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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-1941-15T3

PHILLIP A. DIXON,

Appellant,

v.

NEW JERSEY DEPARTMENT
OF CORRECTIONS,

Respondent.

Submitted July 6, 2017 – Decided July 19, 2017

Before Judges Yannotti and Haas.

On appeal from the New Jersey Department of
Corrections.

Phillip A. Dixon, appellant pro se.

Christopher S. Porrino, Attorney General,
attorney for respondent (Lisa A. Puglisi,
Assistant Attorney General, of counsel; Randy
Miller, Deputy Attorney General, on the
brief).

PER CURIAM

Appellant Phillip Dixon, an inmate currently in the custody
of the Department of Corrections (DOC), appeals from the DOC's
final administrative decisions adjudicating him guilty of

institutional infractions .254, refusing to accept a housing unit assignment, and *.803/*.306,¹ attempting to disrupt or interfere with the security or orderly running of the correctional facility. N.J.A.C. 10A:4-4.1(a). We affirm.

On September 13, 2015, Senior Corrections Officer Barrett ordered Dixon to pack up his belongings and move to a different cell. Dixon refused to comply with this order and stated, "I'm not going to double lock,^[2] send me to lock-up." Dixon was charged with refusing to accept a housing unit assignment and placed in prehearing detention. After a sergeant investigated the incident, the matter was referred to a hearing officer.

At the hearing, Dixon was represented by a counsel substitute. Dixon pled not guilty to the charge, claiming that there was information in his file indicating that he was designated as "a single lock only" and, therefore, was not required to share a cell with another inmate. However, there were no orders in Dixon's medical or institutional files directing that he be assigned to a single-inmate cell and Dixon failed to produce any documents from his own records to support his claim. Dixon was granted

¹ Infractions "preceded by an asterisk (*) are considered the most serious and result in the most severe sanctions." N.J.A.C. 10A:4-4.1(a).

² Dixon used the term "double lock" to indicate that he did not want to share a cell with another inmate.

confrontation of Officer Barrett, who confirmed that Dixon refused to move to the new cell. The hearing officer denied Dixon's request to confront several other officers because they had not witnessed the incident. Dixon did not call any other witnesses on his own behalf.

At the conclusion of the hearing, the hearing officer found Dixon guilty of refusing a housing unit assignment and sanctioned him to time served in detention, ninety days' of administrative segregation, and thirty days' loss of television privileges. Dixon filed an administrative appeal and, on November 5, 2015, the Administrator upheld the hearing officer's findings and sanctions.

While that matter was pending, Dixon sent a letter to a DOC Assistant Commissioner and the Administrator. In the September 14, 2015 letter, Dixon alleged that he was entitled to "single cell status." Toward the end of his letter, Dixon stated, "I fear placing me in a cell will end with my death or the death of my cellmate. Given my military training, it is more likely the latter. Either way, I will never leave prison. This is not what I want!"

As a result of the threat contained in the letter, Dixon was charged with attempting to disrupt or interfere with the security

or orderly running of the correctional institution³ and, following an investigation, the matter was referred to a hearing officer. Dixon was again represented by counsel substitute. Dixon pled not guilty, and asserted that he did not threaten anyone because he did not know who his cellmate would be and did not say that he would definitely kill that individual. Because the charge was based on the letter Dixon sent to the prison administrators, the hearing officer denied Dixon's request for confrontation of officers who were not involved in the matter. Dixon did not call any witnesses.

Based upon the evidence presented, the hearing officer found Dixon guilty of the charge and sanctioned him to 180 days' of administrative segregation, 365 days' loss of commutation time, and thirty days' loss of recreation privileges. Dixon filed an administrative appeal and, on October 13, 2015, the Administrator upheld the hearing officer's findings and sanctions. This appeal followed.

On appeal, Dixon argues there was insufficient evidence in the record to support the hearing officer's finding of guilt on

³ The DOC initially charged Dixon with institutional infraction *.005, threatening another with bodily harm. However, the hearing officer later modified the charge to attempting to disrupt or interfere with the security or orderly running of the correctional institution under *.803/*.306.

both charges and asserts that his due process rights were violated by the DOC during its handling of the charges. We disagree.

The scope of our review of an agency decision is limited. In re Taylor, 158 N.J. 644, 656 (1999). "An appellate court ordinarily will reverse the decision of an administrative agency only when the agency's decision is 'arbitrary, capricious or unreasonable or [] is not supported 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) (alteration in original) (quoting Henry v. Rahway State Prison, 81 N.J. 571, 579-80 (1980)). "'Substantial evidence' means 'such evidence as a reasonable mind might accept as adequate to support a conclusion.'" Figueroa v. 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)).

Prison disciplinary hearings are not part of a criminal prosecution, and the full spectrum of rights due to a criminal defendant does not apply. Avant v. Clifford, 67 N.J. 496, 522 (1975). However, when reviewing a determination of the DOC in a matter involving prisoner discipline, we consider not only whether there is substantial evidence that the inmate committed the prohibited act, but also whether, in making its decision, the DOC followed regulations adopted to afford inmates procedural due process. See McDonald v. Pinchak, 139 N.J. 188, 194-96 (1995).

Having considered the record in light of the foregoing principles, we conclude that sufficient credible evidence in the record supports the DOC's determination that Dixon was guilty of refusing a housing unit assignment, and attempting to disrupt or interfere with the security or orderly running of the correctional institution. With regard to the first charge, Dixon does not dispute that he refused to comply with Officer Barrett's order to move to a new cell. Although Dixon argued that he was entitled to single-cell status, there was nothing in his medical, administrative, or personal records to support his claim.

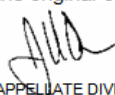
Turning to the second charge, Dixon's threat to kill any inmate assigned to his cell was clear from the face of his letter to the prison officials. Contrary to Dixon's contention, the hearing officer was not required to accept his later claim that he did not actually intend to carry out his threat. The hearing officer's credibility determination on this point is entitled to deference on appeal. Taylor, supra, 158 N.J. at 659.

Dixon's due process claims also lack merit. As noted above, an incarcerated inmate is not entitled to the full panoply of rights in a disciplinary proceeding as is a defendant in a criminal prosecution. Avant, supra, 67 N.J. at 522. An inmate is entitled to written notice of the 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 inmate is permitted the assistance of counsel substitute. Id. at 523-29. Based upon our review of the record, we are satisfied that Dixon received all the process an inmate is due.

Affirmed.

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


CLERK OF THE APPELLATE DIVISION