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**SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-2698-21**

HECTOR REYES,

Plaintiff-Respondent,

v.

CITY OF ATLANTIC CITY,

Defendant-Appellant.

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Submitted February 13, 2023 – Decided February 28, 2023

Before Judges DeAlmeida and Mitterhoff.

On appeal from the Superior Court of New Jersey, Law  
Division, Atlantic County, Docket No. L-3039-21.

Ruderman & Roth, LLC, attorneys for appellant  
(Steven S. Glickman, on the brief).

Rosenberg, Perry & Associates, LLC, attorneys for  
respondent (Nathan J. Mammarella, on the brief).

PER CURIAM

Defendant, the City of Atlantic City, appeals from the Law Division's April 5, 2022 order, which reversed the decision of the hearing officer and dismissed the charges and discipline against plaintiff, Hector Reyes. We affirm, substantially for the reasons articulated in Judge John C. Porto's well-reasoned opinion.

We discern the following facts from the record. Plaintiff is a member of the Atlantic City Police Department ("ACPD"). On September 4, 2020, Officer Kevin Sketers and plaintiff were assigned to booking and detention at the holding facility in the ACPD public safety building.

On that date, an unnamed suspect was detained by the ACPD and transported to the holding facility where plaintiff was assigned. Despite being searched by multiple officers, the suspect was later found to be in possession of a handgun within the facility. Neither plaintiff nor Officer Sketers assisted with the initial search of the inmate. In addition to the discovery of the weapon, the door leading to the holding facility was propped open by a trashcan, creating a safety hazard.

As a result of the September 4, 2020 incident, an Internal Affairs ("IA") investigation was opened by ACPD on September 10, 2020. The investigation was assigned to Sgt. Mason on September 24, 2020. On the same day, the

Atlantic County Prosecutor's Office IA unit was notified of the incident. On November 2, 2020, however, the Atlantic County Prosecutor's Office IA unit indicated to ACPD that they were not taking any action regarding the matter.

On December 8, 2020, ACPD IA complaint notification forms were issued to all officers involved in the incident. On December 21, 2020, plaintiff and Officer Sketers were interviewed in the ACPD IA office.

On February 1, 2021, the final IA report was submitted to the police captain. On March 3, 2021, a Preliminary Notice of Disciplinary Action ("PNDA") was filed against plaintiff, listing the following violations of ACPD's internal rules and regulations under "[s]ustained [c]harges":

ACPD General Order Volume 5, Chapter 7, Temporary Detention Section XIII Security and Control (G) Door Locks and Key Control #1;

ACPD General Order Volume 5, Chapter 7, Temporary Detention Section IV Booking Intake; and

City of Atlantic City Personnel Policies and Procedures Manual Section IV Changes in employment and Separation from Service.

In an addendum to the PNDA, N.J.S.A. 40A:14-147 was also listed as a sustained charge.<sup>1</sup>

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<sup>1</sup> No other violations of any administrative code or criminal laws were cited.

On August 25, 2021, a departmental hearing was held before a hearing officer. During the hearing, counsel for both parties stipulated to the relevant facts and provided written submissions for the disciplinary determination. On September 17, 2021, the hearing officer sustained the charges and plaintiff received a ten-day major disciplinary suspension without pay.<sup>2</sup>

On September 24, 2021, plaintiff filed this action appealing his suspension to the Superior Court of Atlantic County. In the first count, plaintiff sought judgment declaring the disciplinary actions null and void and reinstatement to his prior status.<sup>3</sup> In the second count, plaintiff alleged that defendant failed to serve him with the PNDA within the forty-five-day requirement contained in N.J.S.A. 40A:14-147 and, as a result, requested dismissal of the charges and reinstatement to his prior status.

Counsel for both parties agreed that the issue would be presented to Judge Porto by way of brief without the need for a hearing. On April 5, 2022, the

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<sup>2</sup> Plaintiff has three prior sustained disciplinary offenses, all of which resulted in minor discipline. The most recent offense was from 2012.

<sup>3</sup> Plaintiff did not contest the charges or argue that he did not violate the Atlantic City internal rules and regulations. Rather, plaintiff contested the discipline that was imposed as excessive, in violation of the principles of progressive discipline.

judge issued an order reversing the decision of the hearing officer and dismissing the discipline imposed against plaintiff, finding the charges time-barred because defendant violated the forty-five-day deadline contained in N.J.S.A. 40A:14-147.

In a written opinion, the judge thoroughly addressed both parties' arguments. In their brief, plaintiff's counsel argued that the forty-five-day deadline contained in N.J.S.A. 40A:14-147 applies in this case because plaintiff was only charged with alleged violations of internal rules or regulations. Plaintiff's counsel further argued that an individual cannot violate a statute that is meant to protect him—i.e., by establishing procedural safeguards, such as the one at issue in the instant matter. Instead, it was plaintiff's position that defendant incorrectly charged him with violating N.J.S.A. 40A:14-147. There, since plaintiff was only charged with violations of internal rules and regulations, it was his position that the "exception" in N.J.S.A. 40A:14-147 did not apply.

According to defense counsel, however, the forty-five-day rule does not apply in cases where, as here, disciplinary charges are brought for something other than an alleged violation of an internal rule or regulation, namely a violation of the statute itself.

On this matter, Judge Porto found that "the only charges issued were violations of the internal rules and regulations." Therefore, because plaintiff did not face charges for any violation(s) of any criminal laws, the exception to N.J.S.A. 40A:14-147 was inapplicable. In so finding, the judge reasoned that N.J.S.A. 40A:14-147 "does not provide nor is it a basis for separate charges for discipline, suspension[, or removal from the department." Ultimately, the judge found that listing the statute as a "sustained charge" against plaintiff was incorrect and did not warrant application of the statute's exception.

After finding the exception inapplicable, the judge then found that defendant did not file its complaint within forty-five days of receiving sufficient information of the alleged internal violations. Based on the timeline leading up to the March 3, 2021 charges, the judge found that, even "[g]iving . . . [d]efendant the presumption [that] the forty-five (45) day period did not toll until the completion of the IA interview(s), there was still a three[-] or four[-] month delay in issuing" said charges. Defendant's failure to commence a timely investigation, in the judge's opinion, was unjustifiable given that the facts and imposition of discipline in this case were "rather straight forward," especially because "[e]verything that occurred was captured by video surveillance and [was] readily available to IA." This appeal followed.

On appeal, defendant presents the following arguments:

POINT I

THE TRIAL COURT ERRED IN FINDING THAT "THE ONLY CHARGES ISSUED WERE VIOLATIONS OF THE INTERNAL RULES AND REGULATIONS" OF APPELLANT.

POINT II

THE TRIAL COURT ERRED IN FINDING THAT "LISTING N.J.S.A. 40A:14-147 AS A 'SUSTAINED CHARGE' APPLIED AGAINST THIS PLAINTIFF IS INCORRECT AS THAT STATUTE DOES NOT LIST ANY ADMINISTRATIVE VIOLATIONS THAT WERE ALLEGEDLY VIOLATED BY THE PLAINTIFF."

The statutory framework for disciplinary proceedings against police officers is governed by N.J.S.A. 40A:14-147 to -151. Ruroede v. Borough of Hasbrouck Heights, 214 N.J. 338, 343 (2013). That statutory scheme requires the city to demonstrate "just cause" for any suspension, termination, fine, or reduction in rank. Id. at 354 (quoting N.J.S.A. 40A:14-147). Pursuant to N.J.S.A. 40A:14-147, just cause includes "misconduct."

Our Supreme Court has recognized that "misconduct" under N.J.S.A. 40A:14-147 "need not be predicated on the violation of any particular department rule or regulation," but may be based merely upon the "implicit standard of good behavior which devolves upon one who stands in the public

eye as the upholder of that which is morally and legally correct." In re Phillips, 117 N.J. 567, 576 (1990) (quoting In re Emmons, 63 N.J. Super. 136, 140 (App. Div. 1960)).

Pursuant to N.J.S.A. 40A:14-147 and -150, an officer is entitled to a hearing, and, if convicted of any charge, he or she may seek review in the Superior Court. Ruroede, 214 N.J. at 354-55. The trial court's review is de novo. Id. at 355. The trial court must provide "an independent, neutral, and unbiased" review of the disciplinary action, and make its own findings of fact. Id. at 357 (citing Phillips, 117 N.J. at 578, 580). The court must "make reasonable conclusions based on a thorough review of the record." Ibid. (quoting Phillips, 117 N.J. at 580).

Our role in reviewing the de novo proceeding is "limited." Phillips, 117 N.J. at 579. "[W]e must ensure there is 'a residuum of legal and competent evidence in the record to support'" the court's decision. Ruroede, 214 N.J. at 359 (quoting Weston v. State, 60 N.J. 36, 51 (1972)). We do not make new factual findings, but merely "decide whether there was adequate evidence before the . . . [c]ourt to justify its findings of guilt" or innocence. Phillips, 117 N.J. at 579 (quoting State v. Johnson, 42 N.J. 146, 161 (1964)). "[U]nless [we] find[] that the decision below was 'arbitrary, capricious[,] or unreasonable[,] or



'[un]supported by substantial credible evidence in the record as a whole,' the de novo findings should not be disturbed." Ibid. (fourth alteration in original) (quoting Henry v. Rahway State Prison, 81 N.J. 571, 580 (1963) and Campbell v. Dept. of Civil Serv., 39 N.J. 556, 562 (1963)).

On the other hand, where the trial judge's decision involves "a purely legal question, . . . we review that determination de novo." State v. Twiggs, 233 N.J. 513, 532 (2018) (citation omitted); see Rowe v. Bell & Gossett Co., 239 N.J. 531, 552 (2019) ("[A] trial court's interpretation of the law and the legal consequences that flow from established facts are not entitled to any special deference.") (quoting Manalapan Realty, L.P. v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995)). We apply an identical "de novo review to issues of statutory interpretation." Garden State Check Cashing Servs. v. State Dep't of Banking & Ins., 237 N.J. 482, 489 (2019) (citation omitted).

N.J.S.A. 40A:14-147 establishes the procedure for removing or suspending an officer, providing that:

Except as otherwise provided by law, no permanent member or officer of the police department or force shall be removed from his office, employment or position for police reasons or for any cause other than incapacity, misconduct, or disobedience of rules and regulations established for the government of the police department and force, nor shall such member or officer be suspended, removed, fined or reduced in rank or in

office, employment, or position therein, except for just cause as hereinbefore provided and then only upon a written complaint setting forth the charge or charges against such member or officer. The complaint shall be filed in the office of the body, officer or officers having charge of the department or force wherein the complaint is made and a copy shall be served upon the member or officer so charged, with notice of a designated hearing thereon by the proper authorities, which shall not be less than 10 nor more than 30 days from date of service of the complaint.

A complaint charging a violation of the internal rules and regulations established for the conduct of a law enforcement unit shall be filed no later than the 45th day after the date on which the person filing the complaint obtained sufficient information to file the matter upon which the complaint is based. The 45-day time limit shall not apply if an investigation of a law enforcement officer for a violation of the internal rules or regulations of the law enforcement unit is included directly or indirectly within a concurrent investigation of that officer for a violation of the criminal laws of this State. The 45-day requirement of this paragraph for the filing of a complaint against an officer shall not apply to a filing of a complaint by a private individual.

A failure to comply with said provisions as to the service of the complaint and the time within which a complaint is to be filed shall require a dismissal of the complaint.

The law enforcement officer may waive the right to a hearing and may appeal the charges directly to any available authority specified by law or regulation, or follow any other procedure recognized by a contract, as permitted by law.

Turning to the instant matter, defendant's arguments are essentially two parts of a single argument. First, defendant argues that the judge erred by finding that the only charges issued against plaintiff were for violations of defendant's internal rules and regulations. In so doing, defendant relies on the language of the PNDA, which identifies that disciplinary charges were sustained against plaintiff for a violation of N.J.S.A. 40A:14-147 itself. Second, defendant argues that the judge erred by finding that disciplinary charges could not be brought and sustained pursuant to N.J.S.A. 40A:14-147. In support, defendant argues that the PNDA clearly established that defendant sought plaintiff's discipline for "misconduct," as well as violations of its department's internal rules and regulations.

We addressed the significance of defendant's distinction between charges for misconduct and charges for violations of internal rules and regulations in McElwee v. Borough of Fieldsboro, 400 N.J. Super. 388 (App. Div. 2008). There, we held the forty-five-day requirement contained in N.J.S.A. 40A:14-147 did not apply and that the statute did not require the dismissal of the charges because "the Borough sought plaintiff's removal for misconduct, not for the violation of a specific internal rule or regulation governing the operations of the

Borough's police department." Id. at 394 (emphasis added). In so doing, we expanded on the "exception" to the forty-five-day requirement, stating that:

the requirement that a complaint be filed within forty-five days of the date when the complainant has sufficient information to make the complaint pertains to alleged violations of "internal rules and regulations established for the conduct of [the] law enforcement unit[.]" However, a violation of "internal rules and regulations" is only one of the grounds upon which a police officer may be disciplined. The statute also allows a police officer to be removed for incapacity or misconduct but imposes no time constraints on asserting a complaint seeking removal on those grounds.

[Ibid.]

We find that defendant's complaint was clearly time-barred by N.J.S.A. 40A:14-147.<sup>4</sup> Here, unlike in McElwee, Judge Porto properly concluded that the only charges issued against plaintiff were specific violations of ACPD's internal rules and regulations. Three out of four of the "sustained charges" in the PNDA refer to violations of specific sections of ACPD's "Personnel Policies

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<sup>4</sup> We further reject defendant's purported justification for failing to commence a timely investigation based on the then-pending prosecutor's IA determination. ACPD received notice that the prosecutor's office would not take action on November 2, 2020; however, formal charges were not issued until March of 2021.

and Procedure Manual." For those charges, there is no question that the forty-five-day deadline applies.

As for the fourth sustained charge in the PNDA, an alleged violation of N.J.S.A. 40A:14-147 itself, the judge properly concluded that the statute does not provide a basis for a separate charge for discipline, suspension, or removal from the department. In so finding, the judge correctly stated that "[t]he intent of the statute is to protect law enforcement officers from an appointing authority unduly and prejudicially delaying the imposition of disciplinary charges." See Ruroede, 214 N.J. at 344 ("The statutory scheme is designed to bring police disciplinary actions to a swift, efficient, and final resolution."). To allow alleged violations of the statute to be an exception to the statute itself would undermine its own intent.

Affirmed.

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

  
CLERK OF THE APPELLATE DIVISION