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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-0686-20**

KENNETH FUQUA,

Appellant,

v.

**NEW JERSEY DEPARTMENT
OF CORRECTIONS,**

Respondent.

Submitted May 2, 2022 – Decided May 10, 2022

Before Judges Fasciale and Firko.

On appeal from the New Jersey Department of Corrections.

Kenneth Fuqua, appellant pro se.

Matthew J. Platkin, Acting Attorney General, attorney for respondent (Sookie Bae-Park, Assistant Attorney General, of counsel; Erica R. Heyer, Deputy Attorney General, on the brief).

PER CURIAM

Kenneth Fuqua appeals from a September 18, 2020 final agency decision by the New Jersey Department of Corrections (DOC) finding him guilty of committing act *.258 (refusing to submit to testing for prohibited substances), N.J.A.C. 10A:4-4.1(a)(2). The hearing officer (HO) weighed the evidence, determined that Fuqua committed the offense, and imposed a sanction of 120 days in restorative housing, 90 days loss of commutation time, urine monitoring, and a permanent loss of contact visits. The HO referred Fuqua to a drug diversion program and suspended imposition of the sanctions for sixty days. We affirm.

On appeal, Fuqua argues:

[POINT I]

THE PHYSICAL EVIDENCE [CANNOT] POSSIBLY PROVE THAT ALL POLICIES AND PROCEDURES WERE ADHERED TO PERTAINING TO THE COLLECTING OF EVIDENCE AND DUE PROCESS OF COLLECTING THE EVIDENC[E].

[POINT II]

THE COUNSEL FOR DEFENDANT WAS INEFFECTIVE DUE TO THE FACT THAT THE PARALEGAL COERCED DEFENDANT INTO TAKING A PL[E]A THAT HE WAS NOT GUILTY ... BECAUSE OF THE PARALEGAL[']S PRE-HEARING ENCOUNTER WITH THE [HO].

[POINT III]

THE DATE THE PARALEGAL APPEARED BEFORE THE [HO] APPEALING THE DECISION WAS A DAY BEF[OR]E THE ACTUAL HEARING AND THE CHARGE APPEALED IS INCORRECT, DEFENDANT NEVER WAS CHARGED WITH SUCH CHARGES.

[POINT IV]

. . . DEFENDANT[']S DUE PROCESS RIGHTS WERE VIOLATED BY THE [DOC] REFUSING TO PROVIDE . . . DEFENDANT THE WRITING OF THE RESULTS OF THE REVIEW TO . . . DEFENDANT[']S APPEAL AND THE REASONING THEREFORE.

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). An HO'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)).

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. We are convinced Fuqua received due process throughout the hearing process.

The record demonstrates substantial credible evidence exists to support the HO's finding that Fuqua refused to submit to testing for prohibited

substances. He was ordered to provide a urine sample following a medical emergency, which he did not produce. More than one officer reported Fuqua refused and stated, "No, I'm not pissing." Contrary to Fuqua's contentions on appeal, he received the process that was due.

To the extent we have not addressed Fuqua's arguments, 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.



CLERK OF THE APPELLATE DIVISION