

**COURT OF APPEALS
DECISION
DATED AND FILED**

September 10, 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. 98-0565

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

**STATE OF WISCONSIN EX REL.
DARNELL JACKSON,**

PETITIONER-APPELLANT,

V.

**GARY McCAUGHTRY, LT. ECKSTEIN,
AND JOHN McDONALD,**

RESPONDENTS-RESPONDENTS.

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

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

PER CURIAM. Darnell Jackson, an inmate at Waupun Correctional Institution, appeals an order affirming a prison disciplinary decision. A disciplinary committee found him guilty of possessing marijuana and disruptive conduct, and imposed punishment under the disciplinary code. The warden

affirmed that decision on administrative review. In this appeal, Jackson contends that his rights under the due process clause and the administrative code were violated. We independently review the disciplinary proceedings, and do not defer to the trial court's decision. *See State ex rel. Hippler v. Baraboo*, 47 Wis.2d 603, 616, 178 N.W.2d 1, 8 (1970). However, we reject Jackson's arguments, and therefore affirm.

Jackson committed his violations on July 19, 1997. On July 21, he received a copy of his conduct report. It described his disruptive behavior and stated that a green, leafy substance seized from him tested positive for marijuana. The report further stated that "a copy of the drug test report accompanies this conduct report."

The same day, Jackson also received a standard form "notice of major disciplinary hearing rights," advising him that the hearing he requested on the charges would occur within two to twenty-one days. Jackson signed the notice with an acknowledgment that he fully understood it. On August 6, Jackson received notice that the disciplinary hearing was scheduled for August 7. The hearing was held as scheduled.

Jackson contends that the hearing notice he received on August 6 violated WIS. ADM. CODE § DOC 303.76(3). That section provides in relevant part that the hearing cannot be held until at least two working days after the inmate receives the "hearing notice." According to Jackson, the hearing notice referred to is the notice he received on August 6, only one day before his hearing. However, the supreme court has declared that the standard "notice of major disciplinary hearing rights" that Jackson received on July 21 supplies the notice required by § DOC 303.76(3). *See Bergmann v. McCaughtry*, 211 Wis.2d 1, 9, 564 N.W.2d

712, 715 (1997). The August 6 notice that Jackson received is required by WIS. ADM. CODE § DOC 303.81(9), which does not contain the two-day notice provision. That resolves the issue.

Jackson also contends that the committee violated his due process rights by failing to provide him a copy of the marijuana test results in advance of the hearing. Even if Jackson did not receive an advance copy of the report, there is no record that he raised the issue before the disciplinary committee. It is therefore waived. *See Saenz v. Murphy*, 162 Wis.2d 54, 66-67, 469 N.W.2d 611, 616-17 (1991). While Jackson alleges that he did, in fact, raise the issue, and that the disciplinary committee did not note his objection, our review on certiorari is strictly limited to the record. *See State ex rel. Richards v. Leik*, 175 Wis.2d 446, 455, 499 N.W.2d 276, 280 (Ct. App. 1993). Nothing in that record supports Jackson's allegation.

By the Court.—Order affirmed.

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

