

**COURT OF APPEALS
DECISION
DATED AND FILED**

October 21, 2004

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. 03-2397

Cir. Ct. No. 01CV003481

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

**STATE OF WISCONSIN EX RELS. TONY MERRIWEATHER,
TONY EPPENGER, KYLE BONER AND DAVID HUDSON,**

PETITIONERS-APPELLANTS,

**ERIC M. WASHINGTON, RUFUS L. LYNCH, ALLEN T.
DAVIS, WILLIAM MEDINA, MICHAEL S. JOHNSON AND
GLENN T. TURNER,**

PETITIONERS,

V.

**GERALD BERGE, VICKIE SHARPE AND PETER A.
HUIBREGSTE,**

RESPONDENTS-RESPONDENTS.

APPEAL from an order of the circuit court for Dane County:
ROBERT DeCHAMBEAU, Judge. *Affirmed.*

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

¶1 PER CURIAM. Four prison inmates appeal an order denying a motion to hold the respondents, officials of the Department of Corrections (DOC), in contempt. The issue is whether the trial court properly ruled the respondents were in compliance with a prior decision on the appellants' certiorari petition. We affirm.

¶2 The appellants and other inmates commenced this action for review of the DOC's decision on their inmate complaint filed on June 6, 2001. The inmate complaint challenged, unsuccessfully, DOC's practice of paying all administratively confined inmates \$.08 per hour, the lowest of several inmate pay rates.

¶3 On judicial review the trial court reversed the DOC's decision. The court held that under WIS. ADMIN. CODE §§ 309.55 and 308.04(12)(g), inmates participating in work, school or program assignments during administrative confinement, who were also participating in a work, school or program assignment immediately before placement in administrative confinement, were entitled to a higher rate of pay. The court then remanded for a determination by the DOC whether the petitioners qualified for a higher pay rate based on its ruling.

¶4 In the weeks following the trial court's decision, several inmates wrote to the court either seeking clarification of the decision, or complaining that the DOC had not raised their pay rates, or moving the trial court to hold the DOC in contempt for its failure to increase their pay. On April 10, 2003, the trial court reiterated its holding that, for administratively confined inmates participating in work, school or program assignments, the single factor that determined pay status is whether the inmate was participating in a work, school or program assignment immediately prior to the administrative confinement. In order to address the

contempt motions and claims of non-compliance with that ruling, the court ordered the DOC to provide documentation showing whether each party was or was not participating in an assignment immediately prior to his administrative confinement, and whether the inmate continued with that assignment after administrative confinement began. After the DOC provided the ordered documentation, the trial court ruled on August 8, 2003, that the DOC had satisfactorily shown that none of the petitioner inmates were in a work, school or program assignment immediately prior to the administrative confinement the inmate was serving on June 6, 2001, the day they filed their inmate complaint. Consequently, the court upheld the DOC's determination that none of the inmates were entitled to increased pay as a result of the February decision. The appellants then commenced this appeal on September 9, 2003.

¶5 The appellants raise several issues concerning the February 2003 certiorari decision, and the proceedings leading up to it. Their principal objection is the court's determination that the previous assignment had to be in effect immediately prior to administrative confinement. However, none of the appellants timely appealed that decision, and we therefore have no jurisdiction to review it. *See* WIS. STAT. RULE 809.10(1)(b) (2001-02).¹ Consequently, the only issue that is properly before this court is whether the trial court erred in its August 8 decision by finding the DOC in compliance with the February order.

¶6 The trial court properly found the DOC in compliance. In response to the order for documentation, the DOC produced the "face card" for each

¹ All references to the Wisconsin Statutes are to the 2001-02 version unless otherwise noted.

petitioner. These documents showed the confinement status of each petitioner during the relevant times. They showed that each petitioner was either in temporary lock up, program segregation, or administrative segregation status immediately prior to the administrative confinement that existed on June 6, 2001. The DOC further showed that inmates in these statuses are not on work, school or program assignment. The petitioners failed to rebut the accuracy of that description of DOC policy, or the accuracy of the information provided by their face cards. Consequently, as the trial court held, the DOC was in compliance with the February order despite the fact that none of the petitioners received higher pay as a result.

¶7 On appeal, the appellants contend that at least in some cases, the prior program or adjustment segregation was subsequently expunged. That may or may not be correct, and it may or may not serve as a basis to claim higher wages. Those issues have not been litigated administratively, or in the trial court. We decline to address them for the first time on appeal.

¶8 Additionally, the appellants contend that the trial court erred by using the June 6, 2001 date to determine compliance, when in fact they first raised the pay issue by an inmate complaint filed on November 6, 2000. However, there is nothing of record in this proceeding concerning the November 6 complaint. The petition for certiorari review identifies the June 6, 2001 complaint as its only subject. The trial court therefore had no authority to determine the petitioners' eligibility for higher wages as of November 2000.

By the Court.—Order affirmed.

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

