

**COURT OF APPEALS
DECISION
DATED AND FILED**

October 8, 1998

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. 98-0578

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN EX REL. JUNIOR CASAS,

PETITIONER-APPELLANT,

v.

JUDY SMITH,

RESPONDENT-RESPONDENT.

APPEAL from an order of the circuit court for Dane County:
DANIEL R. MOESER, Judge. *Affirmed.*

Before Eich, Vergeront and Roggensack, JJ.

PER CURIAM. Junior Casas appeals from an order affirming a decision of the Oshkosh Correctional Institution Adjustment Committee, which found him guilty of group resistance and violating the institution's policies and procedures. See WIS. ADM. CODE § DOC 303.20 and 303.63. The issues are: (1) whether Casas waived his right to raise issues that he did not raise before the

adjustment committee and whether he waived his right to challenge the department's decision finding him guilty of violating the institution's policies and procedures; and (2) whether there was sufficient evidence to sustain the committee's decision finding him guilty of group resistance. We resolve the issues against Casas and affirm the order.

A conduct report was issued charging Casas with group resistance and violating the institution's policies and procedures. The charges stemmed from Casas's possession of written materials regarding an attempt to form a Spanish-speaking prisoners' group. Under prison rules, group activities are not allowed without specific approval of the warden. The prison adjustment committee found Casas guilty of the charges. Casas appealed to the warden, who affirmed. The trial court then affirmed the warden's order.

Casas first attempts to raise a number of issues that he did not raise before the adjustment committee. He argues: (1) that he did not receive notice under WIS. ADM. CODE § DOC 303.81 when his hearing was allegedly canceled and rescheduled; (2) that his activities were protected by the First Amendment because the papers were religious and legal in nature; (3) that the search which led to the discovery of the documents was unlawful; and (4) that his advocate did not have sufficient time to prepare for the hearing. Because Casas did not raise these arguments before the adjustment committee, he has waived his right to raise them before this court. *See Saenz v. Murphy*, 162 Wis.2d 54, 66, 469 N.W.2d 611, 616-17 (1991), *overruled on other grounds by Casteel v. Vaade*, 167 Wis.2d 1, 21 n.18, 481 N.W.2d 476, 484 (1992). We also conclude that Casas has waived his right to challenge the finding of guilt on the charge of violating the institution's policies and procedures because Casas did not appeal this decision to the warden.

See Santiago v. Ware, 205 Wis.2d 295, 325, 556 N.W.2d 356, 368 (Ct. App. 1996) (a prisoner waives issues not raised on appeal to the warden).

Casas next argues that the guilty finding on the group resistance charge was not supported by the evidence. Any inmate who intentionally participates in a group activity which is not approved by the warden is guilty of an offense. *See* WIS. ADM. CODE § DOC 303.20(1). It is undisputed that Casas possessed a document entitled “Articles of Association” that was prepared to form a group of Spanish-speaking inmates. It is undisputed that Casas did not have authorization from the warden to engage in organizational activities for this group. At the conduct hearing, Casas admitted his guilt to the charges. There was sufficient evidence for the committee to find Casas guilty as charged. *See Van Ermen v. DHSS*, 84 Wis.2d 57, 64, 267 N.W.2d 17, 20 (1978) (we do not review the evidence *de novo*, but simply determine whether there is substantial evidence to support the administrative decision).

By the Court.—Order affirmed.

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

