**COURT OF APPEALS**
**DECISION**
**DATED AND FILED**

November 19, 1998

**Marilyn L. Graves**
**Clerk, Court of Appeals**
**of Wisconsin**



**No. 98-1553**

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

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**STATE OF WISCONSIN EX REL. TONY SHAW,**

**PETITIONER-APPELLANT,**

**V.**

**GARY R. MCCAUGHTRY,**

**RESPONDENT-RESPONDENT.**

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

Before Dykman, P.J., Roggensack and Deininger, JJ.

PER CURIAM. Tony Shaw appeals the decision and order of the circuit court which denied his petition for a writ of certiorari and affirmed the decision of the Program Review Committee (PRC). The issues on appeal are whether the committee properly considered documents which were the basis for a prior conduct report which had been expunged; whether the PRC complied with

the appropriate DOC regulations; and whether the PRC was required to produce certain witnesses at the hearing. Because we conclude that the PRC followed all the appropriate procedural requirements, we affirm.

Shaw is an inmate at Waupun Correctional Institution. Based on the recommendation of the security director, the PRC held a hearing to determine whether Shaw should remain in administrative confinement. The PRC determined that he should because of his gang involvement. At the hearing, the PRC relied on letters found in Shaw's possession, informant statements, and conduct reports.

On certiorari, review of the PRC is limited to the record created before the committee. *See* ***State ex rel. Whiting v. Kolb,*** 158 Wis.2d 226, 233, 461 N.W.2d 816, 819 (Ct. App. 1990). The court's review is limited to whether (1) the committee stayed within its jurisdiction, (2) it acted according to law, (3) the action was arbitrary, oppressive or unreasonable and represented the committee's will and not its judgment, and (4) the evidence was such that the committee might reasonably make the order or determination in question. *See* ***id.*** "The facts found by the committee are conclusive if supported by 'any reasonable view' of the evidence and [the court] may not substitute [its] view of the evidence for that of the committee." ***Id.*** (quoting ***State ex rel. Jones v. Franklin,*** 151 Wis.2d 419, 425, 444 N.W.2d 738, 741 (Ct. App. 1989)).

Shaw first argues that the PRC erred when it relied on documents which were part of a conduct report which had previously been expunged. The State argues, and the circuit court found, that the expunged conduct report itself was not part of the record which was considered by the PRC. The documents which were before the PRC were confidential informant statements and a letter. The State contends that ***Irby v. Bablitch***, 170 Wis.2d 656, 659, 489 N.W.2d 713,

714 (Ct. App. 1992), requires that only "records of alleged disciplinary infractions" must be expunged. We agree and conclude that the confidential informant statements and letter, although they were used as evidence of a disciplinary infraction in a prior proceeding, are not "records of the disciplinary infraction" and therefore are not required to be expunged.

Shaw next argues that the circuit court violated his constitutional rights by citing WIS. ADM. CODE § DOC 308.04(5), which did not become effective until after Shaw's hearing. The regulation establishes the procedure for the use of confidential informant statements. The regulation in effect at the time of Shaw's hearing, however, was not substantially different.

Under WIS. ADM. CODE § DOC 308.04(4)(e)4 (Register, June, 1994, No. 462), if a designated staff member determines that testifying would pose a significant risk of bodily harm to a witness, the staff member is to obtain a signed, sworn, statement from the witness, corroborated in accordance with the procedures in § DOC 303.86(4). The staff member then may edit the statement to avoid revealing the identity of the witness and must deliver a copy of the edited statement to the witness.[1]

The record indicates that the prison staff followed the procedures in effect at the time of the hearing. Since we review the record to determine whether the department followed its own regulations, the circuit court's reference to the current regulation has no effect on our determination and does not violate Shaw's constitutional rights.

[1] Under the newer regulation, the staff member prepares a summary of the statement rather than editing it.

The next issue Shaw raises is that his requested witness list was improperly denied. Shaw apparently is referring to his request that Registrar Pam Knick and the confidential informants attend the hearing. Knick was unable to attend the hearing because she was on vacation at that time. Knick provided a signed and sworn statement to the PRC. WISCONSIN ADM. CODE § DOC 303.81, which applies to administrative confinement proceedings under § DOC 303.04(4)(e)4 (Register, June, 1994, No. 462), specifically provides that a signed statement may be taken from a staff member witness who will be on vacation.

The other witnesses Shaw requested were the confidential informants. As discussed above, the security director determined that the witnesses were at risk of serious bodily harm if they testified. Therefore, under the regulation, statements could be used instead of testimony. *See* WIS. ADM. CODE § DOC 308.04(4)(e)4 (Register, June, 1994, No. 462). Consequently, Shaw was not improperly denied the attendance of any witnesses.

*By the Court.*—Order affirmed.

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