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**SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-1722-20**

CATELIN HICHOS,

Appellant,

v.

NEW JERSEY DEPARTMENT  
OF CORRECTIONS,

Respondent.

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Submitted April 4, 2022 – Decided May 25, 2022

Before Judges Rothstadt and Bishop-Thompson.

On appeal from the New Jersey Department of  
Corrections.

Catelin Hichos, appellant pro se.

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

PER CURIAM

Catelin Hichos,<sup>1</sup> an inmate at the Edna Mahan Correctional Facility for Women (EMCFW), appeals from a final determination of the Department of Corrections (DOC), which upheld a guilty finding and sanctions for committing the institutional disciplinary offense \*002,<sup>2</sup> assaulting any person, N.J.A.C. 10A:4-4.1(a)(1). We affirm.

We discern the following pertinent facts, adduced at the disciplinary hearing, based on the special custody reports, incident report logs, witness statements, and the procedural history. The charge stems from an incident that occurred on January 5, 2021, at approximately 1:30 p.m. in the Restorative Housing Unit Yard (RHU Yard) at the EMCFW.

Apparently, an argument occurred between Hichos and another inmate, Lettie Carstarphen. Officer Shaneyn Drayton, while monitoring the RHU Yard, heard the argument and directed Hichos to quiet down. This led to an argument between Hichos and Drayton. Hichos requested to leave the yard and return to

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<sup>1</sup> Hichos recently changed her name to Catelin Dinora Perez-Carstarphen pursuant to a final order signed on June 10, 2021.

<sup>2</sup> Generally, "DOC inmate disciplinary regulations classify 'asterisk offenses' as prohibited acts considered to be the most serious violations, resulting in the most severe sanctions." N.J.A.C. 10A:4-4.1. See also Hetsberger v. Dep't of Corr., 395 N.J. Super. 548, 556 (App.Div.2007).

her cell. Drayton called Officers Shellyse Cline and Mica Merilus to the RHU Yard to escort Hichos back to her cell, which required Hichos to be placed in handcuffs and a leather restraining belt.

According to Drayton's incident report, "after the handcuffs were secured, inmate Hichos pulled the leather belt and handcuffs inside the RHU yard [and] began to strike inmate Carstarphen with the leather belt in the upper body." Hichos disobeyed several of Drayton's orders to stop striking Carstarphen. Drayton called a code 33 – an emergency, officer in need of assistance, and deployed oleoresin capicum (OC) spray, which struck both inmates. The code 33 required officers to leave their assigned posts to assist in securing Hichos and Carstarphen.

Based on the incident report completed by Cline, as Hichos was being secured to leave the yard, Carstarphen came to the gate and attempted to block Hichos' exit. Cline gave Carstarphen several orders to go to the back of the cage, but she failed to comply. Hichos then "aggressively pulled the belt into the yard and started hitting Carstarphen." Hichos failed to comply with Cline's orders to "stop and get on the ground."

Merilus' incident report corroborated Cline's version of the events. Merilus stated Hichos "aggressively" pulled the belt and began to strike

Carstarphen in the head and body. When Hichos failed to comply with Drayton's order to stop striking Carstarphen, a code 33 was called.

Based on the incident report log, Sergeant Robert Barsony responded to the code 33 and observed Hichos and Carstarphen "tied up with each other." Barsony ordered Hichos "to stop striking Carstarphen." Hichos refused and OC spray was deployed on both inmates to prevent further injuries.

Sergeant Anthony Valvano and Lieutenant Steve Munton also responded to the RHU Yard. Valvano ordered the custody staff to have Hichos and Carstarphen decontaminated and medically assessed before returning them to their cells. Hichos was escorted to the RHU shower for decontamination by Officers Anthony Quinones and Jennifer Estevez. She was then escorted to the hospital for a medical assessment, which she refused. Hichos was then returned to her cell without incident.

Barsony handcuffed Carstarphen. She was escorted to the RHU shower by Cline and Sergeant Matthew Faschan for decontamination. Carstarphen was escorted to the hospital for a medical assessment, which she also refused.

The next day, Hichos was served with the disciplinary charge, committing prohibited act \*.002- assaulting any person. An investigation was conducted, and the charge was referred to a hearing officer for further action.

Hichos requested a witness statement from Carstarphen. On the same day, Carstarphen wrote an inmate statement asserting Hichos was venting to her about a "private home situation" when Drayton made a comment about Hichos being "too loud." Hichos and Drayton "exchanged words." Hichos became upset and Carstarphen asked to go back to their cells. Carstarphen further stated that she heard Drayton threaten to mace Hichos when she was in one cuff. When Drayton reached for the mace, Hichos stated "please do not mace me." Carstarphen claimed Hichos tried to protect her face and "whoever was holding the belt, let it go to avoid the mace assault." Carstarphen further claimed "someone sprayed [mace] and [she] used her body to shield Hichos." A code 33 was called as Carstarphen kept yelling "stop there is no need to spray she's getting on the ground." Carstarphen stated Hichos "never hit her or touched her in any way." She asserted that she had no marks on her and that "a body assessment was not needed."

A mental health evaluation was conducted on January 7, 2021 to determine Hichos' mental status and level of responsibility. The evaluator found that Hichos was responsible for her actions at the time of the infraction.

A disciplinary hearing was held on January 8, 2021. Hichos requested, and was granted, the assistance of a counsel substitute. Hichos pleaded not

guilty to the charge. Hichos was offered the opportunity to confront or cross examine adverse witnesses, and she declined to do so. Hichos was also shown the adjudication report and the evidence considered by the hearing officer.

At the disciplinary hearing, Hichos stated she was "running away from the mace" and denied touching Carstarphen. She further stated she "thought [she] was being charged for arguing with Officer Drayton." The counsel substitute requested that the hearing officer consider Hichos' explanation.

The hearing officer found Hichos guilty of assault, and imposed sanctions of 180 days confinement in the RHU unit, 180 days loss of commutation credits, and thirty days loss of radio/television privileges. On the adjudication report, the hearing officer wrote that sanctions were imposed because "[Hichos] cannot inflict bodily harm on anyone" and in consideration of her disciplinary history. The hearing officer also considered Hichos' mental health evaluation finding that she was responsible for her actions.

Hichos filed an appeal to the Assistant Superintendent asserting: (1) a "plea of leniency"; (2) the conflicting version of events and the "panic of being maced"; and (3) that the imposed sanction be reduced or suspending pending the appeal. Hichos claimed that she "react[ed] in a panicked way after being sprayed repeatedly with mace." She further claimed that it was possible that "she was

flaying her arms while struggling to get away from the spray." Hichos requested that the assault charge be downgraded to the lesser offense of .013,<sup>3</sup> because of the purported "panicked" state she was in. Hichos further requested the sanctions be reduced or suspended on appeal.

In a written decision, the Assistant Superintendent upheld the guilty finding and the sanctions imposed and explained "the decision and sanction[s] were based on evidence and [did] not coincide with the self-reported appeal." The decision also found the sanctions to be within the guidelines, "especially considering [Hichos'] disciplinary history." This appeal followed.

On appeal, Hichos argues that (1) the finding of guilty was not based on "substantial evidence" of guilt; (2) the conflicting written reports did not demonstrate "substantial evidence" of guilt; and (3) the withholding of Estevez' report violated procedural due process, which deprived her of the right to submit documentary evidence on appeal. We disagree.

Our standard of review of a final agency decision is limited. Figueroa v. N.J. Dep't of Corr., 414 N.J. Super. 186, 190 (App. Div. 2010). Reversal is

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<sup>3</sup> Prohibited act .013 is "unauthorized physical contact with any person, such as, but not limited to, physical contact not initiated by a staff member, volunteer, or visitor." N.J.A.C. 10A:4-4.1(a)(3)(ii).

appropriate only when the agency's decision is arbitrary, capricious, or unreasonable, or unsupported by substantial credible evidence in the record as a whole. Ramirez v. Dep't of Corr., 382 N.J. Super. 18, 23 (App. Div. 2005) (quoting Henry v. Rahway State Prison, 81 N.J. 571, 579-80 (1980)); see also In re Taylor, 158 N.J. 644 (1999) (holding that a court must uphold an agency's findings, even if it would have reached a different result, so long as "sufficient credible evidence in the record supports the agency's conclusions").

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, 414 N.J. Super. at 191. "Substantial evidence means such evidence as a reasonable mind might accept as adequate to support a conclusion." Id. at 192 (internal quotation marks omitted).

The limited due process rights to which inmates in our prisons charged with disciplinary infractions are entitled were first enumerated by our Supreme Court in Avant v. Clifford, 67 N.J. 496, 522-30 (1975), and are codified in DOC regulations, N.J.A.C. 10A:4-9.1 to - 9.28. In a disciplinary proceeding, an inmate is not entitled to "the full panoply of rights" afforded to a defendant in a criminal prosecution. Avant, 67 N.J. at 522 (quoting Morrissey v. Brewer, 408 U.S. 471 (1972)). An inmate is entitled to written notice of the charges at least



twenty-four hours prior to the hearing; an impartial tribunal; a limited right to call witnesses and present documentary evidence; a limited right to confront and cross-examine adverse witnesses; a right to a written statement of the evidence relied upon and the reasons for the sanctions imposed; and, where the charges are complex, the inmate is permitted the assistance of a counsel substitute. Id. at 525-33.

Here, we conclude from our review of the record that Hichos was afforded each of the procedural due process rights articulated in Avant. Hichos received timely notice of the charge. She requested a written statement from Carstarphen, which was timely obtained and considered by the hearing officer. She was assisted by counsel substitute, presented Carstarphen's statement as a witness in her defense, and declined to cross-examine adverse witnesses. Although Hichos did not provide a written statement, the hearing officer considered her statement made at the disciplinary hearing. The disciplinary hearing was conducted by a hearing officer, thereby providing an impartial tribunal.

Contrary to Hichos' assertions on appeal of alleged due process violations, the hearing officer considered all of the evidence presented: the disciplinary report; special custody reports completed by Drayton, Cline, Merilus, and Munton; an incident report log; the EMCFW anatomical figure forms for

inmates Hichos and Carstarphen; Carstarphen's inmate statement; and Hichos' statement made at the hearing. Hichos' counsel substitute acknowledged on line sixteen of the adjudication report the information on lines one through fifteen accurately reflected what took place at the hearing. Therefore, we reject Hichos' contention on this point.

Hichos contends that divergent reports are in conflict and thereby demonstrate a lack of substantial evidence of guilt. Hichos further contends that a report prepared by Estevez was not provided to her. Hichos' claim is tenuous.

We reject Hichos' argument that there was an insufficient factual basis to support the hearing officer's finding of guilt. The disciplinary hearing record undercuts this argument. The special custody reports and incident report log presented at the disciplinary hearing were consistent in demonstrating that at least four officers observed Hichos in the act of striking Carstarphen, which contradicted Carstarphen's version that she was not struck. Moreover, despite repeated orders to stop striking Carstarphen, Hichos continued with the assault. Nothing in the record rebutted the reports prepared by the officers, other than Hichos' unsupported assertions.

Equally unsupported by the record is Hichos' claim that a purported incident report prepared by Estevez was not provided to her and therefore is not

part of the record on appeal. Hichos claims, for the first time on appeal, that Estevez wrote a report which stated, "the leather belt and handcuffs were on Ms. Hichos tightly," and as such, cast doubt that an assault was committed. While the incident log identified Estevez as one of eleven officers that responded to the code 33, the hearing record is devoid of any report allegedly prepared by Estevez. Hichos' claim is also untenable since she declined to call Estevez as a witness to support her claim as noted on line fifteen of the adjudication report.

In compliance with the case law cited above, the substantial evidence presented at the disciplinary hearing supports the hearing officer's finding of guilt on the assault charge and the imposed sanctions. The DOC's final determination was not arbitrary, capricious, or unreasonable. We further find the decision of the DOC, as an administrative agency, is supported by sufficient credible evidence on the record as a whole. R. 2:11-3(e)(1)(D).

To the extent we have not specifically addressed any of Hichos' remaining arguments, it is because we consider them sufficiently without merit to require discussion in a written opinion. 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