

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

January 18, 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. 94-3326

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

**STATE OF WISCONSIN EX REL.
ROBERT L. WORTHON,**

Petitioner-Appellant,

v.

JEFFREY ENDICOTT,

Respondent-Respondent.

APPEAL from an order of the circuit court for Columbia County:
DANIEL GEORGE, Judge. *Affirmed.*

Before Gartzke, P.J., Sundby and Vergeront, JJ.

PER CURIAM. Robert Worthon appeals from an order affirming the Columbia Correctional Institution adjustment committee's decision finding him guilty of disruptive conduct. The issues are: (1) whether there was sufficient evidence to support the committee's decision; (2) whether Worthon was denied his right to call witnesses pursuant to WIS. ADM. CODE § DOC 303.81(4); and (3) whether the committee adequately explained its reasons for finding Worthon guilty. We resolve all issues against Worthon and affirm the order.

WISCONSIN ADM. CODE § DOC 303.28 defines the offense of disruptive conduct. It provides:

Any inmate who intentionally or recklessly engages in, causes or provokes disruptive conduct is guilty of an offense. "Disruptive conduct" includes physically resisting a staff member, or overt behavior which is unusually loud, offensive or vulgar, and may include arguments, yelling, loud noises, horseplay, or loud talking, which may annoy another.

The conduct report, the charging document, stated that Worthon had engaged in disruptive conduct for the following reasons:

On above date and time inmate Worthon came out for lunch, he took his tray and started to complain about his food. He walked over to the tables and started to ask inmates at different tables if they wanted his food. I told him that he had to sit at a table and only give his food up to those at that table. Inmate Worthon stated, "Sarg you better stop harassing me, you've been harassing me ever since I got here." I told him to go back to his cell if he's not eating. He stated, "you can't stop me from talking[.] I'm covered by the first amendment. You can't tell me to stop talking. You better look out I've got 10-12 witnesses here (as he points to all the inmates in the dayroom) and I'll have you in federal court.["] I told him to be quiet and go back to his cell. Worthon stated again "you can't stop me from talking[.] I've got these witnesses["] and went back to his cell. During this incident there [were] 13 inmates in the dayroom eating lunch. All thirteen seemed to stop eating and went quiet until Worthon went back to his cell.

Based on the information in the conduct report and the testimony of the reporting officer, the adjustment committee found Worthon guilty of the offense.

Certiorari review is limited to determining whether the administrative body stayed within its jurisdiction and acted according to law; whether its decision was arbitrary or unreasonable; and whether its determination was reasonably based upon the evidence. See *State ex rel. Staples v. DHSS*, 115 Wis.2d 363, 370, 340 N.W.2d 194, 197-98 (1983).

Worthon first argues that the evidence was insufficient to find him guilty of the violation. Where the sufficiency of the evidence to support an administrative decision is challenged, we may not weigh the evidence; we are limited to determining whether there is substantial evidence in the record to support the determination. *Van Ermen v. DHSS*, 84 Wis.2d 57, 64, 267 N.W.2d 17, 20 (1978).

The committee's decision is supported by the reporting staff officer's testimony that Worthon was disruptive because his conversation was loud and caused others in the dayroom to stop eating. The committee's decision is also supported by the information in the conduct report. Because statements in a conduct report may, in and of themselves, serve as a basis for a finding of guilt, *Culbert v. Young*, 834 F.2d 624, 631 (7th Cir. 1987), *cert. denied*, 485 U.S. 990 (1988), the statements in the conduct report coupled with the prison officer's testimony are sufficient to sustain the committee's determination of guilt.

Worthon next argues that his right to call witnesses under WIS. ADM. CODE § DOC 303.81(4) was violated. Worthon's claim is based on the fact that Captain Trattles was not present at the hearing despite Worthon's request that he appear as a witness.

WISCONSIN ADM. CODE § DOC 303.81(4) provides:

[I]f a staff member witness ... will be unavailable due to illness, no longer being employed at the location, being on

vacation or being on a different shift, but there is no other reason to exclude that witness's testimony ... then the hearing officer shall attempt to get a signed statement from the witness to be used at the disciplinary hearing.

We agree with Worthon that there was a violation of the rule. There was no showing that Trattles was unavailable because he was ill, no longer employed, on vacation, or working a different shift. Even if Trattles was unavailable for one of these reasons, the hearing officer should have attempted to get a signed statement from Trattles to be used at the disciplinary hearing. Because the hearing officer did not attempt to do so, the rule was violated.

Even though the rule was violated, however, Worthon has waived his right to raise the argument. In *Saenz v. Murphy*, 162 Wis.2d 54, 63-64, 469 N.W.2d 611, 615 (1991), limited on other grounds by *Casteel v. Vaade*, 167 Wis.2d 1, 481 N.W.2d 476 (1992), the supreme court held that an inmate who failed to object to a witness's absence at a disciplinary hearing waived his right to later raise the claim. The record does not show that Worthon objected to Trattles' absence at the hearing, or to the fact that the hearing officer did not attempt to get a signed statement from Trattles. Under *Saenz*, Worthon has waived his right to object to the rule violation.

Worthon finally argues that the committee did not adequately explain its reasons for finding him guilty. Whether a prison disciplinary committee has provided an adequate statement of the reasons for its decision "will vary from case to case depending on the severity of the charges and the complexity of the factual circumstances...." *Culbert*, 834 F.2d at 631.

In its decision, the committee stated that it reviewed both the oral and written testimony. The committee stated that it found the charging officer's testimony to be credible, but found the testimony of an inmate witness called by Worthon, who testified that he was present in the dayroom but did not hear a disruption, not to be credible because the inmate heard only part of the exchange. All the committee is required to do is to state that it believed the conduct report and the testimony of the charging officer and disbelieved contrary testimony. Cf. *Saenz v. Young*, 811 F.2d 1172, 1174 (7th Cir. 1987). The

committee's statement of its reasons for finding Worthon guilty was sufficiently adequate.

By the Court. – Order affirmed.

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