

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

March 25, 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. 98-1029**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT IV**

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**STATE OF WISCONSIN EX REL. TAYR KILAAB AL  
GHASHIYAH (KHAN) F/N/A CASTEEL,**

**PETITIONER-APPELLANT,**

**V.**

**MICHAEL SULLIVAN, SECRETARY, JUDY SMITH,  
FRED NELSON, BILL SCHIDER, LT. STELLIE,  
DEANNE SCHAUB, STEPHEN PUCKETT,  
MIRA GONZALES, CAPT. SCHROEDER,  
DIANE FERGOT, SPANBAUER, HAMERSMA,  
MOLLY SULLIVAN, DEPARTMENT OF CORRECTIONS,**

**RESPONDENTS-RESPONDENTS.**

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APPEAL from an order of the circuit court for Dane County: PAUL B. HIGGINBOTHAM, Judge. *Affirmed in part, reversed in part and cause remanded with directions.*

Before Dykman, P.J., Eich and Roggensack, JJ.

PER CURIAM. Tayr Kilaab al Ghashiyah (Khan) appeals from an order affirming a prison discipline decision and a program review committee decision. We affirm as to the discipline decision, but reverse as to the program review committee.

Khan was charged with having used the initials “B.D.” to identify himself on cards he filled out during his job in the prison barbershop. A staff member ordered him to change the initials to his own, but Khan did not do so. He was found guilty of using a false name or title (WIS. ADM. CODE § DOC 303.31), disobeying orders (WIS. ADM. CODE § DOC 303.24), and inadequate work or study performance (WIS. ADM. CODE § 303.62).

Khan argues that he did not receive proper notice of the discipline hearing. The respondent argues that Khan waived the issue by not raising it at the hearing. *See Saenz v. Murphy*, 162 Wis.2d 54, 64-67, 469 N.W.2d 611, 616-17 (1991). We agree. Khan submitted a thirteen-paragraph statement at the hearing with numerous reasons why he objected to the proceedings, but this was not one of them.

Khan argues that he was not guilty of using a false name because the appendix to WIS. ADM. CODE § DOC 303.31 indicates that this provision should not be applied to forbid use of common and recognizable nicknames, initials, or a shortened form of the first or last name. He argues that “B.D.” is short for “bird dog,” which is the English translation of the “Tayr Kilaab” portion of his legal name. We reject the argument. Perhaps if he had used “T.K.” this argument would have merit. However, when initials require knowledge of a translation from a foreign language, they are not common or recognizable.

Khan appears to argue that he did not disobey an order because the order to change the initial on the card was not lawful, since he was allowed to use such an initial as provided in the appendix for WIS. ADM. CODE § DOC 303.31. However, we have just concluded that he was not entitled to use that initial, and therefore the order to change it was lawful.

As to the charge of inadequate work performance, Khan argues that there was no evidence regarding the standards required for his work performance. WIS. ADM. CODE § DOC 303.62(1) provides that any inmate whose work fails to meet the standards set for performance on a job and who has the ability to meet those standards is guilty of an offense. The respondent argues that Khan “was directly told” by the officer who wrote the conduct report “that the performance of his job as a barber required properly identifying himself on the barber cards.” This fact is stated without citation to the record. Our review of the record finds no evidence of such a statement by the officer. However, it is clear from the conduct report that some type of “barber shop cards” exist on which records of haircuts are kept. It is reasonable to infer that part of Khan’s job would include keeping accurate records of who provided a particular haircut. When he failed to do this, Khan was properly found guilty of this offense.

Following this discipline proceeding, the prison apparently removed Khan from his barber job. The program review committee then met with Khan and altered his program placement to remove him from his barber job. Khan argues that the committee lacked jurisdiction to conduct this early review of his status because the disciplinary hearing officer that decided the conduct report did not refer him to the committee.

The warden responds that the committee could conduct the early review under WIS. ADM. CODE § DOC 302.18(3)(b), which provides in relevant part: “Such review may occur before the time designated for the review: .... (b) At the request of the resident or a staff member, provided there is a significant change of circumstances relevant to the classification or program assignment of the resident.” The warden argues that the loss of Khan’s job was a significant change in circumstances, but he does not suggest any basis to conclude that the early review was at “the request of the resident or a staff member.”

In looking at the committee decision, it is difficult for us to determine how the matter came before the committee. The social worker summary states in part that Khan “is requesting to remain on his job assignment.” The committee account of the meeting states in part: “[Khan] indicated that since the adjustment committee did not recommend a referral to [the program review committee], that we have no jurisdiction to remove him from his job. He was advised otherwise.” The committee gave no further explanation and cited no authority in rejecting this argument.

While the social worker summary suggests the review may have been at Khan’s request, that would be inconsistent with his own objection to jurisdiction at the meeting. Nor did the committee respond to his objection by pointing out that the review was at his own request. We conclude that the record fails to show that the committee had authority to conduct an early review of Khan’s assignment. Therefore, we reverse. However, the practical effect of our decision is not clear, since this review occurred more than two years ago and has likely been supplanted by subsequent reviews.

On remand, the trial court shall enter an order vacating the program review committee decision.

*By the Court.*—Order affirmed in part; reversed in part and cause remanded with directions.

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

