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**SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-0511-21**

**REGINALD ROACH,**

Appellant,

v.

**NEW JERSEY DEPARTMENT  
OF CORRECTIONS,**

Respondent.

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Submitted October 25, 2022 – Decided November 2, 2022

Before Judges Sumners and Geiger.

On appeal from the New Jersey Department of Corrections.

Reginald Roach, appellant pro se.

Matthew J. Platkin, Attorney General, attorney for respondent (Melissa H. Raksa, Assistant Attorney General, of counsel; Christopher C. Josephson, Deputy Attorney General, on the brief).

**PER CURIAM**

Appellant Reginald Roach, an inmate at East Jersey State Prison, appeals from a final agency decision of respondent New Jersey Department of Corrections (DOC) imposing sanctions for committing a prohibited act.

On August 5, 2021, at about 5:45 a.m., Correction Officer J. Shell was conducting an inmate count of a housing unit. Upon approaching and looking into cell No. 52, which housed Roach, Shell observed Roach looking directly at her and smiling while stroking his genitals. Upon completing the inmate count, Shell informed her supervisor, Sergeant Soto, about the incident.

Roach was charged with committing prohibited act \*.053, indecent exposure, in violation of N.J.A.C. 10A:4-4.1(a)(2)(vi).<sup>1</sup> On August 5, 2021, a Corrections Sergeant investigated the incident, served Roach with the charge, and referred the charge to a disciplinary hearing.

Roach requested and was afforded the assistance of a counsel substitute and pleaded not guilty to the charge. The disciplinary hearing took place on August 9, 2021. Roach stated that he and Shell "had words before about certain things." In a written statement submitted at the hearing, Roach denied that he had exposed his genitals to Shell and that she observed him stroking his genitals.

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<sup>1</sup> Prohibited acts preceded by an asterisk are the most serious inmate infractions and result in the most severe disciplinary sanctions. N.J.A.C. 10A:4-4.1(a).

His counsel substitute relied on Roach's written statement as credible and requested leniency.

Roach was offered the opportunity to call witnesses on his behalf. He requested a statement from his cellmate, Johnson. Johnson declined to provide a statement. He was also offered the opportunity to confront adverse witnesses but declined to do so. Roach was shown the adjudication report and the evidence considered by the disciplinary hearing officer.

After hearing the testimony, reviewing the evidence, and considering Roach's arguments, Disciplinary Hearing Officer (DHO) Russell found Roach guilty of the charge. The DHO relied upon Shell's report that Roach had exposed his genitals to her during an inmate count. The DHO found that Roach did not provide any evidence to discredit the reports, noting that his witness provided no information supporting Roach's denial of the charge. The DHO found no basis to find Roach not guilty or to mitigate his actions.

The DHO noted Roach's prior disciplinary history, including a prior \*.053 charge, and lack of a mental health history. The DHO found that sanctions were necessary to deter indecent exposure. Roach was sanctioned to the Limited Privilege Unit to serve a thirty-day loss of TV, radio, telephone, email, and recreational privileges.

Roach administratively appealed the DHO's decision. In that appeal, Roach argued that Shell fabricated the charge in retaliation for a prior interaction and that based upon his denial of the charge, the decision was not supported by substantial evidence. On August 10, 2021, Assistant Superintendent Russo upheld the guilty finding and the sanctions imposed. This appeal followed.

Roach raises the following points for our consideration:

POINT I

THE DECISION RENDERED BY THE HEARING OFFICER WAS ARBITRARY, CAPRICIOUS, AND IN VIOLATION OF THE APPELLANT'S RIGHT TO DUE PROCESS AND FAIRNESS.

POINT II

THE DISCIPLINARY HEARING OFFICER FAILED TO ESTABLISH THE REQUISITE ELEMENT OF PROHIBITED ACT \*.053, INDECENT EXPOSURE TO SUPPORT THE FINDING OF GUILT. (Not Raised Below).

Our role in reviewing the decision of an administrative agency is limited. Circus Liquors, Inc. v. Governing Body of Middletown Twp., 199 N.J. 1, 9 (2009). "We will not disturb the determination of an administrative agency absent a showing that it was arbitrary, capricious, or unreasonable." Figueroa v. N.J. Dep't of Corr., 414 N.J. Super. 186, 190 (App. Div. 2010) (citing Circus Liquors, 199 N.J. at 10). We employ the following test.

In determining whether an agency action is arbitrary, capricious, or unreasonable, a reviewing court must examine: (1) [w]hether the agency's action violates express or implied legislative policies, that is, did the agency follow the law; (2) whether the record contains substantial evidence to support the findings on which the agency based its action; and (3) whether in applying the legislative policies to the facts, the agency clearly erred in reaching a conclusion that could not reasonably have been made on a showing of the relevant factors.

[Blanchard v. N.J. Dep't of Corr., 461 N.J. Super. 231, 238 (App. Div. 2019) (quoting In re Carter, 191 N.J. 474, 482 (2007)).]

"Decisions of administrative agencies carry with them a presumption of reasonableness." Figueroa, 414 N.J. Super. at 191. "Even if a court may have reached a different result had it been the initial decision maker, it may not simply 'substitute its own judgment for the agency's.'" Circus Liquors, 199 N.J. at 10 (quoting Carter, 191 N.J. at 483). "[A] court must be mindful of, and deferential to, the agency's 'expertise and superior knowledge of a particular field.'" Ibid. (quoting Greenwood v. State Police Training Ctr., 127 N.J. 500, 513 (1992)).

"Nonetheless, 'although the determination of an administrative agency is entitled to deference, our appellate obligation requires more than a perfunctory review.'" Figueroa, 414 N.J. Super. at 191 (quoting Blackwell v. Dep't of Corr., 348 N.J. Super. 117, 123 (App. Div. 2002)). "[O]ur function is not to merely

rubberstamp an agency's decision." Ibid. Rather, we "engage in a 'careful and principled consideration of the agency record and findings,'" Williams v. Dep't of Corr., 330 N.J. Super. 197, 204 (App. Div. 2000) (quoting Mayflower Sec. Co. v. Bureau of Sec., 64 N.J. 85, 93 (1973)), and "insure procedural fairness in the administrative process," Avant v. Clifford, 67 N.J. 496, 520 (1975).

"We recognize that '[p]risons are dangerous places, and the courts must afford appropriate deference and flexibility to administrators trying to manage this volatile environment.'" Blanchard, 461 N.J. Super. at 238 (alteration in the original) (quoting Russo v. N.J. Dep't of Corr., 324 N.J. Super. 576, 584 (App. Div. 1999)). However, "a disciplinary hearing officer's adjudication that an inmate committed a prohibited act must [still] be based on substantial evidence in the record," Figueroa, 414 N.J. Super. at 191 (citing N.J.A.C. 10A:4-9.15(a)), and not merely be "a subjective hunch, conjecture[,] or surmise of the factfinder," ibid.

Substantial evidence is evidence that "a reasonable mind might accept as adequate to support a conclusion." Blanchard, 461 N.J. Super. at 238 (quoting Figueroa, 414 N.J. Super. at 192). It "has also been defined as 'evidence furnishing a reasonable basis for [an] agency's action.'" Figueroa, 414 N.J. Super. at 192 (quoting McGowan v. N.J. State Parole Bd., 347 N.J. Super. 544,

562 (2002)). The substantial evidence standard permits an agency to apply its expertise where the evidence supports more than one conclusion. Murray v. State Health Benefits Comm'n, 337 N.J. Super. 435, 442 (App. Div. 2001).

With these principles in mind, we turn to defendant's arguments on appeal. Roach argues the DHO improperly shifted the burden of proof to him to disprove Shell's allegations and that credibility should not be based "on the color of one's uniform." Roach contends the DHO's decision "provides no viable explanation as to why she believed [Shell's] report" over his own version of the events. Roach asserts the DHO's decision violated due process and was not supported by substantial evidence. In response, the DOC asserts the DHO "was in the best position to assess credibility [and] found that Roach's denial was not credible." The DOC maintains that all procedural requirements were met.

After careful review of the record, we are satisfied that Roach's adjudication of guilt was premised on substantial evidence in the record. The guilty finding was based on the DHO's determination of the credibility of Shell's and Roach's diametrically opposed versions of the incident, which included consideration of Roach's claim that the charge was fabricated. "As a reviewing court, we will not . . . determine the credibility of witnesses." Penpac, Inc. v.

Passaic Cnty. Utils. Auth., 367 N.J. Super. 487, 507 (App. Div. 2004) (quoting De Vitis v. N.J. Racing Comm'n, 202 N.J. Super. 484, 489-90 (App. Div. 1985)).

The record also reveals that Roach was afforded due process. The DOC's inmate disciplinary regulations, N.J.A.C. 10A:4-1.1 to -12.3, "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, 330 N.J. Super. at 203 (citing McDonald v. Pinchak, 139 N.J. 188, 202 (1995)). Subject to certain exceptions not applicable here, the regulations recognize an inmate's right to the timely notification of charges, N.J.A.C. 10A:4-9.2, the right to a prompt hearing, N.J.A.C. 10A:4-9.8, the right to be present during the hearing, N.J.A.C. 10A:4-9.10, the right to request counsel substitute, N.J.A.C. 10A:4-9.12, the right to call witnesses, N.J.A.C. 10A:4-9.13, the right to confront and cross-examine witnesses, N.J.A.C. 10A:4-9.14, the right to a written statement setting forth the evidence relied upon, the findings of fact, the final decision, and reasons for the disciplinary action taken, N.J.A.C. 10A:4-9.24, and the right for disciplinary action to be based on appropriate criteria, N.J.A.C. 10A:4-9.17. These requirements were met. Roach's due process rights were not violated.

Roach further argues that the DOC failed to prove a requisite element of indecent exposure—that his genitals were "uncovered" and "exposed." He notes



that Shell's report contains "no language" to this effect. The DOC argues that this issue was not raised during the administrative hearing or appeal and should not be considered by this court because it does not concern an important public issue. Roach replies that we should consider the issue because it was inherent in the arguments he raised during the administrative proceedings or essential to a fair adjudication of the case. He further contends that the failure to prove this element was plain error subject to appellate review.

"Normally, we do not consider issues not raised below at an administrative hearing." In re Stream Encroachment Permit, 402 N.J. Super. 587, 602 (App. Div. 2008). However, an issue not raised below may be considered if it meets the plain error standard. Pressler & Verniero, Current N.J. Court Rules, cmt. 3 on R. 2:6-2 (2023). Because an adjudication of guilty in the absence of proving each element of a prohibited act would be plain error, we will consider the issue.

Roach contends that the DHO improperly shifted the burden of proof to him. Although the DHO found that Roach did not provide any evidence to discredit the reports relating to the incident, we do not view this as shifting the burden of proof to Roach. After hearing the testimony and reviewing the evidence, including the reports submitted by Shell and Sergeant Soto, the DHO found Roach guilty of committing prohibited act \*.053.

Officer Shell alleged that she observed Roach "stroking his genitals." Implicit in her allegation is that Roach's genitals were uncovered. Roach declined to cross-examine Shell. His cellmate declined to provide a statement. Notably, Roach did not assert a defense at the hearing that his genitals were covered. Instead, he claimed he was asleep during the inmate count. The DHO rejected Roach's version of the incident and found that Roach had committed the prohibited act. We discern no basis to overturn those findings, which were supported by substantial evidence that the DHO found to be credible.

Affirmed.

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



CLERK OF THE APPELLATE DIVISION