COURT OF APPEALS
DECISION
DATED AND FILED

June 10, 1999

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

No. 98-1934

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT IV

STATE OF WISCONSIN EX REL. THOMAS PONCHIK,

PETITIONER-RESPONDENT,

V.

JEFFREY ENDICOTT,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Columbia County: RICHARD REHM, Judge. *Reversed.*

Before Eich, Roggensack and Deininger, JJ.

PER CURIAM. The State of Wisconsin appeals from an order reversing a prison disciplinary proceeding which found Columbia Correctional Facility Inmate Thomas Ponchik guilty of disruptive behavior, contrary to WIS. ADM. CODE § DOC 303.28. We reverse because we conclude that sufficient

evidence supports the hearing officer's disposition, and that the circuit court erred when it found the evidence sustaining the charge insufficient.

Ponchik received a conduct report which accused him of disrespect, contrary to WIS. ADM. CODE § DOC 303.25, as well as disruptive conduct, contrary to WIS. ADM. CODE § DOC 303.28. The conduct report stated that on August 8, 1997, at 10:30 p.m., Ponchik was speaking to his cellmate in a disruptively loud voice. When an officer came to investigate, he made disrespectful statements and continued to be loud, even after he was told he would receive a conduct report.

At his August 21, 1997 hearing on the conduct report,[1] Ponchik stated that he hadn't meant to be disrespectful but rather had made the statements because the officer was "walking away and I just wanted to discuss my problem with her." Relying on the conduct report, as well as Ponchik's testimony, the hearing examiner found that the conduct report itself did not support the charge of disrespect, but that evidence supported the charge of disruptive conduct because Ponchik admitted to being loud in trying to get the officer's attention. Ponchik was sentenced to two days loss of recreation and day-room use.

On August 21, 1997, Ponchik appealed to the warden, who affirmed. On September 25, 1997, Ponchik filed a petition of certiorari with the Columbia County Circuit Court. At a telephone hearing on April 9, 1998, the circuit court overturned the imposition of discipline on the grounds that "the record contains insufficient evidence upon which the finding of guilt could be based." The court explained that the hearing examiner found Ponchik guilty because he admitted

[1] Ponchik waived his right to a full due process hearing.

being loud to get the officer's attention. However, the court reversed because it concluded that there was insufficient evidence to support a charge of disruptive conduct, in that the hearing record contained no reference to Ponchik's original loud behavior.

A reviewing court on certiorari does not weigh the evidence presented to the hearing committee or officer. ***Van Ermen v. DHSS***, 84 Wis.2d 57, 64, 267 N.W.2d 17, 20 (1978). Rather, judicial review of certiorari actions is limited to determining whether the administrative hearing committee kept within its jurisdiction, whether it proceeded on a correct theory of law, whether its action was arbitrary, oppressive or unreasonable and represented its will and not its judgment, and whether the evidence was such that the committee might reasonably make the determination in question. As to this last, the test is whether reasonable minds could arrive at the same conclusion reached by the committee. ***State ex rel. Brookside Poultry Farms, Inc. v. Jefferson County Bd. of Adjustment,*** 131 Wis.2d 101, 119-20, 388 N.W.2d 593, 600 (1986); *see also* ***Van Ermen***, 84 Wis.2d at 64, 267 N.W.2d at 20 (same standard applies on appellate review).

We reverse because we conclude that the evidence in the record supports the hearing officer's disposition. Specifically, the conduct report charged that the officer had investigated Ponchik's original loud behavior: "my attention was drawn to [Ponchik] by the sound of very loud talking. As I opened the tier door I could clearly hear … the inmate…." The report charged Ponchik with, among other things, disruptive conduct, contrary to WIS. ADM. CODE § DOC 303.28. Thus, the report contained notice to Ponchik and cited examples of that disruption: the loud talking which led the officer to investigate, and the loud response to the investigation. More is not required. *See* ***Wolff v. McDonnell.*** 418 U.S. 539, 564 (1974).

A hearing officer may rely on a conduct report to support a finding of guilt. *See* ***Culbert v. Young***, 834 F.2d 624, 631 (7th Cir. 1987), *cert. denied*, 485 U.S. 990 (1988). The officer did rely on the conduct report here, so stating by checking the appropriate box, and also relied on Ponchik's own admission that he had loudly made a statement to the officer "trying to get sgts attention." We reverse because: 1) Ponchik was charged with disruptive conduct; 2) Ponchik received written notice that this behavior included his loud talk; 3) proper evidence supported a finding of guilty on this charge; and 4) reasonable minds could find this sufficient evidence of disruptive conduct.

By the Court.—Order reversed.

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