

**COURT OF APPEALS
DECISION
DATED AND FILED**

April 24, 2008

David R. Schanker
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. 2007AP468

Cir. Ct. No. 2006CV2485

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN EX REL. RAFAEL COLLAZO,

PETITIONER-APPELLANT,

V.

MATTHEW J. FRANK,

RESPONDENT-RESPONDENT.

APPEAL from an order of the circuit court for Dane County:
RICHARD G. NIESS, Judge. *Affirmed.*

Before Dykman, Lundsten and Bridge, JJ.

¶1 PER CURIAM. Rafael Collazo appeals an order denying his petition for certiorari review of a prison disciplinary decision. He raises a number of issues. We affirm.

¶2 Collazo argues that his due process rights were violated by WIS. ADMIN. CODE § DOC 303.02(18), which allows a designated appointee to act on

behalf of a security director in a prison. As a general rule, a prisoner waives the right to raise issues not brought before the disciplinary committee or on administrative appeal in the prison. See *Santiago v. Ware*, 205 Wis. 2d 295, 324-26, 556 N.W.2d 356 (Ct. App. 1996). We will not consider this issue because Collazo did not properly raise it in previous proceedings.

¶3 Collazo next argues that his due process rights were violated by the definition of “possession” in WIS. ADMIN. CODE § DOC 303.02(16), which provides that “[p]ossession’ means on one’s person, in one’s quarters, in one’s locker or under one’s physical control.” He contends that this provision is unlawful because prisoners share cells and they may not know about items that are controlled by other inmates. We reject this argument. As noted by the Department of Corrections, the rule promotes “safety and orderly administration of prisons” and it “ultimately protects staff and other inmates by putting a speedy halt to drug/weapons trafficking in prisons, and is necessary for the safety of all parties.” As the Seventh Circuit has explained, “*the animating theme of ... prison jurisprudence for the last 20 years [is] the requirement that judges respect hard choices made by prison administrators.*” *Johnson v. Phelan*, 69 F.3d 144, 145 (7th Cir. 1995). In keeping with that admonition, we conclude that the provision does not violate due process even though it may place a burden on an inmate to be aware of what a fellow inmate is doing in their common living space.

¶4 Collazo next argues that he should not have been found guilty of possession of contraband because the contraband found in his cell was never introduced at the hearing. The reporting officer stated in the conduct report that he found a tobacco-like substance in Collazo’s cell. The officer further stated that the substance was turned over to the unit manager for specific identification and found to be tobacco. Statements in a conduct report may be relied upon by a hearing

officer as a basis for a determination of guilt. *See Culbert v. Young*, 834 F.2d 624, 631 (7th Cir. 1987). The statements by the reporting officer in the conduct report are sufficient to support the finding of guilt regardless of whether the tobacco was introduced as evidence at the hearing.

¶5 Collazo next contends that the document listing the reasons for the committee's decision and the evidence it relied on should not have been amended three times without a hearing on the amendments. The amendments were made during the inmate complaint review process in response to Collazo's request for review and correction of procedural errors. Collazo was not entitled to a hearing before changes were made in response to his requests for review.

¶6 Collazo argues that the testimony of witness LeShawn Brooks, his roommate who had also been charged with rule violations, should not have been considered by the disciplinary committee because there was no investigation as to whether his testimony was true or false. We are puzzled by this argument because Brooks' testimony supported Collazo's contention that he was not guilty of several of the rule violations. In any event, credibility of the witnesses is committed to the disciplinary committee's determination. *See State v. Bowden*, 2007 WI App 234, ¶14, 742 N.W.2d 332. Therefore, we reject this argument.

¶7 Collazo argues that his due process rights were violated by the fact that one of his staff advocates was appointed without approval from the acting warden and that his staff advocates did not provide him with adequate assistance. Again, Collazo failed to raise these arguments before the disciplinary committee or an administrative appeal in the prison, so we will not now consider them.

¶8 Finally, Collazo contends that the Department of Corrections has based his waiver argument on the wrong complaint file because the respondent's

brief refers to complaint file SCI-2006-1039, not SCI-2006-10397. While it is true that the respondent's brief incorrectly omits the final number of the complaint file, this is nothing more than a clerical error. The return to the writ contains documents pertaining to only one inmate disciplinary hearing and the respondent's brief accurately refers to the documents in that file despite the clerical error.

By the Court.—Order affirmed.

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