

**COURT OF APPEALS
DECISION
DATED AND FILED**

November 19, 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. 98-1676

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN EX REL. LEWIS ALTMAN, JR.,

PETITIONER-APPELLANT,

v.

**GARY R. MCCAUGHTRY, WARDEN, WAUPUN
CORRECTIONAL INSTITUTION,**

RESPONDENT-RESPONDENT.

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

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

PER CURIAM. Lewis Altman appeals from a decision and order denying certiorari and affirming the decision of the superintendent of the institution. We affirm.

Altman was charged with violating WIS. ADM. CODE § § DOC 303.27, lying, and 303.28, disruptive conduct, for lying about an incident with another inmate. Altman alleged that another inmate had beaten him. When institutional staff investigated the matter, they reached the conclusion that Altman was lying. An officer interviewed Altman who admitted that he had made up the story, and a conduct report was issued.

The adjustment committee held a hearing at which Altman denied that he had admitted to lying. The adjustment committee found that the reporting officer was credible and Altman was not, and found Altman guilty of lying and not guilty of disruptive conduct. Altman appealed the decision to the warden and the warden affirmed. Altman then brought a writ of certiorari to the circuit court. The circuit court concluded that there was sufficient evidence to support the decision of the adjustment committee and affirmed the decision. Altman appeals.

Altman argues generally that he was not allowed to present to the adjustment committee the testimony of certain relevant witnesses, that he was denied the effective assistance of a staff advocate, that the adjustment committee did not have jurisdiction to hear his case, and that the circuit court's decision was erroneous.

On certiorari, our review of the prison adjustment committee is limited to the record created before the committee, and 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. *State ex rel. Whiting v. Kolb*, 158 Wis. 2d 226, 233, 461 N.W.2d 816, 819 (Ct. App. 1990).

Since we are limited to the record created before the committee, it follows that we cannot consider issues which were not raised before the committee and hence are not in the record. Consequently, if an inmate does not raise an issue before the committee, or on appeal to the warden, the inmate has not preserved those issues for review by this court. *Cf. Saenz v. Murphy*, 162 Wis.2d 54, 66, 469 N.W.2d 611, 616 (1991); *Santiago v. Ware*, 205 Wis.2d 295, 327, 556 N.W.2d 356, 368 (Ct. App. 1996). Because Altman did not raise any of the argued issues before the adjustment committee, he may not pursue them on appeal.

Finally, as we have indicated, the only issue addressed by the circuit court was whether there was sufficient evidence to support the adjustment committee's decision. Altman discusses this issue for the first time in his reply brief. We will not consider an issue raised for the first time in a reply brief. *See In re Estate of Bilsie*, 100 Wis.2d 342, 346 n.2, 302 N.W.2d 508, 512 (1981). We therefore affirm the decision and order of the circuit court.

By the Court.—Order affirmed.

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

