

**COURT OF APPEALS
DECISION
DATED AND FILED**

January 18, 2001

Cornelia G. Clark
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 WIS. STAT. § 808.10 and RULE 809.62.

No. 00-1224

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN EX REL. DENNIS JONES,

PETITIONER-RESPONDENT,

V.

**JON E. LITSCHER, SECRETARY, DEPARTMENT OF
CORRECTIONS,**

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Dodge County:
JOSEPH E. SCHULTZ, Judge. *Reversed and cause remanded with directions.*

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

¶1 PER CURIAM. Jon Litscher, Secretary of the Department of Corrections, appeals from an order reversing a disciplinary decision. The trial court found that the department violated a procedural rule by denying Dennis

Jones a seven-day postponement of his disciplinary hearing without good reason. Consequently, the court reversed the department's finding of guilt and ordered it expunged from Jones' record. The department contends that the appropriate remedy is a remand for further administrative proceedings, rather than expungement. We agree and therefore reverse.

¶2 On certiorari review, we independently review administrative decisions without deference to the trial court's determination. *State ex rel. Ortega v. McCaughtry*, 221 Wis. 2d 376, 385-86, 585 N.W.2d 640 (Ct. App. 1998). In our view, the better remedy for a minor rule violation is a remand to allow the department an opportunity to provide a hearing with proper application of the disciplinary rules.¹ Such is the preferred remedy where additional proceedings do not offend considerations of due process and fair play. *See State ex rel. Gibson v. DHSS*, 86 Wis. 2d 345, 353, 272 N.W.2d 395 (Ct. App. 1978).

¶3 We reverse the trial court's order insofar as it provides for the expungement of Jones' disciplinary violation. On remand we direct the trial court to order the matter remanded to the department to either provide Jones a hearing in compliance with departmental rules or to dismiss the charge against him.

By the Court.—Order reversed and cause remanded with directions.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5 (1999-2000).

¹ Under any reasonable view, the department's rule violation in this case was minor. Jones requested a seven-day postponement of the scheduled hearing which the department could deny only on good reason. *See* WIS. ADMIN. CODE § DOC 303.76(3). Jones received a four-day postponement, with no reason provided for denying the additional three days requested.

