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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-3494-16T3

PONTELL BRYANT,

Appellant,

v.

NEW JERSEY DEPARTMENT OF
CORRECTIONS,

Respondent.

Submitted May 1, 2018 – Decided May 21, 2018

Before Judges Mayer and Mitterhoff.

On appeal from the New Jersey Department of
Corrections.

Pontell Bryant, appellant pro se.

Gurbir S. Grewal, Attorney General, attorney
for respondent (Melissa Dutton Schaffer,
Assistant Attorney General, of counsel; Erica
R. Heyer, Deputy Attorney General, on the
brief).

PER CURIAM

Appellant Pontell Bryant appeals from a final agency decision
of the New Jersey Department of Corrections (DOC) finding he

committed prohibited act .053, indecent exposure in violation of N.J.A.C. 10A:4-4.1. We affirm.

On March 12, 2017, a female corrections officer reported that as she was taking count of inmates at South Woods State Prison, Bryant was standing by his cell door with his erect penis in hand, shaking it at the officer. The officer ordered him to stop but he refused. A disciplinary hearing was held on March 21, 2017, which resulted in a finding that Bryant violated N.J.A.C. 10A:4-4.1. Bryant was sanctioned with credit for time served in detention, 180 days' administrative segregation and 90 days' loss of commutation time. On March 22, 2017, the DOC upheld the hearing officer's decision. The DOC found that there was sufficient evidence to support the charge and sanction. The DOC specifically noted that the fact that Bryant had been charged with multiple prior infractions of this nature supported the hearing officer's decision to upgrade the sanction.

On appeal, Bryant first asserts that he was denied due process. In the context of disciplinary proceedings, due process requires: (1) written notice of the charges at least 24 hours prior to the hearing; (2) an impartial tribunal, which may consist of staff from the central office staff of the Department; (3) a limited right to call witnesses and present documentary evidence in defense to the charges; (4) a limited right to confront and

cross-examine adverse witnesses; (5) a right to a written statement of the evidence relied upon and the reasons for the sanctions imposed; and (6) where the charges are complex or the inmate is illiterate or otherwise unable to prepare his defense, the inmate should be permitted the assistance of counsel-substitute. See N.J.A.C. 10A:4-9.1 to -9.8.

All of the foregoing requirements were satisfied in this case. On March 13, 2017, a corrections sergeant served Bryant with the disciplinary charge. The DOC afforded Bryant the assistance of counsel; the hearing was conducted by a member of the central office staff; witness statements were gathered at his request and entered into the record; Bryant was provided with the evidence against him; and he was allowed to confront the complaining officer. Accordingly, we reject Bryant's argument that he was denied due process.

Bryant next argues that the DOC's denial of his request to take a polygraph amounted to a deprivation of due process. A prison administrator's determination not to give a prisoner a polygraph examination is discretionary and may be reversed only when that determination is "arbitrary, capricious or unreasonable." Ramirez v. Dep't of Corrections, 382 N.J. Super. 18, 23 (App. Div. 2005) (quoting Henry v. Rahway State Prison, 81 N.J. 571, 580 (1980)). A reviewing court must determine whether

there were serious issues of credibility that could not have been adequately addressed at the hearing and that the denial of the examination would compromise the fundamental fairness of the disciplinary process. Id. at 24.

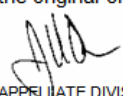
In this case, the complaining officer provided an eyewitness account of the incident. None of Bryant's witnesses provided any testimony to contradict the officer's testimony. Accordingly, there is no showing of any serious issues of credibility that were not adequately addressed at the hearing. We find no abuse of discretion in denying Bryant's request for a polygraph.

We also reject Bryant's contention that the DOC's finding was unsupported by substantial credible evidence in the record. An agency's decision must be upheld on appeal unless it is arbitrary, capricious, unreasonable or unsupported by credible evidence in the record. Id. at 23. In this case, the finding was amply borne out by the eyewitness testimony of the complaining officer.

Nor do we agree that the sanctions imposed were excessive. The sanctions imposed were within the guidelines set forth in N.J.A.C. 10A:4-4.1, and were justified in light of the evidence that this was Bryant's seventh offense of this nature from several facilities.

Affirmed.

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


CLERK OF THE APPELLATE DIVISION