

**COURT OF APPEALS
DECISION
DATED AND FILED**

December 23, 2003

Cornelia G. Clark
Clerk of Court of Appeals

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 WIS. STAT. § 808.10 and RULE 809.62.

**Appeal No. 03-1305
STATE OF WISCONSIN**

Cir. Ct. No. 02CV003295

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN EX REL. BRYCE GARRETT,

PETITIONER-APPELLANT,

V.

GERALD BERGE,

RESPONDENT-RESPONDENT.

APPEAL from an order of the circuit court for Dane County:
ROBERT A. DE CHAMBEAU, Judge. *Affirmed.*

Before Dykman, Vergeront and Lundsten, JJ.

¶1 PER CURIAM. Bryce Garrett appeals an order affirming two prison disciplinary decisions. In each, officials at the Wisconsin Secure Program Facility (WSPF) disciplined Garrett for attempting to mail a letter to his sister after the security director suspended his privilege to correspond with her. The

dispositive issue is whether the evidence was sufficient to support the guilty findings. We affirm.

¶2 On June 20, 2002, the security director at WSPF, Gary Boughton, notified Garrett's sister, Dianna Spoo, of Green Bay, that he was suspending her mail privileges with Garrett because she had mailed Garrett a fraudulent or altered document. On June 26, apparently in response to Garrett's inquiry, Boughton sent Garrett a memo clarifying that the suspension also included his privilege to mail letters to Spoo. Pursuant to the provisions of WIS. ADMIN. CODE § DOC 309.04(8) and (9), inmates have ten days from the date mail privileges are suspended to appeal the suspension to the warden. Boughton's memo advised Garrett that he had ten days from the date of the memo to appeal the suspension. However, Garrett did not appeal.

¶3 On July 7, 2002, and again on July 11, 2002, Garrett posted letters addressed to a Diane Brice, at a post office box in Green Bay. WSPF officials intercepted the letters, and issued two conduct reports to Garrett after receiving information from the Green Bay Police Department that Dianna Spoo and Diane Brice were the same person. In both disciplinary proceedings, the alleged disciplinary infractions were disobeying an order and attempting an unauthorized use of the mail. In both, the disciplinary committee found Garrett guilty based on the evidence that he received notice of the suspension from Boughton, and that Spoo and Brice were the same person. In so doing, the committee rejected Garrett's assertion that Brice was his niece, noting that he presented no documentary evidence to support that assertion. The committee noted that, in addition to the Green Bay police report, the WSPF visitors list for Garrett identified both Dianna Spoo and Diane Brice-Spoo, as his sister.

¶4 After appealing to the warden and going through the inmate complaint review system, Garrett petitioned for certiorari review in the trial court. His appeal follows the trial court's order denying his petition.

¶5 On certiorari review, we apply the substantial evidence test, under which we determine whether the disciplinary committee's finding of guilt was reasonable given the evidence before it. *See State ex rel. Richards v. Traut*, 145 Wis. 2d 677, 680, 429 N.W.2d 81 (Ct. App. 1988). Stated otherwise, the committee's finding is conclusive if any reasonable view of the evidence supports it, and we do not substitute our view of the evidence for the committee's. *See State ex rel. Jones v. Franklin*, 151 Wis. 2d 419, 425, 444 N.W.2d 738 (Ct. App. 1989). Our review on certiorari is identical to that of the trial court, and we conduct it independently and without deference to the trial court's decision. *See State ex rel. Hippler v. City of Baraboo*, 47 Wis. 2d 603, 616, 178 N.W.2d 1 (1970).

¶6 We first address the respondent's argument that review on Garrett's petition is barred because he failed to exhaust his administrative remedies. *See* WIS. STAT. § 801.02(7)(b) (2001-02).¹ However, the only remedy Garrett failed to pursue was an appeal of the mail privilege suspension. Consequently, it is only issues regarding the lawfulness of the suspension that he has waived, and he raises none of those issues on appeal. He fully exhausted the remedies available to him after the disciplinary committee issued its decisions, and consequently did not waive review of the disciplinary proceedings.

¹ All references to the Wisconsin Statutes are to the 2001-02 version unless otherwise noted.

¶7 The committee received sufficient evidence to reasonably find Garrett guilty of the charged rules infractions. That evidence consisted of a police report from the Green Bay Police Department and Garrett's visitor list. The information in both documents is, arguably, hearsay. However, a prison disciplinary committee may consider hearsay evidence. *See State ex rel. Ortega v. McCaughtry*, 221 Wis. 2d 376, 387-88, 585 N.W.2d 640 (Ct. App. 1998). Although the committee may refuse to consider hearsay it deems unreliable, *see* WIS. ADMIN. CODE § DOC 303.86(2)(b)1, nothing suggests that the records in question here are not sufficiently reliable to consider. Either or both provide a reasonable basis to conclude that Spoo and Brice were the same person, especially given the absence of any contravening evidence other than Garrett's unsupported denial.

By the Court.—Order affirmed.

This opinion will not be published. WIS. STAT. RULE 809.23(1)(b)5.

