

**NOT FOR PUBLICATION WITHOUT THE  
APPROVAL OF THE APPELLATE DIVISION**

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-4444-14T4

DARRYL M. FORD,<sup>1</sup>

Appellant,

v.

NEW JERSEY DEPARTMENT  
OF CORRECTIONS,

Respondent.

---

Submitted March 8, 2017 – Decided April 4, 2018

Before Judges Fuentes and Simonelli.

On appeal from the New Jersey Department of  
Corrections.

Darryl M. Ford, appellant pro se.

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

The opinion of the court was delivered by

FUENTES, P.J.A.D.

---

<sup>1</sup> The record also shows appellant's name as Darryle M. Ford and D. Ford.

Darryl M. Ford is an inmate currently serving an eleven-year term of imprisonment for aggravated manslaughter,<sup>2</sup> N.J.S.A. 2C:11-4(a), at New Jersey State Prison in Trenton. At all times relevant to this appeal, Ford was serving a four-year term at the Mountainview Youth Correctional Facility (MYCF) in Annandale. In this appeal, Ford challenges the April 20, 2015 final agency decision of the Department of Corrections (DOC or Department) that upheld the earlier decision of a hearing officer who found Ford guilty of committing the following disciplinary infractions: (1) \*001, killing, N.J.S.A. 10A:4-4.1(a)(1)(i); (2) \*.010<sup>3</sup> participating in an activity related to a security threat group (STG), N.J.S.A. 10A:4-4.1(a)(2)(v);<sup>4</sup> and (3) \*.306, engaging in conduct which disrupts or interferes with the security or orderly

---

<sup>2</sup> Pursuant to the No Early Release Act, N.J.S.A. 2C:43-7.2, Ford must serve eighty-five percent of his sentence before he is eligible for parole.

<sup>3</sup> "'Asterisk offense' means a prohibited act preceded by a number and an asterisk that is considered the most serious and results in the most severe sanction(s)." N.J.A.C. 10A:1-2.2. Prohibited acts are sub-classified into five categories of severity from A through E. The prohibited acts listed in Category A are the most severe. N.J.A.C. 10A:4-4.1(a).

<sup>4</sup> "A 'security threat group' means a group of inmates possessing common characteristics, interests and goals that serve to distinguish the group or group members from other . . . inmates[,] and which . . . poses a threat to the safety of the staff, other inmates, the community, or causes damage to or destruction of property, or interrupts the safe, secure and orderly operation of the correctional facility[.]" N.J.A.C. 10A:1-2.2.

running of the correctional facility, N.J.A.C. 10A:4-4.1(a)(2)(xxix).

Ford argues the Hearing Officer violated his right to due process because the disciplinary charges stemming from the death of a fellow inmate occurred three years earlier while he was serving a previous and unrelated term of imprisonment. After considering the evidence the DOC investigators presented before the Hearing Officer and mindful of our standard of review, we affirm.

Special Investigation Division (SID) Senior Investigator Brian Bonomo investigated the death of inmate Carl Epps that occurred on August 23, 2010. Bonomo determined that Ford and other inmates repeatedly punched Epps, kicked Epps, and banged Epps's head against the wall and floor, ultimately causing his death. The Hunterdon County Prosecutor's Office (HCPO) and the New Jersey State Police were also involved in the investigation. The HCPO initially assumed the lead role for the homicide investigation.

While the HCPO was still actively engaged in this investigation, Ford reached his maximum sentence date and was released from the custody of the DOC on December 22, 2010. The HCPO promptly arrested Ford and placed him in the solitary confinement unit of the Hunterdon County Jail. According to Ford,

he was removed from the Hunterdon County Jail in May 2013 and was sent to New Jersey State Prison as a pre-trial detainee. He pled guilty shortly thereafter to one count of aggravated manslaughter involving the death of inmate Carl Epps.

On March 3, 2011, the HCPO informed officials at the DOC that it had obtained sufficient evidence to support the filing of disciplinary administrative charges against Ford and four other inmates. The DOC contends it could not serve Ford with notice of these charges at the time because he was in the custody of the Hunterdon County Jail. The DOC filed administrative disciplinary charges against the other four inmates for: (1) \*.001, killing; (2) \*.306, conduct which disrupts or interferes with the security or orderly running of the correctional facility; and (3) \*.010, participating in any activity related to a STG. On December 12, 2013, the Superior Court in Hunterdon County sentenced Ford to the eleven-year term he is still serving.

The DOC placed Ford in pre-hearing detention on December 16, 2013. The following day, prison officials served him with the administrative disciplinary charge reports. SID investigators determined that Ford and Epps were both members of the Crips Gang. According to SID, Epps informed his fellow gang members that he no longer wanted any association with the gang. The investigators determined that Epps's savage beating is a common inter-gang

disciplinary method for punishing members who no longer wish to participate in gang activities. As it had done with the four other MYCF inmates, the DOC held Ford responsible for Epps's death and charged him with the same disciplinary infractions.

After several adjournments, Ford appeared before a hearing officer on January 2, 2014 on the charge of \*.001, killing, and \*.306, engaging in conduct which disrupts or interferes with the security or orderly running of the correctional facility. The hearing on the remaining charge, \*.010, participating in an activity related to a STG, was held on January 9, 2014. Ford requested and was provided with the assistance of counsel substitute and submitted a written request for the dismissal of all charges. Ford argued the DOC failed to file the charges within forty-eight hours of the incident and there were no "exceptional circumstances" to justify the delay. He declined to make a verbal statement or cross-examine any adverse witnesses. Although he requested statements from several inmate witnesses, these inmates could not testify because they were no longer in the custody of the DOC.

The Hearing Officer found Ford guilty on all three charges. The evidence relied upon to support this conclusion included Epps's death certificate and autopsy report, the SID report prepared by Investigator Bonomo, and extensive statements from three other

MYCF inmates. The Hearing Officer sanctioned Ford to serve fifteen days in detention and 365 days of administrative segregation on the \*.001 charge, killing. He also imposed an additional fifteen days in detention and 365 days of administrative segregation on the \*.306 charge, disruption or interference with the security or orderly administration of the prison. This latter sanction was to run consecutive to the sanctions imposed for the killing charge, \*.001. Finally, on the \*.010 charge, participating in an activity related to a STG, the Hearing Officer sanctioned Ford to serve 365 days of administrative segregation, consecutive to the \*.001 and \*.010 charges.

On March 31, 2015, plaintiff filed an administrative appeal with the DOC, again alleging "statute of limitations" and due process violations. The Administrator who heard this appeal upheld the Hearing Officer's findings and sanctions on April 20, 2015.

The Administrator found:

The evidence presented supports the charges as written. Sanctions received are proportionate to the offense and upheld. After review of all of the documentation pertaining to the charges, the inmate[']s claim that his due process rights were violated is not substantiated. As indicated, extraordinary circumstances existed to justify the lateness of the actions filed as a result of the disciplinary infraction. There is also nothing substantiating the inmate's claim that he should not have been subject to disciplinary sanctions by the

Department of Corrections. The seriousness of the offense and the subsequent investigation clearly warranted the action that was initiated.

The inmate made multiple references to a violation of due process in regards to his placement in solitary confinement, double jeopardy issues, his placement in Administrative Segregation[,] and his objection to the author of the actual charges. All of the issues have been reviewed and all are viewed as unsubstantiated and without merit. The issues presented by the inmate have no bearing on the offense committed, [the] investigat[ive] findings[,] [or] the adjudication process. All appropriate due process measures were accomplished in accordance with departmental policy.

The charges brought against inmate Ford, as based upon the SID investigation[,] are viewed as credible. As such[,] the charges and sanctions are upheld.

This court is bound to uphold the DOC's decision unless the record shows the decision was "arbitrary," "capricious[,]," "unreasonable[,]," or "not supported by substantial credible evidence in the record[.]" Henry v. Rahway State Prison, 81 N.J. 571, 579-80 (1980). In determining what degree of due process an inmate is entitled to receive, we must balance the facility's institutional needs against the inmate's liberty interest in remaining in the prison's general population. See Hewitt v. Helms, 459 U.S. 460, 472 (1983). Although inmates in a State prison are not entitled to the same degree of due process rights as free

persons, they are not "wholly stripped of constitutional protections." Wolff v. McDonnell, 418 U.S. 539, 555 (1974). The Fourteenth Amendment abridges constitutional rights as necessary to accommodate prisons' institutional needs and objectives. McDonald v. Pinchak, 139 N.J. 188, 194 (1995).

Our Supreme Court has adopted the Wolff standards. Avant v. Clifford, 67 N.J. 496 (1975). An inmate charged with administrative disciplinary infractions is entitled to an "informal hearing" before an impartial tribunal for the purpose of determining the charges' accuracy. McDonald, 139 N.J. at 195. The DOC is required to conduct the hearing "as soon as practicable" and "within one week of the alleged violation, under ordinary circumstances[.]" Avant, 67 N.J. at 528. If the inmate is confined in prehearing detention, the DOC shall conduct the hearing "within 72 hours absent exceptional circumstances[.]" Ibid.

It is not disputed that Ford was not served with notice of the disciplinary charges within the timeframe provided under N.J.A.C. 10A:4-9.2, which provides:

The disciplinary report shall be served upon the inmate within 48 hours after the violation unless there are exceptional circumstances. The report shall be delivered by the reporting staff member or the investigating custody staff member. The report shall be signed by the person delivering it and the date and time of delivery shall be noted. The inmate shall have 24 hours to prepare his or her defense.



However, the DOC served Ford with actual notice of the disciplinary charges after he was transferred to the custody of the DOC on December 12, 2013. The DOC argues appellant's criminal involvement and his subsequent transfer to the custody of the county jail constituted "exceptional circumstances" under N.J.A.C. 10A:4-9.2. We agree. However, even if his custodial status did not constitute exceptional circumstances, Ford received actual notice of the nature of the charges against him in the form of the discovery he and his attorney received from the HCPO in the criminal prosecution. Thus, there is no actual due process violation. Even more important, Ford pled guilty to aggravated manslaughter involving the death of a fellow inmate while in DOC custody. This is the same underlying basis supporting the disciplinary infractions. Ford is now judicially estopped from denying he committed prohibited acts \*.001, killing a fellow inmate, \*.010, participating in an activity related to a STG, and \*.306, conduct which disrupts or interferes with the security or orderly running of the correctional facility.

Affirmed.

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

  
CLERK OF THE APPELLATE DIVISION