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**DISTRICT IV**

April 25, 2014

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

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2013AP2588

State of Wisconsin ex rel. Darrick Arnold Alexander v. Edward F.  
Wall and Michael Dittman (L.C. # 2013CV262)

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

Darrick Alexander appeals a circuit court certiorari order that affirmed a prison disciplinary decision made after Alexander waived his right to have a formal due process hearing on a conduct report issued against him. He also appeals the order denying his motion for reconsideration. After reviewing the briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2011-12).<sup>1</sup> We affirm.

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

This court's certiorari review of a prison disciplinary decision is limited to determining whether administrative officials acted according to law, in a non-arbitrary manner and within their jurisdiction, based upon evidence that might reasonably be relied upon to make the determination in question. *State ex rel. Whiting v. Kolb*, 158 Wis. 2d 226, 233, 461 N.W.2d 816 (Ct. App. 1990). In considering whether the administrative officials acted according to law, we may independently determine whether an inmate was afforded due process during administrative proceedings. See *State ex rel. Curtis v. Litscher*, 2002 WI App 172, ¶10, 256 Wis. 2d 787, 650 N.W.2d 43.

Alexander raises four due process issues on this appeal. He claims that: (1) the hearing officer impermissibly called a witness at Alexander's informal disciplinary hearing; (2) the department failed to provide Alexander with written notice that a witness would be called; (3) the department failed to provide Alexander with adequate notice of the date and time of his disciplinary hearing; and (4) the department failed to provide Alexander with adequate notice of the charges against him.

Alexander's first argument is based on a misunderstanding of the administrative code. WISCONSIN ADMIN. CODE § DOC 303.75 sets forth the procedures for an informal hearing on a prison conduct report, which apply when an inmate has waived his right to a formal due process hearing. See WIS. ADMIN. CODE § DOC 303.76(2). At an informal hearing, an "inmate has no right ... to confront witnesses or to have witnesses testify on the inmate's behalf." WIS. ADMIN. CODE § DOC 303.75(4). Alexander erroneously interprets this provision to mean that there shall be no witnesses at an informal hearing. However, while it may be that the Department of Corrections frequently does not produce witnesses at informal hearings, there is nothing in the administrative code provision that prohibits the *hearing officer* from calling witnesses. To the

contrary, the waiver of the inmate's right to confront witnesses necessarily implies that witnesses are permissible.

Alexander's second argument fails because Alexander waived any right to notice of witnesses when he waived his right to a formal hearing. In any event, the witness corroborated Alexander's claim that he was not argumentative or verbally abusive, resulting in the dismissal of a disruptive conduct charge. Since Alexander's own admissions were sufficient to sustain the other two charges, any error in obtaining the witness's testimony was harmless.

Alexander's third argument fails because there is no requirement that an offender be provided with written notice of the date and time of an *informal* disciplinary hearing. *Cf.* WIS. ADMIN. CODE §§ 303.75(1) and 303.76(1).

Alexander's fourth argument lacks factual support because the conduct report includes the signature of a staff member who specified when he delivered the report to Alexander, and Alexander himself acknowledged in the form he signed waiving his right to a formal due process hearing on the conduct report that he had been given the conduct report.

IT IS ORDERED that the certiorari order affirming the administrative disciplinary decision and the order denying reconsideration are summarily affirmed under WIS. STAT. RULE 809.21(1).

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*Diane M. Fremgen*  
*Clerk of Court of Appeals*