COURT OF APPEALS
DECISION
DATED AND FILED

October 25, 2012

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2011AP2250 **Cir. Ct. No. 2010CV5300**

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

STATE OF WISCONSIN EX REL. JIMMY BALDWIN,

PETITIONER-APPELLANT,

V.

RANDALL HEPP AND RICK RAEMISCH,

RESPONDENTS-RESPONDENTS.

APPEAL from an order of the circuit court for Dane County: JOHN C. ALBERT, Judge. *Affirmed*.

Before Lundsten, P.J., Sherman, J., and Charles P. Dykman, Reserve Judge.

¶1 PER CURIAM. Jimmy Baldwin appeals a circuit court order denying his petition for a writ of certiorari challenging a prison disciplinary decision. Baldwin contends that: (1) the Department of Corrections Adjustment

Committee lacked jurisdiction to conduct the prison disciplinary hearing because the hearing was held without the required two-day notice under WIS. ADMIN. CODE § DOC 303.76(3) (Dec. 2006); (2) the Department of Corrections (DOC) violated its own rules and denied him due process when it denied Baldwin's witness requests and the Adjustment Committee questioned a witness outside of Baldwin's presence; and (3) the evidence was insufficient to support the Adjustment Committee's determination. We reject these contentions, and affirm.

BACKGROUND

¶2 On March 29, 2010, Baldwin was issued a conduct report and notice of major disciplinary hearing rights. The conduct report alleged that Baldwin had forged an amended judgment of conviction to secure his early release, contrary to DOC rules prohibiting escape and forgery. *See* WIS. ADMIN. CODE §§ DOC 303.22 and 303.41 (Dec. 2006). Baldwin requested the following witnesses attend the hearing: (1) Captain Dohms, the writer of the conduct report; (2) the unnamed writer of a report, apparently a staff member at Stanley Correctional Institution, indicating that the Milwaukee County Circuit Court had confirmed that the amended judgment of conviction was a forgery; (3) June Smythe, from the Milwaukee County Circuit Court clerk's office; and inmate Vincent Ammons, as a character witness. The DOC approved Captain Dohms, but denied Baldwin's other witness requests.

¶3 The Adjustment Committee held a full due process disciplinary hearing on March 31, 2010. Following the hearing, the Adjustment Committee found Baldwin guilty of the charged offenses. Baldwin appealed that decision to the warden, who affirmed the Adjustment Committee's decision. Baldwin appealed procedural issues to the Inmate Complaint Examiner, who noted no

procedural errors. Baldwin appealed to the corrections complaint examiner's office, which determined that Baldwin had not preserved any reviewable issues. Baldwin sought review in the circuit court by certiorari, which denied the writ and dismissed the action. Baldwin appeals.

STANDARD OF REVIEW

¶4 On certiorari review, we review de novo the disciplinary decision of the DOC. *See* ***State ex rel. Tate v. Schwarz***, 2001 WI App 131, ¶10, 246 Wis. 2d 293, 630 N.W.2d 761, *rev'd on other grounds*, 2002 WI 127, 257 Wis.2d 40, 654 N.W.2d 438. Our review is limited to the following: (1) whether the DOC kept within its jurisdiction; (2) whether the DOC acted according to law; (3) whether the DOC's actions were arbitrary, oppressive or unreasonable and represented its will and not its judgment; and (4) whether the evidence was such that the DOC might reasonably have made its decision. *See* ***id.***

DISCUSSION

¶5 Baldwin argues that he was not provided sufficient notice of the disciplinary hearing, and thus the Adjustment Committee lacked authority to hold the hearing and find Baldwin had violated DOC rules. Baldwin argues that, under WIS. ADMIN. CODE § DOC 303.76(3) (Dec. 2006), the Adjustment Committee was not allowed to hold the disciplinary hearing "until at least 2 working days after [Baldwin] receive[d] a copy of the conduct report and hearing rights notice." Here, Baldwin contends, Baldwin received the conduct report and hearing rights notice at 5:15 p.m. on March 29, 2010, and the hearing was held at 12:40 a.m. on March 31, 2010. Baldwin argues that the hearing was held less than two full working days from the time notice was given, depriving the Adjustment Committee of authority to act.

¶6 However, as the State points out, the record indicates that Baldwin did not raise this argument to the Adjustment Committee or through the Inmate Complaint Review System. *See* WIS. STAT. § 801.02(7)(b) (2009-10)[1] (prisoner must exhaust administrative remedies before bringing claim on certiorari); WIS. ADMIN. CODE §§ DOC 310.04, 310.05 and 310.08(3) (Dec. 2006) (an inmate must raise claims of procedural errors through the Inmate Complaint Review System to exhaust his administrative remedies). Baldwin does not dispute in his reply brief that he failed to raise this procedural argument.

¶7 While Baldwin asserts he stated in his complaint to the Inmate Complaint Review System that "I never waived my rights see: Notice of Major Disciplinary Hearing Rights," he does not assert that he ever asserted that the hearing was held without adequate notice. Rather, Baldwin contends that the Adjustment Committee lost competency to act when it held the hearing less than two full days from giving Baldwin notice, and that Baldwin's failure to raise this issue does not amount to waiver. In support, Baldwin cites ***State ex rel. Jones v. Franklin***, 151 Wis. 2d 419, 423-24, 444 N.W.2d 738 (Ct. App. 1989), for the proposition that "[t]he inmate's right to a timely hearing may be waived only by the inmate. The committee has no authority to waive it any more than it has the authority to disregard it." (citation omitted). However, the issue in ***Jones*** was whether the harmless error rule applied to Jones' claim that he was not provided a timely hearing, not whether Jones could raise the issue despite failing to exhaust administrative remedies. Because there is no dispute in this case that Baldwin

[1] All references to the Wisconsin Statutes are to the 2009-10 version unless otherwise noted.

failed to exhaust his administrative remedies as to this claim, he may not raise it by certiorari.

¶8 Next, Baldwin contends that he was denied a full and impartial due process hearing when the Adjustment Committee called a witness against Baldwin out of Baldwin's presence. Baldwin points out that the Adjustment Committee stated in its decision that it called Ms. Semanko, a supervisor at Stanley Correctional Institution's records department, at Baldwin's request to ask a question Baldwin had for her, and that Baldwin did not request for Ms. Semanko to be present at the hearing. Baldwin asserts that he never made that request, and points out that there is no request made by him in the record. Baldwin asserts that if the Adjustment Committee was implying that Ms. Semanko was the unnamed writer, then there is no explanation for why the Adjustment Committee did not ask her other questions that Baldwin had for the unnamed writer. Baldwin also points out that the conduct report indicated Ms. Semanko received the report, not that she wrote it. Baldwin contends that he had a right to be present when Ms. Semanko was questioned, citing his right to be present for the disciplinary hearing under WIS. ADMIN. CODE § DOC 303.76 (Dec. 2006). We disagree that Baldwin was denied his right to a full due process hearing on these facts.

¶9 Baldwin concedes that he did not request to have Ms. Semanko present at his disciplinary hearing. The Adjustment Committee submitted one question to Ms. Semanko—whether several documents that were discovered to be forgeries were "produced/forged" in the same way. This question was posed by Baldwin. Baldwin does not cite any rule or case law that would prohibit the Adjustment Committee from submitting this question to Ms. Semanko or requiring Baldwin's presence when the question was submitted. Further, the record indicates that Ms. Semanko is employed at a different correctional institution,

which renders her an unavailable witness. *See* WIS. ADMIN. CODE § DOC 303.81(4) (Dec. 2006). To the extent Baldwin is asserting that he had a due process right to cross-examine Ms. Semanko, case law is settled that he did not. *See* ***Wolff v. McDonnell***, 418 U.S. 539, 567-68 (1974) (inmates do not have constitutional right to cross-examine witnesses against them at disciplinary proceedings). Thus, the Adjustment Committee was allowed to consider a transcript of Ms. Semanko's oral testimony rather than requiring her presence at the hearing. *See* ***id.***

¶10 Next, Baldwin asserts that he was denied a full and fair due process hearing when his request for witnesses was denied. Baldwin asserts his requested witnesses were denied for no reason. We disagree.

¶11 The first requested witness Baldwin was denied was the unnamed writer of the report received by Ms. Semanko at Stanley. The DOC reviewing staff decision indicates that request was denied because there was no way to determine who the unnamed writer was. Baldwin asserts that the report reveals that whoever wrote it was a staff member at Stanley Correctional Institution's records department. He also argues that the writer's statement that he or she had been briefed by Captain Dohms indicates that Captain Dohms knew who the writer was. However, it does not follow that Captain Dohms necessarily knew which staff member wrote the report, and it remains that Baldwin was not able to name that proposed witness. We discern no error in the decision denying Baldwin's request for an unnamed witness.

¶12 Another requested witness, June Smythe, was denied under WIS. ADMIN. CODE § DOC 303.81(8) (Dec. 2006), which provides that only inmates and staff may attend hearings as witnesses. Baldwin asserts that there was no

reason why he could not have had his advocate question Smythe under WIS. ADMIN. CODE § DOC 303.81(8) (Dec. 2006), even if she did not attend the hearing. While this is true, the only issue before us is whether Baldwin was denied the right to present witnesses when his request to have Smythe attend the hearing was denied. Because Smythe was undisputedly not an inmate or staff member at the institution, the request to have her attend the hearing was properly denied under WIS. ADMIN. CODE § DOC 303.81(8) (Dec. 2006).

¶13 The final witness request that was denied was for inmate Vincent Ammons to appear as a character witness. The character witness request was denied as irrelevant. Baldwin does not develop an argument as to how character evidence was relevant to the rule violation charges in this case. We do not consider undeveloped arguments. ***State v. Pettit***, 171 Wis. 2d 627, 646, 492 N.W.2d 633 (Ct. App. 1992).

¶14 To the extent Baldwin asserts he was denied due process when his witness requests were denied, we note that Baldwin was able to call the conduct report writer and submit questions to him, and to submit his own statement in defense. We discern no due process violation. *See* ***Wolff***, 418 U.S. at 567-68 (explaining that inmates are not entitled to full due process rights at disciplinary proceedings that are afforded to criminal defendants at trial).

¶15 Finally, Baldwin contends that the evidence was insufficient to support the Adjustment Committee's decision. Baldwin argues that there was no evidence that he forged his amended judgment of conviction or that he was at all involved in the forgery that resulted in his early release. We disagree.

¶16 Baldwin was found guilty of violating WIS. ADMIN. CODE § DOC 303.22 (Dec. 2006), which prohibits an inmate from leaving an institution without

permission, or making or possessing any materials for use in escape. He was also found guilty of violating WIS. ADMIN. CODE § DOC 303.41 (Dec. 2006), which prohibits an inmate from making or altering any document so that it appears the document was made or signed by a different person. Our review is limited to whether there is substantial evidence to support the hearing officer's decision, even though the evidence would also support a contrary decision. *See* ***Von Arx v. Schwarz***, 185 Wis. 2d 645, 656, 517 N.W.2d 540 (Ct. App. 1994). If a reasonable mind could reach the decision reached by the Adjustment Committee, the decision is supported by substantial evidence. *See* ***State ex rel. Whiting v. Kolb***, 158 Wis. 2d 226, 233, 461 N.W.2d 816 (Ct. App. 1990).

¶17 At the disciplinary hearing, there was evidence that the amended judgment of conviction, used to secure Baldwin's early release from the institution, was a forgery.[2] The conduct report writer testified that Baldwin was the only one who benefitted from the forgery. A reasonable mind could conclude, from this evidence, that Baldwin was a party to the forgery of the amended judgment of conviction to secure his early release. *See* WIS. ADMIN. CODE § DOC 303.07 (Dec. 2006) (inmate is guilty of substantive rule violation if the inmate aids and abets another in committing that rule violation). The Adjustment Committee's decision was therefore supported by substantial evidence. We affirm.

By the Court.—Order affirmed.

[2] Baldwin appears to argue the evidence was insufficient to establish that the amended judgment of conviction was a forgery because the conduct report relied on an anonymous, unsigned report confirming the amended judgment of conviction was a forgery. However, even disregarding the unsigned report, the conduct report itself set forth evidence that the amended judgment of conviction was forged. *See* ***Culbert v. Young***, 834 F.2d 624, 631 (7th Cir. 1987) (conduct report may be considered as evidence).

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