SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2936-20

BARRY WILLIAMS,

Appellant,

v.

NEW JERSEY DEPARTMENT OF CORRECTIONS,

Respondent.

Submitted November 10, 2022 – Decided December 12, 2022

Before Judges DeAlmeida and Mitterhoff.

On appeal from the New Jersey Department of Corrections.

Barry Williams, appellant pro se.

Matthew J. Platkin, Attorney General, attorney for respondent (Sookie Bae-Park, Assistant Attorney General, of counsel; Erica R. Heyer, Deputy Attorney General, on the brief).

PER CURIAM

Appellant, Barry Williams, an inmate at Northern State Prison, appeals from an April 29, 2021 Department of Corrections (DOC) final decision imposing disciplinary sanctions on him for committing prohibited act .053, indecent exposure, in violation of N.J.A.C. 10A:4-4.1(a)(2)(vi). Appellant asserts that the DOC's final decision violated his due process rights by denying his request for a polygraph examination, along with asserting claims for discrimination and retaliation. We affirm.

We discern the following facts from the record. Appellant was an inmate at South Woods State Prison at all relevant times. On March 22, 2021, Officer Sanchez began conducting the regular institutional count of inmates. After announcing "female on the tier," Officer Sanchez approached appellant's cell where she witnessed him in the middle of his cell, facing her, pants on the floor, stroking his erect penis. After allegedly refusing to comply with Sanchez's orders to stop and go to his bunk, another officer was called who ultimately put appellant in handcuffs and escorted him off the unit. That same day, appellant was charged with committing prohibited act .053, indecent exposure.

The next day, March 23, 2021, a corrections sergeant served the .053 charges on appellant, conducted an investigation, and referred the charges to a hearing officer for further action. In connection with this charge, appellant

requested, and was granted, the assistance of a counsel substitute. Appellant's hearing was also initially scheduled for March 23rd but was rescheduled twice to afford him the opportunity to confront Officer Sanchez and to address his polygraph request. On March 29, 2021, the South Woods State Prison administrator ultimately denied appellant's request for a polygraph, reasoning that "[t]here are no issues of credibility in regards to the reporting officer or through investigation that was conducted by the disciplinary Sergeant."

A hearing was eventually held on March 30, 2021. There, appellant pleaded "not guilty" to the charge and, in his defense, asserted that he was simply using the bathroom while facing away from the officer during the event in question. Counsel substitute further noted that appellant—who has been incarcerated for over 26 years—did not have a history of indecent exposure. During the hearing, appellant was afforded the opportunity to call witnesses on his behalf and submitted a written statement from another inmate stating that appellant was "not at fault." In addition, appellant was offered, and accepted, the opportunity to confront/cross-examine adverse witnesses, specifically Officer Sanchez.

After hearing the testimony, reviewing all the evidence, and considering appellant's arguments, the disciplinary hearing officer found appellant guilty of

the .053 charge and imposed disciplinary sanctions. Appellant was sanctioned to sixty days in a restorative housing unit, thirty days loss of commutation time, and fifteen days loss of recreation and use of electronics.

On March 31, 2021, appellant administratively appealed the disciplinary hearing officer's decision and requested a polygraph, reduced sanctions, and leniency. On April 29, 2021, after reviewing the hearing, the DOC upheld the decision of the hearing officer. This appeal followed.

On appeal, appellant raises the following arguments:

> [POINT I]
>
> THE APPELLANT BARRY WILLIAMS IS ALLEGING ONE (1) VIOLATION OF STANDARDS OF BEING DENIED THE REQUEST FOR A POLYGRAPH EXAMINATION PURSUANT TO N.J.A.C. 10A:3-7.1(a) WHEREAS A POLYGRAPH EXAMINATION IS THE ONLY WAY TO DETERMINE THE TRUTH WHEN THE STATEMENTS MADE ARE IN DIRECT CONFLICT WITH EACH OTHER.
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> [POINT II]
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> THE APPELLANT BARRY WILLIAMS FINAL DECISION SHOULD NOT BE AFFIRMED BY THIS COURT [DUE] TO THE ATTORNEY GENERAL RECEIVING CONTRADICTING STATEMENTS BY OFFICER SANCHEZ OF EVENTS THAT ALLEGEDLY OCCURRED ON MARCH 22, 2021 THAT DOES NOT COMPORT WITH DUE PROCESS AND THE FINDING OF GUILT SHOULD BE

OVERTURNED BY SUBSTANTIAL CREDIBLE EVIDENCE.

Our role in reviewing the decision of an administrative agency is limited. In re Taylor, 158 N.J. 644, 656 (1999); Figueroa v. N.J. Dep't of Corr., 414 N.J. Super. 186, 190 (App. Div. 2010). We will not upset the determination of an administrative agency absent a showing that: it was arbitrary, capricious, or unreasonable; it lacked fair support in the evidence; or it violated legislative policies. Henry v. Rahway State Prison, 81 N.J. 571, 579-80 (1980) (citing Campbell v. Dep't of Civ. Serv., 39 N.J. 556, 562 (1963)).

The DOC has broad discretion in all matters regarding the administration of a prison facility, including disciplinary infractions by prisoners. Russo v. N.J. Dep't of Corr., 324 N.J. Super. 576, 583 (App. Div. 1999). Therefore, we may not vacate an agency's determination because of doubts as to its wisdom or because the record may support more than one result. De Vitis v. N.J. Racing Comm'n, 202 N.J. Super. 484, 489-90 (App. Div. 1985).

A prison disciplinary proceeding "is not part of a criminal prosecution and thus the full panoply of rights due a defendant in such a proceeding does not apply." Avant v. Clifford, 67 N.J. 496, 522 (1975) (quoting Morrissey v. Brewer, 408 U.S. 471, 480 (1972)). Thus, inmates are afforded certain limited

due process protections when facing disciplinary charges. Malacow v. N.J. Dep't of Corr., 457 N.J. Super. 87, 93 (App. Div. 2018).

The discipline of prisoners for violations of rules and regulations rests solely within the discretion of the DOC. See, e.g., N.J.S.A. 40:1B-6, -10. The due process safeguards established by the DOC for the administration and implementation of inmate discipline are set forth in N.J.A.C. 10A:4-1.1 to -12.3. Pursuant to N.J.A.C. 10A:4-4.1(a):

> An inmate who commits one or more of the following prohibited acts shall be subject to disciplinary action and a sanction that is imposed by a [hearing officer] . . . . Prohibited acts preceded by an asterisk (*) are considered the most serious and result in the most severe sanctions . . . . Prohibited acts are further subclassified into five categories of severity (Category A through E) with Category A being the most severe and Category E the least severe.

A Category B offense, including prohibited act .053, indecent exposure, "may result in a sanction of up to 120 days in a Restorative Housing Unit." N.J.A.C. 10A:4-4.1(a)(2). A hearing officer's finding that an inmate committed a prohibited act must be supported by "substantial evidence." N.J.A.C. 10A:4-9.15(a).

Applying these principles, we discern no basis to disturb the DOC's April 29, 2021 final decision and, therefore, deny appellant's due process claim.

Relying on the correction sergeant's investigation, the hearing officer found appellant's recounting of events to be unsupported by the evidence—especially considering the consistent testimony of Officer Sanchez and the backup officer. Moreover, appellant was afforded the limited protections guaranteed to criminal defendants. See McDonald v. Pinchak, 139 N.J. 188, 194 (1995); Avant, 67 N.J. at 523. Appellant received notice of the charge against him more than twenty-four hours before the hearing; he was afforded assistance of a counsel substitute for the March 30, 2021 hearing; he was offered the opportunity to call witnesses on his behalf and was granted confrontation of witnesses against him; and he received a written statement of the evidence relied upon and the reasons for the discipline. We find nothing in the record to suggest that the DOC's use of its discretion here was arbitrary, capricious, or unreasonable.

In addition, appellant argues that he was improperly denied the opportunity to take a polygraph examination. We disagree. We have long recognized that an inmate does not have the right to a polygraph test to contest a disciplinary charge. Johnson v. N.J. Dep't of Corr., 298 N.J. Super. 79, 83 (App. Div. 1997). "An inmate's request for a polygraph examination shall not be sufficient cause for granting the request." N.J.A.C. 10A:3-7.1(c). Indeed, N.J.A.C. 10A:3-7.1(c) "is designed to prevent the routine administration of

polygraphs, and a polygraph is clearly not required on every occasion that an inmate denies a disciplinary charge against him." Ramirez v. Dep't of Corr., 382 N.J. Super. 18, 23-24 (App. Div. 2005). 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.'" Id. at 24. "[A]n inmate's right to a polygraph is conditional and the request should be granted when there is a serious question of credibility, and the denial of the examination would compromise the fundamental fairness of the disciplinary process." Id. at 20.

In the present matter, the administrator determined that there were no issues of credibility warranting a polygraph examination. The administrator reached this conclusion after reviewing appellant's request and accompanying evidence, which included nothing more than blanket denials of fault. Therefore, we are satisfied that the administrator's determination was not arbitrary, capricious, or unreasonable. Id. at 24.

Finally, we will not consider the merits of appellant's discrimination and retaliation claims as they were not raised below. See Nieder v. Royal Indem. Ins. Co., 62 N.J. 229, 234 (1973) ("[O]ur appellate courts will decline to consider questions or issues not properly presented to the trial court when an

opportunity for such a presentation is available 'unless the questions so raised on appeal go to the jurisdiction of the trial court or concern matters of great public interest.'") (quoting Reynolds Offset Co. v. Summers, 58 N.J. Super. 543, 548 (App. Div. 1959)).

Affirmed.

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

CLERK OF THE APPELLATE DIVISION