

**NOT FOR PUBLICATION WITHOUT THE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-1303-21**

YAHCOR NAPPER,

Appellant,

v.

**NEW JERSEY DEPARTMENT
OF CORRECTIONS,**

Respondent.

Submitted November 7, 2022 — Decided November 18, 2022

Before Judges Mawla and Marczyk.

On appeal from the New Jersey Department of Corrections.

Yahcor Napper, appellant pro se.

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

PER CURIAM

Appellant Yahcor Napper appeals from a November 10, 2021 final agency decision by the New Jersey Department of Corrections (DOC), adjudicating him guilty of committing a prohibited act *.202, possession of a weapon in violation of N.J.A.C. 10A:4-4.1(a). We affirm.

Appellant is an inmate in Northern State Prison. On October 12, 2021, a corrections officer watching a surveillance camera saw appellant and another inmate with weapons. Both took a fighting stance and engaged in a verbal confrontation. The other inmate had a shank in his hand. At one point, the pair separated, and appellant returned to his bunk, took out a sock, removed a heavy object from his locker, and placed it in the sock. The preliminary incident report filed by the officer posited the object was a lock. Appellant then swung the sock with the object inside it, wrapping it around his hand. Although appellant and the other inmate did not resume their fight, appellant suffered a scratch on his arm from the altercation. No weapons were recovered from either inmate.

Appellant was charged and pled not guilty. The hearing officer adjourned the disciplinary hearing to review the surveillance video. The DOC granted appellant's request for substitute counsel and appellant filed a statement in which he claimed the sock contained plastic chess pieces because he did not

have another means of transporting them. Appellant declined to call witnesses or confront DOC witnesses.

The hearing officer found appellant guilty. The officer recounted their review of the video and found appellant had "drop[ped] a heavy item in his sock and [stood at] the end of his bunk." The officer concluded appellant went to his bed to get a weapon. On appeal, appellant argued there was no lock in the sock. The DOC upheld the hearing officer's determination and filed the final agency decision appellant challenges in this appeal.

Our role in reviewing a prison disciplinary decision is limited. Figueroa v. N.J. Dep't of Corr., 414 N.J. Super. 186, 190 (App. Div. 2010). The decision must not be disturbed on appeal unless it was "arbitrary, capricious or unreasonable or it is not supported by substantial credible evidence in the record as a whole." Henry v. Rahway State Prison, 81 N.J. 571, 579-80 (1980) (citation omitted).

Appellant argues we should reverse the decision because there was no evidence to support the guilty finding since the weapon was never found, and the video evidence does not support the DOC's finding. He also claims the wrong evidentiary standard was employed to find him guilty.

N.J.A.C. 10A:4-9.15(a) states an adjudication of an infraction must be supported by substantial evidence. "'Substantial evidence' means 'such evidence as a reasonable mind might accept as adequate to support a conclusion.'" Figueroa, 414 N.J. Super. at 12 (quoting In re Pub. Serv. Elec. & Gas Co., 35 N.J. 358, 376 (1961)).

Our Supreme Court has stated:

A policy of deferring to findings of fact of a trial court based on its review of video and documentary evidence has certain tangible benefits. When more than one reasonable inference can be drawn from the review of a video recording, . . . then the one accepted by a trial court cannot be unreasonable and the alternative inference accepted by an appellate court cannot be superior. In such a scenario, a trial court's factual conclusions reached by drawing permissible inferences cannot be clearly mistaken, and the mere substitution of an appellate court's judgment for that of the trial court's advances no greater good. . . .

. . . .

Acknowledging that a trial court's factual findings are entitled to deference does not mean that appellate courts must give blind deference to those findings. Appellate courts have an important role to play in taking corrective action when factual findings are so clearly mistaken — so wide of the mark — that the interests of justice demand intervention. . . . Deference ends when a trial court's factual findings are not supported by sufficient credible evidence in the record.

[State v. S.S., 229 N.J. 360, 380-81 (2017) (citations omitted).]

Pursuant to these principles, our review of the video and appellant's submissions to the hearing officer, on appeal to the DOC, and on this appeal, reveal no basis to disturb the DOC's factual findings. Considering appellant did not call witnesses or confront DOC witnesses, we have no reason to doubt the finding appellant placed a heavy object, like a lock, in the sock, with the intention to fight the other inmate, whom he had just confronted and who had injured him.

Affirmed.

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



CLERK OF THE APPELLATE DIVISION