

**NOT FOR PUBLICATION WITHOUT THE
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-4627-14T2

SHANE HOPKINS,

Appellant,

v.

NEW JERSEY DEPARTMENT OF
CORRECTIONS,

Respondent.

Submitted January 19, 2017 – Decided March 1, 2017

Before Judges Alvarez and Accurso.

On appeal from the New Jersey Department of
Corrections.

Shane Hopkins, appellant pro se.

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

PER CURIAM

Shane Hopkins, an inmate incarcerated in the State prison
in Trenton, appeals from a final decision of the Department of
Corrections denying his application for restoration of

commutation credits. N.J.A.C. 10A:9-5.5. Because the Department's interpretation of the regulation is consistent with its plain language, and the Department's determination that Hopkins is not eligible for restoration of additional credits is supported by the record and not arbitrary or capricious, we affirm.

The essential facts are undisputed. Hopkins began serving an eight-year sentence with a mandatory minimum of one year and six months in 2011. On January 31, 2012, he escaped while being transported to court. He was recaptured the following day, February 1, and on February 2, 2012, was charged with prohibited acts *.101, escape and *.306, conduct which disrupts or interferes with the security or orderly running of the correctional facility, both in violation of N.J.A.C. 10A:4-4.1(a). He was found guilty, and the sanctions imposed included 365 days' loss of commutation credit on each charge.

Pursuant to N.J.A.C. 10A:9-5.5, Hopkins made application in 2013 and 2014 for restoration of the forfeited commutation credits and was awarded twenty-five percent each time. The Department, however, denied Hopkins' 2015 requests for the remaining twenty-five percent maximum permitted by the regulation. In an explanation to Hopkins, the Department advised he was denied the third year credit "because you were

not charge free the full 3 years in custody from the date of incident, which expired 1/31/15." The Department determined Hopkins was only three years' "charge free" on February 1, 2015, making him ineligible for the remaining twenty-five percent commutation credit because it was beyond three years from the incident date of January 31, 2012.

Hopkins appeals, contending the Department's interpretation of the regulation is arbitrary and capricious and that "N.J.A.C. 10A:9-5.5 does not contain a written prerequisite stipulation that the petitioner was required to remain in the 'custody' of the New Jersey Department of Corrections in order to receive the full benefits mandated by N.J.A.C. 10A:9-5.5(c)(1)(i)(ii) and (iii)." We reject those arguments and conclude they are without sufficient merit to warrant more than the brief comments that follow. R. 2:11-3(e)(1)(D)-(E).

Our role in reviewing the decision of an administrative agency is limited. In re Taylor, 158 N.J. 644, 656 (1999); Brady v. Bd. of Review, 152 N.J. 197, 210 (1997). We review an agency decision to determine whether the findings are supported by the record, Williams v. Dep't of Corrs., 330 N.J. Super. 197, 203-04 (App. Div. 2000), and give deference to the agency's interpretation of its regulations, Wnuck v. N.J. Div. of Motor Vehicles, 337 N.J. Super. 52, 56 (App. Div. 2001).

The sections of N.J.A.C. 10A:9-5.5(c)¹ on which Hopkins relies provide:

(c)

1. Up to 75 percent of the forfeited commutation credits may be restored to inmates over the three year period following the incident which resulted in the loss of commutation credits. The three years must run consecutively, calculated beginning with the date of the incident. Credits shall be restored at the rate of 25 percent for each year which is free of any disciplinary charges with a guilty finding, as follows:

i. If the inmate completes only one year without a charge which results in a guilty finding, he or she will have 25 percent of the forfeited credits restored at the completion of that year.

ii. If the inmate completes any two years of the three year period without a charge which results in a guilty finding, he or she will have 50 percent of the forfeited credits restored at the rate of 25 percent at the completion of each of the respective two years.

iii. If the inmate completes all three years without a charge which results in a guilty finding, the inmate will have 75 percent of the forfeited credits restored at the rate

¹ The regulation was amended effective May 18, 2015, shortly before Hopkins filed his notice of appeal. See 47 N.J.R. 65(a) (Jan. 5, 2015). The amendment reorders the sections of the regulation and, although making no substantive change to the requirement that the three years must run consecutively, "calculated from the date of the incident," it makes explicit that credits are only restored "for each year the inmate is in custody and is free of any disciplinary charges with a guilty finding." N.J.A.C. 10A:9-5.5(d)1 (emphasis added).

of 25 percent at the completion of each of the respective three years.

[Emphasis added.]

The facts here are undisputed. The date of the incident, Hopkins' escape, was January 31, 2012. He was not returned to State custody until the evening of the following day. The regulation is neither vague nor ambiguous. Because Hopkins was both in custody and infraction free from February 1, 2012 to February 1, 2013, and from February 1, 2013 to February 1, 2014, he was entitled to and properly credited for restoration of twenty-five percent of the lost commutation credits he received as a sanction for his escape for each of those two years.

Hopkins is not entitled to the remaining twenty-five percent credit because the third period, February 1, 2014 to February 1, 2015, extended beyond January 31, 2015, the end of the three years from the incident of January 31, 2012. Hopkins is also plainly not entitled to restoration of commutation credit for any days when he was not in State custody, which is why the Department appropriately ran the earlier periods from February 1 to February 1 each year.

As the Department's decision regarding the restoration of Hopkins' lost commutation credits is both consistent with the

plain language of the regulation and supported by the record, we affirm.

Affirmed.

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

A handwritten signature in black ink, appearing to be 'JMA', is written over the text of the certification.

CLERK OF THE APPELLATE DIVISION