COURT OF APPEALS
DECISION
DATED AND FILED

December 23, 2004

Cornelia G. Clark
Clerk of Court of Appeals

Appeal No. 03-0921 **Cir. Ct. No. 02CV003404**

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

STATE OF WISCONSIN EX REL. BRYCE L. GARRETT,

PETITIONER-APPELLANT,

V.

GERALD BERGE,

RESPONDENT-RESPONDENT.

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

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

¶1 PER CURIAM. Bryce Garrett appeals from an order affirming prison discipline decisions. We affirm.

¶2 For purposes of the issues in this opinion, the facts of the three conduct reports and the proceedings need not be stated in any detail. Garrett was

found guilty of using false names and titles, enterprises and fraud, unauthorized transfer of property, counterfeiting and forgery (two separate counts), possession of contraband, and unauthorized use of mail.

¶3 Review on certiorari is limited to whether: (1) the agency kept within its jurisdiction; (2) it acted according to law; (3) its action was arbitrary, oppressive or unreasonable and represented its will and not its judgment; and (4) the evidence was such that it might reasonably make the order or determination in question. ***Coleman v. Percy***, 96 Wis. 2d 578, 588, 292 N.W.2d 615 (1980).

¶4 We address two separate issues in this opinion. The first is whether an inmate is entitled to view or receive copies of documentary evidence that will be used at the disciplinary hearing *before* the hearing itself occurs. The second issue is whether Garrett was deprived of due process because of the manner in which documents were shown to him *at* the hearing. Both parties agree that Garrett was entitled to due process in connection with the charges.

¶5 Garrett first argues that prison officials should have granted his requests for access to the documentary evidence in advance of the hearings, for the purpose of assisting him in preparing his defense. He relies on ***Wolff v. McDonnell***, 418 U.S. 539, 94 S. Ct. 2963 (1974), and other federal cases. Berge argues that the situation is controlled by ***State ex rel. Ortega v. McCaughtry***, 221 Wis. 2d 376, 585 N.W.2d 640 (Ct. App. 1998). He relies on a different portion of that opinion than the circuit court did. In addition, the circuit court's analysis did not address this issue separately from the question of whether a prisoner is entitled to view evidence *at* the hearing. We agree that this portion of ***Ortega*** is persuasive on the question of access to documentary evidence before the hearing.

¶6 Ortega argued that he did not receive due process because he was not given, with his copy of the conduct report, a copy of a police report that was attached to the original conduct report. ***Ortega***, 221 Wis. 2d at 380-81, 398. We held that due process was satisfied by giving Ortega the conduct report itself, without attachments. ***Id.*** at 399. We concluded that the attachment was not necessary because the conduct report itself provided sufficient notice of the charge. ***Id.*** Although the facts in ***Ortega*** related only to an attachment to the conduct report, its reasoning can be applied to Garrett, as well. Providing the inmate with documentary evidence is not necessary to provide adequate notice, if the conduct report itself provides sufficient description. Garrett does not argue that there is something so unique about the nature of the evidence in this case that the description of it in the conduct report was inadequate to give him notice and allow him to prepare a defense.

¶7 Garrett also argues that he was precluded from examining copies of the documentary evidence during the hearing itself, because he was limited to viewing the items on a small video screen eight feet away from where he was seated. Berge does not argue that ***Ortega*** has significant bearing on this issue.[1] Instead, he argues that use of the screen comports with due process for other reasons. We see no reason why due process would bar the use of a screen to review evidence, assuming that the screen allows for inspection of the documents at a level of detail that is appropriate for defending against the specific allegations.

[1] In the respondent's original brief filed in this appeal, he argued at page 9 that ***Ortega*** leads to the conclusion that an inmate is not entitled to see the documentary evidence "prior to *or at*" the hearing. (Emphasis added.)

In a case alleging forgery of a signature, for example, it might be necessary to view the signature itself at some level of detail.

¶8 However, in this case we do not understand Garrett to be arguing on appeal that the use of the screen did not provide him with sufficient detail. In his trial court brief Garrett asserted that he "could not see any paperwork on an 8 inch monitor from 8 feet away." However, in certiorari our review is limited to the record brought up by the writ. ***State ex rel. Richards v. Leik***, 175 Wis. 2d 446, 455, 499 N.W.2d 276 (Ct. App. 1993). That means that in certiorari neither the circuit court nor this court can address an issue on the basis of factual assertions made in a party's brief. Accordingly, there is no record upon which we can draw any conclusion about whether due process was provided.

By the Court.—Order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5 (2001-02).