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This opinion shall not "constitute precedent or be binding upon any court."
Although it is posted on the internet, this opinion is binding only on the
parties in the case and its use in other cases is limited. R.1:36-3.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2081-15T3

KEVIN ALEXANDER,

Appellant,

v.

NEW JERSEY DEPARTMENT
OF CORRECTIONS,

Respondent.

Submitted April 24, 2017 – Decided May 3, 2017

Before Judges Currier and Geiger.

On appeal from the New Jersey Department of
Corrections.

Kevin Alexander, appellant pro se.

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

PER CURIAM

Appellant Kevin Alexander is an inmate currently incarcerated
at Southern State Correctional Facility. He is serving a thirteen-
year term, subject to a six-year period of parole ineligibility,

for second-degree armed burglary, N.J.S.A. 2C:18-2(b), third-degree burglary, N.J.S.A. 2C:18-2, third-degree eluding police, N.J.S.A. 2C:29-2(a)(3), and fourth-degree eluding police, N.J.S.A. 2C:29-2(a)(3). He appeals from the denial of his request for transfer to a community release program by the Department of Corrections ("DOC"). We affirm.

Appellant applied for entry into a halfway house under the DOC's Community Release Program. On October 19, 2015, the Classification Committee recommended the approval of appellant's transfer to a community release program. On November 2, 2015, the Office of Community Programs denied his application due to his prior escape history. Appellant appealed. DOC moved to dismiss the appeal for failure to exhaust administrative remedies. That motion was denied on April 20, 2016. Appellant removed the case to federal court. It was then remanded to this court, for lack of jurisdiction.

Appellant was convicted of escape in 1986. However, he claims he was subsequently released to halfway houses in 1995 and 2001. He further claims he was approved for release under the community release program in 2010, but the release was not undertaken because he was scheduled to "max-out" only seven days later. Appellant argues that the denial of his application for community release

was arbitrary, capricious, unsupported and violative of his due process rights.

In deciding an inmate's application for transfer to a community release program, the Institutional Classification Committee and the Office of Community Programs considers all relevant factors, including but not limited to, the inmate's prior criminal record. N.J.A.C. 10A:9-4.5. Furthermore, "a reduction in custody status is a matter of privilege, not of right." Smith v. N.J. Dep't of Corr., 346 N.J. Super. 24, 30 (App. Div. 2001) (citing N.J.A.C. 10A:9-4.2).

An inmate does not have a constitutionally protected liberty interest in his or her placement by the State's penal authority. Sandlin v. Conner, 515 U.S. 472, 115 S. Ct. 2293, 132 L. Ed. 2d 418 (1995). "There is no constitutionally protected interest in reduced custody status." Moore v. Dep't of Corr., 335 N.J. Super. 103, 110 (App. Div. 2000). More specifically, "halfway house placement does not involve a liberty interest. Trantino v. N.J. State Parole Bd., 296 N.J. Super. 437, 464 (App. Div. 1997), modified, 154 N.J. 19 (1998). Instead, due process safeguards are only required when a change in custody status "imposes atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life." Sandlin, supra, 515 U.S. at 484, 115 S. Ct. at 2300, 132 L. Ed. 2d at 430.

Relying on Sandlin, we have consistently upheld the DOC's institutional prerogative to reclassify an inmate's custodial status based on a variety of reasons. Shabazz v. N.J. Dep't of Corr., 385 N.J. Super. 117, 124 (App. Div. 2006) (finding that an inmate has no protected liberty interest in being placed in a halfway house or in remaining there); Szemple v. Dept. of Corr., 384 N.J. Super. 245, 247-48 (App. Div.), certif. denied, 187 N.J. 82 (2006) (concluding there is no protected liberty interest in upholding the DOC's designation of an inmate as "high risk"); Muhammad v. Balicki, 327 N.J. Super. 369, 371 (App. Div. 2000) (reducing an inmate's custody status that permitted him to enjoy "more mobility and less supervision in the prison than the general prison population").

Inmates in a halfway house remain in institutional confinement. Shabazz, supra, 385 N.J. Super. at 125. The refusal to transfer an inmate to a halfway house does not inherently impose an "atypical" or "significant" hardship on the inmate. See id. (quoting Sandlin, supra, 515 U.S. at 484, 115 S. Ct. at 2300, 132 L. Ed. 2d at 430). Therefore, an inmate does not have a constitutionally protected interest in placement in a halfway house, or in remaining there. Id. at 124.

"Courts have a limited role in reviewing a decision of an administrative agency. Ordinarily, an appellate court will

reverse the decision of the administrative agency only if it is arbitrary, capricious or unreasonable or it is not supported by substantial credible evidence in the record as a whole." Henry v. Rahway State Prison, 81 N.J. 571, 579-80 (1980).

Applying this standard of review, we discern no legal basis to interfere with the DOC's decision. The DOC was required to consider appellant's prior criminal record and previous incarcerations to determine his appropriate custodial status, including whether he was suitable for placement in a halfway house. N.J.A.C. 10A:9-4.5. The DOC properly considered appellant's prior escape conviction in denying his transfer to a community release program. By doing so, the DOC did not act in an arbitrary, capricious or unreasonable manner. The DOC's decision is supported by substantial credible evidence in the record.

Affirmed.

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


CLERK OF THE APPELLATE DIVISION