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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-2140-14T3

ROOSEVELT WITHERS,

Appellant,

v.

NEW JERSEY DEPARTMENT
OF CORRECTIONS,

Respondent.

Submitted on February 14, 2017 – Decided March 28, 2017

Before Judges Yannotti and Gilson.

On appeal from the New Jersey Department of
Corrections.

Roosevelt Withers, 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

Roosevelt Withers, an inmate in state prison, appeals from a
final determination of the New Jersey Department of Corrections
(Department), which upheld findings of guilt and sanctions imposed

for committing prohibited acts of attempting to give money or anything of value to another inmate, .802/.752, twice attempting to give or offer any official or staff member a bribe or anything of value, *.803/*.751, and conspiring to disrupt or interfere with the security of the correctional facility, *.803/*.306, all in violation of N.J.A.C. 10A:4-4.1(a). We affirm.

Withers is serving a twenty-seven-year-prison term for aggravated manslaughter. The charges against him arose out of an investigation conducted by the Special Investigation Division (SID) regarding a conspiracy to obtain tobacco. In February 2013, the Department banned tobacco products throughout the New Jersey State prison system. As a result, tobacco products became a sought after illegal commodity at prisons.

In March 2013, SID began a lengthy investigation related to the trafficking of tobacco products in prisons. During that investigation, certain witnesses identified Withers as one of the prisoners participating in a conspiracy to introduce tobacco and tobacco products into the prison. The investigation also revealed that Withers had conspired with another inmate to give that inmate an incentive food package through fraudulent pretenses.

On October 15, 2014, Withers was charged with committing a number of prohibited acts. He was served with those charges the

following day, and on October 17, 2014, a disciplinary hearing began.

The hearing officer modified one of the charges against Withers to a charge of attempting to give money or anything of value to another inmate (.802/.752) and Withers pled guilty to that charge. Withers pled not guilty to the other charges and requested the assistance of a counsel substitute, which was granted. Thereafter, the hearing was postponed eleven times so that the hearing officer could review the extensive evidence submitted by SID and Withers. The hearing was also postponed several times so that Withers could confront a witness and submit a written summation. The hearing concluded on November 25, 2014.

At the conclusion of the hearing, the hearing officer found Withers guilty of twice attempting to give or offer an official or staff member a bribe or anything of value (*.803/*.751) and attempting to disrupt or interfere with the security or orderly running of the correctional facility (*.803/*.306). With regard to the charges of attempting to bribe staff members, the hearing officer found that the materials provided by SID, including testimony by a SID investigator, established that Withers conspired with other inmates and civilians to provide monies to two corrupted staff members.

With regard to the charge of attempting to disrupt or interfere with the security of the corrections facility, the hearing officer found that the evidence provided by SID established that Withers solicited a civilian to receive money from other inmates and their families, and that money was used to purchase contraband that was to be smuggled into the prison by corrupted staff. Again, the hearing officer relied on the testimony of a SID investigator and considered the written statement provided by Withers. The hearing officer also considered Withers' trust account statement and JPay summary to support the finding of guilt.

For the violation of prohibited act .802/.752, Withers was sanctioned to fifteen days detention, sixty days loss of commutation time, ninety days administrative segregation and thirty days loss of canteen, luxury items only. For the violation of *.803/*.306, Withers was sanctioned with 15 days detention, 365 days loss of commutation time, 365 days administrative segregation, 365 days of loss of television, phone, and radio privileges, and confiscation of \$1600. For the violations of *.803/*.751, Withers was sanctioned to 15 days detention, 365 days administrative segregation, 365 days loss of commutation time, 30 days loss of canteen, luxury items only, and 30 days loss of recreational privileges.

Withers filed an administrative appeal and, on December 2, 2014, the Department upheld the hearing officer's findings of guilt and sanctions.

On this appeal, Withers contends that his due process rights were violated and that the matter should be reversed or remanded for a new hearing. Specifically, he contends that he was not properly informed of the reasons for the delay in the hearing, there was insufficient evidence to link him to the smuggling scheme, and the charges against him should have been filed in August 2014, when the Department allegedly had all the necessary information. We find no merit in any of these arguments.

Our role in reviewing decisions of an administrative agency is limited. Circus Liquors, Inc. v. Governing Body of Middletown Twp., 199 N.J. 1, 9 (2009). "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. N.J. Dept. of Corr., 382 N.J. Super. 18, 23 (App. Div. 2005) (quoting Henry v. Rahway State Prison, 81 N.J. 571, 579-80 (1980)).

When reviewing a final determination of the Department in a prisoner disciplinary matter, we consider whether there is substantial evidence that the inmate has committed the prohibited

act and whether, in making its decision, the Department followed the regulations adopted to afford inmates limited procedural due process. McDonald v. Pinchak, 139 N.J. 188, 194-95 (1995); Jacobs v. Stephens, 139 N.J. 212, 220-22 (1995).

Withers' due process arguments are based on the delay in initiating the proceedings and conducting the hearing. N.J.A.C. 10A:4-9.2 requires that notice of a violation be served within forty-eight hours of occurrence of the violation, but at least twenty-four hours prior to the disciplinary hearing, unless there are exceptional circumstances. N.J.A.C. 10A:4-9.8 places time limitations on disciplinary hearings, unless there are exceptional circumstances.

Here, the hearing officer found that there were exceptional circumstances justifying both the delay in initiating the proceedings and the delay in the hearing. The charges against Withers arose out of an extensive investigation involving other inmates and civilians. To protect the integrity of the investigation and the related criminal prosecution of other individuals, the Department delayed issuance of the disciplinary charges. We agree with the hearing officer that this constituted exceptional circumstances justifying the delay in issuing the disciplinary report and charges against Withers.

With regard to the delay in the proceedings, the initial hearing was scheduled for October 17, 2014. Thereafter, there were eleven adjournments so that the hearing officer could review the extensive evidence, including the summation submitted by Withers. The hearing was also delayed to allow Withers to confront a witness and to prepare his summation. The evidence against Withers included a confidential appendix containing extensive materials. We find no abuse of discretion in the Department's and hearing officer's decision to find exceptional circumstances warranting the delays.

Withers also argues that the evidence presented against him did not support findings of guilt of the prohibited acts. We reject this argument because there was substantial evidence to support the Department's determination that Withers committed the prohibited acts. The hearing officer here prepared a concise summary of the confidential information she relied on in determining guilt. The record establishes that the disciplinary charges were adequately described. Moreover, Withers had the opportunity to confront the SID investigator through written questions. In rendering her decision, the hearing officer found that the confrontation did not produce any evidence to discredit the information that was provided by SID. Accordingly, there was

substantial evidence in the record to support the Department's and hearing officer's findings of guilt.

Affirmed.

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



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