COURT OF APPEALS
DECISION
DATED AND FILED

October 9, 2008

David R. Schanker
Clerk of Court of Appeals

Appeal No. 2007AP192 **Cir. Ct. No. 2006CV1905**

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

STATE OF WISCONSIN EX REL. ANTOINE NELSON,

PETITIONER-APPELLANT,

V.

WILLIAM POLLARD AND MATTHEW FRANK,

RESPONDENTS-RESPONDENTS.

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

Before Dykman, Vergeront and Lundsten, JJ.

¶1 PER CURIAM. Antoine Nelson, *pro se*, appeals an order denying his petition for certiorari review of a prison disciplinary decision finding him guilty of attempted possession of intoxicants and attempted possession of contraband. He argues: (1) that his due process rights were violated because the

record did not contain the official toxicology test result or form DOC-77, which addresses statements made by confidential informants; (2) that he was not given the confidential informants' statements prior to his disciplinary hearing; (3) that there was insufficient evidence to support the disciplinary decision because the confidential informants' statements were uncorroborated and unreliable and the record was void of any information showing that the substance found was marijuana; (4) that the hearing officer did not provide a sufficient written explanation of the decision; (5) that he should have been allowed to submit written statements made by him and another inmate; and (6) that the certiorari record was incomplete because it contained only redacted versions of the confidential informants' statements. We affirm.

¶2 Nelson first argues that he was entitled to receive an official written toxicology test result, not just the conduct report's description that the material seized tested positive for the presence of marijuana. He also contends that the result should have been made a part of the record. We reject this argument. Nelson has pointed to nothing in the Administrative Code or in case law that stands for the proposition that a prison inmate must be allowed to view the official written toxicology test result. Furthermore, the hearing officer was entitled to rely on Lieutenant Swiekatowski's statement in the conduct report that the stuffed animals contained contraband, including material that tested positive for marijuana, as evidence of guilt. Nelson also argues for the first time on appeal that he was denied due process because the record does not include Form DOC-77, which verifies that the hearing officer considered statements made by confidential informants. We reject this argument because Nelson is mistaken; the form is in the record.

¶3 Nelson next argues that the Department should have provided him with a summary of the confidential informants' statements before the hearing. *See* WIS. ADMIN. CODE § DOC 303.86(4). Nelson did not raise this argument in the circuit court, so he has waived his right to raise it on appeal. *See* ***State v. Huebner***, 2000 WI 59, ¶10, 235 Wis. 2d 486, 611 N.W.2d 727 (issues that are not preserved in the circuit court will not be considered for the first time on appeal). Even if he had properly raised the issue, we would have rejected it. Nelson received a summary of the statements made by the confidential informants in the conduct report, thus allowing him to prepare his defense. There is no requirement in the Administrative Code or in case law that he be given more than a summary of the statements in advance of the hearing.

¶4 Nelson next argues that there was insufficient evidence to support the committee's decision because the confidential informants' statements were uncorroborated and unreliable. We reject this argument because the confidential informants' statements *were* corroborated as required by the Administrative Code. *See* WIS. ADMIN. CODE § DOC 303.86(4). Nelson also contends that the evidence was insufficient because the record was void of any information showing that the substance found was marijuana. As we explained above, Lieutenant Swiekatowski's statement in the conduct report that the substance had tested positive for marijuana was sufficient evidence to support the decision.

¶5 Nelson next argues that the hearing examiner did not provide a sufficient written explanation of the decision. We disagree. The hearing officer explained at length the reasons for the decision and the evidence relied upon, including testimony by witnesses and physical evidence.

¶6 Nelson next argues that he should have been allowed to present his own written statement and that of another inmate to the hearing officer. *See* WIS. ADMIN. CODE § DOC 303.76(1)(e)1. (the inmate may present oral, written, documentary, and physical evidence to the adjustment committee). Nelson was not entitled to present his own written statement because he testified at the hearing. Under WIS. ADMIN. CODE § DOC 303.81(4), a witness may give a written statement only if the witness is unavailable to testify at the hearing. As for the other inmate, Edward Singleton, Nelson has made no showing that Singleton was unavailable to testify and thus should have been allowed to present a written statement. In fact, Singleton was not even named on Nelson's list of requested witnesses.

¶7 Finally, Nelson contends that the certiorari record was incomplete because it contained only redacted versions of the confidential informants' statements. Nelson is wrong. The full statements, still under seal, are in the record.

By the Court.—Order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5. (2005-06).