

**COURT OF APPEALS
DECISION
DATED AND FILED**

March 12, 2009

David R. Schanker
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. 2008AP1283

Cir. Ct. No. 2007CV3892

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN EX REL. Jael SPEIGHTS,

PETITIONER-APPELLANT,

V.

GREG GRAMS AND RICK RAEMISCH,

RESPONDENTS-RESPONDENTS.

APPEAL from an order of the circuit court for Dane County:
C. WILLIAM FOUST, Judge. *Affirmed.*

Before Dykman, Vergeront and Bridge, JJ.

¶1 PER CURIAM. Jael Speights appeals an order affirming a prison disciplinary decision. He was disciplined for three violations of the rules of the Department of Corrections. He contends that the evidence was insufficient to find

him guilty of the violations. He also contends that he was wrongfully denied access to exculpatory evidence. We affirm.

¶2 Speights was formerly incarcerated at Columbia Correctional Institution (CCI). Officials at CCI issued a conduct report charging Speights with violating rules against battery, sexual conduct, lying, and soliciting staff. At a hearing on the charges there was evidence that Speights said to a female corrections officer, Sergeant Grimm, that if he knew he would not get into trouble he would do “something along the lines of fraternization.” Later Speights took Grimm’s pen to his cell, and when she went to his cell to retrieve it she observed him naked.

¶3 Speights admittedly masturbated in his cell around this time, and then returned to the dayroom and approached Grimm’s desk with a cup in his hand. At the time, Grimm was drinking a soda that she had left on her desk for a moment to run an errand. When she returned and tasted the soda, it tasted salty and soapy. Grimm spat it back into her glass, and then dumped the contents of the glass. Grimm reported that Speights was the only inmate who had access to her drink while she was away from her desk, and, according to another officer, a videotape confirmed that fact.

¶4 The disciplinary committee found Speights guilty of battery, for placing a foreign substance in Grimm’s glass, which the committee found to be semen. It found him guilty of sexual conduct for exposing himself to Grimm, and found him guilty of soliciting staff for his comment to her concerning fraternization. He was found not guilty of lying. Speights appealed to the warden and also sought review of the disciplinary decision through the inmate complaint review system. He then commenced this judicial review proceeding.

¶5 Our review is limited to whether the Department acted within its jurisdiction, acted according to law, issued an arbitrary or oppressive decision, and had sufficient evidence to make the disciplinary decision in question. *See State ex rel. Ortega v. McCaughtry*, 221 Wis. 2d 376, 385, 585 N.W.2d 640 (Ct. App. 1998). The evidence is sufficient if reasonable minds could arrive at the same conclusion the committee reached. *See State ex rel. Richards v. Traut*, 145 Wis. 2d 677, 680, 429 N.W.2d 81 (Ct. App. 1988). We review the record in the same manner as the circuit court, and we independently decide whether to uphold the agency decision. *Ortega*, 221 Wis. 2d at 385-86.

¶6 The committee received sufficient evidence to find Speights guilty of battery. “Any inmate who spits or throws or uses body fluids or waste or any substance on another is guilty of [battery].” WIS. ADMIN. CODE § DOC 303.12(2) (Dec. 2006). There was credible evidence that Speights was the only person with access to Grimm’s soda when she left her desk. There was also evidence that Speights had a cup with him, that he had recently masturbated, and that the drink tasted markedly different after Speights had access to it. The disciplinary committee determines the weight and credibility of the evidence before it. *Ortega*, 221 Wis. 2d at 391. Giving due weight and credibility to Grimm’s statements, and the investigator’s conclusions from viewing the videotape, the committee’s finding was a reasonable interpretation of the evidence. Although Speights contends that the committee could not consider the videotape evidence without actually viewing the tape itself, the committee was permitted to rely on the statement of the officer who viewed the videotape. *See id.* at 388-90 (committee may rely on hearsay evidence to find rule violation and need not personally view physical evidence). The same is true of the committee’s reliance on Grimm’s statement that her drink tasted markedly different after Speights had access to it. Her statement provided

sufficient evidence that Speights tampered with her soda notwithstanding her spontaneous disposal of its contents. *See id.*

¶7 The committee also reasonably found Speights guilty of soliciting staff. Under WIS. ADMIN. CODE § DOC 303.26(6) (Dec. 2006), an inmate commits the offense of soliciting staff by, among other means, conveying affection verbally to staff, or requesting special attention from staff. Taken in the context of Speights' other contemporaneous interactions with Grimm, including appearing naked in front of her, the committee reasonably concluded that Speights was flirting with Grimm when he expressed a desire to fraternize, and thereby conveyed affection and/or requested special attention.

¶8 An inmate engages in prohibited sexual conduct by exposing the inmate's "intimate parts to another person for the purpose of sexual arousal or gratification." WIS. ADMIN. CODE § DOC 303.15(1)(d) (Dec. 2006). Speights contends that there was no evidence that he exposed himself to Grimm for sexual arousal or gratification. However, in the context of his other behavior toward Grimm, that inference is readily and reasonably available from the evidence.

¶9 Speights also contends that the rule against sexual conduct applies only where the inmate exposes his or her intimate parts to another inmate or to a visiting spouse. However, if the language of an administrative rule is clear and unambiguous, we interpret it according to the plain meaning it conveys. *See Snyder v. Badgerland Mobile Homes, Inc.*, 2003 WI App 49, ¶10, 260 Wis. 2d 770, 659 N.W.2d 887. The rule prohibits conduct with "another person," which plainly means any other person, including members of the prison staff.

¶10 Speights finally contends that the videotape was, in fact, exculpatory, and the committee violated his due process rights by not allowing

him to use it as evidence. A prisoner seeking review of a prison disciplinary proceeding must exhaust all available administrative remedies promulgated by DOC rule. *See* WIS. STAT. § 801.02(7)(c) (2007-08). Speights did not raise the videotape issue in his appeal to the warden or in his inmate complaint. Consequently, he did not exhaust his remedies regarding this issue, and we decline to address it. He also failed to raise it in the circuit court proceeding, and we decline to address it for that reason as well. *See State v. Van Camp*, 213 Wis. 2d 131, 144, 569 N.W.2d 577 (1997) (arguments raised for the first time on appeal are deemed waived).

By the Court.—Order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5 (2007-08).

