SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2557-22

S.L.,

Appellant,

v.

NEW JERSEY DEPARTMENT OF CORRECTIONS,

Respondent.

Submitted May 15, 2024 – Decided May 24, 2024

Before Judges Firko and Vanek.

On appeal from the New Jersey Department of Corrections.

S.L., appellant pro se.

Matthew J. Platkin, Attorney General, attorney for respondent (Janet Greenberg Cohen, Assistant Attorney General, of counsel; Leo R. Boerstoel, Deputy Attorney General, on the brief).

PER CURIAM

S.L.[1] appeals from the April 10, 2023 New Jersey Department of Corrections (DOC) final decision upholding a hearing officer's determination he committed prohibited act *.009, which bars the unauthorized electronic transmission of a message, image, or data pursuant to N.J.A.C. 10A:4-4.1(a)(1)(viii). S.L. argues the DOC decision should be reversed because it was unsupported by the record, arbitrary, capricious, and an abuse of discretion. Unpersuaded by S.L.'s claims, we affirm.

I.

We briefly address the crimes for which S.L. was incarcerated at the time of the violation only to the extent relevant to disposition of this appeal. S.L. was serving five concurrent five-year sentences at the DOC's Adult Diagnostic and Treatment Center (ADTC) after pleading guilty to five counts of second-degree endangering the welfare of a child through sexual conduct while acting as a caretaker, N.J.S.A. 2C:24-4(a)(1). As part of his sentence, S.L. was required to forfeit his teaching license and comply with the registration and reporting requirements of Megan's Law, N.J.S.A. 2C:7-1 to -23, including parole

[1] We identify appellant and other individuals by initials to protect the identity of the minor victim of sexual assault. R. 1:38-3(c)(12).

supervision for life, and Nicole's Law, N.J.S.A. 2C:14-12 and 2C:44-8, which provides permanent restraining orders for sex offense victims.

S.L.'s brother, J.R., also an inmate at the ADTC at the same time as S.L., was incarcerated for a conviction stemming from the victimization of his former wife[2] B.B.'s daughter Y.R. Though the details of J.R.'s crime are not in the record, neither party disputes a temporary restraining order (TRO) was entered to protect B.B. and her family, including Y.R.

According to the incident reports, on March 31, 2023, Lieutenant Joseph Socolof discovered S.L. had used the JPay[3] email system to request his wife find out if D.B., Y.R.'s aunt and B.B.'s sister, still maintained a personal webpage. S.L. then asked his wife to forward screenshots depicting a social media search for D.B. to him, which she did. S.L.'s wife also forwarded the results of the social media search to J.R. Because there was a TRO entered to protect B.B. from J.R., and B.B. had the same last name as the individual in the social media search, Socolof advised ADTC administration and the DOC's Special Investigation Division.

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[2] The record is inconsistent as to if B.B. was J.R.'s wife or girlfriend. The distinction is immaterial to our analysis.

[3] JPay is private company that partners with correctional facilities to provide inmates the ability to send and receive digital messages.

S.L. was placed in the Restrictive Housing Unit (RHU). On April 1, 2023 S.L. was notified he was charged with committing prohibited acts *.009 and *.360.[4] S.L. provided a written statement setting forth: (1) he is J.R.'s brother; (2) J.R.'s victim is S.L.'s niece; (3) S.L. did not attempt to contact the victim or request anyone contact J.R.'s victim, his niece; and (4) J.R. had not asked S.L. to contact the victim.

On April 6, 2023 a hearing was held on the charges. S.L. pleaded not guilty and was granted the assistance of a counsel substitute, at his request.[5] During the hearing, S.L. had the opportunity to testify on his own behalf and

[4] Under N.J.A.C. 10A:4-4.1(a)(1)(viii), *.009 prohibits 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 while assigned to a secure correctional facility." Under N.J.A.C. 10A:4-4.1(a)(1)(xxii), *.360 prohibits "unlawfully obtaining or seeking to obtain personal information pertaining to an inmate's victim or the victim's family or pertaining to DOC staff or other law enforcement staff or the family of said staff."

[5] Inmates are not afforded the right to legal counsel at disciplinary hearings. Sheika v. N.J. Dep't of Corr., 395 N.J. Super. 266, 276 (App. Div. 2007). However, when an inmate is accused of the "most serious" category of prohibited acts under N.J.A.C. 10A:4-4.1—also called asterisk offenses—such as *.009, "the inmate shall be afforded the right to request representation by a counsel substitute." N.J.A.C. 10A:4-9.12(a). Counsel substitutes must be trained as a paralegal pursuant to the standards set forth in N.J.A.C. 10A:6-2.13 and -2.14.

present other witness testimony, but declined to do so. Instead, S.L.'s counsel substitute relied on S.L.'s prior statement and requested leniency. In addition to S.L.'s statement, the hearing officer also considered the reports of the correctional officers, JPay emails, medical evaluation reports and a request for additional information to the investigating sergeant regarding the victim.

The hearing officer found S.L. guilty of the *.009 charge and imposed the following penalties: 180 days in the RHU, 180 days loss of communication time credits, and thirty days of loss of recreation privileges. The *.360 charge was deemed "repetitive" and no further punishment was levied for that offense. The hearing officer set forth that although S.L. did not have any prior disciplinary charges, the sanctions were imposed to deter the misuse of electronic devices which is a Category A offense under N.J.A.C. 10A:4-4.1(a)(1).

S.L. appealed the hearing officer's decision. On April 10, 2023, the DOC issued a final disposition upholding the hearing officer's determination of S.L.'s guilt and imposition of sanctions, finding the "decision was based on substantial evidence." This appeal follows.[6]

[6] As of November 28, 2023, S.L. is no longer incarcerated.

II.

On appeal, S.L. seeks reversal of the DOC's final disposition finding him guilty and imposing sanctions for his violation of prohibited act *.009. Further, S.L. seeks to have the charge dismissed in its entirety and expunged from his record pursuant to N.J.A.C. 10A:4-9.26(b). S.L. argues the hearing officer refused to consider "documentary evidence" which proves his innocence. Additionally, S.L. asserts there is insufficient evidence to show he misused any electronic communication devices within the meaning of *.009.

Our review of an agency decision is limited. In re Stallworth, 208 N.J. 182, 194 (2011); Malacow v. N.J. Dep't of Corr., 457 N.J. Super. 87, 93 (App. Div. 2018). We presume the validity of the "administrative agency's exercise of its statutorily delegated responsibilities." Lavezzi v. State, 219 N.J. 163, 171 (2014). "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).

"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 credible evidence "means 'such evidence as a reasonable

mind might accept as adequate to support a conclusion.'" Figueroa v. N.J. Dep't of Corr., 414 N.J. Super. 186, 192 (App. Div. 2010) (quoting In re Pub. Serv. Elec. & Gas Co., 35 N.J. 358, 376 (1961)).

III.

We turn first to S.L.'s assertion the hearing officer declined to allow his written statement to be considered as part of the record at the hearing as required under N.J.A.C. 10A:4-9.13(a). We begin by articulating the limited rights an inmate has at a disciplinary hearing. "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 DOC sets forth regulations standardizing an inmate's narrow procedural rights at N.J.A.C. 10A:4-9.1 to -9.28, which include a limited right to call witnesses and present documentary evidence, N.J.A.C. 10A:4-9.13.

We see no need to analyze the legal standard further because the record here clearly demonstrates S.L.'s written statement was considered by the hearing officer. On the DOC's adjudication of disciplinary charge form, the hearing officer memorialized that S.L.'s counsel substitute "rel[ied] on [S.L.'s] statement" and "request[ed] leniency." S.L. proffers no explanation as to the

source of his belief the hearing officer did not consider his written statement and, thus, we lack the ability to review S.L.'s argument further. See Friedman v. Martinez, 242 N.J. 449, 475 (2020) (noting the scope of a reviewing court is limited to the record proffered before it).

S.L. also asserts his due process rights have been violated because the handwritten records furnished by the DOC in the record are "illegible." This argument is belied by S.L.'s counsel substitute acknowledging the accuracy of the hearing officer's recitation of the evidence and arguments proffered at the hearing by signing the adjudication form. Moreover, our review of the documents does not warrant a conclusion the documents are unreadable or limited S.L.'s ability to bring this appeal.

IV.

Next, we consider S.L.'s assertion he was wrongfully penalized under *.009 because the credible evidence in the record did not establish he engaged in unauthorized use of the JPay system on an electronic device. Although S.L. does not dispute he requested information about D.B. from his wife, he posits he did not contact or attempt to contact a victim or victim's family as prohibited under Megan's Law or Nicole's Law. S.L. acknowledges he is prohibited from contacting any of the five victims listed in his judgment of conviction (JOC).

However, he contends he was free to contact his wife, D.B., B.B., and Y.R., as Y.R. was victimized by J.R., not S.L. S.L. also argues J.R.'s JOC does not list S.L.'s wife or D.B. as parties J.R. is prohibited from contacting.

Our review of the record establishes the DOC's final determination that S.L. violated *.009 is supported by sufficient credible evidence, ERG Container Servs., Inc. v. Bd. of Chosen Freeholders, 352 N.J. Super. 166, 173 (App. Div. 2002), and is not arbitrary, capricious, or unreasonable. Henry v. Rahway State Prison, 81 N.J. 571, 580 (1980). We discern no credible evidence in the record to warrant disregarding the DOC's factual finding S.L. assisted J.R. in unlawfully collecting information pertaining to D.B., who is a family member of J.R.'s victim, Y.R.

S.L. does not dispute he solicited this information and sought for it to be distributed to J.R. *.360 prohibits obtaining personal information pertaining to an inmate's victim or their family and *.009 prohibits electronic transmission of an unauthorized message, image or data. S.L. caused the electronic transmission of unauthorized personal information regarding the family of an inmate's victim. Aiding in the commission of a crime is tantamount to committing the crime yourself. State v. Samuels, 189 N.J. 236, 254 (2007); N.J.S.A. 2C:5-2(a)(2). Though facilitating the transmission of unauthorized personal information

regarding an inmate's victim's family, S.L. misused JPay on an electronic device pursuant to N.J.A.C. 10A:4-4.1(a)(1)(viii).

We reject S.L.'s unsupported assertion the TRO which protected B.B. and her family from J.R. expired ten days after its issuance in 2017 and cannot formulate the basis for his sanction. S.L.'s narrow interpretation of *.009 and *.360 as only prohibiting contact with individuals listed on a restraining order is not supported by the regulatory language. *.360 broadly prohibits obtaining personal information "pertaining to an inmate's victim or the victim's family" without the limitation S.L. posits. The regulation does not support the restricted definition of a victim's family S.L. posits. S.L.'s actions constitute the transmission of unauthorized an electronic message, image and data under *.009 regarding an inmate's victim's family, even without consideration of the viability of the TRO.

Finally, S.L. argues the DOC has overstepped the boundaries of a State agency and interfered with the province of the court to impose sentences as recognized under State v. Coviello, 252 N.J. 539, 552 (2023), by extending his restrictions under Megan's Law and Nicole's Law to also shield him from contacting J.R.'s victims. We are unconvinced that in enforcing *.009, the DOC has either improperly invaded the province of the court by altering a sentence,

see id. at 552, or infringed on the exclusive power of the legislature to make laws, see State v. Int'l Fed'n of Prof'l & Tech. Eng'rs, Local 195, 169 N.J. 505, 547 (2001). Rather, the DOC is empowered by statute and regulation to impose sanctions when inmates commit prohibited acts because "[t]he institutional need to control the inmate population and maintain order is manifest." Jenkins, 412 N.J. Super. at 252.

To the extent we have not addressed any of S.L.'s remaining arguments, we find them to be without sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(2).

Affirmed.