

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

February 4, 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. 98-1305**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT IV**

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**STATE OF WISCONSIN EX REL. PATRICK A. SAUNDERS,**

**PETITIONER-APPELLANT,**

**v.**

**GARY MCCAUGHTRY, WARDEN, WAUPUN  
CORRECTIONAL INSTITUTION,**

**RESPONDENT-RESPONDENT.**

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

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

PER CURIAM. Patrick Saunders appeals from the circuit court's order denying his petition for writ of certiorari and upholding a decision of the Waupun Correctional Institution Adjustment Committee. The issues are: (1) whether there was substantial evidence that Saunders was guilty of "threats,"

and (2) whether there was substantial evidence that Saunders was guilty of “group resistance and petitions.” We resolve these issues against Saunders and affirm.

After an investigation by the Milwaukee County Sheriff’s Department into drug and weapon trafficking, a conduct report was issued against Waupun Correctional Institution inmate Patrick Saunders. The conduct report alleged the following:

[I]nformation gathered showed that the marijuana and weapons were being controlled by the street gang Simon City Royals. Inmate Patrick Saunders is currently at WCI and holds the rank of “Prince”. A “Prince” in the Simon City Royals is the second highest rank obtainable in the Simon City organization.

On January 22, 1997, the buy for five (5) lbs. of marijuana and weapons was to occur on Milwaukee’s east side. Detective [Carol] Mascari, along with Federal agents, arrived for the buy. The buy went sour as the Simon City representatives took the money from Detective Mascari and fled on foot. Law enforcement officials gave chase, which subsequently resulted in the apprehension and arrest of two (2) Simon City Royals....

On January 22, 1997, I began to monitor phone calls being made by Inmates Johnson and Saunders .... On January 22, 1997, I began to listen to phone calls that Inmate Saunders had made. Inmate Saunders was communicating with Simon City Royals in Milwaukee. The Royals in Milwaukee were reporting to Saunders the events of the rip off that had occurred. Saunders was then giving them instructions on what to do with the money that was stolen. Saunders had not yet known that the money was recovered by law enforcement officials.

On January 23, 1997, I listened to a phone call made on January 23, 1997 at 10:30 a.m. Inmate Saunders called [a Milwaukee number] ... to a male by the name of Kevin. Saunders told Kevin that the individuals who did the rip off on January 22, 1997, had been arrested and that Jackie, who was the under cover agent, was police. Kevin was aware of this situation. Saunders then referred to Jackie as “that broad” and to Inmate Gooch [an inmate informant] as “her brother”, and made the statement, “That

broad's brother is supposedly over here. I'm wondering if I should go after him."

Saunders testified at the disciplinary hearing. After considering the conduct report and Saunders's testimony, and after listening to the audiotape and viewing written transcripts of conversations Saunders had on the phone, the committee found Saunders guilty of two rule violations, making "threats" and "group resistance and petitions." The trial court denied Saunders's petition for writ of certiorari challenging the committee's decision.

Saunders argues that there was insufficient evidence to convict him of "threats." The written transcript of the phone conversations and Saunders's own admissions undercut this claim. The transcript clearly shows that Saunders made threatening comments on the phone and Saunders conceded to the committee that he "did say that I should go after this guy because where I come from, one inmate does not work with the police against another. I did make a threat." Saunders did not have to make the threats directly to the inmate in question, as he argues, in order to violate the rule against threats. Similarly, Saunders is not, as he argues, exonerated simply because he never acted on the threat. There was sufficient evidence for the committee to find Saunders guilty of making threats.

Saunders contends that he was just "voicing his thoughts," and argues that no "rule is broken by wondering about something." As finder of fact, the committee concluded that the statements made by Saunders constituted a threat and that, therefore, he was guilty of a rule violation.

Saunders objects to the fact that the trial court considered statements he made in the audiotape which were not listed in the conduct report, including a

statement that “I’m thinking about going right at this punk and boom boom boom boom where it all really started, you know what I mean.”

The conduct report specifically incorporated the audiotape, listing it as one of the items of evidence. As a reviewing court, the trial court was free to consider statements made on the tape. There is no merit to this claim.

Saunders next argues that there was insufficient evidence to find him guilty of “group resistance and petitions.” WIS. ADM. CODE § DOC 303.20(1) provides:

(1) Any inmate who intentionally participates in any group activity which is not approved under s. DOC 309.365 or is contrary to provisions of this chapter, to institution policies and procedures or to a direct verbal order from a staff member, but which does not create a serious risk of injury to persons or property, is guilty of an offense.

....

(3) Any inmate who intentionally participates in any activity with the purpose of identifying himself or herself with an inmate gang ... is guilty of an offense.

It is undisputed that Saunders was participating in the Simon City Royals. The phone conversations show that Saunders was giving instructions to fellow gang members, albeit through a mutual acquaintance rather than directly. There was sufficient evidence to support the committee’s decision.

Saunders argues that it is no violation to be a gang member. Saunders is wrong. Anyone who participates in a gang is guilty of a rule violation. *See* WIS. ADM. CODE § DOC 303.21(1).

Finally, Saunders argues that the committee should not have stated that it found one of the prison guards, Captain Michael Dittmann, to be a credible witness “based on his training and experience in the area of conducting investigations.” Even if there were error, an issue we need not decide, the error was harmless. Saunders did not dispute most of the evidence, he just argued that his conduct did not constitute the violations charged. The only thing that Saunders did dispute was that he was a member of a gang acting in Wisconsin, as opposed to Chicago. However, his phone conversations with people in Milwaukee and his awareness of the criminal activity in Milwaukee clearly corroborate Captain Dittmann’s testimony.

*By the Court.*—Order affirmed.

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

