COURT OF APPEALS
DECISION
DATED AND FILED

September 30, 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. **98-2048**

STATE OF WISCONSIN

IN COURT OF APPEALS
DISTRICT IV

STATE OF WISCONSIN EX REL. REGINALD D. BURKE,

PETITIONER-APPELLANT,

V.

GARY MCCAUGHTRY, WARDEN,

RESPONDENT-RESPONDENT.

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

Before Eich, Vergeront and Deininger, JJ.

PER CURIAM. Reginald Burke, an inmate at Waupun Correctional Institution, appeals a trial court order that, upon certiorari review, upheld his prison disciplinary sanction for possession, manufacture, and alteration of weapons. *See* WIS. ADM. CODE § DOC 303.45(2). Using a probe and flashlight,

prison guards found a disposable razor blade, removed from its plastic housing, hidden in the track to Burke's sliding cell door. Burke claims that the track lies outside his cell. Prison guards also found a burnt pin stuck in a cell bulletin board underneath a piece of paper. The hearing officer found Burke guilty of possessing the razor blade and not guilty of possessing the pin. On appeal, Burke argues that prison officials did not show his guilt by sufficient evidence. He claims that anyone could have put the razor blade in the cell-door track and that he had no knowledge of its presence there. He also claims no knowledge of the pin. His cellmate supported Burke's testimony with similar testimony at the hearing. We reject Burke's arguments and affirm the trial court order.

We review the prison disciplinary committee's ruling without deference to the trial court's decision, and our review is limited to the committee's record. *See* ***State ex rel. Whiting v. Kolb***, 158 Wis.2d 226, 233, 461 N.W.2d 816, 819 (Ct. App. 1990). We may overturn the committee if it (1) exceeded its jurisdiction, (2) acted outside the law, (3) made an arbitrary, oppressive or unreasonable ruling, or (4) weighed the evidence in an unreasonable way. *See* ***id***. We will uphold its ruling if it rests on substantial evidence—the quantum of proof that reasonable minds would need to reach the committee's finding. *See* ***State ex rel. Richards v. Traut***, 145 Wis.2d 677, 679-80, 429 N.W.2d 81, 82 (Ct. App. 1988). We will not substitute our judgment for the committee's, and its findings are conclusive as long as they have reasonable support in the evidence. *See* ***State ex rel. Jones v. Franklin***, 151 Wis.2d 419, 425, 444 N.W.2d 738, 741 (Ct. App. 1989). Courts are slow to interfere in the executive branch's administration of the prisons. *See* ***Lomax v. Fiedler***, 204 Wis.2d 196, 208, 544 N.W.2d 841, 845 (Ct. App. 1996) (quoted source omitted).

Fact finders, such as hearing officers, look at variety of factors to ascertain if an accused knowingly possessed illegal property. They must often decide such matters from circumstantial evidence. *See* ***Schwartz v. State***, 192 Wis. 414, 418, 212 N.W. 664, 665 (1927). Possession includes both actual and constructive possession. *See* ***State v. Peete***, 185 Wis.2d 4, 14-15, 517 N.W.2d 149, 152 (1994). Hearing officers may impute possession if an object lies in a place immediately accessible to the accused, he has exclusive or joint dominion or control over the area, and he has knowledge of the object's presence. *See* ***id***. at 15, 517 N.W.2d at 153. If a person has control over an object, it is in his possession, despite the fact that someone else may also have similar control. *See* ***id***. at 16, 517 N.W.2d at 153. Hearing officers may infer knowledge of possession from the accused's conduct, his direct admission, or contradictory statements indicative of guilt. *See* ***State v. Trimbell***, 64 Wis.2d 379, 384-85, 219 N.W.2d 369, 371 (1974). Efforts to conceal or dissemble can often act as proof of guilt. *See* ***id***. at 385, 219 N.W.2d at 371. The inference is one of probabilities, not certainty. *See* ***id***. at 386, 219 N.W.2d at 372.

Here, the hearing officer had substantial evidence that Burke knowingly possessed and altered the razor blade. Burke and his cellmate lived in a small area for a number of weeks, and this created a reasonable inference that each knew what lay there. Hearing officers may draw reasonable, nonconjectural inferences from circumstantial evidence, and such evidence need not nullify every possibility of innocence. *See* ***Garcia v. State***, 73 Wis.2d 174, 182, 242 N.W.2d 919, 922 (1976).

Although Burke and his cellmate denied knowledge of the razor, the hearing officer found they were not credible witnesses. The hearing officer found the cellmate's testimony incredible and rehearsed and Burke's testimony self-

serving. The hearing officer was able to view the demeanor of both witnesses and was in the better position to make such determinations. The hearing officer, not this court, is the judge of the weight of the evidence and the credibility of witnesses. *See* ***State ex rel. Ortega v. McCaughtry***, 221 Wis.2d 376, 391, 585 N.W.2d 640, 648 (Ct. App. 1998). The hearing officer could therefore discount the denials of Burke and his cellmate and decide that Burke knowingly possessed and altered the razor blade.

By the Court.—Order affirmed.

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