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March 8, 2018

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

2017AP589

State of Wisconsin ex rel. Brian Walter Lawhon v. Edward F. Wall
and Michael A. Dittman (L.C. # 2016CV708)

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

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

Brian Walter Lawhon, pro se, appeals a circuit court order affirming the Department of Corrections' resolution of his inmate grievance, which alleged that a department employee improperly issued a conduct report that resulted in Lawhon being confined to his cell for fourteen days. Lawhon also appeals the circuit court's order denying his motion for reconsideration. In his brief to this court, Lawhon argues that the employee did not follow the correct procedure in issuing the conduct report and that the department submitted falsified

documents to the circuit court. 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 reject Lawhon's arguments and affirm.

Lawhon was issued a conduct report following a verbal altercation with his math teacher. The record shows that the teacher reviewed the incident with Lawhon and gave him the opportunity to make a statement. The teacher documented Lawhon's statement admitting that he had raised his voice and cursed at her, but denying that he yelled. Lawhon also stated that the teacher's report included accusations that were not true. Lawhon's supervisor found him guilty of three rule violations (inadequate work or study performance, disruptive conduct, and disrespect) and imposed a disposition of fourteen days of cell confinement.

Lawhon filed an appeal of that disposition, challenging the supervisor's determinations that he was guilty of the three rule violations. As a result of Lawhon's appeal, the warden returned the matter to the supervisor to correct an unspecified error. Lawhon then proceeded to file several inmate complaints relating to the supervisor's role in issuing the conduct report. The department rejected these complaints on the ground that they were filed solely to harass the supervisor. After exhausting his administrative remedies with respect to the rejection of these complaints, Lawhon filed a petition for certiorari in circuit court alleging that the department had violated its own policies in rejecting the complaints against the supervisor, that the department acted in an arbitrary manner by failing to consider the violations of prison disciplinary process alleged in these complaints, and that the supervisor's decision to issue the conduct report was not supported by substantial evidence. Specifically, Lawhon argued that he was denied his right to give a statement or be present before the supervisor found him guilty. Lawhon further argued that the supervisor inaccurately believed that Lawhon had pleaded guilty.

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

At the outset, we note that Lawhon has abandoned most of the arguments he made in his initial petition for certiorari. We see no developed argument relating to the alleged violations of inmate grievance policy or any argument relating to Lawhon's allegations that the supervisor inaccurately believed that Lawhon had pleaded guilty. Accordingly, we conclude that he has abandoned these issues. *See A.O. Smith Corp. v. Allstate Ins. Cos.*, 222 Wis. 2d 475, 491, 588 N.W.2d 285 (Ct. App. 1998) (“[A]n issue raised in the [circuit] court, but not raised on appeal, is deemed abandoned.”). Instead, Lawhon presents three questions for appeal: (1) whether the circuit court should have granted Lawhon's motion for a declaratory judgment to take judicial notice of documents outside the record; (2) whether the circuit court should have given Lawhon an opportunity to challenge a document in the certified record as fraudulent; and (3) whether the department followed its rules with respect to the conduct report.

We can easily reject Lawhon's argument regarding his motion for a declaratory judgment and his request that the circuit court take judicial notice of certain facts not in the record. “Certiorari is the well-established mode of judicial review for inmates ... who seek to challenge prison disciplinary decisions.” *State ex rel. L’Minggio v. Gamble*, 2003 WI 82, ¶21, 263 Wis. 2d 55, 667 N.W.2d 1 (quoted source omitted). On certiorari review, we consider: (1) whether the department kept within its jurisdiction; (2) whether the department acted according to law; (3) whether the department's action was arbitrary, oppressive, or unreasonable and represented its will and not its judgment; and (4) whether the evidence was such that the department might reasonably make the determination in question. *Id.*, ¶20. “A certiorari court is limited to reviewing the record and cannot consider additional facts outside of the record.” *Id.* The circuit court therefore properly disregarded Lawhon's motions seeking alternative relief and to take judicial notice of non-record facts.

We can also easily dispose of Lawhon's second question for appeal, in which he contends that the department submitted an altered record in bad faith. This argument lacks any apparent merit. The main basis for Lawhon's argument is the copy of the conduct report that he submitted

with his certiorari petition, in which the boxes for a finding of guilty or not guilty are both unchecked. In contrast, in the version of the conduct report submitted by the department as the certified record, the boxes for a finding of guilty are checked. Lawhon argues that this discrepancy means that he was improperly punished without a finding that he was guilty of the three rule violations. This newly raised argument lacks any meaningful support in the record. Lawhon knew that he had been found guilty of the three rule violations, because he expressly challenged those guilty findings when he appealed the disposition six days later. At best, Lawhon has shown that the supervisor made a clerical error by failing to check any of the boxes when he first issued the conduct report and that the error was fixed after remand by the warden.² The clerical error, if any, was harmless. *See* WIS. ADMIN. CODE § DOC 303.88 (“If staff does not adhere to a procedural requirement under this chapter, the error is harmless if it does not substantially affect a finding of guilt or the inmate’s ability to provide a defense.”).

Lawhon’s third argument on appeal is that the department did not follow its procedures in issuing the conduct report. Lawhon’s offenses were minor, which means the department was required to follow the procedure set forth in WIS. ADMIN. CODE § DOC 303.77. The procedure applies when the inmate refuses to accept an uncontested minor disposition for a minor rule infraction. *See* WIS. ADMIN. CODE § DOC 303.77(1). Staff must inform the inmate of the nature of the alleged infraction. *See* WIS. ADMIN. CODE § DOC 303.77(2)(a). The inmate must be given the opportunity to make a statement, which staff must document on the appropriate form.

² The record shows that after Lawhon appealed, the warden returned the matter to the supervisor to correct an error. Applying the presumption of regularity, we assume that the supervisor fixed the clerical error by checking the boxes that reflected his initial findings of guilt. *See Ashleson v. Labor & Indus. Review Comm’n*, 216 Wis. 2d 23, 34, 573 N.W.2d 554 (Ct. App. 1997) (a petitioner challenging a decision of an administrative agency must rebut the presumption of regularity). We therefore reject Lawhon’s belated attempts to characterize the missing check marks as evidence that the supervisor never found him guilty. *Id.* (under the presumption of regularity, a lack of express confirmation that the agency followed the proper procedure is an insufficient basis to conclude that the agency failed to follow procedure).

See WIS. ADMIN. CODE § DOC 303.77(2)(b). Staff must inform the inmate that the conduct report and statement are being forwarded to the supervisor for review and disposition. *See* WIS. ADMIN. CODE § DOC 303.77(2)(c). The supervisor must review the conduct report and the statement, render a decision, and notify the inmate within five working days. *See* WIS. ADMIN. CODE § DOC 303.77(3). If there is a finding of guilt, the supervisor shall impose a disposition in accordance with WIS. ADMIN. CODE § DOC 303.70. *See* WIS. ADMIN. CODE § DOC 303.77(4).

Here, the record demonstrates compliance with each aspect of the process. Specifically, the record indicates that Lawhon's teacher informed Lawhon of the alleged rule violations and gave Lawhon the opportunity to make a statement. The teacher documented Lawhon's statement on the form. The record shows that the supervisor rendered a decision and imposed a disposition of fourteen days cell confinement. We can reasonably infer that Lawhon received timely notice based on the fact that he appealed the guilty findings six days later. The supervisor's decision is supported by the teacher's report of Lawhon's conduct. *See State ex rel. Ortega v. McCaughtry*, 221 Wis. 2d 376, 386, 585 N.W.2d 640 (Ct. App. 1998) (the agency's findings are "conclusive if supported by 'any reasonable view' of the evidence," and a reviewing court may not substitute its view of the evidence (quoted source omitted)).

We see no argument from Lawhon that the department failed to comply with the process set forth in WIS. ADMIN. CODE § DOC 303.77(2) and (3). Lawhon's only developed argument is that the supervisor imposed the fourteen days cell confinement without finding him guilty, which would violate WIS. ADMIN. CODE § DOC 303.77(4). But, for the reasons explained above, we reject Lawhon's argument as insufficient to rebut the presumption that the department followed its procedures. *See Ashleson v. Labor & Indus. Review Comm'n*, 216 Wis. 2d 23, 34, 573 N.W.2d 554 (Ct. App. 1997). We see no other developed arguments from Lawhon. *See M.C.I., Inc. v. Elbin*, 146 Wis. 2d 239, 244-45, 430 N.W.2d 366 (Ct. App. 1988) (we need not consider arguments that are unexplained or undeveloped). Thus, we conclude that the record demonstrates that the department complied with its procedures for a minor infraction and issued

a reasonable decision. The circuit court properly denied Lawhon's petition for certiorari and his motion for reconsideration.

Upon the foregoing reasons,

IT IS ORDERED that the orders are summarily affirmed pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Sheila T. Reiff
Clerk of Court of Appeals