COURT OF APPEALS
DECISION
DATED AND FILED

May 7, 2015

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2014AP153 **Cir. Ct. No. 2012CV198**

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

STATE OF WISCONSIN EX REL. WILLIE S. DAVIS,

PETITIONER-APPELLANT,

V.

MICHAEL MEISNER,

RESPONDENT-RESPONDENT.

APPEAL from orders of the circuit court for Dane County: RHONDA L. LANFORD, Judge. *Affirmed in part; reversed in part; and cause remanded for further proceedings*.

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

¶1 PER CURIAM. Willie Davis, pro se, appeals circuit court orders denying Davis relief on certiorari review of a prison disciplinary decision and denying reconsideration. Davis contends that the circuit court erred by affirming

the disciplinary decision and denying Davis certiorari review of a second disciplinary decision identified in Davis's petition. We reject Davis's claims related to the conduct report that proceeded to certiorari review, but agree with Davis that the circuit court erred by limiting its review to a single disciplinary decision. Accordingly, we affirm in part; reverse in part; and remand for further proceedings.

¶2 Davis received a prison conduct report in June 2011, charging Davis with violating institutional policies and procedures and inadequate work or study performance. The report writer, Officer Donovan, alleged that he searched Davis's folder of class material and discovered a test answer sheet in between study papers. After a disciplinary hearing, Davis was found guilty of both rule violations. Davis appealed to the warden and then through the Inmate Complaint Review System.

¶3 In January 2012, Davis filed a petition for a writ of certiorari in the circuit court. Davis sought review of the disposition of the June 2011 conduct report and the disposition of an unrelated conduct report Davis received in September 2011. On the State's motion to quash, the circuit court determined that two unrelated conduct reports may not be the subject of one certiorari action. The court ordered Davis to choose one conduct report to maintain as the subject of this action. In July 2012, Davis selected the June 2011 conduct report as the subject of this action, but also moved the circuit court to reconsider its decision to prohibit Davis from seeking review of two unrelated disciplinary decisions in one action. In December 2012, the circuit court denied reconsideration. In his brief in support of his petition, Davis again argued for the circuit court to reconsider its decision to limit Davis's certiorari petition to one disciplinary decision. In October 2013, the circuit court affirmed the disciplinary decision, dismissed the writ of certiorari,

and denied reconsideration of its decision to limit its review to one certiorari action. In November 2013, the circuit court denied Davis's motion for reconsideration.

¶4 On appeal from an order dismissing a petition for certiorari review of a prison disciplinary decision, we examine only whether the decision was within the agency's jurisdiction, according to law, arbitrary or unreasonable, and supported by substantial evidence. *See* ***State ex rel. Anderson-El v. Cooke***, 2000 WI 40, ¶15, 234 Wis. 2d 626, 610 N.W.2d 821. Part of this analysis is whether the Department of Corrections (DOC) followed its own rules and complied with due process requirements. *See* ***Curtis v. Litscher***, 2002 WI App 172, ¶15, 256 Wis. 2d 787, 650 N.W.2d 43. We owe no deference to the circuit court's decision on our certiorari review of the DOC's disciplinary decision. *See* ***Anderson-El***, 234 Wis. 2d 626, ¶15. We independently review a circuit court's decision on a motion to quash. ***State ex rel. Myers v. Swenson***, 2004 WI App 224, ¶6, 277 Wis. 2d 749, 691 N.W.2d 357.

¶5 Regarding the June 2011 conduct report, Davis argues first that the evidence was insufficient to support the decision of the adjustment committee (AC) and the decision was unreasonable in light of the evidence, violating Davis's due process rights. Davis argues there was no evidence to show that the test answer sheet correlated to a test in the institutional school program in which Davis was enrolled. Davis points out that Donovan stated that Davis had a test answer sheet, but that Donovan did not establish what test the answer sheet corresponded to. Thus, according to Davis, the evidence that Davis possessed the test answer sheet was insufficient to support the findings that Davis violated an institutional policy and failed to meet the standards for performance in a school program. We disagree.

¶6 On certiorari review, "we determine whether reasonable minds could arrive at the same conclusion the committee reached. 'The facts found by the committee are conclusive if supported by "any reasonable view" of the evidence, and we may not substitute our view of the evidence for that of the committee.'" ***State ex rel. Ortega v. McCaughtry***, 221 Wis. 2d 376, 386, 585 N.W.2d 640 (Ct. App. 1998) (citation omitted) (quoted source omitted). Here, Donovan's statement that Davis was in possession of a test answer sheet was sufficient to support the AC's finding that Davis was guilty of violating the prison policy against cheating and that Davis did not meet the standards for performance in the school program. While Davis asserted his innocence, the AC deemed Donovan's report credible. It was reasonable for the AC to infer that the test answer sheet related to a school program in which Davis was enrolled. Thus, there was substantial evidence to support the AC's decision and the decision did not violate Davis' due process rights. *See* ***Santiago v. Ware***, 205 Wis. 2d 295, 327-28, 556 N.W.2d 356 (Ct. App. 1996) (in prison disciplinary context, "[i]f 'some evidence' exists, that is sufficient evidence to satisfy due process. If no evidence exists, a finding of guilt violates due process." (quoted source omitted)).

¶7 Next, Davis contends that the AC failed to explain why it disregarded exculpatory evidence. Davis points to testimony by his instructor, Brian Quamme, that Quamme did not recognize the test answer sheet as showing answers to any of Quamme's tests. Davis points out that the AC deemed Quamme's statements credible. Davis argues that Quamme's testimony directly undermined the allegations that the test answer sheet was for a test in Quamme's program, requiring the AC to explain why it disregarded that evidence. *See* ***Meeks v. McBride***, 81 F.3d 717, 720 (7th Cir. 1996) ("[W]here a prison inmate produces exculpatory evidence that directly undermines the reliability of the evidence in the

record pointing to his guilt, he is 'entitled to an explanation of why the [disciplinary board] disregarded the exculpatory evidence and refused to find it persuasive.'" (quoted source omitted)). We are not persuaded.

¶8 "[I]t is 'general[ly] immaterial that an accused prisoner presented exculpatory evidence unless that evidence directly undercuts the reliability of the evidence on which the disciplinary authority relied' in support of its conclusion." ***Id.*** (quoted source omitted). Accordingly, "we do not consider exculpatory evidence merely because it could have supported a different result from that reached by the board." ***Id.*** It is only when the exculpatory evidence directly undermines the reliability of the evidence in the record pointing to guilt that an explanation as to why the evidence was disregarded is required. ***Id.*** Here, Quamme testified that he did not recognize the answer sheet because he changed his tests earlier in the year. At most, this evidence could have allowed the AC to find the test sheet was not from Quamme's program; it did not directly undermine the evidence against Davis.

¶9 Davis also contends that AC member Ashworth had substantial involvement in the incident contrary to DOC rules. *See* WIS. ADMIN. CODE § DOC 303.79 (through March 30, 2015) (No person who has substantial involvement in an incident, which is the subject of a hearing, may serve on the committee for that hearing.). Davis argues that Ashworth spoke with Donovan and Quamme before the conduct report was written, to determine what charges to pursue against Davis; that Ashworth then removed Davis from the school program; and that Ashworth spoke with Davis about the incident prior to Donovan writing the conduct report, at which time Davis professed his innocence. Those facts, however, do not establish Ashworth's substantial involvement in the incident. The incident itself was discovery of a test answer sheet in Davis's

possession. The facts asserted by Davis, if true, would show Ashworth's participation in an investigation following the incident itself. Nothing in the rule prohibits a person who has investigated an incident from participating on a committee.

¶10 Next, Davis contends that the written cheating policy underlying the charge of violating institutional policies was not an official policy so as to establish rule violations. So far as we can tell, Davis is arguing that the notes to the administrative code limit how institutional policy is created and the DOC did not establish that the policy against cheating was created according to the proper procedure. We are not persuaded. We reject Davis's argument that the institutional policy against cheating, as set forth in the handbook Davis received while participating in an institutional school program and memorialized in a document Davis signed, was not a valid institutional policy to support a charge of violating an institutional policy.

¶11 Davis also argues that the record on review is incomplete because it is missing documents showing that Ashworth removed Davis from the institution's school program, which Davis asserts supports Davis's claim that Ashworth had substantial involvement in the incident. However, as explained above, the fact that Ashworth removed Davis from the program following the incident would not establish Ashworth's substantial involvement in the incident itself. Accordingly, we reject Davis's argument that the record is incomplete.

¶12 Finally, Davis contends that the circuit court erred by granting the respondent's motion to quash as to the second disciplinary decision Davis sought to include in his certiorari petition. Davis contends that the issue of whether a

prisoner may seek review of more than a single disciplinary decision in a certiorari action is a matter of first impression that this court should resolve.

¶13 The State responds that unrelated disciplinary decisions should not be joined in a single certiorari action because they do not arise from the same transaction or occurrence, as contemplated under WIS. STAT. § 803.04(1) (2013-14),[1] Wisconsin's permissive joinder of parties statute. The State also contends that allowing prisoners to obtain review of multiple disciplinary decisions in one certiorari action is contrary to the Prison Litigation Reform Act because it allows prisoners to avoid paying the filing fee as to each decision, *see* WIS. STAT. § 814.29(1m), and allows dismissal of multiple claims from an action without any resulting strikes to the litigant, *see* ***State ex rel. Henderson v. Raemisch***, 2010 WI App 114, ¶28, 329 Wis. 2d 109, 790 N.W.2d 242.

¶14 Davis replies that WIS. STAT. § 803.04(1) applies to joinder of parties, which is not at issue in this case, and that the applicable statute is WIS. STAT. § 803.02, joinder of claims. Davis points out that, under § 803.02(1), a litigant may join as many claims as he or she has against an opposing party. Here, Davis asserts, the certiorari petition joined Davis's two claims for relief against the same respondent. Davis also asserts that the State's argument is based on policy rather than law, and then asserts that judicial efficiency is better served by allowing prisoners to seek review of multiple conduct reports in one certiorari action.

[1] All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

¶15 We conclude that the circuit court erred by limiting its review in this action to a single disciplinary decision. Under WIS. STAT. § 803.02(1), Davis was allowed to join his claims against the respondent in a single certiorari petition. Even accepting the State's arguments that requiring separate certiorari actions for each disciplinary decision furthers public policy, that does not provide a legal basis for a court to dismiss a properly pled claim. Accordingly, we reverse the circuit court's order denying Davis's request for review of the second conduct report and remand for further proceedings.

By the Court.—Orders affirmed in part; reversed in part; and cause remanded for further proceedings.

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