COURT OF APPEALS
DECISION
DATED AND RELEASED

November 14, 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. 95-2357

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT IV

TAYR KILAAB AL GHASHIYAH (KAHN),

Petitioner-Appellant,

v.

GARY R. McCAUGHTRY,

Respondent-Respondent.

APPEAL from an order of the circuit court for Dodge County: JOSEPH E. SCHULTZ, Judge. *Affirmed*.

Before Eich, C.J., Dykman, P.J., and Robert D. Sundby, Reserve Judge.

PER CURIAM. Tayr Kilaab Al Ghashiyah (Kahn), a.k.a John Casteel, appeals from an order of the circuit court quashing his writ of certiorari. For the reasons set forth below, we affirm.

By minor conduct report dated October 14, 1994, Kahn, then an inmate at Waupun Correctional Institution, was charged with violating WIS. ADM. CODE § DOC 303.63.[1] Specifically, Kahn was charged with kissing an adult visitor during—as opposed to at the beginning or end of—a visit, on October 7, 1994, as disallowed by the institution rules handbook, as well as the visiting room rules attached to the report.

At a minor conduct hearing on October 21, 1994, Kahn pled not guilty. The hearing officer found him guilty, explaining that "inmate intentionally [and] knowingly kissed his female visitor—inmate got copy of policy [and] procedures in inmate handbook—issued to all inmates." Kahn was penalized by not being permitted to see that particular visitor for thirty days.

The warden affirmed the hearing officer's decision, and Kahn appealed to the circuit court, which also affirmed. He now appeals to this court.

Judicial review in certiorari actions is limited to determining (1) whether the administrative hearing committee "kept within its jurisdiction; (2) whether it proceeded on a correct theory of 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 the committee might reasonably make the determination in question." ***Snyder v. Waukesha County Zoning Bd. of Adjustment***, 74 Wis.2d 468, 475, 247 N.W.2d 98 (1976). As to this last, "the test is whether reasonable minds could arrive at the same conclusion reached by the administrative tribunal." ***State ex rel. Brookside Poultry Farms, Inc. v. Jefferson County Bd. of Adjustment,*** 131 Wis.2d 101, 120, 388 N.W.2d 593,

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[1] WIS. ADM. CODE § DOC 303.63 states:

> **(1)** Each institution may make specific substantive disciplinary policies and procedures relating to:
>
> (a) Visiting, including no-contact visiting;
>
> ...
>
> **(2)** Violations of any specific policies or procedures authorized under sub. (1) are offenses.

600-01 (1986); *see also* ***Van Ermen v. DHSS,*** 84 Wis.2d 57, 64, 267 N.W.2d 17, 20 (1978) (same standard applies on appellate review).

A reviewing court on certiorari does not weigh the evidence presented to the adjustment committee. ***Van Ermen***, 84 Wis.2d at 64, 267 N.W.2d at 20. Our inquiry is limited to whether any reasonable view of the evidence supports the committee's decision. ***State ex rel. Jones v. Franklin,*** 151 Wis.2d 419, 425, 444 N.W.2d 738, 741 (Ct. App. 1989).

Kahn alleges that the hearing officer erred because the officer did not consider any physical evidence. We do not know what "physical evidence" there can be of a kiss, and Kahn does not identify any.

Kahn next argues that he did not receive a copy of the "posted policy and procedure," and that he was unaware of the prison policy. We reject this argument. Although Kahn alleges otherwise, the record demonstrates that he received a copy of the conduct report, as well as a copy of the rules he was charged with violating. The record also shows that among Kahn's copious conduct report violations is a charge from the previous month of breaching these same visiting rules.

Kahn contends that the hearing officer failed to make an adequate record, or an adequate statement of the reasons for disposition. We disagree. The certiorari return shows that Kahn was served notice, appeared and pled not guilty, and was found guilty for the reasons discussed above. More is not required. ***State ex rel. Staples v. DHSS***, 130 Wis.2d 308, 311-12, 387 N.W.2d 551, 552 (Ct. App. 1986).

Further, although Kahn states that the reporting officer was biased against him, he offers only an unsupported assertion and speculation regarding his visitor's *persona non grata* status with the warden. Kahn's apparent theory is that he never improperly kissed his visitor but was instead the victim of a pattern of retaliation and harassment amounting to a conspiracy among the reporting officer, the hearing officer, various other officers, and the warden. The decisionmaker was entitled to reject this theory. A decisionmaker 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).

Kahn does not make a separate argument on the bias of the hearing officer, and it appears to be merely an arm of his conspiracy theory. "In light of the inadequate briefing on this issue, we decline to address it." ***In re Estate of Balkus***, 128 Wis.2d 246, 255 n.5, 381 N.W.2d 593, 598 (Ct. App. 1985).

Finally, Kahn argues that a certiorari petition and a disciplinary proceeding are both inadequate forums to consider constitutional claims stemming from harassment and retaliation. We agree. Certiorari is limited in scope. If Kahn wishes in good faith to state a constitutional claim—the legal nature of which he has not stated to this court—he may institute whatever proceedings he believes will offer relief.

By the Court.—Order affirmed.

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