SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3244-21

JOSE VELEZ,

Appellant,

v.

NEW JERSEY DEPARTMENT OF CORRECTIONS,

Respondent.

Submitted February 13, 2024 – Decided June 20, 2024

Before Judges Sumners and Rose.

On appeal from the New Jersey Department of Corrections.

Jose Velez, appellant pro se.

Matthew J. Platkin, Attorney General, attorney for respondent (Janet Greenberg Cohen, Assistant Attorney General, of counsel; Andrew Carter Matlack, Deputy Attorney General, on the brief).

PER CURIAM

On January 3, 2022, a corrections officer witnessed a fight in the mess hall at South Woods State Prison between inmates Jose Velez and Robert Decree causing them to be restrained. Relevantly, Velez was charged with prohibited act *.002, assault, N.J.A.C. 10A:4-4.1(a)(1)(ii). The disciplinary hearing officer found Velez—who declined the opportunity to testify—guilty of the charge based upon first-hand special custody reports and a video of the incident evidencing that Velez swung open a pantry door in the mess hall to strike Decree in the arm. Velez was sanctioned to sixty days in the restorative housing unit, thirty days loss of commutation time, and fifteen days loss of recreation, television, radio, and media tablet privileges.

Velez's administrative appeal of the hearing officer's decision was denied, upholding the guilty finding and sanctions. The assistant superintendent rejected Velez's claim that he merely pushed Decree away from the pantry door because it was broken and declined his request to downgrade the *.002 assault charge to a charge of .013, unauthorized physical contact with any person, N.J.A.C. 10A:4-4.1(a)(3)(ii).

Before us, Velez argues:

> POINT I
>
> APPELLANT WAS DENIED THE DUE PROCESS OF LAW GUARANTEED BY BOTH THE SIXTH

AND FOURTEENTH AMENDMENTS OF THE UNITED STATES CONSTITUTION, AND ARTICLE 1, PARAGRAPH 10 OF THE NEW JERSEY STATE CONSTITUTION TO PRISONERS IN THE ADMINISTRATIVE DISCIPLINARY HEARING, WHEN THE DISCIPLINARY HEARING OFFICER FOUND HIM GUILTY OF A CHARGE OF ASSAULT THAT WAS NOT SUPPORTED BY SUBSTANTIAL EVIDENCE, AND MUST THEREFORE BE REVERSED. (Not Raised Below)[1]

POINT II

APPELLANT WAS DENIED THE ASSISTANCE OF COUNSEL SUBSTITUTE AT HIS DISCIPLINARY HEARING, AS WELL AS AT THE ADMINISTRATIVE APPEAL LEVEL, AND THIS MATTER SHOULD THEREFORE BE REVERSED AND REMANDED FOR A NEW HEARING. (Not Raised Below).

After review of the record, we are not persuaded that Velez has satisfied his burden of showing the DOC's decision was arbitrary, capricious, or unreasonable. See Figueroa v. N.J. Dep't of Corr., 414 N.J. Super. 186, 190 (App. Div. 2010) (citing Circus Liquors v. Governing Body of Middletown Twp. 199 N.J. 1, 10 (2009)). There is sufficient credible evidence supporting the agency's finding that Velez was guilty of assault. See id. at 191 ("[A] disciplinary hearing officer's adjudication that an inmate committed a prohibited

[1] Velez in fact argued that the DOC's guilty finding was not supported by the record.

act must be based on substantial evidence in the record." (citing N.J.A.C. 10A:4-9.15(a))); see also R. 2:11-3(D). The guilty finding was based on the hearing officer's credibility determination of credibility, which we do not determine. Penpac, Inc. v. Passaic Cnty. Utils. Auth., 367 N.J. Super. 487, 507-08 (App. Div. 2004) (citing DeVitis v. N.J. Racing Comm'n, 202 N.J. Super. 489-90 (App. Div. 1985)).

We decline to address Velez's argument in Point II, raised for the first time on appeal, that he was denied the right to counsel substitute to "assist him in both . . . his defense [at the hearing] and filing an administrative appeal." Nothing in the record supports his contention, and his failure to raise these issues before the hearing officer or in the administrative appeal precludes advancement of the issues on appeal as they are not properly before us. See Brian v. Dep't of Corr., 258 N.J. Super. 546, 548 (App. Div. 1992) (citing Nieder v. Royal Indem. Ins. Co., 62 N.J. 229, 234 (1973)).

Finally, to the extent we have not specifically addressed arguments raised by Velez, they lack sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

Affirmed.