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**DISTRICT IV**

September 5, 2025

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

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2024AP354

State of Wisconsin ex rel. G'esa Kalafi v. Christopher Stevens -  
Warden (L.C. # 2023CV647)

Before Blanchard, Nashold, and Taylor, JJ.

**Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).**

G'esa Kalafi (also known as Stanley Felton), pro se, appeals the circuit court's denial of his petition for a writ of certiorari related to a Department of Corrections (DOC) disciplinary action. 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 (2023-24).<sup>1</sup> Because we

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2023-24 version.

conclude that none of the issues raised by Kalafi warrant granting his petition, we summarily affirm.<sup>2</sup>

Kalafi is an inmate who was incarcerated at Kettle Moraine Correctional Institution at all times relevant to this appeal. On August 29, 2022, Kalafi received a conduct report charging him with inciting a disturbance and participating in group resistance and petitions in violation of WIS. ADMIN. CODE §§ DOC 303.21(c) and 303.24 (through Sept. 2014).<sup>3</sup> According to the report, on July 25, 2022, security supervisors were alerted that Kalafi and another inmate, Roger Edwards, were organizing a sit-in protest planned for August 1, 2022. In addition, Kalafi created a document (found in his property during investigation) that he characterized as “a letter to the Warden requesting changes” (and Edwards characterized as a petition) that was signed by 20 inmates. Kalafi and Edwards had allegedly met in the library on multiple occasions over a period of months to plan and discuss these activities. Statements from numerous confidential informants included in the report supported the allegations in the report.

Kalafi challenged the charges in the report in a due process hearing conducted by a hearing officer on September 12, 2022. The hearing officer found Kalafi guilty of inciting a disturbance but not guilty of group resistance and petitions and ordered Kalafi to serve 240 days of disciplinary separation.

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<sup>2</sup> We note that Kalafi did not file a reply brief and that failure to respond to arguments made in a response brief may be taken as concessions. See *United Coop. v. Frontier FS Coop.*, 2007 WI App 197, ¶39, 304 Wis. 2d 750, 738 N.W.2d 578. Nevertheless, we address Kalafi’s arguments on the merits.

<sup>3</sup> All references to WIS. ADMIN. CODE § DOC are to the September 2014 register.

Kalafi appealed this disposition to Deputy Warden Michelle Haese on September 16, 2022. Haese affirmed the disposition in a written decision bearing a typed date of November 15, 2022, and a handwritten date next to her signature of November 16, 2022. In her decision, she stated that she could not identify any procedural errors in the proceeding, that the report supported the code violation for inciting a disturbance, and that the evidence from the due process hearing demonstrated it was “more likely than not” that Kalafi conspired to incite a disturbance.

Kalafi filed a complaint with the Inmate Complaint Review System seeking review of his disposition. The Institution Complaint Examiner dismissed the complaint, addressing each of the ten grounds in Kalafi’s filing. This dismissal was affirmed in turn by Warden Dylan Radke, the Corrections Complaint Examiner, and the Office of the Secretary.

Kalafi then filed a petition for writ of certiorari in the circuit court naming various DOC personnel as respondents.<sup>4</sup> Kalafi challenged the DOC decision dismissing his inmate complaint, raising (among others) arguments that he renews on appeal and that we discuss below. The circuit court denied certiorari relief and dismissed Kalafi’s petition. Kalafi appeals.

Kalafi raises five arguments in support of his claim that the circuit court erred in dismissing his certiorari petition: (1) that DOC failed to keep an adequate record of the conduct report proceedings; (2) that the hearing officer was biased against him; (3) that he was entitled to video evidence from the law library; (4) that Haese failed to follow her own rules in making her

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<sup>4</sup> We refer to the respondents collectively as “DOC” in this appeal.

decision one day later than the deadline provided by WIS. ADMIN. CODE § DOC 303.82(2); and (5) that DOC waived its right to argue against his claims.

“On certiorari review, we determine de novo whether the DOC acted within its jurisdiction, whether it acted according to applicable law, whether the action was arbitrary or unreasonable, and whether the evidence supported the determination in question.” *State ex rel. McClain v. Cooke*, 211 Wis. 2d 841, 844, 565 N.W.2d 303 (Ct. App. 1997). We are limited to these four questions in our review of the DOC decision. *See Van Ermen v. DHSS*, 84 Wis. 2d 57, 63, 267 N.W.2d 17 (1978). An agency’s decision is not arbitrary if it represents a proper exercise of discretion, which means it uses a reasoning process based on the facts of the record and a conclusion based on a logical rationale founded upon a correct understanding of the law. *See id.* at 64-65.

Kalafi first argues that DOC’s decision should be vacated for failure to return an adequate record. He cites *State ex rel. Lomax v. Leik*, 154 Wis. 2d 735, 740, 454 N.W.2d 18 (Ct. App. 1990), for the proposition that a reviewing court may vacate an agency’s decision on certiorari if the agency does not return records sufficient to demonstrate that the proceedings before it were not procedurally proper. That case involved a record insufficient to show that the DOC complied with notice and documentation requirements for a prison transfer. *Id.* at 737. By contrast, the administrative record here—while lacking in its reproduction of some of Kalafi’s handwritten complaints or appeals—includes legible and complete documents regarding Kalafi’s conduct

report, all of the proceedings that took place, and the DOC decisions.<sup>5</sup> Kalafi does not allege, and it does not appear, that this record is insufficient to show whether the DOC proceedings were procedurally proper. Thus, Kalafi has failed to show that any defect in the record warrants vacating DOC's disposition.

Kalafi's second ground for certiorari is the hearing officer's alleged bias against him. He contends that two statements objectively demonstrate the hearing officer's bias and predetermination of guilt: first, the officer's statement early in the due process hearing that Kalafi would get a copy of the hearing record "for [his] appeal" and second, the officer's statement—"I gave you what you wanted"—which Kalafi allegedly overheard as the officer spoke to the warden in a telephone call immediately after the hearing. Kalafi further asserts that the hearing officer checked to "see[] what happened in Edwards['s] hearing" during Kalafi's hearing and that Kalafi received "the exact same punishment" as his alleged co-conspirator, Edwards. Kalafi apparently suggests that that warden must have directed the hearing officer to reach the same disposition, which he argues constitutes "blatant bias."

Due process requires that the hearing officer in a prison disciplinary hearing be unbiased. *Edwards v. Balisok*, 520 U.S. 641, 647 (1997). In determining whether a decisionmaker is biased, we consider whether the objective facts could lead a reasonable person to question impartiality. See *State v. Herrmann*, 2015 WI 84, ¶¶26-27, 364 Wis. 2d 336, 867 N.W.2d 772; *State v. Goodson*, 2009 WI App 107, ¶9, 320 Wis. 2d 166, 771 N.W.2d 385.

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<sup>5</sup> As Kalafi notes, the circuit court criticized DOC for submitting a record with numerous illegible pages. The court discussed these pages in the context of considering whether Kalafi had raised the issue of the hearing officer's bias in his earlier complaints such that it was appropriately part of his appeal. Given its inability to determine whether Kalafi had raised the issue, the court assumed that he had and reached the merits on that issue in its decision.

We independently reach the same conclusion reached by the circuit court with respect to this issue: the first statement Kalafi cites, which Kalafi asserts was made while he was taking notes of the proceeding before the hearing officer, suggests simply that the hearing officer was informing Kalafi that Kalafi did not have to record the proceedings by hand because, in the event that Kalafi might eventually need the records for an appeal, he would be given copies of the documents. As to the second statement, Kalafi only overheard one side of this phone conversation. His speculation about the context of the statement is not enough to support a reasonable conclusion that the hearing officer was biased against him or had predetermined his guilt.

Third, Kalafi argues that DOC arbitrarily denied him access to law library video footage that would show that a confidential informant was lying about having observed Kalafi and Edwards discussing a protest over several months. DOC denied access to the footage in question based on an asserted need to ensure the safety of the confidential informant and because the video evidence was cumulative. Although inmates have limited rights to present documentary evidence in their defense, these rights must be “balance[d] ... against the needs of the prison.” *Wolff v. McDonnell*, 418 U.S. 539, 566 (1974). The United States Supreme Court has explicitly directed that evidence “unduly hazardous to institutional safety” may be excluded and “[p]rison officials must have the necessary discretion to keep the hearing within reasonable limits.” *Id.*; see also *State ex rel. Ortega v. McCaughtry*, 221 Wis. 2d 376, 389-90, 585 N.W.2d 640 (Ct. App. 1998) (explaining that *Wolff* “imposes no requirement for the production of physical evidence”). Given DOC’s stated justification for denying access to the video footage sought by Kalafi and the case law discussed above, Kalafi has not shown that DOC acted arbitrarily in withholding the video footage.

Next, Kalafi argues that certiorari should be granted because Deputy Warden Haese failed to follow DOC's own rules in timely issuing her decision on his appeal. As stated previously, WIS. ADMIN. CODE § DOC 303.82(2) provides that, when an inmate appeals a contested disposition, "the warden shall review all records and forms pertaining to the appeal and make the decision within 60 days following receipt of the request for appeal." In Kalafi's case, the decision should have been made by November 15, 2022, but the two different dates appearing on the decision suggest that it could have been made on either that date or on November 16, 2022.

Kalafi does not acknowledge WIS. ADMIN. CODE § DOC 303.88, which states: "If staff does not adhere to a procedural requirement under this chapter, the error is harmless if it does not substantially affect a finding of guilt or the inmate's ability to provide a defense." Nor does Kalafi make any argument that a one-day delay in Haese's decision substantially affected a finding of guilt or Kalafi's ability to provide a defense. Kalafi was able to proceed with all subsequent steps of his appeal, including this petition for a writ of certiorari, in a timely manner. We therefore conclude that even if the decision was issued on November 16, 2022, contrary to § DOC 303.88, any error was harmless and not a basis for certiorari relief.

Finally, Kalafi contends that DOC waived its right to respond to his arguments because it did not adequately do so before the circuit court. Courts have discretion to consider an issue—even one not argued before or addressed by a lower court—depending on the facts and circumstances of a case. See *Hopper v. City of Madison*, 79 Wis. 2d 120, 137, 256 N.W.2d 139 (1977). Here, although the circuit court criticized DOC for failing to fully address Kalafi's claim of bias in Haese's review of the hearing officer's disposition after Kalafi's due process hearing,

the court fully considered all of the issues before it on the merits. We see no basis for invoking waiver here.

For the foregoing reasons, we conclude that Kalafi has failed to demonstrate that DOC failed to act within its jurisdiction, conform to applicable law, or act in an arbitrary or unreasonable manner. *See Cooke*, 211 Wis. 2d at 844. We affirm.

Therefore,

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

IT IS FURTHER ORDERED that this court's case caption is amended to substitute Jared Hoy for Kevin Carr as Department of Corrections Secretary and Christopher Stevens as Warden for Michelle Haese as Deputy Warden.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

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*Samuel A. Christensen*  
*Clerk of Court of Appeals*