

**COURT OF APPEALS
DECISION
DATED AND FILED**

February 11, 1999

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

No. 98-1015

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN EX REL. DARRELL D. CAGE,

PETITIONER-APPELLANT,

V.

GARY R. McCAUGHTRY,

RESPONDENT-RESPONDENT.

APPEAL from an order of the circuit court for Dodge County:
JOSEPH E. SCHULTZ, Judge. *Affirmed.*

Before Dykman, P.J., Vergeront and Deininger, JJ.

PER CURIAM. Darrell Cage, an inmate at Waupun Correctional Institution, appeals an order affirming a prison disciplinary decision. A disciplinary committee found him guilty of battery, disobeying orders and possession of intoxicants; and not guilty of threatening an officer. The warden affirmed that decision on administrative review. In this appeal Cage argues:

(1) he received insufficient notice of his hearing, (2) the committee heard insufficient evidence to find him guilty of battery, (3) the orders he disobeyed were unlawful, (4) he received ineffective assistance from his advocate, and (5) the warden provided an inadequate administrative review. We independently review the disciplinary proceedings and do not defer to the trial court's decision. *See State ex rel. Hippler v. City of Baraboo*, 47 Wis.2d 603, 616, 178 N.W.2d 1, 8 (1970). We reject all of Cage's arguments and affirm.

Cage committed his violations on July 14, 1997. On July 15, he received a copy of his conduct report. It reported that Correctional Officer Glamann ordered him to take off his clothes for a strip-search. Cage then refused to take off two pair of underwear he was wearing. At Cage's request, Glamann called a superior officer, Captain Muraski. Muraski also ordered Cage to submit to a strip-search. Cage still refused to totally remove his clothing, but pulled down the front part of his underwear and stated, "see man, I don't have nothing." As he did so, Glamann noticed a piece of plastic in Cage's underwear. Glamann attempted to retrieve it, and a scuffle ensued during which Cage resisted and bit Glamann on the left hand. Cage was subsequently restrained. A substance found in the plastic tested positive for marijuana.

The same day Cage received a standard form "Notice of Major Disciplinary Rights" advising him that the hearing he requested on the charges would occur within two to twenty-one days. Cage signed the notice with an acknowledgment that he fully understood it. On July 23, Cage received notice that the disciplinary hearing was scheduled for July 24. The hearing was held as scheduled, and Cage appeared with a staff advocate, J. D. Smith. The record shows that Smith's only contribution to the proceeding was the statement "he did have questions for Captain Grahl that I forgot to get." Captain Grahl appeared as a

witness, however, and exonerated Cage from the charge that he uttered threats after he was restrained. Cage presented a written statement asserting that the staff official's order to strip was unlawful, and that he therefore was not obliged to obey it. He added that once Muraski ordered him to strip, he complied. The adjustment committee believed Glamann's account and found Cage guilty on the battery, disobeying orders and possession charges.

Cage contends that the hearing notice he received on July 23 violated WIS. ADM. CODE § DOC 303.76(3). That section provides in relevant part that the hearing cannot be held until at least two working days after the inmate receives the "hearing notice." According to Cage, the hearing notice referred to is the notice he received on July 23, only one day before his hearing. However, our supreme court has declared that the standard "notice of major disciplinary hearing rights" that Cage received on July 15 supplies the notice required by § DOC 303.76(3). See *Bergmann v. McCaughtry*, 211 Wis.2d 1, 9, 564 N.W.2d 712, 715 (1997). The July 23 notice that Cage received is required by WIS. ADM. CODE § DOC 303.81(9), which does not contain the two-day notice provision.

Evidence supports the finding that Cage was guilty of battery. Cage contends the evidence was not sufficient because there was no evidence that he injured Glamann when he bit him. WISCONSIN ADMINISTRATIVE CODE § DOC 303.12 provides that any inmate who intentionally causes "bodily injury" to another is guilty of a disciplinary offense. WISCONSIN ADMINISTRATIVE CODE § DOC 303.02(2) defines "bodily injury" as "injury or physical pain, illness or any impairment of physical condition." Here, Glamann reported that Cage's bite caused him discomfort. The disciplinary committee could reasonably infer that the discomfort described was a form of pain. The evidence therefore supports the battery finding under our standard of review. See *State ex rel. Staples v. DHSS*,

115 Wis.2d 363, 370, 340 N.W.2d 194, 197-98 (1983) (we affirm if the evidence was such that the committee might reasonably make the determination in question).

Cage waived the claim that he was given an unlawful order. A strip-search may be conducted at the direction of a shift supervisor who is satisfied that there are reasonable grounds to believe the inmate possesses contraband or, in the absence of the shift supervisor, when a staff member reaches the same conclusion. WIS. ADM. CODE § DOC 306.16(3)(e) and (f). This court has held that an inmate cannot be disciplined for disobeying a search order when there is no evidence in the record that the search was authorized under DOC rules. *State ex rel. Anderson v. Shade*, 181 Wis.2d 348, 352-53, 510 N.W.2d 805, 806-07 (Ct. App. 1993). The burden is on the DOC staff to prove the order lawful. *Id.* Here, Cage only challenged the lawfulness of Glamann's order to strip. The committee found, however, that he disobeyed Muraski's order as well. Because he did not also challenge the lawfulness of that order, the issue is waived. *Saenz v. Murphy*, 162 Wis.2d 54, 63, 469 N.W.2d 611, 615 (1991).

Cage suffered no prejudice from the staff advocate's representation at the hearing. Cage describes the advocate's omission as failing to help him question Captain Grahl. The only allegation Grahl had knowledge of was the charge that Cage threatened the reporting officer after the incident. Grahl's testimony cleared Cage of that charge.

We need not address whether the warden conducted an adequate review. Cage's argument amounts to an unsupported allegation that the warden "rubber-stamped" the committee's decision. We do not review inadequately

briefed issues that have no support in the record. *State v. Pettit*, 171 Wis.2d 627, 647, 492 N.W.2d 633, 642 (Ct. App. 1992).

By the Court.—Order affirmed.

This opinion will not be published. See RULE 809.23(1)(b)(5), STATS.

