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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-2021-14T1

VASIL W. HEISLER,

Appellant,

v.

NEW JERSEY DEPARTMENT
OF CORRECTIONS,

Respondent.

Submitted January 10, 2017 – Decided August 3, 2017

Before Judges Messano and Espinosa.

On appeal from the New Jersey Department of
Corrections.

Vasil W. Heisler, 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

Vasil Heisler, an inmate at New Jersey State Prison (NJSP),
appeals from the final administrative decision of the Department
of Corrections (DOC) that upheld a hearing officer's decision

finding him guilty on two counts of prohibited act *.009, misuse and possession of an electronic communication device, N.J.A.C. 10A:4-4.1(a)(1)(v); and one count of prohibited act *.803/*.306, conspiracy to disrupt or interfere with the security or orderly running of the correctional facility, N.J.A.C. 10A:4-4.1(a)(1)(xiv), (2)(xxix); and imposed sanctions. Heisler's charges resulted from a system-wide investigation by the NJSP's Special Investigations Division (SID) to uncover a large-scale conspiracy to smuggle contraband into prisons by inmates and corrupt prison staff.

On April 8, 2014, the DOC issued two *.009 charges and a *.306 charge against Heisler and placed him in prehearing detention based on evidence from the SID investigation that he (1) placed several calls to a family member from two cell phones seized from two other inmates in April and July 2012, and (2) conspired with other inmates and civilians to transfer money used to bribe a sworn DOC officer.¹ Heisler was served with the charges on April 9, 2014, and the matter was referred to a disciplinary hearing officer.

The hearing officer modified the *.306 charge, converting it

¹ Heisler was also charged with, but found not guilty of, prohibited act *.803/*.751, attempting to give or offer any official or staff member a bribe or anything of value.

to *.803/*.306, a conspiracy charge. Heisler requested counsel substitute, which was granted, and together they asked to review the documentary evidence and twenty-four hours to prepare a defense. To accommodate Heisler's request and to give the hearing officer time to "review [and] prepare evidence," the hearing was postponed to April 30, 2014.

The DOC identified a list of non-confidential materials it relied on, including the call records of the two cell phones seized and the subscriber information of a cell phone number linked to Heisler's family member. In addition, the DOC provided a list of confidential SID investigation reports, that were withheld because they "contain[ed] info regarding an ongoing criminal invest[igation]" and the DOC sought "[t]o avoid [and] deter violence [and] retaliation." Instead, Heisler was provided with "a concise summary of evidence" contained in the confidential reports, including statements made by a confidential informant (CI).

The disciplinary hearing resumed on April 30, 2014, where, following a review of the evidence, the hearing officer found Heisler guilty of both *.009 charges and the modified *.803/*.306 charge. Following Heisler's administrative appeal, the Associate Administrator upheld the hearing officer's decision.

On appeal, Heisler argues the DOC's final decision should be

reversed because his due process rights were violated, the decision was unsupported by substantial credible evidence, and the modification of prohibited act *.803 or *.803/*.306 was extraneously excessive.

We preface our analysis by recognizing our review of the DOC's decision is limited. Reversal is appropriate only when the agency's decision is arbitrary, capricious or unreasonable, or unsupported by substantial credible evidence in the record as a whole. Henry v. Rahway State Prison, 81 N.J. 571, 579-80 (1980); see also In re Taylor, 158 N.J. 644, 657 (1999) (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 exists to support the agency's conclusions). However, "although the determination of an administrative agency is entitled to deference, our appellate obligation requires more than a perfunctory review." Figueroa v. N.J. Dep't of Corr., 414 N.J. Super. 186, 191 (App. Div. 2010) (quoting Blackwell v. Dep't of Corr., 348 N.J. Super. 117, 123 (App. Div. 2002)).

I.

An incarcerated inmate is not entitled to the full panoply of rights in a disciplinary proceeding as a defendant in a criminal prosecution. Avant v. Clifford, 67 N.J. 496, 522 (1975). 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 a counsel substitute. Id. at 525-33. It is undisputed Heisler was afforded these procedural safeguards.

Heisler argues the DOC violated N.J.A.C. 10A:4-9.2, which requires the disciplinary report "be served upon the inmate within 48 hours after the violation unless there are exceptional circumstances," because the disciplinary report was issued years after the violations were uncovered. He also asserts that, beginning on April 8, 2014, he was held in prehearing detention for two weeks prior to his April 23, 2014 hearing in violation of N.J.A.C. 10A:4-9.8(c), which mandates that inmates in prehearing detention "receive a hearing within three calendar days of their placement . . . unless there are exceptional circumstances, unavoidable delays, or reasonable postponements."

We are satisfied the adjudication of violations uncovered during a long-term, system-wide investigation into corrupt prison practices qualifies as an exceptional circumstance. However, even where there are no exceptional circumstances, a failure to comply

with time limits set by inmate disciplinary regulations does not mandate a dismissal of the charges. N.J.A.C. 10A:4-9.9(a). The dismissal of charges rests within the discretion of the hearing officer, with consideration given to the length and reason for the delay, prejudice to the inmate's defense preparation, and the seriousness of the violation charged. N.J.A.C. 10A:4-9.9(a)(1)-(4).

Both of the prohibited acts charged are asterisk offenses, which are "considered the most serious." N.J.A.C. 10A:4-4.1(a). However, Heisler has not identified any prejudice he suffered in preparing a defense to these charges as a result of the delays. The charges were delayed to prevent an adverse "impact or impede any ongoing activities" relating to SID's corruption investigation. The hearing was delayed because the "extensive investigation by SID . . . produced an extensive amount of evidence" that "created an excessive case load" for the hearing officer as evinced by the lengthy, over-four-hundred-page confidential record documenting SID's investigation. We are satisfied that, under the circumstances, the stated reasons for the delays are valid, the delays were not unreasonable and Heisler suffered no prejudice.

Heisler also argues his due process rights were violated when the DOC failed to provide him "photocopies of [all] documented

evidence," namely the confidential records the hearing officer relied on in adjudicating his guilt. However, Heisler was not entitled to receive such confidential information. Where there is a confidential record, the hearing officer is only required to provide "[a] concise summary of the facts on which the hearing officer concluded that the informant was creditable or his or her information reliable" and "[t]he informant's statement (either in writing or as reported) in language that is factual rather than a conclusion, and based on the informant's personal knowledge of the matters contained in such statement." N.J.A.C. 10A:4-9.15(b)(1). Heisler was provided a "concise summary of evidence," the sufficiency of which he does not challenge on appeal.

We are thus satisfied that Heisler received all due process protections afforded to him.

II.

"A finding of guilt at a disciplinary hearing shall be based upon substantial evidence that the inmate has committed a prohibited act." N.J.A.C. 10A:4-9.15(a). "Substantial evidence" is "such evidence as a reasonable mind might accept as adequate to support a conclusion." Figueroa, supra, 414 N.J. Super. at 192 (quoting In re Pub. Serv. Elec. & Gas Co., 35 N.J. 358, 376 (1961)). In other words, it is "evidence furnishing a reasonable basis for the agency's action." Ibid. (quoting McGowan v. N.J.

State Parole Bd., 347 N.J. Super. 544, 562 (2002)). "Where there is substantial evidence in the record to support more than one regulatory conclusion, 'it is the agency's choice which governs.'" In re Vineland Chem. Co., 243 N.J. Super. 285, 307 (App. Div.) (quoting De Vitis v. N.J. Racing Comm'n., 202 N.J. Super. 484, 491 (App. Div.), certif. denied, 102 N.J. 337 (1985)), certif. denied, 127 N.J. 323 (1990).

The call histories of the two confiscated cell phones show that several calls were placed in March and April 2012 to a number that belongs to a member of Heisler's family, as confirmed by subscriber information from the cell phone provider, who was on his list of approved visitors. Our review of the confidential appendix corroborates the substance of the concise summary provided to Heisler, i.e., the CI confirmed calls were made to a Heisler family member from cellphones in NJSP and that Heisler used third parties to exchange money that was used to bribe a corrupt officer to smuggle contraband into the prison.

At the disciplinary hearing, Heisler provided no alternate explanation for the outgoing calls to his family member, nor did he show it was possible that the other two inmates could have called his family member without him knowing. He also presented no evidence to rebut the confidential informant's statements as described in the concise summary provided to him. Because the


charges against Heisler were supported by substantial credible evidence, the determination that Heisler committed two counts of prohibited act *.009 and one count of prohibited act *.803/*.306 was not arbitrary, capricious or unreasonable.

III.

Pursuant to N.J.A.C. 10A:4-9.16(a), a hearing officer is required to modify a charge when "it becomes apparent at a disciplinary hearing that an incorrect prohibited act is cited in the disciplinary report but that the inmate may have committed another prohibited act." When this happens, the inmate must "be given the option of a 24-hour postponement to prepare his or her defense against the new charge or have the new charge adjudicated at that time." Ibid. Heisler's original charge of *.306, which concerns "conduct which disrupts or interferes with" with the function of the prison, N.J.A.C. 10A:4-4.1(a)(2)(xxix), was modified to a charge of *.803/*.306, which instead concerns "making plans to commit" such disruptive or interfering conduct, N.J.A.C. 10A:4-4.1(a)(1)(xiv). The hearing officer found the *.803/*.306 was the "more appropriate charge." Based on our review of the record, we agree, and discern no abuse of discretion in the modification.

Affirmed.

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


CLERK OF THE APPELLATE DIVISION