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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-3563-16T3

J.W.,

Appellant,

v.

NEW JERSEY DEPARTMENT OF
CORRECTIONS and DEPARTMENT
OF HUMAN SERVICES,

Respondents.

Submitted May 9, 2018 – Decided May 16, 2018

Before Judges Alvarez and Geiger.

On appeal from the New Jersey Department of
Corrections.

J.W., appellant pro se.

Gurbir S. Grewal, Attorney General, attorney
for respondents (Melissa H. Raksa, Assistant
Attorney General, of counsel; Suzanne Davies,
Deputy Attorney General, on the brief).

PER CURIAM

Appellant J.W. is currently committed to the Department of
Corrections' Special Treatment Unit (STU) for sexually violent
predators. He was involuntarily civilly committed to the STU

under the Sexually Violent Predator Act (SVPA), N.J.S.A. 30:4-27.24 to -27.38. He appeals from a final agency decision denying his request to rescind the STU's tobacco free policy and implement a new policy permitting residents to smoke tobacco products within the STU's recreation yard. For the reasons that follow, we affirm.

Effective February 15, 2013, the Department of Corrections implemented a ban on all tobacco products and related paraphernalia within the secure perimeter of any Department of Corrections' institution or facility. On August 27, 2016, J.W. filed an STU remedy form requesting to rescind the STU's tobacco free policy and allow residents to smoke tobacco products in a designated area of the recreation yard. He also sought installation of igniter equipment in the recreation yard. On September 9, 2016, a staff member denied J.W.'s request. J.W. appealed the denial. STU Administrator Sherry Yates upheld the denial of J.W.'s request. This appeal followed.

On appeal, J.W. argues respondents erred by denying his request to establish procedures permitting SVPA residents to use tobacco products in a designated area of the STU's recreation yard. He claims the denial of his request was arbitrary and capricious and was not supported by the record as a whole.

Our role in reviewing the STU's denial of J.W.'s request for a designated smoking area is limited to a determination of whether

the decision was arbitrary, capricious, or unreasonable, or was not supported by substantial credible evidence in the record as a whole, in which case reversal is warranted. Henry v. Rahway State Prison, 81 N.J. 571, 579-80 (1980) (citing Campbell v. Dep't of Civil Serv., 39 N.J. 556, 562 (1963)).

"The [Department of Corrections] is responsible for the operation of the [STU], while the Division of Mental Health Services in the Department of Human Services is responsible for providing and facilitating the treatment for the residents." In re Civil Commitment of J.H.M., 367 N.J. Super. 599, 609 (App. Div. 2003) (citing In re Commitment of D.L. & C.M., 351 N.J. Super. 77, 80-81 (App. Div. 2002); N.J.S.A. 30:4-27.34(b)). N.J.S.A. 26:3D-58.1(c) allows the Commissioner of the Department of Human Services to prohibit smoking on the grounds of Human Services facilities.

The New Jersey Smoke-Free Air Act (the Act), N.J.S.A. 26:3D-55 to -64, generally restricts tobacco smoking in indoor public places and workplaces. N.J.S.A. 26:3D-58. The STU is a "public place" for purposes of the Act. In turn, N.J.A.C. 8:6-2.3 further restricts smoking tobacco on the outdoor grounds of correctional facilities. Moreover, the "operator of an establishment" is permitted to impose more stringent restrictions on tobacco smoking than imposed by the Act or regulation. N.J.A.C. 8:6-2.1(c).

Given: (1) the Legislature's finding that "[t]obacco smoke constitutes a substantial health hazard to the nonsmoking majority of the public[,]" N.J.S.A. 26:3D-56(b); (2) the regulations promulgated under the Act apply to correctional facilities as well as other places, N.J.A.C. 8:6-2.3; (3) and the regulations are not to "be construed to limit the ability of an . . . operator of an establishment from establishing . . . prohibitions against smoking at the establishment that are greater than those provided in the Act and this chapter," N.J.A.C. 8:6-2.1(c), we do not find the denial of a designated smoking area in the STU's recreation yard to be arbitrary, capricious, or unreasonable.

J.W.'s remaining arguments are without sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

Affirmed.

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


CLERK OF THE APPELLATE DIVISION