

**NOT FOR PUBLICATION WITHOUT THE  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-0312-22**

**ASHLEY GEORGES,**

Appellant,

v.

**NEW JERSEY DEPARTMENT  
OF CORRECTIONS,**

Respondent.

---

Submitted May 13, 2024 – Decided May 22, 2024

Before Judges Sabatino and Chase.

On appeal from the New Jersey Department of Corrections.

Ashley Georges, appellant pro se.

Matthew J. Platkin, Attorney General, attorney for respondent (Janet Greenberg Cohen, Assistant Attorney General, of counsel; Christopher C. Josephson, Deputy Attorney General, on the brief).

**PER CURIAM**

Appellant Ashley Georges, an inmate in New Jersey State Prison, appeals the June 20, 2022 final agency decision of the Department of Corrections ("DOC") imposing disciplinary sanctions upon him for committing prohibited acts \*.708, refusal to submit to a search; \*.306, conduct which disrupts or interferes with the security or orderly running of the correctional facility; \*.256, refusal to obey an order of any staff member; and .709, failure to comply with a written rule or regulation of the correctional facility, in violation of N.J.A.C. 10A:4-4.1(a).

On June 4, 2022, appellant was instructed by a corrections officer to allow another inmate to move into his assigned cell. After appellant refused, the corrections officer called Sergeant R. Daley. Sergeant Daley proceeded to appellant's cell where he observed a "thick sheet draped across the cell blocking the view" from the outside. Sgt. Daly drew the sheet to one side and asked appellant what the problem was. Appellant responded he would not permit another inmate to move into his cell. After appellant was told numerous times that it was not up to him, he still refused and was ordered multiple times to step out of his cell. Appellant disobeyed the order, sat on his footlocker, and refused to come out. After defendant still refused to exit for over three hours, a cell extraction team was called, arrived at appellant's cell, and ordered him to exit.

When he refused several orders, the cell extraction team entered the cell and forcibly removed him from the cell by using "OC spray" and placing appellant in restraints. After being decontaminated and evaluated by medical staff, appellant refused a search of his person.

Appellant was then served with institutional charges and the matter was referred to a hearing officer. At the same time, appellant was given a mental-health evaluation and was found to have no signs or symptoms of an acute mental illness.

Appellant requested and was granted the assistance of counsel substitute for the hearing. After pleading "not guilty," appellant stated both orally and in writing, "I have the right to get what I want. I am not going to double lock [with] anyone. I am comfortable where I am. I am good. I respectfully refuse." He also argued his actions caused no disruption, he could not comply to the search because he was handcuffed, his behavior was the result of a "mental health crisis," and he should have been permitted to watch the video of the extraction.

The day before the hearing, appellant requested to confront three witnesses: Sgt. Daley, Sgt. Daley's lieutenant, and the doctor who had completed appellant's mental health examination. His request was initially

granted by the Disciplinary Hearing Officer ("DHO"). At the hearing the DHO, counsel substitute, and prison staff reviewed a video of the incident. After reviewing the video, the DHO cancelled the confrontation, finding it no longer necessary. She explained, "[there] was no need to continue [with confrontation]. Inmate stated unless he got what he wanted it did not matter what anyone said. He said he would not move unless he gets a single cell. He decided not to cooperate and try to move." The DHO also concluded appellant's request for confrontation was an attempt to stall having to move to another cell.

At the conclusion of the hearing, the DHO adjudicated appellant guilty of all charges. The DHO acknowledged appellant had a mental health exam and was found responsible for his actions. The mental health exam noted appellant had been assessed by the doctor and two other clinical staff members on three occasions in the previous six months and "has asserted he requires a single cell since he lost it . . . and has attempted to manipulate the mental health department to make this recommendation."

Appellant appealed the adjudication to the prison's administrator. On June 20, 2022, Assistant Superintendent Berryman upheld the guilty finding, determining the DHO had discretion to refuse the requested video because it was

not necessary for an adequate understanding of the case. As such, the recommended sanctions were imposed.

On appeal, appellant raises the following arguments, reprinted verbatim:

I. APPELLANT WAS DENIED DUE PROCESS AT HIS DISCIPLINARY PROCEEDINGS WHEN HE WAS DENIED THE OPPORTUNITY TO REVIEW, PRESENT THE VIDEO OF THE EXTRACTION, DENIED THE OPPORTUNITY TO CONFRONTATION AND CROSS-EXAMINATION.

II. THE DECISIONS PROVIDED BY EAST JERESY STATE PRISON'S DISCIPLINARY HEARING OFFICER AND ADMINISTRATIVE BODY WAS NOT BASED ON THE SUBSTANTIAL EVIDENCE IN THE RECORD.

Appellate review of a final agency decision is limited. Figuroa v. N.J. Dep't of Corr., 414 N.J. Super. 186, 190 (App. Div. 2010). We have long recognized "[p]risons are dangerous places, and the courts must afford appropriate deference and flexibility to administrators trying to manage this volatile environment." Russo v. N.J. Dep't of Corr., 324 N.J. Super. 576, 584 (App. Div. 1999). A reviewing court "may not substitute its own judgment for the agency's, even though the court might have reached a different result." In re Stallworth, 208 N.J. at 194 (2011) (quoting In re Carter, 191 N.J. 474, 483(2007)). This customary deference stems from the "[w]ide discretion [ ] afforded to administrative decisions because of an agency's specialized

knowledge." In re Request to Modify Prison Sentences, 242 N.J. 357, 390 (2020).

Reversal is appropriate only when the agency's decision is unsupported by substantial credible evidence in the record as a whole. Ramirez v. Dep't of Corr., 382 N.J. Super. 18, 23 (App. Div. 2005) (quoting Henry v. Rahway State Prison, 81 N.J. 571, 579-80 (1980)); see also In re Taylor, 158 N.J. 644, 657 (1999) (holding a court must uphold an agency's findings, even if it would have reached a different result, so long as "sufficient credible evidence in the record supports the agency's conclusions"). The burden rests on the challenging party to show the administrative agency decision was arbitrary, capricious, or unreasonable. McGowan v. N.J. State Parole Bd., 347 N.J. Super. 544, 563 (App. Div. 2002) (citing Barone v. Dep't of Human Servs., Div. of Med. Assistance & Health Servs., 210 N.J. Super. 276, 285 (App. Div. 1986)).

Applying these well-settled principles, we affirm the Department's final agency decision. The hearing officer relied on sufficient and substantial credible evidence to conclude appellant had obstructed the operations of the prison by failing to accept a cellmate. Appellant's arguments focusing on alleged deprivation of his due process rights are unavailing. Appellant was afforded the limited procedural due process rights of inmates, as set forth in Avant v.

Clifford, 67 N.J. 496, 522 (1975), and codified in DOC regulations, N.J.A.C. 10A:4-9.1 to -9.8.

In a disciplinary proceeding, an inmate is not entitled to "the full panoply of rights" afforded to a defendant in a criminal prosecution. Avant, 67 N.J. at 522 (quoting Morrissey v. Brewer, 408 U.S. 471, 480 (1972)). An inmate is entitled to written notice of 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, where the charges are complex, the assistance of a counsel substitute. Id. at 525-33.

Appellant argues the denial of access to video footage from the extraction team removing him from his cell constituted a denial of due process. He argues he was given no reason for the denial.

Access to video footage is not one of the limited due process entitlements afforded to an incarcerated person. Appellant fails to demonstrate how video footage would have changed the outcome of this case. Under N.J.A.C. 10A:4-8.4, "[t]he [DHO] or Adjustment Committee shall have the discretion to keep a hearing within reasonable limits and to refuse to permit the collection and

presentation of evidence which is not necessary for an adequate understanding of the case." The hearing officer's denial of the request was fully within this discretion. Additionally, appellant's counsel substitute viewed the video, could describe to appellant what he had seen, and argue what it showed.

Appellant also asserts the DOC violated his due process rights by denying his request to confront and cross-examine three witnesses. He further asserts this impeded his ability to support his arguments relating to his mental health. An "opportunity for confrontation and cross-examination of the accuser(s) [or] . . . witnesses, if requested shall be provided to the inmate or counsel substitute in such instances where the . . . [h]earing [o]fficer . . . deems it necessary . . . , particularly when serious issues of credibility are involved." N.J.A.C. 10A:4-9.1(a); see also Avant, 67 N.J. at 529-30. DOC regulations enumerate the situations in which such requests may be denied, including if in-person questioning would be irrelevant or likely to produce repetitive testimony. N.J.A.C. 10A:4-9.13(a). See also McDonald v. Pinchak, 139 N.J. 188, 194 (1995) (finding inmate's due process right to call witnesses and present evidence may be "abridged to the extent necessary to accommodate the institutional needs and objectives of prisons").




The repetitive nature of appellant's refusal to take a roommate combined with the doctor's report informing the DHO appellant had no acute mental illness and was responsible for his actions clearly formed the basis for the guilty findings and accompanying sanctions. There was no need to call the sergeant, his lieutenant, or the doctor for the purposes of cross-examination, especially since appellant admitted to the DHO that he refused and was still refusing to accept a roommate.

To the extent we have not specifically addressed any remaining arguments, it is because we find them to be without sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(D) and (E).

Affirmed.

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



CLERK OF THE APPELLATE DIVISION