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DISTRICT IV

May 2, 2016

To:

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You are hereby notified that the Court has entered the following opinion and order:

2014AP843 State of Wisconsin ex rel. Donte E. Brown v. Jeff Pueh and Gary Hamblin (L.C. # 2012CV3650)

Before Kloppenburg, P.J., Lundsten and Higginbotham, JJ.

Donte Brown appeals an order affirming a prison discipline decision. Based on our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2013-14).[1] We reverse and remand with directions.

Brown asked that his cellmate Chris Shingleton appear as a witness, and the security director approved that. However, apparently Shingleton did not appear as a witness. Later, the

[1] All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

inmate complaint examiner wrote that Shingleton did not appear "for his own safety and security reasons," but the examiner did not say what the risk to Shingleton's safety was.

On appeal, Brown argues that denial of Shingleton as a witness violated the administrative code. At that time the code provided that requested witnesses who are inmates "shall attend" the hearing unless one of three conditions is met. *See* WIS. ADMIN. CODE § DOC 303.81(3) (July 2000). One of those conditions is that there is a "risk of harm to the witness if the witness testifies."

Brown argues that for Shingleton to appear at the hearing would not cause any additional risk to Shingleton because Brown already knew which other person was alleged to be involved in the sexual conduct. If there was risk to Shingleton, Brown argues, it would come from Shingleton admitting the sexual conduct, and this risk would occur regardless of whether Shingleton did that at the hearing in person, or instead just made a written statement. This was not a confidential informant situation.

The respondents' brief does not respond to this argument in a substantive manner. The respondents assert only that it was reasonable for the prison to conclude that there was a risk of harm to allow Shingleton to testify in person "when he had a relationship with Brown and he was going to testify against him." But the department does not specify exactly what the nature of that risk was, and does not respond to Brown's assertion that appearing at the hearing was not a risk to Shingleton because Brown already knew who the witness was. It is not obvious to us what risk of harm would be presented by an in-person appearance in a non-confidential situation under the circumstances of this case.

Accordingly, we conclude that Brown was improperly denied the appearance of witness Shingleton. As a remedy, Brown asks that we expunge the offense from his record. The respondents do not dispute that this would be the proper remedy if we disagree with their position on the merits. Therefore, we reverse and order the circuit court to enter an order directing the respondents to expunge this offense from Brown's record.

IT IS ORDERED that the order appealed is summarily reversed under WIS. STAT. RULE 809.21 and the cause is remanded with directions.

Diane M. Fremgen
Clerk of Court of Appeals