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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0881-15T1

CECILIO DAVILA,

Appellant,

v.

NEW JERSEY DEPARTMENT
OF CORRECTIONS,

Respondent.

Submitted January 31, 2017 – Decided March 13, 2017

Before Judges Ostrer and Leone.

On appeal from the New Jersey Department of
Corrections.

Cecilio Davila, appellant pro se.

Christopher S. Porrino, Attorney General,
attorney for respondent (Lisa A. Puglisi,
Assistant Attorney General, of counsel;
Suzanne Davies, Deputy Attorney General, on
the brief).

PER CURIAM

Inmate Cecilio Davila (Davila) appeals from a September 15,
2015 order by the New Jersey Department of Corrections (DOC)
upholding an adjudication imposing disciplinary sanctions. We

affirm.

I.

Davila is presently serving a fifteen-year sentence with a seven-and-a-half-year mandatory minimum term for two drug offenses and related weapons offenses. He was incarcerated in South Woods State Prison from June 7, 2012 until he was transferred to Northern State Prison on September 24, 2015, where he is presently incarcerated.

A Special Investigations Division (SID) report found the following. On August 26, 2015, the South Woods State Prison mailroom discovered an envelope addressed to Davila containing photographs of members of the family of a friend of Davila's. The envelope also had four yellow filmstrips hidden behind the envelope's stamp. After an investigation, it was determined the four filmstrips contained buprenorphine.¹ This was confirmed by the "BN6" inscriptions on each of the strips, as "BN6" is a common inscription used to identify the amount of buprenorphine contained in each strip. It was later discovered the envelope bore a

¹ Buprenorphine is a Schedule 3 narcotic. 21 C.F.R. § 1308.13(e)(2)(i)(2017); see N.J.A.C. 13:45H-10.1(1). It is "an opioid analog prescribed by physicians to treat the physical symptoms of opioid withdrawal." N.J. Div. of Child Prot. & Permanency v. K.M., 444 N.J. Super. 325, 328 (App. Div.), certif. denied, 227 N.J. 211 (2016). It is apparently incorporated in oral, dissolvable filmstrips in products such as Bunavail and Suboxone.

fictitious sender's name with a fictitious address.

According to the SID report, Davila's mail was confiscated and searched, revealing several letters and photographs from Davila's friend. Examination of the confiscated letters showed the friend's handwriting matched the handwriting found in the letters to Davila containing Bunavail. Past emails between Davila and his friend also revealed requests for "photo exchanges." Additionally, the SID determined this same fictitious name and address was used to send letters to another inmate in South Woods Prison. That inmate was also in possession of envelopes containing Bunavail under the stamps and bearing handwriting matching Davila's friend.

Davila was charged with two offenses: "attempting to commit, aiding another person to commit or making plans to commit" "possession or introduction of any prohibited substances such as drugs, intoxicants or related paraphernalia not prescribed for the inmate by the medical or dental staff," N.J.A.C. 10A:4-4.1(a)(2)(xxxvii) and (xv) (*.803/*.203); and "perpetrating frauds, deception, confidence games, riots or escape plots," N.J.A.C. 10A:4-4.1(a)(2)(xxxiv)(* .704).

Davila entered "no plea" to the charges. A disciplinary hearing was scheduled for August 31, 2015, but was postponed pending the preparation of the SID report, which was completed

September 4, 2015.

Davila's disciplinary hearing took place on September 14, 2015. He argued there was no evidence of his intent to possess the Bunavail because he had no control over what was sent to him in the mail. However, based on the SID report, the hearing officer found Davila guilty on all of the charges. Davila was sanctioned to 365 days' loss of commutation time, 365 days' administrative segregation, 365 days' urine monitoring, permanent loss of contact visits, and fifteen days' loss of recreation privileges. Davila appealed the decision, but an Associate Administrator upheld the sanctions.

Davila appeals, arguing the following:

- A. There Was Insufficient Proof To Find [Davila] Guilty.
- B. Being Found Guilty of the Fraud Charge Arguably Increased the Sanction Imposed.
- C. The Administrative Appeal Was Not Truly Considered.
- D. The Hearing Was Not Held In Time.

II.

Pursuant to N.J.A.C. 10A:4-4.1(a), an inmate who commits an enumerated prohibited acts "shall be subject to disciplinary action and a sanction that is imposed by a Disciplinary Hearing Officer or Adjustment Committee." "Prison disciplinary

proceedings are not part of a criminal prosecution, and the full panoply of rights due a defendant in such proceedings does not apply." Jenkins v. Fauver, 108 N.J. 239, 248-49, (1987) (quoting Wolff v. McDonnell, 418 U.S. 539, 556, 94 S. Ct. 2963, 2975, 41 L. Ed. 2d 935, 951 (1974)). The inmate's more limited procedural rights, initially set forth in Avant v. Clifford, 67 N.J. 496, 525-46 (1975), are codified in a comprehensive set of DOC regulations, N.J.A.C. 10A:4-9.1 to 9.28. These regulations "strike the proper balance between the security concerns of the prison, the need for swift and fair discipline, and the due-process rights of the inmates." Williams v. N.J. Dep't of Corr., 330 N.J. Super. 197, 203 (App. Div. 2000) (citation omitted).

"Our role in reviewing the decision of an administrative agency is limited." Figueroa v. N.J. Dep't of Corr., 414 N.J. Super. 186, 190 (App. Div. 2010). "We defer to an agency decision and do not reverse unless it is arbitrary, capricious or unreasonable or not supported by substantial credible evidence in the record." Jenkins v. N.J. Dep't of Corr., 412 N.J. Super. 243, 259 (App. Div. 2010). Nonetheless, we must "engage in a 'careful and principled consideration of the agency record and findings.'" Williams, supra, 330 N.J. Super. at 204 (citation omitted). We must hew to our standard of review.

III.

Appellant argues the DOC adjudication was not based on substantial evidence. "A finding of guilt at a disciplinary hearing shall be based upon substantial evidence that the inmate has committed a prohibited act." N.J.A.C. 10A:4-9.15(a); see McDonald v. Pinchak, 139 N.J. 188, 195 (1995); Avant, supra, 67 N.J. at 530; see also N.J.A.C. 10A:4-11.4(e)(2). "'Substantial evidence' means 'such evidence as a reasonable mind might accept as adequate to support a conclusion.'" Figueroa, supra, 414 N.J. Super. at 192 (citation omitted).

The hearing officer's decision to find Davila guilty of attempting to possess drugs was supported by substantial evidence, particularly the SID report, which was introduced as Exhibit A3.² The envelope containing Bunavail film behind the stamps was addressed to Davila from a fictitious name and address. This envelope contained photographs from Davila's friend, and bore the friend's handwriting, suggesting the letter was not sent to Davila at random. Nor did it appear to be sent by Davila's friend by accident, as he sent an envelope with Bunavail behind the stamps

² As the SID report was not treated as confidential information and was introduced as an exhibit, and as Davila had the opportunity to review the report, there was no need to prepare a non-confidential summary of confidential information under N.J.A.C. 10A:4-9.15(b).

to another inmate using an envelope bearing the same fictitious name and address and the same handwriting. From the past emails between Davila and his friend requesting "photo exchanges," it was reasonable to infer that Davila requested his friend send him the Bunavail film. The evidence supported a finding that Davila attempted, ordered, or planned the offense, and knew he would be sent a prohibited substance. Ibid.

This evidence also provided substantial evidence that Davila was perpetrating a fraud or deception. Davila's emailing coded requests for "photo exchanges," and receiving letters sent from false names and addresses, showed he was trying to deceive prison authorities about the scheme to send Bunavail hidden behind stamps.

Therefore, there was substantial and credible evidence on the record to find Davila guilty of both charges.

IV.

Davila argues that his disciplinary hearing was unreasonably delayed. Inmates are "entitled to a hearing within seven calendar days of the alleged violation," and "shall receive a hearing within three calendar days of their placement in Prehearing Disciplinary Housing." N.J.A.C. 10A:4-9.8(b), (c). Here, Davila's violation was on August 26, 2015, he was placed in pre-hearing detention on August 28, and his hearing was appropriately scheduled for August 31.

The DOC can grant "reasonable postponements" of a hearing date. Ibid. Davila's hearing was repeatedly postponed "pending info from SID" and awaiting the "SID Report." It was reasonable to give SID time to complete its investigation and prepare its report. The investigation involved not just the seizure of the Davila's mail, but also searches of the property of Davila and another inmate, review of Davila's emails, inquiry into the validity of the outside names and addresses, and handwriting comparison.

We note the SID report is dated September 4, 2015, but the hearing was postponed until September 14, 2015. The DOC offers no explanation for this discrepancy. As a result, we are unable to find reasonable the delay after the SID report became available.


However, "[t]he failure to adhere to any of the time limits prescribed . . . shall not mandate the dismissal of a disciplinary charge." N.J.A.C. 10A:4-9.9(a). The disciplinary authority, in this case the DOC, may "in its discretion, dismiss a disciplinary charge because of a violation of the time limits." Ibid. Here, "[t]he length of the delay" was only ten days. Ibid. Although "[t]he reason for the delay" was unexplained, Davila does not allege the delay "prejudice[d] . . . his [] defense" to the charges. Ibid. Moreover, he was given credit for his time in pre-hearing detention against his disciplinary sanction of 365

days of administrative detention. N.J.A.C. 10A:4-10.1(f). We also consider "[t]he seriousness of the alleged infraction[s]." N.J.A.C. 10A:4-9.19(a). "Prohibited acts preceded by an asterisk (*) are considered the most serious and result in the most severe sanctions." N.J.A.C. 10A:4-4.1(a). Given these considerations, the delay did not require dismissal of the charges, ibid., and was not "clearly capable of producing an unjust result," R. 2:10-2.

Davila's remaining arguments lack sufficient merit to warrant discussion. R. 2:11-3(e)(1)(E), (e)(2).

Affirm.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.


CLERK OF THE APPELLATE DIVISION