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APPROVAL OF THE APPELLATE DIVISION**

This opinion shall not "constitute precedent or be binding upon any court."
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-3089-15T1

JOSE ORTIZ,

Appellant,

v.

NEW JERSEY DEPARTMENT
OF CORRECTIONS,

Respondent.

Submitted May 2, 2017 – Decided May 12, 2017

Before Judges Leone and Vernoia.

On appeal from the New Jersey Department of
Corrections.

Jose Ortiz, 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, Jose Ortiz, is an inmate at the New Jersey Adult
Diagnostic and Treatment Center. He appeals a March 8, 2016 New
Jersey Department of Corrections (DOC) decision finding him guilty

of prohibited act .256, refusing to obey an order of a staff member, N.J.A.C. 10A:4-4.1(a), and imposing sanctions. We affirm.

I.

Appellant was assigned to perform food service work in the Center's main kitchen. On February 21, 2016, he was directed by institutional training instructor Bianca Olowe to perform kitchen duties different from those he was normally assigned. Appellant refused to perform the duties as directed. His refusal was witnessed by Olowe and senior corrections officer Hassan.¹ Olowe advised appellant he could request a change of job assignment, but was required to perform the kitchen duties as directed until a change in job assignments was approved and became effective. Appellant continued to refuse to perform the directed duties. Olowe then terminated appellant from the kitchen duty assignment.

Appellant was served with a notice charging him with prohibited act .256, refusing to obey an order of a staff member, N.J.A.C. 10A:4-4.1(a). Appellant pleaded not guilty and was assigned a counsel substitute. The hearing commenced on February 24, 2016, but was adjourned. It concluded on March 2, 2016.

Appellant disputed that he refused an order to perform kitchen duties. He contended that he said only that he "didn't want to

¹ The record does not include officer Hassan's first name.

cook" because he "had a bad knee." Olowe said she repeatedly directed him to perform the cooking duties and that he refused. Appellant's three witnesses stated that appellant did not refuse to work. They claimed he stated only that he wanted change his position from cook to the kitchen's line service. One of the witnesses stated that appellant "did not want to take [responsibility] for cooking [and] want[ed] to step down from cooking to line services."

The hearing officer found that Olowe and Hassan witnessed appellant's refusal to perform cooking services, and that appellant's witnesses acknowledged appellant said "he wanted to do something else other than cook." She concluded that "inmates must do what they are ordered to do" and upheld the charge. She imposed thirty days of administrative segregation, thirty days loss of commutation time and ten hours of extra duty as the sanction.

Appellant filed an administrative appeal. The DOC issued its final decision on March 8, 2016, finding appellant guilty of committing prohibited act .256, but reducing the administrative segregation time penalty to fifteen days, and suspending its imposition for sixty days. This appeal followed.

II.

The scope of our review in appeals from final decisions of administrative agencies is "severely limited." George Harms Constr. Co. v. N.J. Tpk. Auth., 137 N.J. 8, 27 (1994). "Courts can intervene only in those rare circumstances in which an agency action is clearly inconsistent with its statutory mission or with other State policy." Ibid.

Furthermore, when reviewing a final decision of the DOC imposing disciplinary sanctions upon an inmate, our review is limited to determining whether there is substantial evidence to support the agency's finding and whether, in rendering its decision, the DOC afforded the inmate the process due. See McDonald v. Pinchak, 139 N.J. 188, 194-95 (1995); Jacobs v. Stephens, 139 N.J. 212, 219-22 (1995).

Appellant argues there was insufficient evidence supporting the DOC's determination that he committed prohibited act .256. We disagree. Olowe and Hassan stated that appellant refused Olowe's direct and repeated order to perform cooking services. Indeed, appellant admitted he did not want to cook and provided an excuse, a sore knee, for not doing so. In addition, appellant's witnesses corroborated that appellant was directed to cook and that he said he wanted to perform only line services. We recognize appellant contends he did not refuse to cook, but we are satisfied there is

"substantial evidence in the record," Figueroa v. New Jersey Dep't of Corrections, 414 N.J. Super. 186, 191 (App. Div. 2010), supporting the DOC's conclusion that appellant committed prohibited act .256 by refusing Olowe's order.

Appellant also argues that the DOC violated his right to due process. He contends the DOC failed to produce for his review the written statements of his three witnesses during the hearing. The record, however, shows the statements were introduced as exhibits during appellant's hearing. Appellant signed the Adjudication of Disciplinary Charge form acknowledging that the information contained on "lines 1-15 accurately reflect[ed] what took place at the inmate disciplinary hearing." A portion of line 14 shows that the statements of the three witnesses were marked as exhibits and introduced at the hearing. Thus, as appellant admitted by his execution of the form, the statements were made available to him during the hearing.

Similarly, appellant's contention that the DOC failed to fully explain the basis for its decision is undermined by the record. The hearing officer's decision detailed the testimony supporting its finding that appellant committed the prohibited act. The DOC's final decision addressed appellant's appeal of the hearing officer's decision, explained that it "was based on substantial evidence" and that Olowe's testimony and written

reports were consistent, and found no evidence supporting appellant's claim there was a "violation of standards or misinterpretation of the facts."

Last, we reject defendant's contention the hearing process violated his rights "under the doctrine of fundamental fairness." Although prison disciplinary hearings are not criminal prosecutions requiring "the full panoply of rights due a defendant in such a proceeding," inmates are entitled to limited due process protections. Avant v. Clifford, 67 N.J. 496, 522 (1975). The protections include written notice of the charges at least twenty-four hours prior to the hearing, an impartial tribunal which may consist of personnel from the central office staff, a limited right to call witnesses, the assistance of counsel substitute, and a right to a written statement of evidence relied upon and the reasons for the sanctions imposed. Id. at 525-33; see also McDonald, supra, 139 N.J. at 193-96.

We discern no basis in the record to conclude appellant was denied any of the limited due process rights to which he was entitled. Avant, supra, 67 N.J. at 522. He received timely notice of the charges, was assigned a counsel substitute, had a hearing before an impartial hearing officer, received notice of the evidence against him, and was provided the reasons for the sanctions imposed.

Appellant did not raise before the hearing officer his contention that he was deprived of a fair hearing because the hearing officer was not impartial and had otherwise improperly decided the case before all of the evidence was presented. The claim is based on allegations contained in a letter from counsel substitute to the DOC's Supervisor of Disciplinary Hearing Officers. The letter was sent outside of the record before the hearing officer,² and there is no evidence the claims were raised before the hearing officer or that appellant objected to the hearing officer's continued participation based on counsel substitute's allegations. In fact, the Adjudication of Disciplinary Charge form signed by appellant does not include any allegation by appellant that the hearing officer was not impartial or had stated she made a final decision prior to the presentation of the evidence. Having deprived the hearing officer of the opportunity to consider and address the allegations during the proceeding, we will not consider appellant's contention because

² The letter was not submitted as a part of the evidentiary record before the hearing officer. Although it is addressed to the DOC, it referenced the disciplinary proceedings against appellant and another inmate, and stated that its purpose was "not to re-litigate" the charges against the appellant but instead was to lodge a complaint against the hearing officer and "against the lack of transparency and fairness of the courtline process" at the institution.

it does not involve jurisdiction or matters of great public interest. State v. Robinson, 200 N.J. 1, 20 (2009); Nieder v. Royal Indem. Ins. Co., 62 N.J. 229, 234 (1973).³

Appellant's remaining arguments are without sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

Affirmed.

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



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³ Even if were to consider counsel's substitute's allegations, we are not convinced they demonstrate appellant was deprived of a fair hearing. It is alleged the hearing officer said she made her final decision before considering the statements from appellant's witnesses. The record, however, shows the hearing officer considered appellant's witnesses' statements and relied on them in making her decision. In addition, we are satisfied that the statement counsel substitute attributed to the hearing officer, to the effect that inmates could avoid abuse by not coming to prison in the first instance, was intemperate if made but does not require the conclusion that the hearing officer could not render a fair and impartial decision on the charge against appellant.