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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-5577-14T3

EMIL RUSCINGNO,

Appellant,

v.

NEW JERSEY DEPARTMENT
OF CORRECTIONS,

Respondent.

Submitted May 23, 2017 — Decided June 30, 2017

Before Judges Fisher and Leone.

On appeal from the New Jersey Department of
Corrections.

Emil Ruscingno, 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

Inmate Emil Ruscingno appeals from a July 23, 2015 order by
the New Jersey Department of Corrections (DOC) imposing
disciplinary sanctions. We affirm.

I.

Appellant is presently serving a life sentence for murder, armed burglary, drug possession, and weapons offenses. He was incarcerated at Northern State Prison.

The following facts appear in the DOC's June 18, 2015 Disciplinary Reports and the DOC's June 17, 2015 Seizure of Contraband Report. On June 17, 2015, prison officials received an anonymous note that appellant's cellmate was planning an escape. Accordingly, the officials conducted a search of their shared cell.

The officials uncovered several contraband items in the search, including 364 stamps found within each inmate's belongings. The officials also uncovered several brown paper bags containing various food items and stamps. Some bags contained handwritten lists indicating the items enclosed and prices.

The food items discovered included items available for purchase through the prison canteen, and large quantities of items from the kitchen not available for purchase, such as sugar packets, condiments, and water bottles of cooking oil. The reporting investigator concluded, based on her training and experience, that the confiscated contraband indicated appellant and his cellmate were running a business selling food items.

The officials also found three stingers (immersion heating coils), a homemade hot plate, a lightbulb, an antenna, a water bottle containing bleach, three floppy disks, ten aluminum pans, a cable wire with a splitter, a television, and gambling paraphernalia. These "prohibited items" were all forbidden to inmates.

Appellant was charged with prohibited acts *.153 "stealing(theft)," .210 "possession of anything not authorized for retention or receipt by an inmate or not issued to him or her through regular correctional facility channels," .705 "operating a business," and .709 "failure to comply with a written rule or regulation of the correctional facility," all in violation of N.J.A.C. 10A:4-4.1(a) (2014).

Appellant pled guilty to .709, pled not guilty to .210 and .705, and entered no plea to *.153. He was offered the opportunity to call witnesses on his behalf and confront and cross-examine adverse witnesses but declined both offers. At the conclusion of the adjudication hearing, the hearing officer found appellant guilty of all four charges. Appellant was sanctioned with a total of thirty days of detention, 270 days of administrative segregation, loss of sixty days of commutation time, and loss of thirty days of recreational privileges. The Assistant Superintendent upheld the imposition of sanctions.

Appellant makes the following argument on appeal:

THE DECISION OF THE HEARING OFFICER VIOLATES
APPELLANT'S RIGHT TO DUE PROCESS AND IN THE
INTEREST OF JUSTICE SHOULD BE VACATED.

II.

"Prison disciplinary proceedings are not part of a criminal prosecution, and the full panoply of rights due a defendant in such proceedings does not apply." Jenkins v. Fauver, 108 N.J. 239, 248-49 (1987) (quoting Wolff v. McDonnell, 418 U.S. 539, 556-57, 94 S. Ct. 2963, 2975, 41 L. Ed. 2d 935, 950-51 (1974)).

Initially set forth by our Supreme Court in Avant v. Clifford, 67 N.J. 496, 525-46 (1975), the due process rights that must be afforded to inmates are now codified in a comprehensive set of DOC regulations, N.J.A.C. 10A:4-9.1 to -9.28. These regulations "strike the proper balance between the security concerns of the prison, the need for swift and fair discipline, and the due-process rights of the inmates." Williams v. Dep't of Corr., 330 N.J. Super. 197, 203 (App. Div. 2000) (citing McDonald v. Pinchak, 139 N.J. 188, 202 (1995)).

"Our role in reviewing the decision of an administrative agency is limited." Figueroa v. N.J. Dep't of Corr., 414 N.J. Super. 186, 190 (App. Div. 2010). "We defer to an agency decision and do not reverse unless it is arbitrary, capricious or unreasonable or not supported by substantial credible evidence in

the record." Jenkins v. N.J. Dep't of Corr., 412 N.J. Super. 243, 259 (App. Div. 2010). Nonetheless, we must "engage in a 'careful and principled consideration of the agency record and findings.'" Williams, supra, 330 N.J. Super. at 204 (quoting Mayflower Sec. Co. v. Bureau of Sec., 64 N.J. 85, 93 (1973)). We must hew to our deferential standard of review.

III.

"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' means 'such evidence as a reasonable mind might accept as adequate to support a conclusion.'" Figueroa, supra, 414 N.J. Super. at 192. There was substantial credible evidence to support each of the charges here.

The hearing officer's finding of stealing, *.153, was supported by appellant's admission that he worked in the kitchen and "would take" the sugar packets and condiments later found in his cell. This charge was also substantiated by the large quantities of kitchen items found in appellant's cell that were unavailable for sale to the inmates.

The numerous prohibited items found in appellant's cell supported the hearing officer's finding of "possession of anything not authorized for retention or receipt by an inmate or not issued

to him or her through regular correctional facility channels." N.J.A.C. 10A:4-4.1(a), .210 (2014). Appellant asserts his cellmate admitted to and was found guilty of possessing these particular items. However, "possession can be jointly shared by several persons." State v. Brown, 80 N.J. 587, 597 (1979).

Under prison rules, an inmate was only permitted to possess eighty stamps at a time. Appellant admitted to prison officials he possessed "at least two-hundred and fifty" of the 364 stamps found. That was sufficient to support the hearing officer's finding of "failure to comply with a written rule or regulation of the correctional facility." N.J.A.C. 10A:4-4.1(a), .709 (2014). In any event, appellant pled guilty to this charge. "'Generally, a defendant who pleads guilty is prohibited from raising, on appeal, the contention that the State violated his constitutional rights prior to the plea.'" State v. Knight, 183 N.J. 449, 470 (2005) (citation omitted).

Finally, the bags with lists of enclosed items and prices, were adequate evidence to support the finding that appellant was "operating a business or group for profit . . . without the approval of the Administrator." N.J.A.C. 10A:4-4.1(a), .705 (2014).

Due process requires appellant received "written notice of the alleged violation." McDonald, supra, 139 N.J. at 195.

Appellant received such notice, with each prohibited act specified in a separate Disciplinary Report, accompanied with a detailed description of the alleged infraction, namely the items recovered from appellant's cell. This was sufficient "to inform him of the charges and to enable him to marshall the facts and prepare a defense." Jacobs v. Stephens, 139 N.J. 212, 217 (1995) (quoting Wolff, supra, 418 U.S. at 565, 94 S. Ct. at 2979, 41 L. Ed. 2d at 956). "Such notice of a specific alleged violation, plus the amplitude of general notice of prison rules, offenses, sanctions and the like, . . . fully satisf[ied] constitutional and 'fairness' requirements of notice." Avant, supra, 67 N.J. at 525.

Appellant contends the identical descriptions of the alleged infractions in each Disciplinary Report and the failure to specify which items were allegedly stolen denied him the opportunity to defend against the charges and thus violated his procedural due process rights. However, as the charges arose from the same event, and the same evidence supported multiple charges, this was not improper. "That this particular conduct may violate [multiple regulations] does not detract from the notice afforded by each." See State v. Kittrell, 145 N.J. 112, 129 (1996) (quoting United States v. Batchelder, 442 U.S. 114, 123, 99 S. Ct. 2198, 2204, 60 L. Ed. 2d 755, 764 (1979)). Moreover, appellant admitted to taking the sugar and condiments that were confiscated from his cell.

Thus, appellant has not shown he was prejudiced by the lack of greater specificity.

Moreover, for each prohibited act, appellant received in the Disciplinary Report a separate and different "written statement by the factfinder[] as to the evidence relied on" in adjudicating him guilty. Avant, supra, 67 N.J. at 523-24 (quoting Morrissey, supra, 408 U.S. at 488-89, 92 S. Ct. at 2604, 33 L. Ed. 2d at 498-99).

Finally, appellant argues he was deprived of a liberty interest in remaining in the general prison population and in maintaining a reduced custody status. However, a change in conditions of confinement does not trigger due process protections unless the change "imposes atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life." Shabazz v. Dep't of Corr., 385 N.J. Super. 117, 123 (App. Div. 2006). Moreover, "[a] reduction in custody status is a privilege and not a right." N.J.A.C. 10A:9-4.2.

Appellant's remaining arguments lack sufficient merit to warrant discussion. 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.


CLERK OF THE APPELLATE DIVISION