SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0797-16T4

CALVIN BASS,

Appellant,

v.

NEW JERSEY DEPARTMENT OF CORRECTIONS,

Respondent.

Submitted March 13, 2018 – Decided March 22, 2018

Before Judges Carroll and Mawla.

On appeal from the New Jersey Department of Corrections.

Calvin Bass, appellant pro se.

Gurbir S. Grewal, Attorney General, attorney for respondent (Jason W. Rockwell, Assistant Attorney General, of counsel; Kevin J. Dronson, Deputy Attorney General, on the brief).

PER CURIAM

Calvin Bass, a State prisoner serving a lengthy sentence, appeals from a final agency decision of the Department of

Corrections finding he committed prohibited act .053, indecent exposure, in violation of N.J.A.C. 10A:4-4.1(a)(3)(v). We affirm.

According to the Department's proofs, Senior Corrections Officer M. Thornton was conducting an inmate count on the prison's mezzanine when she heard Bass call her. Thornton then observed Bass standing at his cell door, watching her and masturbating. Thornton immediately called for assistance. Prison staff responded and removed Bass from his cell.

Bass was given timely notice of the charge and afforded the assistance of counsel substitute. He entered a plea of not guilty, stating the incident "didn't happen." His request to confront Thornton was granted. Bass also obtained a witness statement from his cellmate, who wrote that he "was asleep and awoken by Bass yelling for Mrs. Thornton at the door." The cellmate elaborated: "I sleep with a hat over my eyes and did not see anything besides [Bass] standing at the door."

After considering the evidence, the hearing officer found Bass guilty. The hearing officer determined that "[c]onfrontation revealed no discrepancies" in Thornton's account of events, and that the cellmate's statement confirmed that Bass yelled Thornton's name as the incident unfolded. Consequently, Bass was sanctioned to time served in detention, ninety days' administrative segregation, sixty days' loss of commutation time,

and fifteen days' loss of recreational privileges. Bass filed an administrative appeal to the prison administrator, who upheld the finding and the sanction.

Before us, Bass argues there was insufficient evidence to support the finding that he was guilty of the indecent exposure charge. Also, for the first time on appeal, Bass contends the hearing officer was biased "by allowing [Thornton's sister] who works [c]ourtline to be present during the disciplinary proceedings."

Having considered these arguments in light of the record and the applicable law, we find no merit to these contentions. R. 2:11-3(e)(1)(D). We add only a few brief comments.

We generally do not disturb the Department's administrative decision to impose disciplinary sanctions upon an inmate, unless the inmate demonstrates the decision is arbitrary, capricious, or unreasonable, or that the record lacks substantial evidence to support that decision. Figueroa v. N.J. Dep't of Corr., 414 N.J. Super. 186, 190 (App. Div. 2010). Bass has failed to do so here. The hearing officer was entitled to credit Thornton's account that Bass called out to her, and that upon looking into his cell, she observed Bass masturbating while watching her. Additionally, the cellmate's statement confirmed that Bass did indeed call out to Thornton, while discrediting Bass's assertion that the incident

"didn't happen." We conclude there is sufficient credible evidence in the record to support the finding of guilt.

We also reject Bass's argument that his due process rights were violated by the hearing officer allegedly allowing Thornton's sister to be present at the disciplinary proceedings. We first observe that this newly-minted argument finds no evidentiary support in the record. Moreover, because Bass never raised this issue during the disciplinary proceedings or in his administrative appeal, in conformity with general principles of appellate practice, we decline to consider it on appeal. See Nieder v. Royal Indem. Ins. Co., 62 N.J. 229, 234 (1973) (discussing the limited circumstances in which an appellate court will consider an argument first raised on appeal).

Affirmed.