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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-0067-20**

HAKIM NELSON,

Appellant,

v.

**NEW JERSEY DEPARTMENT
OF CORRECTIONS,**

Respondent.

Submitted March 28, 2022 – Decided April 13, 2022

Before Judges Fasciale and Firko.

On appeal from the New Jersey Department of Corrections.

Hakim Nelson, appellant pro se.

Matthew J. Platkin, Acting Attorney General, attorney for respondent (Melissa H. Raksa, Assistant Attorney General, of counsel; Daniel S. Shehata, Deputy Attorney General, on the brief).

PER CURIAM

Hakim Nelson appeals from a May 1, 2020 final agency decision by the New Jersey Department of Corrections (DOC) finding him guilty of prohibited act *.005 (threatening another with bodily harm), N.J.A.C. 10A:4-4.1(a)(2)(ii). The hearing officer (HO) weighed the evidence, determined that Nelson committed the prohibited offense, and imposed a sanction of ninety-one days administrative segregation, sixty days loss of commutation time, and thirty days loss of recreation privileges. We affirm.

On appeal, Nelson argues:

[POINT I]

VIOLATION OF DUE PROCESS INVOLVING THE REQUIREMENT FOR STANDARD OF EVIDENCE IN ACCORDANCE WITH N.J.A.C. 10A:4-9[.]15(A).

[POINT II]

DUE PROCESS VIOLATION FOR FAILURE OF THE [HO] TO ASCERTAIN [NELSON'S] PLEA PRIOR TO ADJUDICATING DISCIPLINARY CHARGE [*].005 THREATENING BODILY HARM.

[POINT III]

THE SANCTIONS IMPOSED AMOUNT[] TO CRUEL AND UNUSUAL PUNISHMENT.

[POINT IV]

THE EVIDENCE AGAINST [NELSON] DOES NOT
SUPPORT A FINDING OF GUILT AND DENIED
[NELSON] EQUAL PROTECTION OF LAW.¹

Our standard of review is well-settled. We defer to administrative agencies in recognition of their "expertise and superior knowledge of a particular field." In re Herrmann, 192 N.J. 19, 28 (2007). In our review of the DOC's exercise of authority, we must acknowledge "[t]he breadth and importance of the Commissioner's expertise and discretionary authority in matters of prison policy, regulation[,] and administration." Ortiz v. N.J. Dep't of Corr., 406 N.J. Super. 63, 70 (App. Div. 2009). A disciplinary hearing officer's decision that an inmate is guilty of a prohibited act must be based on substantial evidence in the record. Figueroa v. N.J. Dep't of Corr., 414 N.J. Super. 186, 191 (App. Div. 2010). "Substantial evidence means such evidence as a reasonable mind might accept as adequate to support a conclusion." Id. at 192 (internal quotation marks omitted) (quoting In re Pub. Serv. Elec. & Gas Co., 35 N.J. 358, 376 (1961)).

¹ We have altered the capitalization of Nelson's point headings to comport with our style conventions but omitted the alterations for readability.

The limited due process rights to which inmates in our prisons charged with disciplinary infractions are entitled were first enumerated by our Court in Avant v. Clifford, 67 N.J. 496, 525-30 (1975), and are codified in DOC regulations, N.J.A.C. 10A:4-9.1 to -9.28. Among the rights granted by Avant is the inmate's limited right to "present documentary evidence in their defense when such procedure will not be unduly hazardous to institutional safety or correctional goals." 67 N.J. at 529. An inmate's due process rights also include: written notice of the charges at least twenty-four hours prior to the hearing, N.J.A.C. 10A:4-9.2; a fair tribunal, N.J.A.C. 10A:4-9.15; a limited right to call witnesses, N.J.A.C. 10A:4-9.13; a limited right to confront and cross-examine adverse witnesses, N.J.A.C. 10A:4-9.14; a written statement of the evidence relied upon and the reasons for the sanctions imposed, N.J.A.C. 10A:4-9.24; and the assistance of counsel-substitute in certain circumstances, N.J.A.C. 10A:4-9.12. Nelson received due process.

The record on appeal demonstrates the HO did not disregard N.J.A.C. 10A:4-9.15(a). Nelson claimed someone else wrote the email, but the HO found it unlikely that another individual prepared the email, written from Nelson's account. The evidence on which the HO relied corroborates Nelson wrote the email and threatened bodily injury to an officer. The email at issue concerned

the author's frustration about missing property. Nelson's handwritten statement confirms he was "missing stuff" and he expressed at the hearing displeasure about missing items. Indeed, a telephone recording memorialized Nelson complaining about the same information in the email. Thus, there exists substantial evidence that Nelson committed the prohibited offense.

To the extent we have not addressed Nelson's remaining contentions, we conclude they are without sufficient merit to warrant attention in a written decision. R. 2:11-3(e)(2).

Affirmed.

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



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