COURT OF APPEALS
DECISION
DATED AND FILED

June 24, 2010

David R. Schanker
Clerk of Court of Appeals

Appeal No. 2009AP1606 **Cir. Ct. No. 2008CV3064**

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

STATE OF WISCONSIN EX REL. MONTELL M. HORTON,

PETITIONER-APPELLANT,

V.

RICK RAEMISCH AND PETER HUIBREGTSE,

RESPONDENTS-RESPONDENTS.

APPEAL from an order of the circuit court for Dane County: SARAH B. O'BRIEN, Judge. *Affirmed.*

Before Vergeront, Lundsten and Higginbotham, JJ.

¶1 PER CURIAM. Montell Horton appeals from a circuit court order denying his petition for certiorari relief from a prison disciplinary decision. We affirm for the reasons discussed below.

¶2 The prison disciplinary committee found Horton guilty of violating the rule against group resistance and petitions, as set forth in WIS. ADMIN. CODE § DOC 303.20 (Dec. 2006),[1] based on allegations, including statements from confidential informants, that he was a high-ranking member of the Gangster Disciple Nation and had participated in discussions about an assault on staff. On this appeal, Horton claims that: (1) he was improperly denied his right to present witnesses; (2) he was improperly denied the right to review confidential informant statements; (3) the committee's decision was arbitrary, contrary to exculpatory evidence and unsupported by sufficient evidence; and (4) the committee improperly "shored up" the record after the hearing at the direction of the warden. We reject each of these arguments.

¶3 First, WIS. ADMIN. CODE § DOC 303.81(1) limits an inmate to presenting two witnesses, absent a showing of good cause. Horton was allowed to present the first two witnesses he named. Although he requested additional witnesses, the only reason he provided was an unsupported claim that two of them could provide exculpatory evidence. We agree with the respondents that such a generalized assertion was insufficient to establish good cause. Horton was not harmed by the fact that the decision to deny him extra witnesses was made by the hearing officer rather than the security director. *See* WIS. ADMIN. CODE § DOC 303.87 (a violation of procedural requirements is harmless error if it does not substantially affect the finding of guilt or the inmate's ability to present a defense). Moreover, Horton was allowed to present a sworn affidavit from one of those two witnesses.

[1] All references to the Wisconsin Administrative Code are to the December 2006 version unless otherwise noted.

¶4 Second, WIS. ADMIN. CODE § DOC 301.81(5) provides:

> If the institution finds that testifying would pose a risk of harm to the witness, the committee may consider a corroborated, signed statement under oath from that witness without revealing the witness's identity or a corroborated signed statement from a staff member getting the statement from that witness. The adjustment committee shall reveal the contents of the statement to the accused inmate, though the adjustment committee may edit the statement to avoid revealing the identity of the witness. The committee may question the witnesses, if they are otherwise available. Two anonymous statements by different persons may be used to corroborate each other. A statement can be corroborated in either of the following ways:
>
> (a) By other evidence which substantially corroborates the facts alleged in the statement such as an eyewitness account by a staff member or circumstantial evidence.
>
> (b) By evidence of a very similar violation by the same person.

See also WIS. ADMIN. CODE § DOC 303.86(4). Horton complains that the record does not contain a written finding that testifying would pose a risk of harm to Confidential Informant No. 4. We note, however, that the rule does not specifically require that the finding of risk be in writing. Having reviewed the confidential statement itself, in which Confidential Informant No. 4 expresses concern for his safety, we are satisfied that the institution's finding of risk of harm may be inferred from its use of the confidential informant statement. Horton also complains that the summaries of all of the confidential statements he received were "butchered" rather than edited merely to protect the identities of the informants. Having compared the summaries to the original statements, however, we are satisfied that the summaries appropriately conveyed to Horton the content of the statements, minus any identifying information.

¶5 Third, we will sustain a disciplinary decision so long as it is supported by substantial evidence, meaning that reasonable minds could reach the same conclusion as the committee. *See* ***State ex rel. Richards v. Traut***, 145 Wis. 2d 677, 680, 429 N.W.2d 81 (Ct. App. 1988). We are satisfied that the committee's decision here was supported by substantial evidence and was not arbitrary because it was based upon the three confidential witness statements that Horton held a leadership position in the gang and directed other inmates to carry out various activities, in addition to the assessment of the security threat groups coordinator that the allegations against Horton were supported by the testimony of the author of the conduct report. The committee also properly explained on remand from the circuit court why it did not find the affidavits from Horton's witnesses to be as credible as the information from the conduct report writer, since each denial of knowledge that Horton was involved in gang activity was based only on personal knowledge, and did not necessarily contradict the information of others with different information.

¶6 Finally, WIS. ADMIN. CODE § DOC 303.76(7) permits the warden to return the case to the adjustment committee to complete or correct the record. Therefore, it was proper for the warden to direct that the credentials of the security threat group coordinator, upon whose experience and expertise the committee relied, be added to the record. In any event, we do not see how Horton would have been prejudiced by the silence of the original record with respect to the coordinator's credentials, since Horton has not alleged that he has any information to refute them.

By the Court.—Order affirmed.

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