

**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. 97-2125

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

**STATE OF WISCONSIN EX REL.
ANTHONY R. PHILLIPS,**

PETITIONER-APPELLANT,

v.

KENNETH MORGAN,

RESPONDENT-RESPONDENT.

APPEAL from an order of the circuit court for Dane County:
JOSEPH E. SCHULTZ, Judge. *Affirmed.*

Before Dykman, P.J., Deininger and Bartell¹, JJ.

¹ Circuit Judge Angela B. Bartell is sitting by special assignment pursuant to the Judicial Exchange Program.

PER CURIAM. Anthony Phillips, an inmate of the Wisconsin Correctional System, appeals *pro se* from a circuit court order quashing his writ of certiorari and affirming the decision of the Waupun Correctional Institution Adjustment Committee. For the reasons set forth below, we affirm.

BACKGROUND

By major conduct report No. 574948, Phillips was accused of falsely claiming to have injured his hand. As a result of the false claim, Phillips was sent out of the institution to a hospital for an x-ray. The x-ray revealed a congenital abnormality, but no evidence of recent injury. A search through Phillips's record revealed that he had previously made a similar false claim of injury. After review by an adjustment committee, Phillips was found guilty based on the written evidence contained in the conduct report.

Phillips appealed to the warden on the grounds that the conduct report was factually incorrect. Specifically, Phillips claimed that the nurse initiated the conversation about his hand while he was being seen for another problem; that he went for x-rays unwillingly and that he truly had injured his hand; that he was not born with a congenital abnormality; and that he had not lied regarding the events. The warden affirmed the committee finding, noting Phillips's previous history of making the same complaint, and finding that Phillips had intentionally deceived staff.

Phillips appealed further under the Inmate Complaint Review System (ICRS) but his claim was rejected as untimely. Phillips then brought a certiorari action before the circuit court which affirmed the committee's holding.

STANDARD OF REVIEW

Judicial review of certiorari actions is limited to determining whether the administrative hearing committee kept within its jurisdiction, whether it proceeded on a correct theory of law, whether its action was arbitrary, oppressive or unreasonable and represented its will and not its judgment, and whether the evidence was such that the committee might reasonably make the determination in question. As to this last factor, the test is whether reasonable minds could arrive at the same conclusion reached by the administrative tribunal. *State ex rel. Brookside Poultry Farms, Inc. v. Jefferson County Bd. of Adjustment*, 131 Wis.2d 101, 120, 388 N.W.2d 593, 600 (1986). *See also Van Ermen v. DHSS*, 84 Wis.2d 57, 64, 267 N.W.2d 17, 20 (1978) (same standard applies on appellate review). A reviewing court on certiorari does not weigh the evidence presented to the adjustment committee. *Van Ermen*, 84 Wis.2d at 64, 267 N.W.2d at 20. Our inquiry is limited to whether any reasonable view of the evidence supports the committee's decision. *State ex rel. Jones v. Franklin*, 151 Wis.2d 419, 425, 444 N.W.2d 738, 741 (Ct. App. 1989).

ANALYSIS

On appeal, Phillips argues: (1) the circuit court erred in finding that he had waived review of alleged infringement of various due process rights by failing to raise these issues during administrative review; (2) the circuit court erred in finding the conduct report sustained by "sufficient evidence."

Waiver

We have carefully reviewed the record, and conclude that Phillips never raised the issue of alleged violation of due process rights during the

administrative review process. Rather, his appeals were premised on an argument that factual errors had been made. Having failed to raise this issue previously, he has waived it. *Santiago v. Ware*, 205 Wis.2d 295, 322, 556 N.W.2d 356, 366 (Ct. App. 1996).

Were we to review this matter on the merits, however, our disposition would not change because our review of the record convinces us that no due process errors occurred. Specifically, by his signature, Phillips acknowledged receiving the major conduct report and acknowledged being given notice of the hearing. He asked for evidence to be taken from his mother regarding whether the abnormality in his hand was congenital or otherwise, and his request was honored. He was permitted to offer his version of the events, and he was permitted access to two levels of administrative appeals (as well as two levels of court appeal). Thus, he received notice of the proceedings, was permitted to have witness testimony, was permitted to present evidence, and was permitted to appeal. Under these circumstances, no due process errors occurred. *Cf. Wolff v. McDonnell*, 418 U.S. 539 (1974).

Sufficiency of the Evidence

As with his due process arguments, Phillips failed to raise arguments regarding sufficiency of the evidence during the administrative appeals process. Therefore, he has similarly waived court review of these arguments. *Santiago*, 205 Wis.2d at 324, 556 N.W.2d at 367.

Further as with the due process arguments, review of this matter on the merits would similarly not alter our disposition. Phillips argues that the committee erred when it relied solely upon the conduct report to find him guilty. However, an adjustment committee may rely on a conduct report when the only

issue is whether the incident account in the report is more credible than a differing account offered by the inmate. *See Culbert v. Young*, 834 F.2d 624, 631 (7th Cir. 1987), *cert. denied*, 485 U.S. 990 (1988).

By the Court.—Order affirmed.

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

