same as that applied by the circuit court. *State ex rel. Staples v. DHSS*, 136 Wis. 2d 487, 493, 402 N.W.2d 369 (Ct. App. 1987). Review is limited to determining whether the agency kept within its jurisdiction, whether it acted according to law, whether the action was arbitrary, oppressive, or unreasonable and represented its will and not its judgment, and whether the evidence was such that the agency might reasonably make the determination in question. *State ex rel. Meeks v. Gagnon*, 95 Wis. 2d 115, 119, 289 N.W.2d 357 (Ct. App. 1980). Whether the agency acted according to law includes the questions of whether due process was afforded and whether the agency followed its own rules. *Id.*

We first address Jackson's argument that he was denied due process because he was not properly given notice of the hearing. In his report, the Inmate Complaint Examiner made the following findings:

The conduct report was written on 07/13/14 and service was attempted on 07/14/14, however the inmate was in Observation Status. Following the inmate's release from Observation Status on 07/15/14, service was attempted again on 07/16/14.

² At the time of the offense, the pertinent disciplinary section was WIS. ADMIN. CODE § DOC 303.57. The section has been renumbered to WIS. ADMIN. CODE § DOC 303.58 and retitled "misuse of medication." The pertinent language is unchanged. *See* Wis. Adm. Reg. No. 705, (Sept. 30, 2014) (eff. Jan. 1, 2015). Throughout this order, we will cite to the administrative regulations in effect at the time of the incident and disciplinary process.

Documentation indicates that the inmate refused to sign the notice. The evidence shows that staff made reasonable attempts to provide this document to the inmate but he was uncooperative. Simply stated, the inmate's refusal to participate in the procedure does not constitute a denial of due process by staff. The inmate is responsible for the alleged denial of this document and consequently, a formal explanation of his due process rights.

The record supports the ICE's findings. The certiorari return contains two "Notice of Major Disciplinary Hearing Rights" forms, DOC-71. One form indicates that Jackson is in "OBS status" on July 14, 2014, three days after the incident. The other form, dated July 16, indicates that Jackson refused to sign the form but that the serving officer read the notice to him. Thus, the evidence shows that Jackson was given the notice required by WIS. ADMIN. CODE § DOC 303.76.³ Jackson's due process rights were not violated. *See Saenz v. Murphy*, 153 Wis. 2d 660, 680-81, 451 N.W.2d 780 (Ct. App. 1989), *rev'd on other grounds*, 162 Wis. 2d 54, 469 N.W.2d 611 (1991).

The second issue concerns the restitution order. Disciplinary penalties may include restitution for "medical bills" and "other expenses caused by the inmate's actions." WIS. ADMIN. CODE § DOC 303.72(5) (Dec. 2006).⁴ Jackson was ordered to pay restitution of \$500. However, as the circuit court noted, there is nothing in the certiorari record explaining how the amount of restitution was determined. We agree with the circuit court's conclusion that the matter should be remanded to the Adjustment Committee to provide a basis for the restitution amount. A remand does not, as Jackson contends, give prison officials a second kick at the cat. *See State ex*

³ The notice requirement is now found in WIS. ADMIN. CODE §§ DOC 303.80 and 303.81 (through Apr. 2017).

⁴ The authority for a restitution order is now found at WIS. ADMIN. CODE § DOC 303.70(7) (through Apr. 2017).

rel. Lomax v. Leik, 154 Wis. 2d 735, 741, 454 N.W.2d 18 (Ct. App. 1990). Jackson will have an opportunity to contest the amount.⁵

Upon the foregoing reasons,

IT IS ORDERED that the order is summarily affirmed.

Diane M. Fremgen
Clerk of Court of Appeals

⁵ In its brief, the State concedes that Jackson would be entitled to dispute any new evidence relied on to ascertain restitution.