

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

January 4, 1996

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(1), 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. 94-2192

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

**STATE OF WISCONSIN EX REL.
ALBERT WINFREY,**

Petitioner-Appellant,

v.

GORDON A. ABRAHAMSON,

Respondent-Respondent.

APPEAL from an order of the circuit court for Dane County:
ANGELA B. BARTELL, Judge. *Affirmed.*

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

PER CURIAM. Albert Winfrey appeals from an order affirming the decision of the adjustment committee at Dodge Correctional Institution. We affirm.

The conduct report by Lieutenant Schueler alleged that Schueler observed Officer Reukauf approach an inmate who was loitering in the center aisle of the dining room. A short conversation followed and then both started

moving to the front of the dining room. Reukauf reported to Schueler why he had approached the inmate. Winfrey stopped behind Schueler and wanted to continue the discussion about loitering. Schueler told Winfrey that this was not the time or place to discuss the matter and that he should leave the dining room. Winfrey started to leave and then stopped and tried to continue the discussion. Schueler had to order Winfrey two additional times before he left the dining room.

Winfrey waived a formal due process hearing and received an informal hearing under WIS. ADM. CODE § DOC 303.76(2). The handwriting recording Winfrey's statement at the hearing is very difficult to read. So far as we can determine, it states:

Had finished eating; was moving slowly through dining room.
Saw off. talking to LT. so approached LT. LT. told to walk on - did. 2 other inmates asked what was wrong. Inmate died on Monday, thought might be Johnson - asked off. if Johnson had died. Was concerned because had spent mother's day with him.
Off. had told him to leave dining room, but went to LT. because thought could resolve issue. States left when told to do so by LT. Other unknown inmates could verify.

The committee found Winfrey guilty of disobeying orders (WIS. ADM. CODE § DOC 303.24) and disruptive conduct (WIS. ADM. CODE § DOC 303.28). So far as we can read, the committee's reason for decision states:

We find the inmate guilty of 303.24 and 303.28 based on the report of LT. Schueler and the admission by the inmate that he approached the LT. after having been directed to leave the dining room and that as a result of his behavior other inmates interrupted their normal activities and asked him what had happened.

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, 621 (1980). We apply the substantial evidence test, that is, whether reasonable minds could arrive at the same conclusion reached by the department. *State ex rel. Richards v. Traut*, 145 Wis.2d 677, 680, 429 N.W.2d 81, 82 (Ct. App. 1988).

Winfrey argues that the committee erred because it did not accept his version of the events related to the conduct report. However, the decision on credibility is for the committee to make, and it cannot be reviewed on certiorari. *State ex rel. Messner v. Milwaukee County Civil Serv. Comm'n*, 56 Wis.2d 438, 448, 202 N.W.2d 13, 20 (1972).

Winfrey argues that he was not allowed to face his accusers because Schueler and Reukauf did not testify. However, one of the rights Winfrey waived by declining a due process hearing was the right to call witnesses, as is stated on the waiver form and in WIS. ADM. CODE § DOC 303.75(4).

In addition to the conduct report written by Schueler, Reukauf also wrote a conduct report. Winfrey argues that the writing of two conduct reports was in violation of WIS. ADM. CODE § DOC 303.66(3) and violated his right to be free from double jeopardy. We reject the arguments. The charges in Reukauf's conduct report were dismissed because the incident was covered by Schueler's.

Winfrey argues that he should not be disciplined for "going up the chain of command," an activity he claims is authorized by a posted policy. However, nothing in that policy allows such activity at any time or place chosen by the inmate. The policy does not allow inmates to be disruptive or disobey orders.

Winfrey argues that the committee failed to provide a written statement of evidence and reasons for its decision. We conclude that the statements were sufficient.

By the Court. – Order affirmed.

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