COURT OF APPEALS
DECISION
DATED AND RELEASED

June 14, 1995

No. 94-1813

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

STATE OF WISCONSIN
ex rel. JOHNNY LACY, JR.,

Petitioner-Appellant,

v.

DAN A. BUCHLER, Acting Warden,
RACINE CORRECTIONAL INSTITUTION,

Respondent-Respondent.

APPEAL from an order of the circuit court for Racine County: GERALD P. PTACEK, Judge. *Affirmed*.

Before Brown, Nettesheim and Snyder, JJ.

PER CURIAM. Johnny Lacy, Jr. appeals from an order on certiorari review of a decision of the disciplinary committee of the Racine Correctional Institution. He argues that in setting the penalty for a rule violation, the committee improperly relied on evidence of a previous rule violation and that it was not impartial because a member of the committee wrote the conduct report on the previous violation. We conclude that Lacy has failed to meet his burden of establishing that the committee acted arbitrarily or

unreasonably. We affirm the order appealed from which dismissed Lacy's petition.

While confined at the Racine Correctional Institution, Lacy was required to submit to random drug screening. Having tested positive for marijuana on three occasions, Lacy was charged with use of intoxicants, a major disciplinary offense. The first two offenses were February 19, 1992, and April 11, 1993. This appeal arises out of the conduct report issued June 11, 1993, for which Lacy received five days adjustment segregation and ninety days program segregation.

Our review of the action of the prison disciplinary committee is de novo and is limited to the record created before the committee. ***State ex rel. Whiting v. Kolb***, 158 Wis.2d 226, 233, 461 N.W.2d 816, 819 (Ct. App. 1990). We determine whether the committee stayed within its jurisdiction, whether it acted according to law, whether the action was arbitrary, oppressive or unreasonable and represented the committee's will and not its judgment, and whether the evidence was such that the committee might reasonably make the determination appealed from. ***Id.***

Lacy argues that it is not fair for the committee to consider this offense his third offense because he had been released from the institution after the February 19, 1992, violation. He contends that it violates his right to due process to deny him the right to challenge the February 19 violation and yet permit the committee to rely on it. Lacy cannot point to any law or regulation which suggests that his release from the institution wipes his slate clean. There is no due process violation in permitting the committee to consider an inmate's institutional history in determining disciplinary penalties. Further, nothing suggests that Lacy was denied an opportunity to challenge the February 19 violation when it was made. The record reflects that he admitted guilt to that offense.

Lacy also claims that the committee did not act as an impartial administrative body because the author of the February 19, 1992, conduct report sat on the committee considering the most recent violation. We recognize that in the prison setting, the investigative and adjudicative roles of officers may sometimes overlap. A presumption of honesty and integrity follows those

serving as adjudicators. ***Withrow v. Larkin***, 421 U.S. 35, 47 (1975). One arguing that an unconstitutional risk of bias exists in the administrative adjudication has a difficult burden of persuasion in overcoming that presumption and convincing that actual bias or prejudgment exists. *See* ***id.***

There is no proof of actual bias here. The author of the 1992 conduct report did not sit in judgment of that report. Although that person was an adjudicator on the most recent offense, there is no suggestion that he was an investigator on the recent offense. There was no impermissible overlap of duties. The adjudicator's personal knowledge of the prior offense does not make him inherently biased or taint the entire committee. Lacy has failed to overcome the presumption of honesty and integrity.

By a broad statement in the conclusion of his brief, Lacy attempts to raise here additional issues briefed in the circuit court. We will not address issues not specifically argued before this court. *See* ***Fritz v. McGrath***, 146 Wis.2d 681, 686, 431 N.W.2d 751, 753 (Ct. App. 1988). We will not independently develop a litigant's arguments. *See* ***Vesely v. Security First Nat'l Bank***, 128 Wis.2d 246, 255 n.5, 381 N.W.2d 593, 598 (Ct. App. 1985). To the extent that the arguments before the circuit court contend that the committee's decision was not supported by evidence because the screening test was unreliable and that the punishment imposed was arbitrary, we reject them by adopting the reasoning provided in the circuit court's opinion and the respondent's brief.

By the Court.—Order affirmed.

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