COURT OF APPEALS
DECISION
DATED AND FILED

March 25, 1999

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

No. 98-1037

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT IV

STATE OF WISCONSIN EX REL. MICHAEL P. MURPHY,

PETITIONER-APPELLANT,

V.

DANIEL R. BERTRAND,

RESPONDENT-RESPONDENT.

APPEAL from an order of the circuit court for Dane County: PAUL B. HIGGINBOTHAM, Judge. *Affirmed.*

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

PER CURIAM. Michael Murphy appeals the circuit court's order affirming the decision in a prison disciplinary proceeding. The issues on appeal are whether the institution followed its own rules in processing his conduct report, and whether there was sufficient evidence to support the adjustment committee's finding of guilt. Because we conclude that the institution followed its own

regulations, and that sufficient evidence supports the adjustment committee's decision, we affirm.

Inmate Murphy received a conduct report charging him with possession of intoxicants, soliciting staff, and conspiracy. After a full due process hearing, the adjustment committee found Murphy guilty of possession and soliciting, but not of conspiracy. Murphy then appealed the decision to the warden. The warden affirmed and Murphy appealed by writ of certiorari to the circuit court. The circuit court affirmed the decision of the prison adjustment committee.

On certiorari, review of the prison adjustment committee is limited to the record created before the committee. *See* ***State ex rel. Whiting v. Kolb,*** 158 Wis.2d 226, 233, 461 N.W.2d 816, 819 (Ct. App. 1990). The court's review is limited to whether (1) the committee stayed within its jurisdiction; (2) it acted according to law; (3) the action was arbitrary, oppressive or unreasonable and represented the committee's will and not its judgment; and (4) the evidence was such that the committee might reasonably make the order or determination in question. *See* ***id.*** "The facts found by the committee are conclusive if supported by 'any reasonable view' of the evidence and [the court] may not substitute [its] view of the evidence for that of the committee." ***Id.*** (quoting ***State ex rel. Jones v. Franklin***,151 Wis.2d 419, 425, 444 N.W.2d 738, 741 (Ct. App. 1989)).

The first issue is whether the Department of Corrections followed its own rules in processing the complaint against Murphy. Although Murphy does not specifically identify his concern with the process, it appears that he is asserting that the department did not comply with its own rules because someone other than

the security director signed his conduct report. *See* WIS. ADM. CODE § DOC 303.67.[1]

WISCONSIN ADM. CODE § DOC 303.67 requires the security director to review and sign conduct reports. WISCONSIN ADM. CODE § DOC 303.02(17) defines the security director as "the security director at an institution, or designee." The rules, therefore, allow someone other than the security director to sign conduct reports. Consequently, Murphy has not established that the department did not follow its own rules.

The second issue is whether the evidence was sufficient to find Murphy guilty of the conduct charged. Murphy asserts that since he was not found in possession of any intoxicants, he cannot be found guilty of possession. As discussed above, we must affirm the committee's factual findings if they are supported by any reasonable view of the evidence. We conclude that there was sufficient evidence before the committee to support the finding of guilt.

WISCONSIN ADM. CODE § DOC 303.43 states that "any inmate who knowingly has in his or her possession any intoxicating substance" is guilty of an offense. The State argues, and we agree, that this rule does not require that the intoxicants actually be found on the inmate. In other words, the inmate does not

[1] The State argues first that Murphy waived this issue by not raising it before the adjustment committee. Since on certiorari review we are limited to the record created before the committee, it follows that we cannot consider issues which were not raised before the committee, or on appeal to the warden, and hence are not in the record. Consequently, if an inmate does not raise an issue before the committee, the inmate has not preserved the issue for review by this court. *Cf.* ***Saenz v. Murphy***, 162 Wis.2d 54, 66, 469 N.W.2d 611, 616 (1991); ***Santiago v. Ware***, 205 Wis.2d 295, 327, 556 N.W.2d 356, 368 (Ct. App. 1996). The record indicates that Murphy raised this issue in his appeal to the warden. The warden affirmed the decision of the adjustment committee finding that there had not been any errors. Because the issue Murphy raises is one the warden was competent to determine, we conclude that he preserved it by raising it in his appeal to the warden.

have to be caught "red-handed" to be guilty of the offense. The evidence before the committee consisted of statements by informants that Murphy had marijuana. In addition, the reporting officer stated that Murphy had admitted to him that Murphy had bought and possessed marijuana. These statements corroborate each other and provide a reasonable basis for finding Murphy guilty of possession.

By the Court.—Order affirmed.

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