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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-5442-15T2

BERNARD REID,

Appellant,

v.

NEW JERSEY DEPARTMENT OF
CORRECTIONS,

Respondent.

Submitted January 18, 2018 – Decided February 27, 2018

Before Judges Simonelli and Gooden Brown.

On appeal from the New Jersey Department of
Corrections.

Bernard Reid, appellant pro se.

Gurbir S. Grewal, Attorney General, attorney
for respondent (Melissa Dutton Schaffer,
Assistant Attorney General, of counsel and on
the brief).

PER CURIAM

New Jersey State Prison Inmate Bernard Reid appeals from the
April 13, 2016 final agency decision of the Department of
Corrections (DOC) upholding the hearing officer's guilty finding

and imposition of sanctions for committing prohibited act *.002, assaulting any person, in violation of N.J.A.C. 10A:4-4.1(a). We affirm.

The disciplinary charge stemmed from a March 2, 2016 incident that occurred after Reid was returned to his cell by Corrections Officers (CO) Patterson and Gonzalez. Reid had become combative, uncooperative, and agitated in the nurse's office and was escorted back to his cell as a result. As the cell door was about to close, Reid charged at Patterson, "grabbing [his] shirt." Patterson pushed Reid back into the cell, restrained Reid on the ground, and called for assistance.

The following day, Reid was served with the disciplinary charge. After an investigation revealed the charge had merit, the case was referred for a hearing. At the hearing, which was repeatedly postponed for administrative reasons and at Reid's request, Reid pled not guilty. He was afforded the assistance of counsel substitute and granted a witness statement from inmate Devon Woods, who stated "[he] saw CO Patterson push [Reid] twice while [Reid] was in handcuffs[.] Then he push[ed] him in the room and told the CO to close the . . . door" Reid was also granted confrontation of Patterson and Gonzalez and given the opportunity to review a video of the incident, after which Reid

stated "[i]f I would've grabbed him, you would've seen him (Patterson) go backwards on the video. You don't see that."

After considering all the evidence, including the written reports and the video, the hearing officer found Reid guilty of the charge. She credited the account detailed in the "written reports to support [the] charge" and found that the "[c]onfrontation did not produce any additional evidence to discredit staff reports and/or exonerate [Reid]." She rejected Reid's characterization of the video as exculpatory, and described Reid's statement in that regard as "hypothetical[,]" speculative, and "not based on any facts."

Instead, the hearing officer noted that the "video show[ed] . . . Reid being escorted back to his cell" and the officer "leaning into the cell" "[o]nce the cell door [began] to close" However, "due to the position of the [o]fficer (in front of the cell), camera angle, and that the incident occurred within the cell," the hearing officer concluded that "the video [did] not assist the inmate in this matter." She also noted that there was no audio on the video. Additionally, she rejected Woods' statement as "vague" and noted that it did not "address what occurred once . . . Reid was inside of the cell."

The hearing officer imposed concurrent sanctions of 300 days' administrative segregation, 300 days' loss of commutation time,

180 days' loss of television, phone[,] and radio[,] and fifteen days' loss of recreation privileges. Noting that "[Reid] must be held responsible for his actions[,]" she acknowledged that "no injuries were reported by staff." On April 13, 2016, the Assistant Superintendent upheld the hearing officer's decision and sanctions, noting that "there was compliance with the New Jersey Administrative Code on inmate discipline" and that "[t]he preponderance of [the] evidence presented supports the decision" Reid's request for leniency was also denied. This appeal followed.

On appeal, Reid raises the following points for our consideration:

POINT I

THE NJDOC'S CONTESTED DECISION OFFENDS BOTH THE FEDERAL AND STATE CONSTITUTIONS.

POINT II

THE RESPONDENT'S ACTIONS VIOLATE[] EXPRESSED AND/OR IMPLIED LEGISLATIVE POLICIES.

POINT [III]

IN APPLYING THE LEGISLATIVE POLICIES TO THE FACTS THE RESPONDENT CLEARLY ERRED IN REACHING CONCLUSIONS THAT COULD NOT REASONABLY HAVE BEEN MADE ON A SHOWING OF RELEVANT FACTORS.

"Our role in reviewing the decision of an administrative agency is limited." Figueroa v. N.J. Dep't of Corr., 414 N.J.

Super. 186, 190 (App. Div. 2010). "We defer to an agency decision and do not reverse unless it is arbitrary, capricious or unreasonable or not supported by substantial credible evidence in the record." Jenkins v. N.J. Dep't of Corr., 412 N.J. Super. 243, 259 (App. Div. 2010). "'Substantial evidence' means 'such evidence as a reasonable mind might accept as adequate to support a conclusion.'" Figueroa, 414 N.J. Super. at 192 (quoting In re Pub. Serv. Elec. & Gas Co., 35 N.J. 358, 376 (1961)).

When reviewing a determination of the DOC in a matter involving prisoner discipline, we engage in a "careful and principled consideration of the agency record and findings." Williams v. Dep't of Corr., 330 N.J. Super. 197, 204 (App. Div. 2000) (quoting Mayweather Sec. v. Bureau of Sec., 64 N.J. 85, 93 (1973)). We consider not only whether there is substantial evidence that the inmate committed the prohibited act, but also whether, in making its decision, the DOC followed regulations adopted to afford inmates procedural due process. See McDonald v. Pinchak, 139 N.J. 188, 194-96 (1995).

"Prison disciplinary proceedings are not part of a criminal prosecution, and the full panoply of rights due a defendant in such proceedings does not apply." Jenkins v. Fauver, 108 N.J. 239, 248-49 (1987) (quoting Wolff v. McDonnell, 418 U.S. 539, 556 (1974)). The inmate's more limited procedural rights, initially

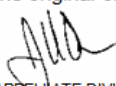
set forth in Avant v. Clifford, 67 N.J. 496, 525-46 (1975), are codified in a comprehensive set of DOC regulations, N.J.A.C. 10A:4-9.1 to -9.28, and include an inmate's entitlement to written notice of the charges at least twenty-four hours prior to the hearing, an impartial tribunal, a limited right to call witnesses and present documentary evidence, a limited right to confront and cross-examine adverse witnesses, a right to a written statement of the evidence relied upon and the reasons for the sanctions imposed, and, in certain circumstances, the assistance of counsel substitute. Those regulations "strike the proper balance between the security concerns of the prison, the need for swift and fair discipline, and the due-process rights of the inmates." Williams v. Dep't of Corr., 330 N.J. Super. 197, 203 (App. Div. 2000) (citing McDonald, 139 N.J. at 202).

Applying these principles, there was substantial credible evidence in the record to support the finding of guilt, and Reid received all the procedural due process he was entitled to, despite his assertions to the contrary. In addition, the sanctions imposed were commensurate with the severity of the infraction and authorized under N.J.A.C. 10A:4-5.1(a). Reid was found guilty of an asterisk offense. Asterisk offenses "are considered the most serious and result in the most severe sanctions" N.J.A.C. 10A:4-4.1(a).

Reid has not demonstrated that the DOC's decision was arbitrary, capricious, unreasonable, or in violation of either the enabling statute or implementing regulations. See Bowden v. Bayside State Prison, 268 N.J. Super. 301, 304 (App. Div. 1993) (holding that "[t]he burden of showing the agency's action was arbitrary, unreasonable or capricious rests upon the appellant"). Reid's arguments, those described here and others not fully set forth, are without sufficient merit to require further 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.


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