

**COURT OF APPEALS
DECISION
DATED AND FILED**

July 23, 1998

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.

No. 97-1382

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN EX REL. JANE PECKHAM,

PETITIONER-RESPONDENT,

V.

KRISTINE KRENKE,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Dane County:
PATRICK J. FIEDLER, Judge. *Affirmed.*

Before Eich, C.J., Dykman, P.J., and Deininger, J.

PER CURIAM. Warden Kristine Krenke appeals from an order of the circuit court reversing a decision of a prison disciplinary committee. Because we agree with the circuit court that the record does not establish that the institution followed its own rules, we affirm.

The inmate in this case, Jane Peckham, received a conduct report charging her with violating two rules, WIS. ADM. CODE §§ DOC 303.24 and 303.32, “disobeying orders” and “enterprises and fraud.” Peckham had mailed an envelope addressed to “Attorney D. Steel” in the care of a publishing company in New York. The letter was returned, unopened to Peckham at the prison. A prison staff member opened the letter and discovered that the letter did not concern a legal matter, but was an attempt to get a refund for a book. After a disciplinary committee hearing, Peckham was found guilty of all charges. She appealed the decision to the warden, and the appeal was denied. She then brought a writ of certiorari to the circuit court seeking to reverse the committee’s decision. The circuit court reversed the disciplinary committee’s decision, because Krenke had not established that the actions of the officer who opened the letter were within the law.

On certiorari, we review the adjustment committee’s decision independently of the trial court. *State ex rel. Whiting v. Kolb*, 158 Wis.2d 226, 233, 461 N.W.2d 816, 819 (Ct. App. 1990). Our review is limited to the record created before the committee. *Id.* The reviewing court may consider whether the prisoner was afforded due process and whether the committee followed its own rules. *State ex rel. Meeks v. Gagnon*, 95 Wis.2d 115, 119, 289 N.W.2d 357, 361 (Ct. App. 1980).

WISCONSIN ADM. CODE § DOC 309.05(4) states in pertinent part: “Correspondence sent by an inmate to any of the parties listed below may not be opened for inspection or read by institution staff. Correspondence received by an inmate from any of these parties may be opened by institution staff in the presence of an inmate.” Subsection (a) identifies an attorney as one of the parties “if the

correspondence is readily identifiable as being from an attorney.” WIS. ADMIN. CODE § 309.05(4)(a).

Based on the record, the only conclusion we can reach is that the letter was opened outside of Peckham’s presence, in direct violation of the regulation. We agree with the circuit court that the record does not establish that the officer acted within the law when opening the envelope.¹ Therefore, we affirm the order of the circuit court.

By the Court.—Order affirmed.

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

¹ The regulation establishing the procedures for opening mail to and from attorneys exists to protect the well-established attorney-client privilege. In this case, there was no evidence in the record establishing that the officer had any reason to know that “Attorney D. Steel” was not an attorney. The rule and the privilege prohibit the officer from opening this mail outside the inmate’s presence.

