

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

November 2, 1995

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

No. 94-1514

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

**STATE OF WISCONSIN EX REL.
ROBERT J. WORTHON, JR.,**

Petitioner-Appellant,

v.

**GERALD BERGE, Superintendent,
FOX LAKE CORRECTIONAL INSTITUTION,**

Respondent-Respondent.

APPEAL from an order of the circuit court for Dodge County:
THOMAS W. WELLS, Judge. *Affirmed.*

Before Eich, C.J., Dykman and Sundby, JJ.

PER CURIAM. In a two-week period in 1993, Robert J. Worthon, Jr., received three conduct reports alleging several violations of prison disciplinary rules. An adjustment committee found Worthon guilty. The

institution superintendent affirmed all but one of the committee's decisions.¹ Worthon filed a petition for *certiorari* with the trial court. The court upheld the superintendent's decision. Worthon appeals, and we affirm.

The factual setting of two of the conduct reports is similar. On two occasions, Worthon was found asleep in his bed at a time when he was scheduled for work. When a guard directed Worthon to get up, Worthon refused. Although Worthon explained to the guard that he was sick, he did not attempt to get a medical excuse from work.²

Worthon first argues that his work assignment was improper and inconsistent with his medical condition. The trial court held that argument was not properly before it and did not address it. We agree with the court.

Judicial review in a *certiorari* matter is limited to four questions: (1) whether the adjustment committee exceeded its jurisdiction; (2) whether it acted according to the law; (3) whether its action was arbitrary, oppressive or unreasonable and represented its will and not its judgment; and (4) whether the evidence was such that it might reasonably make the order or determination in question. See *State ex rel. Richards v. Traut*, 145 Wis.2d 677, 679-80, 429 N.W.2d 81, 82 (Ct. App. 1988). The propriety of Worthon's work assignment is not reviewable upon *certiorari* review of these conduct reports.³

¹ Worthon was found guilty of disobeying orders on three separate occasions and of violating institutional rules, all contrary to WIS. ADM. CODE § DOC 303.24. The superintendent dismissed the charge of refusing to work. Worthon received a total of ten days in adjustment segregation and 210 days of program segregation.

² The third conduct report concerns Worthon's refusal to cut his fingernails which exceeded the length permitted under prison rules. None of Worthon's appellate arguments relate to this conduct report, and we will not address it further.

³ This court has upheld the dismissal of a disciplinary proceeding for disobeying an order when the underlying order was not authorized by Department of Corrections regulations. See *State ex rel. Anderson-EL v. Shade*, 181 Wis.2d 348, 349, 510 N.W.2d 805, 805 (Ct. App. 1993) (inmate was ordered to submit to an unauthorized strip search). These facts differ, however, since no one disputes the guards' authority to issue the orders.

Worthon argues that the adjustment committee did not adequately state the reasons for its decisions.⁴ An adjustment committee must state the reasons for its decision. See *State ex rel. Staples v. DHSS*, 130 Wis.2d 308, 311-12, 387 N.W.2d 551, 552 (Ct. App. 1986). Those reasons need not be lengthy or detailed, but a reviewing court must be able to understand them without resorting to speculation. *Id.* at 312, 387 N.W.2d at 552.

We conclude that the adjustment committee stated sufficient reasons for its decisions. Worthon does not dispute that he refused to get out of bed and report to work. He also does not dispute that he did not try to get a medical excuse prior to these incidents. The committee addressed Worthon's claimed justification for his conduct. The committee's decisions were adequate.

Worthon next contends that the adjustment committee cannot rely on the conduct report as evidence of guilt. Worthon is wrong. An adjustment committee may rely on a conduct report when the only issue is whether the incident account in the report is more credible than a differing account offered by the inmate. See *Culbert v. Young*, 834 F.2d 624, 631 (7th Cir. 1987), *cert. denied*, 485 U.S. 990 (1988). Similarly, when the inmate does not dispute the account set forth in the conduct report, but rather attempts to "explain it away," the committee may rely on the report as a basis for its decision.

By the Court.—Order affirmed.

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

⁴ The adjustment committee's reasons for its decision in the first conduct report were: "Was awaken[ed] by Sgt. and told to report to work. Inmate stated that he was not feeling well and did not report for his work assignment. H.S.U. [Health Services Unit] states that he is moderate work."

The committee's reasons for its second decision were: "Inmate was ask[ed] to report to work but chose not to do so. Even if not feeling well committee finds he could have dealt with this in a more responsible manner."