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June 27, 2016

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

2015AP2237

State of Wisconsin ex rel. Victor Holm v. Michael Dittman and
Edward F. Wall (L.C. # 2014CV2347)

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

Victor Holm appeals, pro se, an order affirming a prison disciplinary decision and disposition. He also appeals the order denying his motion for reconsideration. The respondents are Michael Dittman, the warden at Columbia Correctional Institution, and Edward Wall, the then Secretary of the Department of Corrections, who will collectively be referred to as “the department.” After reviewing the record, we conclude at conference that this case is appropriate

for summary disposition. *See* WIS. STAT. RULE 809.21 (2013-14).¹ We affirm for the reasons discussed below.

Holm, an inmate at Columbia Correctional Institution, received a conduct report for misuse of medication, WIS. ADMIN. CODE § DOC 303.57. The conduct report alleged that, on April 21, 2014, Holm was released from his cell to receive his bedtime medications. Shortly thereafter, an officer discovered eleven and one-half Venlafaxine Hydrochloride 75 milligram tablets in the area—an area that had been free of contraband prior to Holm’s release to report to the area for his medications. The officer checked in with other staff and medical personnel and was informed that, during the relevant time frame, Holm was the only inmate who had been in the area who received 75 milligrams of Venlafaxine in tablet form. Holm denied that the medication was his.

Following a disciplinary hearing, the hearing committee, relying on the conduct report, the available evidence, and the testimony, found it more likely than not that Holm was guilty of violating WIS. ADMIN. CODE § DOC 303.57(4), and possessed more medication than he was supposed to take at the time. The committee imposed 120 days of disciplinary separation as the penalty. Holm pursued his internal administrative appeal avenues. The warden and the Secretary of the Department of Corrections affirmed the hearing committee’s conclusions and disposition. Holm sought certiorari review in the circuit court, which affirmed the department’s decision. Holm now brings this appeal.

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

When reviewing decisions in certiorari proceedings, we use the same standard of review as does the circuit court, and we conduct an independent review. *State ex rel. Town of Norway Sanitary Dist. No. 1 v. Racine Cty. Drainage Bd. Of Comm'rs*, 220 Wis. 2d 595, 605, 583 N.W.2d 437 (Ct. App. 1998). We review the department's decision, not the circuit court's decision, see *Bratcher v. Housing Auth. of Milwaukee*, 2010 WI App 97, ¶10, 327 Wis. 2d 183, 787 N.W.2d 418, and we accord the department's decision the presumption of validity, see *Edward Kraemer & Sons, Inc. v. Sauk Cty. Bd. of Adjustment*, 183 Wis. 2d 1, 8, 515 N.W.2d 256 (1994). Our review is confined to: (1) whether the department kept within its jurisdiction; (2) whether it proceeded on a correct theory of law; (3) whether its action was arbitrary, oppressive, or unreasonable and represented its will rather than its judgment; and (4) whether the evidence supported the decision. See *Ottman v. Town of Primrose*, 2011 WI 18, ¶35, 332 Wis. 2d 3, 796 N.W.2d 411.

The circuit court issued a lengthy, detailed decision and order that carefully examined and considered each of Holm's primary claims. The first claim the circuit court disposed of was Holm's motion to amend his pleadings, filed some seven months after commencing the certiorari action, to convert the certiorari proceeding to a 42 U.S.C. § 1983 civil rights claim—an issue that is unrelated to the certiorari review Holm sought and that is subject to the circuit court's discretionary authority. See *Gosse v. Navistar Int'l Transp. Corp.*, 2000 WI App 8, ¶16, 232 Wis. 2d 163, 605 N.W.2d 896 (WI App 1999). We agree with the circuit court's reasoning that all of the claims Holm sought to raise in his proposed amended pleading were reviewable via certiorari review, with the exception of his claims for injunctive and monetary relief, and that the proposed amendment would lead to unnecessary delay and a needless increase in the cost of

litigation. The circuit court properly exercised its discretion in denying leave to amend the pleadings.

Holm argues that the circuit court inadequately considered his argument that the disciplinary decision is based on false and misleading information. We disagree. The circuit court undertook a thorough review of the evidence presented at the hearing, noting specifically that Holm's claim that the conduct report writer provided inaccurate information "is unsupported by the record." Holm's argument, besides seeking to include "facts" not in the record on review, is basically one that recasts the evidence to support his own conclusion that he should not have been found guilty. On certiorari review, the only question is whether the evidence supports the decision the department made, not whether the evidence could support an alternate decision the department did not make. *See State ex rel. Gendrich v. Litscher*, 2001 WI App 163, ¶12, 246 Wis. 2d 814, 632 N.W.2d 878. Our review of the record reveals no basis for Holm's assertion that the decision is grounded on false or misleading information.

We reject Holm's argument that the circuit court failed to adequately consider his argument that the hearing officer was biased. In addition to addressing whether Holm had exhausted his administrative remedies with regard to that particular claim and concluding that he had not, the circuit court considered the issue on its merits and concluded that nothing in the record supported Holm's assertion of bias. Further, we come to a similar conclusion on our independent certiorari review. Ignoring any jurisdictional defects in Holm having failed to exhaust administrative remedies, the fact that security officers, or an entire security team, were present at the hearing prior to the decision does not support Holm's claim of bias.

Our review of the evidence presented at the hearing satisfies us that the department's decision is supported by sufficient evidence in the record. Although, as the circuit court and Holm both noted, the hearing committee's written reason for its decision erroneously or inartfully states that "inmate admits to 303.57,"² the reasons also include that the hearing committee reviewed all evidence and testimony, found the conduct report writer credible and Holm's statement self-serving, found that Holm was the only inmate on the unit to take that particular prescription, found that the conduct report shows Holm possessed more medication than he was supposed to take at that time, and concluded that a review of all of the evidence and testimony led the committee to find that it was more likely than not that Holm was guilty of violating WIS. ADMIN. CODE § DOC 303.57. Holm makes no argument supporting his position that the remaining reasons provided are inadequate to support the committee's decision other than to state: "Not one of the 6 reasons for decision remains correct. Each is suspect in one way or another and each is partially or fully refuted by the Record or the Agency's own Records which undermine the Agency's and Court's Decisions." We do not consider undeveloped arguments, and decline to address the issue further, *see State v. Pettit*, 171 Wis. 2d 627, 646-47, 492 N.W.2d 633 (Ct. App. 1992), other than to state that the committee's reasoning as a whole supports the committee's finding of guilt.

Holm challenges the hearing committee's reasons for disposition on the ground that the committee relied in part upon an earlier violation that was subsequently expunged from Holm's record. The circuit court noted that a Dane County Circuit Court ordered the violation expunged

² In the offender statement portion of the document, the hearing officer reported: "Is the conduct report true? A: I don't know if it is true. I don't know where the pills came from."

from Holm's record on November 10, 2014, some six months after Holm was found guilty of the misuse of medication violation. Like the circuit court, we conclude that the other five reasons the committee gave for its disposition decision were adequate to support the disposition, namely, that Holm's overall disciplinary record was poor, that the offense comprised a serious threat to institutional security, that the offense gave rise to a dangerous event, that Holm showed no acceptance of responsibility or remorse, and the need for deterrence.

Finally, Holm complains that the circuit court did not address his request to supplement the record pursuant to WIS. STAT. §§ 227.56(1) and 227.57(1). WISCONSIN STAT. § 227.03(4) instructs that neither provision is applicable to proceedings involving prison discipline. Therefore, we need not further consider Holm's argument.

We are satisfied that the department kept within its jurisdiction and proceeded on a correct theory of the law, that the department's actions in finding Holm guilty and imposing its disposition were not arbitrary, oppressive, or unreasonable and represented the department's judgment and not its will, and, finally, that the evidence was such as to permit the department reasonably to make the determination in question. *See Ottman*, 332 Wis. 2d 3, ¶35.

Upon the foregoing reasons,

IT IS ORDERED that the order affirming the department's decision and the order denying reconsideration are affirmed under WIS. STAT. RULE 809.21(1).

Diane M. Fremgen
Clerk of Court of Appeals