



OFFICE OF THE CLERK
WISCONSIN COURT OF APPEALS

110 EAST MAIN STREET, SUITE 215
P.O. BOX 1688
MADISON, WISCONSIN 53701-1688

Telephone (608) 266-1880
TTY: (800) 947-3529
Facsimile (608) 267-0640
Web Site: www.wicourts.gov

DISTRICT IV

January 10, 2017

To:

Hon. Shelley J. Gaylord
Circuit Court Judge
215 South Hamilton, Br 6, Rm 5105
Madison, WI 53703

Gabe Johnson-Karp
Assistant Attorney General
P.O. Box 7857
Madison, WI 53707-7857

Carlo Esqueda
Clerk of Circuit Court
215 South Hamilton, Room 1000
Madison, WI 53703

Nate Wilson 307595
Stanley Corr. Inst.
100 Corrections Drive
Stanley, WI 54768

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

2016AP76

State of Wisconsin ex rel. Nate Wilson v. Edward F. Wall
(L.C. # 2014CV3481)

Before Lundsten, Sherman, and Blanchard, JJ.

Nate Wilson, pro se, appeals a circuit court order that denied Wilson relief on certiorari review of a prison disciplinary decision. Based upon 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 (2015-16).¹ We summarily affirm.

In April 2014, Wilson received a conduct report for group resistance and petitions. After a hearing, the hearing officer found Wilson guilty of the offense. Wilson appealed to the warden, arguing that: (1) the offender complaint was insufficient to provide Wilson an opportunity to prepare a defense; (2) the hearing officer had a conflict of interest and substantial

¹ All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

involvement in the case; (3) the hearing officer failed to consider evidence of Wilson's tattoos contradicting the confidential informants' statements as to Wilson's gang affiliation; and (4) the evidence was insufficient to support the hearing officer's findings. The warden affirmed. Wilson then filed complaints with the inmate complaint review system (ICRS), arguing again that the conduct report was insufficient to allow Wilson to present a defense and that the hearing officer should have recused himself, and adding claims that: (1) corrections officers had lied about which officer wrote the conduct report; (2) the warden had failed to take the oath and bond required by statute; (3) Wilson was denied the assistance of a staff advocate; (4) the confidential informant statements did not meet the guidelines for admissibility under the administrative rules; and (5) the hearing officer actually found Wilson not guilty, the sentence should not have been approved by the warden, and Wilson was denied due process after being transferred to a different institution. The inmate complaint examiner dismissed Wilson's complaints, and the corrections complaint examiner and the secretary of corrections both affirmed.

Wilson initiated this certiorari action in the circuit court in December 2014, seeking review of the disciplinary decision. The circuit court ordered a return on the writ, which was filed in January 2015. In November 2015, the circuit court entered an order denying Wilson's petition for relief.

Our review in a certiorari action is limited to the record created before the administrative agency. *State ex rel. Whiting v. Kolb*, 158 Wis. 2d 226, 233, 461 N.W.2d 816 (Ct. App. 1990). We will consider only whether (1) the agency stayed within its jurisdiction; (2) it acted according to law; (3) its action was arbitrary, oppressive or unreasonable and represented its will and not its judgment; and (4) the evidence was such that the agency might reasonably make the order or determination in question. *Id.*

Wilson contends that: (1) the Department of Corrections (DOC) denied Wilson due process and violated DOC rules by allowing written statements by Wilson's witnesses and DOC's confidential informants, in lieu of live testimony, without a sufficient finding that testifying would pose a risk of harm to the witnesses; and (2) the warden failed to take the oath of office and undertake the bond required by WIS. STAT. § 19.01. The State responds that Wilson failed to exhaust his administrative remedies as to those arguments, and therefore may not pursue those arguments in this certiorari action. We agree with the State that Wilson failed to exhaust his administrative remedies, and affirm on that basis.²

Under the Prisoner Litigation Reform Act (PLRA), prisoners must exhaust their administrative remedies before challenging prison disciplinary decisions by way of certiorari review in the circuit court. WIS. STAT. § 801.02(7)(b); *State ex rel. Frasch v. Cooke*, 224 Wis. 2d 791, 795-97, 592 N.W.2d 304 (Ct. App. 1999). Thus, Wilson was required to appeal any substantive and procedural issues to the warden, and then pursue any procedural claims through ICRS. *See* WIS. ADMIN. CODE §§ DOC 303.76(6) (inmate may appeal disciplinary decision to warden; warden's decision is final as to sufficiency of the evidence, but inmate may seek further review of procedural issues through ICRS); 310.08(2)(a) and (3) (inmate may challenge procedural issues through ICRS only if the inmate exhausted the disciplinary appeal process under ch. DOC 303) (through Dec. 2016). However, Wilson did not argue in his appeal to the warden that that the DOC erred by allowing written statements absent a required finding that testifying posed a risk of bodily harm, or that the warden had not taken the oath and bond required by statute. Moreover, Wilson failed to argue in his ICRS complaints that the DOC erred

² Accordingly, we do not reach the parties' arguments as to the merits.

by allowing written statements absent a finding of a risk of bodily harm. Accordingly, Wilson failed to exhaust his administrative remedies and may not pursue his current arguments in this certiorari action.

Therefore,

IT IS ORDERED that the order is summarily affirmed pursuant to WIS. STAT. RULE 809.21.

Diane M. Fremgen
Clerk of Court of Appeals