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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-0202-20**

TYQUAN GIBBS,

Appellant,

v.

**NEW JERSEY DEPARTMENT
OF CORRECTIONS,**

Respondent.

Submitted October 17, 2022 – Decided November 3, 2022

Before Judges Mayer and Enright.

On appeal from the New Jersey Department of Corrections.

Tyquan Gibbs, appellant pro se.

Matthew J. Platkin, Attorney General, attorney for respondent (Jane C. Schuster, Assistant Attorney General, of counsel; Stephanie M. Mersch, Deputy Attorney General, on the brief).

PER CURIAM

Appellant Tyquan Gibbs is incarcerated in the State's correctional system. He challenges an August 19, 2020 final administrative decision by the New Jersey Department of Corrections (DOC) finding he committed prohibited act *.009.¹ We affirm.

The record reflects that on July 6, 2020, while appellant was incarcerated at the Northern State Prison, a sergeant on duty learned appellant used another inmate's information to access the facility's JPay system.² The next day, the sergeant charged appellant with committing prohibited act *.009 and served him with the charge. The DOC subsequently conducted an evaluation to assess appellant's mental status at the time of the incident. The evaluator concluded appellant's behavior was volitional and that he was responsible for his actions. The matter was referred to a Disciplinary Hearing Officer (DHO) and appellant

¹ This asterisk offense is defined as the "misuse, possession, distribution, sale, or intent to distribute or sell, an electronic communication device, equipment, or peripheral that is capable of transmitting, receiving or storing data and/or electronically transmitting a message, image or data that is not authorized for use or retention" N.J.A.C. 10A:4-4.1(a)(1)(v).

² JPay is a private company that has partnered with state, county, and federal correctional facilities. As relevant here, it offers a service that provides inmates the ability to send and retrieve e-messages through the use of personal tablets, or kiosks, that are typically placed in general population housing units.

was offered and accepted the assistance of a counsel substitute. He later entered "no plea" to the charge.

The disciplinary hearing proceeded on July 14, 2020 before the DHO. At the hearing, appellant's counsel substitute argued the photographic evidence of the alleged infraction "only show[ed] the person's hair, not face. That can be any inmate." Appellant was offered but declined the opportunity to call witnesses on his behalf; he also opted not to make a statement or confront or cross-examine any adverse witnesses.

After considering the argument of counsel substitute and various documentary evidence, including "written reports, as well as [a] JPay log in camera . . . showing . . . [appellant] logged in first . . . [and] the same person [o]n camera (which is . . . [appellant's] hair) then logged into [another inmate's] account," the DHO found appellant guilty. He was sanctioned to 181 days of administrative segregation, 180 days loss of commutation, 365 days loss of contact visits, and 30 days loss of JPay emails. Appellant also was referred to mental health.

Appellant administratively appealed the DHO's decision. On August 19, 2020, the Assistant Superintendent upheld the DHO's findings and sanctions. In doing so, he determined the proceedings before the DHO were conducted in

"compliance with the New Jersey Administrative Code on inmate discipline"; the "charges were adjudicated according[] to the code"; and "[t]he preponderance of evidence presented support[ed] the sanctions levied by the hearing officer."

On appeal, appellant contends he was deprived of a fair hearing because the DHO denied "without comment" his request for dismissal of the charge and he was not afforded "all the rights and privileges outlined in the handbook on inmate discipline." He also newly argues the DHO erred "by failing to enter correct information into the JPay data software" so her decision "was not based on substantial evidence." We reject all of appellant's arguments and conclude they are of insufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(D) and (E). We add the following brief comments.

Our standard of review of an administrative agency decision is limited. Figuroa 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) (citing Bailey v. Bd. of Rev., 339 N.J. Super. 29, 33 (App. Div. 2001)). "'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) (citations omitted)). "The burden of demonstrating that the agency's action was arbitrary, capricious, or unreasonable rests upon the [party] challenging the administrative action." In re Arenas, 385 N.J. Super. 440, 443-44 (App. Div. 2006).

"[A]lthough the determination of an administrative agency is entitled to deference, our appellate obligation requires more than a perfunctory review." Figueroa, 414 N.J. Super. at 191 (quoting Blackwell v. Dep't of Corr., 348 N.J. Super. 117, 123 (App. Div. 2002)). We are not "relegated to a mere rubber-stamp of agency action[,]" but rather we must "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) (internal quotations and citation omitted).

"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)). An inmate's more limited procedural rights, initially set forth in Avant v. Clifford, 67 N.J. 496, 522 (1975), are

codified in a comprehensive set of DOC regulations. N.J.A.C. 10A:4-9.1 to -9.28.

Those rights include a right to a fair tribunal, N.J.A.C. 10A:4-9.15; a limited right to call witnesses and present documentary evidence, N.J.A.C. 10A:4-9.13; a limited right to confront and cross-examine adverse witnesses, N.J.A.C. 10A:4-9.14; a right to a written statement of the evidence relied upon and the reasons for the sanctions imposed, N.J.A.C. 10A:4-9.24; and, in certain circumstances, the assistance of counsel substitute, N.J.A.C. 10A:4-9.12. The 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, 330 N.J. Super. at 203 (citing McDonald v. Pinchak, 139 N.J. 188, 202 (1995)).

Mindful of these standards, we are convinced appellant was afforded the requisite due process protections. He received timely notice of the charge, the DOC afforded him the assistance of a counsel substitute for the hearing, and he was offered but declined to call witnesses or confront or cross-examine adverse witnesses. Additionally, we are persuaded the final agency decision was supported by substantial credible evidence, given that the DHO reviewed images from a surveillance video and other documentary evidence before concluding

appellant improperly used the JPay system while logged in as another inmate on the date of the incident.

To the extent appellant newly argues "the JPay computer software data, item, article, or material [was] altered from its original form," he did not raise this issue before the DHO or during his administrative appeal. Thus, we do not consider this argument. See In re Stream Encroachment Permit, Permit No. 0200-04-002.1 FHA, 402 N.J. Super. 587, 602 (App. Div. 2008) (citations omitted) (noting we "do not consider issues not raised . . . at an administrative hearing.").

In sum, because we are satisfied there was substantial credible evidence in the record to support the finding of guilt on the *.009 charge, and that appellant received all the process he was due, despite his assertions to the contrary, he has not demonstrated the DOC's decision was arbitrary, capricious, or unreasonable.

Affirmed.

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



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