

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

November 6, 1997

Marilyn L. Graves  
Clerk, Court of Appeals  
of Wisconsin

**NOTICE**

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

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.

**No. 96-1665**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT IV**

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**STATE OF WISCONSIN EX REL. RUFUS WEST,**

**PETITIONER-APPELLANT,**

**v.**

**GARY MCCAUGHTRY,**

**RESPONDENT-RESPONDENT.**

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

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

PER CURIAM. Rufus West, a prison inmate, appeals from an order affirming two disciplinary decisions of the Waupun Correctional Institution Disciplinary Committee, which were affirmed in turn by Gary McCaughtry, warden of WCI. That committee found West guilty of being in an unassigned area, contrary to WIS. ADM. CODE § DOC 303.511, and refusing to submit to a

urine test for intoxicants, contrary to WIS. ADM. CODE § DOC 303.59(3). He contends that he received inadequate notice of the intoxicants charge, that he did not receive adequate assistance of a staff advocate on both charges, and that the committee heard insufficient evidence to find him guilty on the intoxicants charge. We reject his arguments and affirm.

West received adequate notice of the charge that he refused to submit to a urine test. The conduct report substantially detailed West's alleged conduct and plainly and unmistakably identified his refusal to submit as the charged offense. West's statement to the disciplinary committee addressed the refusal issue at length, and shows beyond reasonable dispute that he knew and understood that the alleged offense was his refusal. As West notes, the conduct report cited the offense as WIS. ADM. CODE § DOC 303.59, entitled "Use of intoxicants," rather than citing to the specific subsection violated, § DOC 303.59(3). Even if it was error to omit the specific subsection violated, any such error was harmless given the factual description of the offense and West's demonstrated understanding of it. Procedural violations that are harmless are disregarded. WIS. ADM. CODE § DOC 303.87.

The record does not support West's claim that he received inadequate staff assistance. Four days after the conduct reports were issued, which was two weeks before his hearing, West signed and submitted to the warden a form stating "I don't want the assistance of a staff advocate for my upcoming hearings for [these conduct reports]." Although West now asserts that he made this statement because the assigned advocate had already demonstrated his inadequacies, nothing in the record substantiates that allegation. On certiorari review, we are strictly bound by the record. *See State ex rel. Richards v. Leik,*

175 Wis.2d 446, 455, 499 N.W.2d 276, 280 (Ct. App. 1993). Any evidence of inadequate assistance by staff is outside that record.

The committee heard sufficient evidence to find West guilty of refusing a urine test. The conduct report plainly sets out West's conduct in detail, and the committee found that report credible. Conduct reports may constitute evidence in prison disciplinary proceedings. *See* WIS. ADM. CODE § DOC 303.86(2)(a) (“An adjustment committee ... may consider any relevant evidence, whether or not it would be admissible in a court of law ....”).

West seems to argue, as well, that the institution charged the wrong offense because the note to WIS. ADM. CODE § DOC 303.59, in discussing § DOC 303.59(2), refers to refusing a test as a “separate offense.” *See* ch. DOC 303 appendix, note to § DOC 303.59. That is correct. The separate charge referred to is § DOC 303.59(3), and that is what West was charged with and found guilty of violating.

*By the Court.*—Order affirmed.

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

