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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-0121-16T3

ANTHONY B. ELI,

Appellant,

v.

NEW JERSEY DEPARTMENT
OF CORRECTIONS,

Respondent.

Submitted December 7, 2017 – Decided December 21, 2017

Before Judges Simonelli and Haas.

On appeal from the New Jersey Department of
Corrections.

Anthony B. Eli, appellant pro se.

Christopher S. Porrino, Attorney General,
attorney for respondent (Melissa Dutton
Schaffer, Assistant Attorney General, of
counsel; Erica R. Heyer, Deputy Attorney
General, on the brief).

PER CURIAM

Appellant Anthony B. Eli appeals from the final agency
decision of respondent New Jersey Department of Corrections (DOC),

which denied him full minimum custody status and continued his gang minimum custody status. We reverse.

Eli is presently an inmate at South Woods State Prison (SWSP). He is serving a twenty-five year and fifteen-day term of imprisonment for his 2011 conviction for burglary and theft. Upon his incarceration, he was assigned to gang minimum custody status.

In 2015, the SWSP Institutional Classification Committee (ICC)¹ reviewed Eli's custody status and issued an objective reclassification scoring instrument, which contained the following scores:

Severity of Current Offense:	3
Prior Assaultive Off. History-Last 10yr	0
Escape History-Last 5yr incarceration	0
History of Institutional Viol.-Last 5 yr	0
Number of Disciplinary Reports	-2
Most Severe Disciplinary-Last 12 mth	0
Age	-2
Program Participation	-2
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Total Score	-3

¹ Members of a prison's ICC include the Administrator, Associate Administrator, Assistant Superintendent or designee, the Director of Education or designee, the Social Work Supervisor or designee, the Correction Major or custody supervisor designee, and the supervising Classification Officer or designee. N.J.A.C. 10A:9-3.2(a). Other staff members "may be designated by the Administrator to serve as members or alternate members of the ICC." N.J.A.C. 10A:9-3.2(b).

Based on his overall objective classification score of minus three, Eli was eligible for placement into full minimum custody status. See N.J.A.C. 10A:9-2.6(a)(3). On January 21, 2016, the SWSP ICC approved Eli's placement into full minimum custody status.

In February 2016, the DOC transferred Eli to Bayside State Prison (BSP). The BSP ICC approved Eli's placement into full minimum custody status. One month later, the DOC transferred Eli back to SWSP and placed him back into gang minimum status. On April 26, 2016, five of the six members of the SWSP ICC approved Eli's placement into full minimum custody status. However, on May 17, 2016, SWSP Administrator Ronald Riggins, an ICC member, denied Eli full minimum custody status for the following reasons:

In accordance with N.J.A.C. 10[A]:9-4.5 it is in the best interests of the public at large and for the safety of the community not to approve inmate ELI, ANTHONY [full minimum] status and place him in a Minimum Security housing setting. Inmate ELI, ANTHONY presently has over [ten] years and [three] months remaining on his present sentence. I believe when considering the large amount of time remaining on his present sentence, coupled with the reduced amount of security found in [full minimum] settings presents inmate ELI, ANTHONY as a potential escape risk if his [full minimum] status were to be approved.

As a result, Eli remained in gang minimum custody status.

Eli filed a grievance, which was referred to the Classification Services Unit at the Central Office for review. On

June 10, 2016, Tiffany Fairweather² advised Eli that he was denied full minimum custody status "due to an outdated psych[ological] report" and that "[o]nce [his] psych[ological] report [was] updated [he would] be reconsidered for reduced custody status" Eli countered that his last psychological report was dated December 2015, and he was told he was denied full minimum custody status "due to [his] max[imum term]." Fairweather responded that she had given her response and the matter was considered closed. On June 13, 2016, the Central Office committee approved the Administrator's decision to deny Eli full minimum custody status. This appeal followed.

"Changes in inmate custody status within a particular correctional facility shall be made by the [ICC]." N.J.A.C. 10A:9-4.4(a) (emphasis added). In emergency situations, an Administrator can act to increase an inmate's custody status, but the ICC must ultimately approve that decision. N.J.A.C. 10A:9-4.4(2).

In reviewing a request for a change in custody status, the ICC utilizes an objective reclassification scoring instrument for male inmates, which includes assessment scales that are used to generate the inmate's reclassification score. N.J.A.C. 10A:9-

² The record does not indicate what position Fairweather held with the DOC.

2.2(a)(3), (b). The assessment scales are: severity of the offense scale, escape history scale, institutional violence scale, prior felony convictions scale, stability factors scale, number of disciplinary reports scale, severity of offense—disciplinary infractions scale, current age scale, and program participation scale. N.J.A.C. 10A:9-2.2(b). In reviewing those scales, the ICC must assess and assign points to the objective criteria. N.J.A.C. 10A:9-2.6(a). The total points determine the custody status on the reclassification instrument for male inmates. Ibid. An inmate's score of four points or less "shall indicate a recommendation for placement into minimum custody status." N.J.A.C. 10A:9-2.6(a)(3).

Although an inmate has no right to reduced custody status, N.J.A.C. 10A:9-4.2, and although the ICC is not obligated to grant full minimum custody status even if an inmate qualifies, N.J.A.C. 10A:9-4.6, the DOC's decision to deny reduced custody status must not be arbitrary, capricious, or unreasonable, or unsupported by credible evidence in the record. Henry v. Rahway State Prison, 81 N.J. 571, 579-80 (1980); White v. Fauver, 219 N.J. Super. 170, 180 (App. Div. 1987).

Here, a majority of the SWSP ICC members approved Eli's placement into full minimum custody status. The DOC cites no authority empowering Riggins, either as an Administrator or a

member of the ICC, to overrule the ICC's majority decision. Even if Riggins was acting as a member of the ICC, the DOC cites no authority that requires unanimity to reduce an inmate's custody status.

Further, even if Riggins had the authority to overrule the ICC, the record does not support his decision to deny Eli full minimum custody status. First, although Eli had more than ten years remaining on his maximum term, according to his SWSP Face Sheet, his minimum term expires on December 22, 2017, which was approximately one year and seven months from the date of Riggins' decision. Thus, it was unreasonable for Riggins to base his decision on the "large amount of time remaining on [Eli's] present sentence" without considering his minimum term. Second, the remaining time on an inmate's term is not an objective criteria for the reclassification scoring instrument for male inmates. See N.J.A.C. 10A:9-2.6. In addition, there was no evidence whatsoever that Eli was a potential escape risk. Accordingly, we conclude that the DOC's decision to deny Eli reduced custody status was arbitrary, capricious, and unreasonable, and unsupported by credible evidence in the record.

Reversed and remanded with direction to forthwith reduce Eli's inmate custody status to full minimum custody status. We do not retain jurisdiction.

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

CLERK OF THE APPELLATE DIVISION