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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-4253-15T3

AHMED THAKUR,

Appellant,

v.

NEW JERSEY DEPARTMENT
OF CORRECTIONS,

Respondent.

Submitted September 19, 2017 – Decided September 25, 2017

Before Judges Yannotti and Mawla.

On appeal from the New Jersey Department of
Corrections.

Ahmed Thakur, appellant pro se.

Christopher S. Porrino, Attorney General,
attorney for respondent (Melissa H. Raksa,
Assistant Attorney General, of counsel; Erica
R. Heyer, Deputy Attorney General, on the
brief).

PER CURIAM

Ahmed Thakur, an inmate in the State's correctional system,
appeals from a final decision of the New Jersey Department of

Corrections (NJDOC), which found that he committed prohibited act *.004, fighting with another person, in violation of N.J.A.C. 10A:4-4.1(a)(2)(i), and imposed disciplinary sanctions.¹ We affirm.

This appeal arises from the following facts. In March 2016, Thakur was an inmate at Northern State Prison in Newark. He was serving an eight-year sentence for manslaughter and other offenses. On March 10, 2016, a corrections officer observed Thakur and another inmate exchanging punches to the head and upper body, when the inmates were going to their cells after unit recreation.

The officer ordered the inmates to stop fighting, and he called a Code-33 to alert other staff members that there was an emergency in the prison and assistance was needed to respond. The officers separated the inmates. The inmates were secured and removed from the unit. Medical personnel examined Thakur and found that he had superficial scratches on his neck. The other inmate involved in the altercation did not have any injuries, but he had blood on his nose.

¹ We note that effective January 3, 2017, N.J.A.C. 10A:4-4.1 was substantially rewritten. 48 N.J.R. 915(a) (June 6, 2016); 49 N.J.R. 105(a) (January 3, 2017). Because the sanctions at issue here were imposed before the effective date of the new regulations, they do not apply to this matter.

On March 11, 2016, a disciplinary charge was served upon Thakur for fighting with another person. The charge was investigated, determined to have merit, and referred to a hearing officer for further action. The hearing began on March 14, 2016, Thakur pled not guilty, and he was granted the assistance of counsel substitute.

At some point, Thakur asked the hearing officer to obtain a videotape of the incident, which he claimed would show that he had been trying to avoid the other inmate, and that he had approached an officer to complain about the inmate. The hearing was postponed so that the hearing officer could obtain the videotape. The hearing was postponed several more times and concluded on March 30, 2016.

At the hearing, Thakur claimed the other inmate demanded that he start paying "rent" to stay in his cell because the other inmate "runs the unit." Thakur asserted that this inmate's demand for rent caused the fight. He claimed to be defending himself against what he says was an act of extortion. Thakur did not present any witnesses at the hearing, and he declined the opportunity for confrontation. Thakur's counsel substitute requested leniency.

The hearing officer found Thakur guilty of the charge, noting in the adjudication report that Thakur had not offered any evidence to contradict the staff members' reports of the incident. The hearing officer found that Thakur had been involved in an

altercation with another inmate and Thakur was the initial aggressor. The hearing officer imposed the following sanctions: 120 days of administrative segregation, the loss of 170 days of commutation time, and the loss of thirty days of recreation privileges.

Thakur filed an administrative appeal, claiming that he acted in self-defense. He denied he was the aggressor. Assistant Superintendent Anthony Gangi upheld the hearing officer's finding of guilt and the sanctions imposed. This appeal followed.

On appeal, Thakur argues that the agency's finding of guilt should be vacated because he was denied the right to "view footage from the [site] of the alleged infraction." He claims he requested the video from "the test area (law library)" that "would have produced an unbiased piece of crucial evidence," but his request was denied. He also asserts that he was denied the right to call witnesses and present evidence.

"In light of the executive function of administrative agencies, judicial capacity to review administrative actions is severely limited." George Harms Constr. Co. v. N.J. Turnpike Auth., 137 N.J. 8, 27 (1994). When reviewing a determination of the Department in a matter involving prisoner discipline, we consider whether there is substantial evidence that the inmate committed the prohibited act and whether, in making its decision, the NJDOC

followed the regulations adopted to afford inmates procedural due process. McDonald v. Pinchak, 139 N.J. 188, 194-95 (1995); Jacobs v. Stephens, 139 N.J. 212, 220-22 (1995).

As we have explained, the disciplinary hearing was adjourned at Thakur's request so that a videotape of the incident could be obtained. Thakur claimed that the videotape would show the other inmate was the aggressor and started the fight at the door to his cell. The hearing officer granted this request. The videotape was reviewed, but the hearing officer found that Thakur was the aggressor and he was guilty of fighting with another person.

Thakur asserts that he made a request for video footage from the so-called test area (law library), which he claims contained crucial evidence. Thakur did not, however, mention the law-library video in his written request for evidence. In addition, Thakur and his counsel substitute did not request that tape during the hearing.

Therefore, the record does not support Thakur's assertion that the hearing officer denied his request for evidence related to the charge. Furthermore, the incident that resulted in the disciplinary charge took place in Thakur's housing unit, not the law library. The law-library tape, which allegedly was recorded some time before the fight in the housing unit, did not contain evidence directly relevant to the charge.

We therefore conclude that there is sufficient credible evidence in the record to support the NJDOC's determination that Thakur committed prohibited act *.004 and the NJDOC complied with the applicable regulations in adjudicating the charge.

Affirmed.

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



CLERK OF THE APPELLATE DIVISION