

**COURT OF APPEALS
DECISION
DATED AND FILED**

January 31, 2002

Cornelia G. Clark
Clerk of Court of Appeals

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.

**Appeal No. 01-0889
STATE OF WISCONSIN**

Cir. Ct. No. 00-CV-1778

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN EX REL. JAYSON D. EDWARDS,

PETITIONER-APPELLANT,

V.

GARY R. MCCAUGHTRY, WARDEN,

RESPONDENT-RESPONDENT.

APPEAL from an order of the circuit court for Dane County:
MICHAEL N. NOWAKOWSKI, Judge. *Affirmed.*

Before Vergeront, P.J., Roggensack and Lundsten, JJ.

¶1 PER CURIAM. Jayson Edwards appeals from a circuit court order which affirmed a prison disciplinary decision finding him guilty of attempted escape. He claims that the circuit court improperly construed his pleadings and failed to address several of the issues he raised below; the institution failed to establish his guilt by a preponderance of the evidence, particularly in regard to the

questions of identity and intent; the adjustment committee failed to explain its findings regarding witness credibility; and the adjustment committee failed to provide an adequate statement of the reasons for its decision. We are satisfied that the prison officials acted within the scope of their authority and therefore affirm.

BACKGROUND

¶2 Edwards was issued a conduct report alleging that he had attempted an escape contrary to WIS. ADMIN. CODE § DOC 303.22A(1)(a). The reporting officer related that another correctional officer had been sent to the cell that Edwards shared with another inmate to investigate a computer indication that their cell door was open. The investigating officer found the cell door closed. He opened and shut the door, but was informed that the computer was still showing that the door was open. The officer opened the door again, and this time noticed that there was a wad of damp toilet paper stuck in the door track. The officer and Edwards removed the wad. Each cellmate blamed the other for the incident. The reporting officer noted that the upper door track was accessible only from the inside of the cell, and that Edwards had been housed in the cell for over a month.

¶3 Edwards filed a written statement in response to the conduct report, denying any knowledge of how the wad of toilet paper had come to be blocking the door. Edwards pointed out that the location where the wad of toilet paper was discovered was not actually in the upper door track, but rather in the upper corner of the doorframe, which would be accessible only when the door was open. He provided a diagram to illustrate what he meant. Edwards asserted that the door was left open when one of the cellmates was in the showers, at meals, or at the canteen, and indicated that he had been to the showers on the evening in question

while his cellmate had not. Edwards further claimed that he was directed to remove the wad, that he was the only one to touch it, and that it was not damp.

¶4 The investigating officer testified before the adjustment committee. However, the only record of his testimony consists of some notations which were jotted down in spaces following the written questions which Edwards had prepared to ask him. The notes indicate that the officer testified that the size of the wad was about three by one inches, that the wad was located in the corner of the doorframe as indicated on Edward's drawing, and that the officer had touched the wad.

¶5 The adjustment committee characterized the investigating officer's testimony as credible and consistent with other testimony. It also stated that it found the reporting staff credible and did not find Edwards credible. It found that Edwards had attempted to escape by placing the wad of toilet paper in the door track to make the door appear closed, noting that Edwards had attempted to help secure the door before the investigating officer became aware of the material in the track; Edwards went to the shower that night while his cellmate did not; the toilet paper was damp when found; and the material could have been placed inside the track only from inside the cell. It imposed eight days of adjustment segregation and 360 days of program segregation and extended Edwards' mandatory release date by twenty days. The warden and the circuit court affirmed.

STANDARD OF REVIEW

¶6 On certiorari, we review the decision of the administrative agency rather than that of the circuit court, and limit our consideration to the record which was before the agency. *State ex rel. Whiting v. Kolb*, 158 Wis. 2d 226, 233, 461

N.W.2d 816 (Ct. App. 1990). Therefore, we do not directly address Edwards' arguments on appeal regarding the various ways in which he feels the circuit court erred. Instead, we will independently consider whether: (1) the adjustment committee stayed within its jurisdiction; (2) it acted according to law; (3) its action was arbitrary, oppressive, or unreasonable, representing its will rather than its judgment; and (4) the evidence was such that the committee might reasonably make the order or determination in question. *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.* (citation omitted).

ANALYSIS

¶7 First, Edwards is correct that the record does not include a direct statement that he attempted to help the officer with the door in order to avoid detection. We are unable to determine whether the investigating officer may have made such a statement, since his testimony is largely unrecorded. However, a factual finding may also be based on inferences from the evidence in the record. We are satisfied that the committee's inference regarding Edwards' apparent over-helpfulness was permissible, particularly given Edwards' own assertion that he threw the wad of toilet paper into the toilet upon recovering it.

¶8 Similarly, the sufficiency of the evidence to prove Edwards' guilt by a preponderance of the evidence depends in large part upon inferences which could be made from the evidence before the committee. Again, we are satisfied that the committee could permissibly infer that the wad had been placed in the doorframe recently because it was damp and because there was no indication that the computer had been showing the door open prior to that day; that the wad had

been placed by one of the two cellmates because they had the best opportunity to do so and because no one else would have had a motive to do so; that Edwards was the more likely candidate between the two cellmates because of his behavior during the investigation; and that the intent was to escape because there was no other plausible reason for the action. That the record may also have supported other inferences did not preclude the committee from drawing the inferences it did, and the inferences drawn satisfy the burden of proof.

¶9 Finally, Edwards complains that the committee's written statements were inadequate to explain the basis for its decision in several regards. Edwards is correct that due process requires "a written statement of the factfinders as to the evidence relied upon and the reasons for the disciplinary action taken." *Wolff v. McDonnell*, 418 U.S. 539, 563 (1974). It is also true that the conclusory acceptance of a conduct report or the credibility of one witness over another without explanation may be insufficient. *Chavis v. Rowe*, 643 F.2d 1281, 1287 (7th Cir. 1981). However, "the kind of statements that will satisfy the constitutional minimum will vary from case to case depending on the severity of the charges and the complexity of the factual circumstances and proof offered by both sides." *Culbert v. Young*, 834 F.2d 624, 631 (7th Cir. 1987). Thus, where the only evidence which contradicts the conduct report is the inmate's own statement, there is "no mystery" about the committee's reasoning when it adopts one over the other. *Id.*

¶10 Here, Edwards claimed that the wad was dry and the officer had never touched it. The officer claimed that he had touched the wad and found it to be damp. There was no evidence outside of Edwards' own statement supporting his assertions. Moreover, the officer's account made more sense, since it explained how the wad was sticking to the door and why it was difficult to

remove. It is self-evident that the committee could chose only one of these accounts, and we are in no way mystified by the committee's decision. The committee noted that it found the conduct report and the investigating officer to be credible and explained what portions of the conduct report supported its conclusion that Edwards had attempted an escape. The brevity of the committee's decision did not violate due process standards under the circumstances of this case.

By the Court.—Order affirmed.

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

