COURT OF APPEALS
DECISION
DATED AND FILED

October 7, 1999

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

No. 98-3589

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

STATE OF WISCONSIN EX REL.
ROBIN R. ARNOLDUSSEN,

PETITIONER-APPELLANT,

V.

PHIL KINGSTON,

RESPONDENT-RESPONDENT.

APPEAL from an order of the circuit court for Columbia County: LEWIS W. CHARLES, Judge. *Affirmed.*

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

¶1 PER CURIAM. Robin R. Arnoldussen, an inmate at Waupun Correctional Institution, appeals from an order of the Columbia County Circuit Court affirming his prison disciplinary sanction for battery to an inmate. Arnoldussen argues that the prison conduct report gave him insufficient notice of

the charge against him and that his staff advocate gave him inadequate assistance. He also contends that the prison hearing officer acted improperly by limiting him to an oral summary of his defense and refusing to review his written statement. Finally, he argues that there was insufficient evidence to support a finding of guilt. We disagree with Arnoldussen's arguments and affirm.

I. Background

¶2 On July 23, 1998, when Arnoldussen was an inmate at the Oregon Correctional Center, he allegedly struck another inmate in the chest with his fist. Five days later, Arnoldussen was issued a conduct report for battery, contrary to WIS. ADM. CODE § DOC 303.12.[1] The report states that "Mr. Arnoldussen allegedly, without provocation, struck Mr. J. Buckett … very hard in the chest, with his fist on 07-23-98." In its top section, the report lists the date of the incident as "7-24-98," the time as 4:51 p.m. and the location as "outside Maintenance." Arnoldussen also received a form notifying him of his right to a hearing. He selected a staff advocate to help him.

¶3 At his hearing on August 5, 1998, Arnoldussen said that he never hit Buckett, but instead put his hand on Buckett's shoulder to get his attention. The hearing officer reviewed three confidential statements made by other inmates. Two of the statements allege that, on July 23, 1998, Buckett was making a paint roller handle in the machine shop. Arnoldussen came into the shop, asked Buckett what he was doing, and then hit him in the chest. The third statement alleges that, on July 24, 1998, Arnoldussen called Buckett into his office to apologize for

[1] WIS. ADM. CODE § DOC 303.12 reads, "Any inmate who intentionally causes bodily injury to another is guilty of an offense."

hitting him the day before. The hearing officer also reviewed a statement by inmate Randy Gondek, in which Gondek says that he was with Arnoldussen all day long on the day before, the day of and the day after the alleged incident, and never saw Arnoldussen hit anybody. Arnoldussen also submitted a detailed written statement describing his activities on both July 23 and 24, 1998, and responding to the three confidential allegations. The hearing officer found Arnoldussen guilty of battery by a preponderance of the evidence. According to the disciplinary hearing form, Arnoldussen's written statement was not a factor in the hearing officer's decision.

¶4 Arnoldussen appealed to the warden, who affirmed the finding of guilt. Arnoldussen then petitioned the Columbia County Circuit Court for a writ of habeas corpus. The circuit court granted a writ of certiorari, commanding the prison to submit the record from Arnoldussen's disciplinary proceedings. The court reviewed the record and affirmed the prison's decision. It concluded that the proceedings complied with the due process requirements of WIS. ADM. CODE §§ DOC 303.76 through DOC 303.84, and that the finding of guilt was supported by substantial evidence. Arnoldussen appeals.

II. Analysis

¶5 We review the decision of a prison adjustment committee independently of the trial court. *See* ***State ex rel. Whiting v. Kolb***, 158 Wis.2d 226, 233, 461 N.W.2d 816, 819 (Ct. App. 1990). We are limited to the record used by the committee. *See* ***id.*** We review: "(1) whether the committee stayed within its jurisdiction, (2) whether it acted according to law, (3) whether the action was arbitrary, oppressive or unreasonable and represented the committee's will

and not its judgment, and (4) whether the evidence was such that the committee might reasonably make the order or determination in question." ***Id.***

A. Notice Provided By The Conduct Report

¶6 Arnoldussen argues that the conduct report did not give him adequate notice of the charges. He claims that he was unable to prepare a defense because the conduct report provided two different dates for the alleged incident, misidentified the incident's location, provided inadequate details of what happened, and failed to identify who made the allegations.

¶7 For prison disciplinary proceedings to satisfy due process under the United States Constitution, an inmate must be given written notice of a claimed violation at least twenty-four hours before a disciplinary hearing. *See* ***State ex rel. Ortega v. McCaughtry***, 221 Wis.2d 376, 399, 585 N.W.2d 640, 651 (Ct. App. 1998). Under WIS. ADM. CODE § DOC 303.66(2), the conduct report must "describe the facts in detail," including what staff members said happened, and must "list all sections which were allegedly violated." The purpose of the notice provided in the conduct report is to inform the inmate of the charges and enable him or her "to marshal the facts and prepare a defense." ***Ortega***, 221 Wis.2d at 399, 585 N.W.2d at 651 (quoting ***Wolff v. McDonnell***, 418 U.S. 539, 564 (1974)).

¶8 We conclude that the conduct report provided Arnoldussen with adequate notice. The report informed Arnoldussen that he was charged with battery for hitting Buckett in the chest very hard and without provocation. It provided Arnoldussen with the section he was charged with violating, and described the specific incident giving rise to the charge. While the report lists an incorrect location, and at one point gives an incorrect date, these discrepancies did not prevent Arnoldussen from preparing a defense. In fact, Arnoldussen was able

to write a detailed statement in which he describes everything he did on both of the dates listed on the conduct report, provides his own version of what happened between Buckett and him, and responds to the confidential informants' allegations. Arnoldussen received the conduct report eight days before his hearing and clearly understood what incident was in question. Finally, although the report does not identify Arnoldussen's accusers, there is no requirement that it do so.

B. Assistance of The Staff Advocate

¶9 Arnoldussen contends that his staff advocate gave him inadequate assistance. He argues that his advocate did not investigate the details of the alleged incident, did not interview other inmates as he requested, and did not submit his written statement and witness list to the security office.

¶10 Unlike effective assistance of counsel in criminal proceedings, "the assistance of an advocate in prison disciplinary proceedings is constitutionally required" only when the inmate is illiterate, or where the issue is so complex that it is unlikely that the inmate could collect and present the necessary evidence. ***Id.*** at 392 and 394, 585 N.W.2d at 648-49. However, the Department of Corrections must follow its own procedural rules regarding staff advocates. *See* ***id.*** at 395, 585 N.W.2d at 649. WIS. ADM. CODE § DOC 303.78 sets out the procedure for providing staff advocates to inmates. Under § DOC 303.78(2), the performance of a staff advocate is collateral to disciplinary proceedings. ***Ortega***, 221 Wis.2d at 395, 585 N.W.2d at 650. To demonstrate that the proceedings are proper, the record must only "reflect whether an inmate requested the assistance of a staff advocate, and if so, that one was provided." ***Id.*** at 395, 585 N.W.2d at 650. An inmate may claim that an advocate failed to perform the duties outlined in § DOC

303.78(2),[2] but to preserve the issue for judicial review, the inmate must clearly present the basis of the claim for the record before the adjustment committee. *See* ***Ortega***, 221 Wis.2d at 396, 585 N.W.2d at 650.

¶11 We conclude that Arnoldussen has not demonstrated that he failed to receive assistance from his staff advocate. Arnoldussen had no constitutional right to an advocate because, as his written statement in the record demonstrates, he is not illiterate, and the issue reviewed by the adjustment committee was not so complex that he required assistance gathering evidence. The prison provided Arnoldussen with the advocate he requested, as required under WIS. ADM. CODE § DOC 303.78 and ***Ortega***. While Arnoldussen claims that the advocate failed to perform his duties, the record does not reflect a clear basis for his claim. In his appeal to the warden, Arnoldussen stated that his "advocate did not help in any way. He did not find out what time, place and date at which the [incident] took place so he could get witness statements as requested." However, Arnoldussen did not need the assistance of an advocate to understand what incident was under review. In addition, the record does not clearly demonstrate from what witnesses Arnoldussen requested the advocate to obtain statements or how those witness statements were necessary to his defense. Considering that the assistance of a staff advocate was not central to the proceedings, Arnoldussen's claim cannot succeed without more to support it in the record.

---

[2] WIS. ADM. CODE § 303.78(2) provides:

> The advocate's purpose is to help the accused to understand the charges against him or her and to help in the preparation and presentation of any defense he or she has, including gathering evidence and testimony, and preparing the accused's own statement. The advocate may speak on behalf of the accused at a disciplinary hearing or may help the accused prepare to speak for himself or herself.

C. Arnoldussen's Written Statement

¶12 Arnoldussen claims that the hearing officer acted improperly by refusing to accept his written statement and limiting him to an oral summary of his defense. Although his written statement is part of the disciplinary proceeding record, Arnoldussen states that the hearing officer refused to accept it until after the proceedings had concluded. Instead, the officer asked Arnoldussen to give an oral summary of his defense. Arnoldussen argues that in doing so, the hearing officer violated his constitutional right to due process under ***Wolff v. McDonnell***, 418 U.S. 539, 566 (1974), because, in a disciplinary proceeding, he is "allowed to call witnesses and present documentary evidence in his defense" as long as doing so is not unduly hazardous.

¶13 We do not agree that the hearing officer violated Arnoldussen's due process rights by considering only his oral statement. WIS. ADM. CODE § DOC 303.86(2)(b)1 and 3 allows a hearing officer to refuse to hear evidence if it is not reliable, such as hearsay evidence, or if it duplicates evidence already received at the hearing and is no more reliable than the evidence already admitted. In this case, Arnoldussen was present at the hearing and was able to provide an oral statement in his defense. The written statement was not only hearsay and thus less reliable than Arnoldussen's oral account, but it was also not necessary since Arnoldussen could simply tell the hearing officer what happened. In ***Wolff***, the Supreme Court stated that "[p]rison officials must have the necessary discretion to keep the hearing within reasonable limits ...." ***Wolff***, 418 U.S. at 566. By deciding not to consider duplicative, hearsay evidence, the hearing officer did not deprive Arnoldussen of due process.

D. Sufficiency of The Evidence

¶14 Arnoldussen argues that the evidence did not support a finding of guilt. We will uphold a disciplinary committee's ruling if it is supported by "substantial evidence." ***Ortega***, 221 Wis.2d at 386, 585 N.W.2d at 646. Evidence meets the substantial evidence test if it is sufficient to demonstrate that the committee's ruling was reasonable. *See* ***id.*** We "may not substitute our view of the evidence for that of the committee." ***State ex rel. Jones v. Franklin***, 151 Wis.2d 419, 425, 444 N.W.2d 738, 741 (Ct. App. 1989).

¶15 We conclude that the hearing officer's finding of guilt was based on a reasonable view of the evidence. At his hearing, Arnoldussen explained his version of what happened. The hearing officer also reviewed three confidential statements—two alleging that Arnoldussen hit Buckett in the chest and one alleging that Arnoldussen apologized for hitting Buckett the next day. Finally, the hearing officer reviewed the statement of another inmate alleging that he had been with Arnoldussen all day on the day before, the day of and the day after the alleged incident, but never saw Arnoldussen hit anyone. The hearing officer could have reasonably concluded that the three confidential statements were more reliable than the evidence in Arnoldussen's favor. We will not remake the hearing officer's decision as to how much weight to place on each item of evidence. The confidential statements provided substantial evidence to support the finding that Arnoldussen committed battery by punching Buckett.

By the Court.—Order affirmed.

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