

**COURT OF APPEALS
DECISION
DATED AND FILED**

December 18, 1997

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.

**Nos. 96-1310
96-1433**

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN EX REL. JEFFREY DENNY,

PETITIONER-APPELLANT,

v.

GARY McCUAUGHTRY,

RESPONDENT-RESPONDENT.

APPEALS from orders of the circuit court for Dodge County:
THOMAS W. WELLS, Judge. *Reversed and cause remanded with directions.*

Before Eich, C.J., Vergeront and Deininger, JJ.

PER CURIAM. These are consolidated appeals by Jeffrey Denny from two unrelated prison disciplinary decisions. We conclude Denny did not receive sufficient notice of the hearings. We reverse.

In each appeal, Denny was found guilty of violating various prison rules. He sought review by certiorari. Denny raises several issues, but we need only address one. He argues that he did not receive the notice of the hearing required by WIS. ADM. CODE § DOC 303.81(9). Since Denny filed his brief, the Wisconsin Supreme Court has held that this notice requirement is not fulfilled by issuance of the notice of hearing rights (form DOC-71), and that the department's failure to provide the additional required notice "invalidates" the disciplinary proceeding. *Bergmann v. McCaughtry*, 211 Wis.2d 1, 9, 564 N.W.2d 712, 715 (1997). McCaughtry does not claim in these appeals that Denny received a notice that would comply with WIS. ADM. CODE § DOC 303.81(9). Our review of the records has not discovered such a notice in either appeal. Therefore, we conclude that these disciplinary proceedings were invalid and the committee's decisions must be vacated. *See Bergmann*, 211 at 11, 564 N.W.2d at 716.

On remand, the circuit court shall enter an order directing the respondent to vacate the decisions at issue.

By the Court.—Orders reversed and cause remanded with directions.

This opinion will not be published.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

