

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

December 14, 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(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. 94-2712

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

**STATE OF WISCONSIN EX REL.
WILLIAM N. LEDFORD,**

Petitioner-Appellant,

v.

DAN BUCHLER,

Respondent-Respondent.

APPEAL from an order of the circuit court for Dane County:
MICHAEL B. TORPHY, JR., Judge. *Affirmed.*

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

PER CURIAM. William N. Ledford appeals from an order dismissing his petition for a writ of certiorari. The issue is whether his due process hearing was held within twenty-one days, as required by WIS. ADM. CODE § DOC 303.76(3). Because the days are computed according to § 990.001(4), STATS., the hearing was timely. Therefore, we affirm.

Ledford was given a conduct report and hearing notice on March 22, 1994. WIS. ADM. CODE § DOC 303.76(3) requires the prison disciplinary committee to hold a due process hearing within twenty-one days of the date the inmate receives the conduct report.¹ Ledford's hearing was held April 12, 1994.

Ledford does not dispute the facts but asserts that the hearing was one day late under § 302.11(1), STATS., which computes "fractions of a day [to] be rounded in the inmate's favor to a whole day."² However, § 302.11(1) applies

¹ WIS. ADM. CODE § DOC 303.76(3) provides that:

A due process hearing shall be held no sooner than 2 working days or later than 21 days after the inmate receives a copy of the conduct report and hearing notice. An inmate may waive these time requirements in writing if the security director agrees to the waiver. The inmate may request additional time to prepare for the hearing, and the security director shall grant the request unless there is a good reason to deny it.

² Ledford was given his conduct report at 8:20 a.m. and his due process hearing was held at 1:10 p.m.

only to computing an inmate's mandatory release date; it does not apply to other computations, such as those in WIS. ADM. CODE § DOC 303.76(3).³

³ Section 302.11(1), STATS., governs "calculations under this subsection or sub. (2)(b)..." This calculation is under WIS. ADM. CODE § DOC 303.76(3), not § 302.11(1) or § 302.11(2)(b), STATS.

Absent a specific provision to the contrary, § 990.001(4), STATS., governs time computations, including those in WIS. ADM. CODE § DOC 303.76(3). Section 990.001(4)(a) provides, "The time within which an act is to be done or proceeding had or taken shall be computed by excluding the first day and including the last." March 22, 1994, the day Ledford was given the conduct report, is excluded from the computation as the first day, and the twenty-first day, April 12, 1994, is included in the computation as the last day.⁴ Consequently, Ledford's due process hearing was timely held within twenty-one days, as required by WIS. ADM. CODE § DOC 303.76(3) and computed under § 990.001(4)(a).

By the Court. – Order affirmed.

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

⁴ Ledford relies on *State ex rel. Jones v. Franklin*, 151 Wis.2d 419, 424-25, 444 N.W.2d 738, 741 (Ct. App. 1989), which holds that the harmless error rule of WIS. ADM. CODE § DOC 303.87 is inapplicable to violations of the twenty-one day deadline of WIS. ADM. CODE § DOC 303.76(3). However, that holding is not in issue here because the due process hearing was held within twenty-one days. Moreover, Jones' February 26, 1988 hearing was timely on the second conduct report, which he received February 5, 1988. The twenty-one days in *Jones* were computed according to § 990.001(4)(a), STATS., as they were in this case.