

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

March 28, 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, 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. 95-0032

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

**STATE OF WISCONSIN EX REL.
JOHN S. BERGMANN,**

Petitioner-Appellant,

v.

GARY R. McCAUGHTRY,

Respondent-Respondent.

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

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

PER CURIAM. John Bergmann, a Waupun Correctional Institution inmate, appeals from an order affirming four decisions of the Waupun disciplinary committee. Bergmann challenges the sufficiency of the evidence supporting those decisions. The test is whether the decisions are reasonable given the evidence. *Van Erman v. DHSS*, 84 Wis.2d 57, 63, 267 N.W.2d 17, 20 (1978). We conclude that they are, and therefore affirm.

A conduct report issued on October 26, 1993, charged Bergmann with attempted battery, disobeying orders and disrespect. The evidence consisted of eye-witness reports from corrections officers. They stated that while being escorted to temporary lockup, Bergmann verbally abused an officer and disobeyed an order to stop. Bergmann then lunged at one officer but was subdued by another. He then told an officer that the officer was "a sick mother fucker." He then referred to the officers as "scum of the earth." Bergmann admitted disobeying an order and making the disrespectful statements. Whether he attempted a battery was determined against him as a matter of credibility. The committee's decision to believe the officer's version of that incident is not subject to review. *Omernick v. DNR*, 94 Wis.2d 309, 311, 287 N.W.2d 841, 843 (Ct. App. 1979), *cert. denied*, 454 U.S. 883 (1981).

A conduct report issued on October 28, 1993, charged Bergmann with making threats, disobeying an order, lying to an officer and unauthorized use of mail. Evidence produced at the hearing showed that in March 1993 an officer ordered Bergmann not to communicate with his son, Denny, or his ex-wife and her husband, Mindy and Dwayne McCullough. Between August 27 and October 9, 1993, Bergmann wrote four letters to Denny, one of which included a threat to punish Dwayne. The McCulloughs also received an unsigned letter from someone identifying himself as Bergmann's friend, which physically threatened both of them. Staff found a copy of the letter in Bergmann's cell, reasonably implying that he instigated it. When confronted with his letters, Bergmann falsely told an officer that the warden had lifted the no contact order. Bergmann inculpated himself on the charges of disobeying an order, lying to a staff member and unauthorized use of mail. In one of his letters he stated, "I have written to Denny three times over the past seven weeks in violation of the institution's no contact order." That admission, and the content and existence of the letters, supports the guilty finding on all four charges.

On November 5, 1993, a conduct report charged Bergmann with making threats and showing disrespect to staff. The primary evidence of the offense was a letter Bergmann wrote to another inmate referring to officers in derogatory terms and stating that he intended to commit additional infractions over the next few weeks. He stated that "they want a war, they got one. The child abuse Supporting Bastards." The committee acquitted Bergmann on the disrespect charge but convicted him for threatening staff. The committee reasonably concluded that the statement "they want a war, they got one"

threatened staff with harassment. (Bergmann knew that the staff was monitoring his mail and would receive the threat.)

Bergmann's final conduct report under review was issued on January 3, 1994, and charged Bergmann with unauthorized forms of communication, counterfeiting and forgery, and unauthorized use of the mail. The evidence consisted of an envelope addressed to Attorney Mel Feil, and the letter contained in the envelope. In the letter Bergmann wrote that "they have a full mail monitor on me to allegedly intercept any letters I try to send to my son by sending them to someone else first. Thus I called you an attorney on the envelope so I could seal it and they could not read my letter to you. I hope you understand." The committee found Bergmann guilty of counterfeiting and forgery and acquitted him of the other two charges. Bergmann's own admission that he falsely identified the addressee to avoid the mail monitor conclusively established his guilt.

Costs are assessed against Bergmann. Upon service of this order and the order taxing costs, the appropriate officer of the institution in which the appellant is currently incarcerated shall deduct the amount of the costs from the total in the appellant's inmate account as of the date of this order and pay that amount to the respondent. Section 814.29(3)(b), STATS.

By the Court. – Order affirmed and costs awarded to respondent.

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