

**NOT FOR PUBLICATION WITHOUT THE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-2100-20**

MIGUEL RAMOS,

Appellant,

v.

**NEW JERSEY DEPARTMENT
OF CORRECTIONS,**

Respondent.

Submitted November 30, 2022 – Decided December 14, 2022

Before Judges Firko and Natali.

On appeal from the New Jersey Department of Corrections.

Miguel Ramos, appellant pro se.

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

PER CURIAM

Appellant Miguel Ramos, a New Jersey Department of Corrections' (DOC) inmate confined out-of-state pursuant to the Interstate Corrections Compact (ICC), N.J.S.A. 30:7C-1 to 12,¹ appeals from a December 10, 2020 final agency decision of the DOC, which upheld a loss-of-commutation-time sanction against him. Before us, he argues that sanction should be vacated and raises the following two points:

- I. APPELLANT WAS DEPRIVED OF DUE PROCESS AND FAIRNESS WHEN [THE DOC] ARBITRARILY AND CAPRICIOUSLY SUBJECTED [HIM] TO LOSS OF COMMUTATION TIME CONTRARY TO PROVISIONS OUTLINED IN THE NEW JERSEY ADMINISTRATIVE CODE.
- II. APPELLANT WAS DENIED DUE PROCESS AND FAIRNESS WHEN THE ARBITRARY, UNFAIR RECOMMENDATION FOR LOSS OF COMMUTATION TIME WAS APPROVED AND ADJUDICATED ON APPEAL BY THE SAME PERSON.

Having considered appellant's arguments against the record and the applicable law, we affirm.

¹ The ICC "empowers New Jersey to enter into contracts with other states 'for the confinement of inmates on behalf of a sending state for institutions situated within receiving states.'" Van Winkle v. New Jersey Dep't of Corr., 370 N.J. Super. 40, 45 (App. Div. 2004) (quoting N.J.S.A. 30:7C-4(a)).

I.

On September 25, 2020, while housed at the Federal Bureau of Prisons (BOP) correctional institution in Berlin, New Hampshire, appellant threatened a prison employee and refused to obey direct orders. One week later, a disciplinary hearing officer (DHO) presided over an adjudicatory proceeding at that institution. After considering appellant's testimony and written statement, as well as the incident report, witness memoranda, and video footage, the DHO found appellant guilty of those charges and sanctioned him with twenty-eight days of disciplinary segregation, suspension of his phone privileges for two months, and prohibition from accessing his email and the commissary for three months.

In accordance with N.J.A.C. 10A:10-3.16(f), notice of appellant's adjudication and sanctions was forwarded from the BOP to the DOC. A DOC legal specialist, John Falvey, reviewed the infractions and attendant sanctions and recommended appellant also lose 120 days of commutation time on his New Jersey sentence, which Deputy Commissioner Michelle Ricci approved in an October 14, 2020 memorandum. Appellant was informed of the loss of his commutation time by letter shortly thereafter.

In lieu of a formal appeal, appellant sent a letter to the acting DOC Commissioner seeking rescission of the loss-of-commutation-time sanction. Appellant asserted the DOC lacked authority to impose that sanction because, under N.J.A.C. 10A:10-3.16(f), he is "only subject to the disciplinary rules and regulations of the receiving state" except "if the receiving state chooses to impose a loss-of-commutation-time sanction, it cannot exceed the allowable time of the sending state's disciplinary process." Thus, as appellant interprets the regulation, New Jersey's role is limited to reviewing how a loss-of-commutation-time sanction will ultimately impact the inmate's original sentence, and it cannot impose such a penalty in the first instance. Appellant also claimed Deputy Commissioner Ricci improperly approved her own recommendation.

Deputy Commissioner Ricci upheld the sanction in a December 10, 2020 letter. In doing so, she clarified "[o]n [October 9, 2020], Assistant Director [John] Falvey recommended a loss of 120 days commutation time, which I approved. On December 10, upon receipt of your appeal, I upheld that decision." She also stated appellant correctly cited N.J.A.C. 10A:10-3.16(f), but because "[appellant] remain[ed] in the legal custody of New Jersey, New Jersey must evaluate the proper loss of commutation time that could impact [his] sentence

for all disciplinary charges received while housed in the BOP." She further explained New Jersey, as the sending state under the ICC, had exclusive authority to impose a sanction affecting the terms of his New Jersey sentence. This appeal followed.

II.

Our review of agency action is limited. "An appellate court ordinarily will reverse the decision of an administrative agency only when the agency's decision is 'arbitrary, capricious, or unreasonable or is not supported 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)). "[A]n administrative agency's interpretation of statutes and regulations within its implementing and enforcing responsibility is ordinarily entitled to our deference." Wnuck v. N.J. Div. of Motor Vehicles, 337 N.J. Super. 52, 56 (App. Div. 2001) (quoting In re Appeal by Progressive Cas. Ins. Co., 307 N.J. Super. 93, 102 (App. Div. 1997)). We have also noted that the Legislature has provided the DOC with broad discretion in all matters regarding the administration of a prison facility, including disciplinary infractions by prisoners. See Russo v. N.J. Dep't of Corr., 324 N.J. Super. 576, 583 (App. Div. 1999).

III.

In his first point, appellant argues the DOC imposed the loss-of-commutation-time sanction arbitrarily and capriciously because New Jersey lacked authority to impose that sanction against him. He specifically relies on N.J.A.C. 10A:10-3.16(f), which he asserts does not "authorize[], allude[] to, or can be interpreted as authorization for the sending state to impose [l]oss of [c]ommutation [t]ime that was not recommended by the disciplinary tribunal in the receiving state." We disagree.

We begin our analysis by defining "commutation time" and the authority under the applicable regulation to impose that sanction on a prisoner housed in another jurisdiction under the ICC. As we stated in Buncie v. Dep't of Corr., 382 N.J. Super. 214, 217 (App. Div. 2005):

commutation credits, or 'good time' credits, are granted for 'continuous orderly deportment,' and are awarded for every year or fractional part of a year of an inmate's sentence. N.J.S.A. 30:4-140. Although given to an inmate upon his entry into the state correctional system, ibid.; N.J.A.C. 10A:9-5.1, commutation credits, unlike jail credits, are awarded in anticipation of good conduct and may be taken from an inmate for a variety of reasons, including misconduct. N.J.S.A. 30:4-140; N.J.S.A. 30:4-16.2; N.J.A.C. 10A:9-5.3(a) and (b).

[Buncie, 382 N.J. Super. at 217.]

The authority to impose discipline and sanction a prisoner serving a New Jersey-based sentence who is sent to a correctional facility out of state is found in N.J.A.C. 10A:10-3.16(f), which provides:

Inmates in the receiving state, pursuant to the [ICC], shall be subject to the receiving state's rules and regulations governing discipline and disciplinary sanctions except that any sanction providing for the loss of commutation credits shall not affect the terms and conditions of the sending state's sentence. All institutional infractions committed while at the receiving correctional facility shall be forwarded by the Office of Interstate Services to the sending state for a determination on how, or if, sanctions shall affect the original sentence.

[N.J.A.C. 10A:10-3.16(f).]

Under the DOC's interpretation, as explained in Deputy Commissioner Ricci's December 10, 2020 letter, this regulation requires the DOC to review infractions by New Jersey inmates confined out-of-state "to evaluate the proper loss of commutation time" and reserves the exclusive authority of the sending state to "take action that would affect the terms of [his] sentence." With one exception, we agree with the DOC's interpretation.

Specifically, we part company with the DOC to the extent it argues imposing a loss-of-commutation-time sanction is within New Jersey's exclusive jurisdiction as the sending state. If that were so, the following underscored

language of the regulation subjecting appellant to New Hampshire's "rules and regulations governing discipline and disciplinary sanctions except that any sanction providing for the loss of commutation credits shall not affect the term and condition of the sending state's sentence," would be rendered meaningless. We believe a more appropriate reading of the regulation permits a receiving state, here New Hampshire, to recommend a loss-of-commutation-time sanction. If not, there would be no need to include the phrase "except that any sanction providing for the loss-of-commutation credits" in the regulation. If a receiving state imposes a loss-of-commutation credit, however, it is subject to the sending state's review and satisfaction to ensure it does not affect the conditions of the defendant's New Jersey sentence.

Although we disagree with the DOC's interpretation on the exclusivity issue, we concur that N.J.A.C. 10A:10-3.16(f) permits New Jersey, acting as a sending state, to impose loss of commutation credits in the event the receiving state fails to do so, when such a remedy is consistent with New Jersey's disciplinary sanctions. Indeed, the last section of N.J.A.C. 10A:10-3.16(f) provides that "[a]ll institutional infractions committed while at the receiving correctional facility, shall be forwarded by the Office of Interstate Services to

the sending state for a determination on how, or if, sanctions shall affect the original sentence."

Additionally, if we were to adopt appellant's reading of the statute, thereby denying the power of the sending state to impose loss-of-commutation-time sanctions when the receiving state opted not to do so, we would create a result inconsistent with the ICC's statutory scheme, which preserves a sending state's jurisdiction over its inmates. Indeed, when a state contracts to house an inmate within the territory of another state pursuant to the ICC, "the receiving state . . . act[s] in that regard solely as agent for the sending state," N.J.S.A. 30:7C-5(a), and the inmate "shall at all times be subject to the jurisdiction of the sending state," N.J.S.A. 30:7C-5(c).

The regulation also provides "[a]ny decision of the sending state pertaining to the administration of the terms of the inmate's sentence for which the sending state retains jurisdiction pursuant to the [ICC] shall be conclusive upon and not reviewable within the receiving state." N.J.A.C. 10A:10-3.15(e). In light of these provisions, we find imposing such a limitation on New Jersey's authority as the sending state to sanction its inmates is contrary to the ICC and would serve to undermine its purpose of facilitating the treatment and

rehabilitation of New Jersey inmates serving their sentences in receiving states. See Van Wickle, 370 N.J. Super. at 45.

We are also satisfied the loss-of-commutation-time sanction comports with the New Jersey Administrative Code for the offense to which appellant was deemed guilty.² Under N.J.A.C. 10A:4-4.1(a)(2)(ii), a finding of guilt for "threatening another with bodily harm" may result in one or more of the sanctions listed under N.J.A.C. 10A:4-5.1(g), including loss of commutation time up to 180 days. Because the DOC acted within its authority under N.J.A.C. 10A:10-3.16(f), and the sanction adhered to N.J.A.C. 10A:4-4.1(a)(2)(ii), we find no reason to disturb the loss-of-commutation-time sanction.

IV.

Appellant next argues the DOC breached his right to fair and impartial adjudication because Deputy Commissioner Ricci upheld her own approval of the legal specialist's recommended sanction. Relying on Rhodes v. Robinson,

² We note, pursuant to N.J.A.C. 10A:4-4.1(a), the offense of "threatening another with bodily harm" is a Category B asterisk offense. N.J.A.C. 10A:4-4.1(a) provides, "[p]rohibited acts preceded by an asterisk (*) are considered the most serious and result in the most severe sanctions." Additionally, such offenses are "subclassified into six categories of severity (Category A through F) with Category A being the most severe and Category E the least severe and Category F [including] an opportunity for inmates found guilty of specified infractions to participate in a substance-use disorder treatment program . . . , if eligible." N.J.A.C. 10A:4-4.1(a).

612 F.2d 766, 773 (3d Cir. 1979), and Diercks v. Durham, 959 F.2d 710, 713 (8th Cir. 1992), appellant asserts the proceedings were "irreparably tainted" because "Deputy Commissioner Ricci unfairly sat in judgment to decide the merits of an appeal of which she clearly had a vested interest." Appellant further argues Piscitelli v. City of Garfield Zoning Board of Adjustment, 237 N.J. 333, 353 (2019), requires only the potential for conflict, rather than evidence of actual conflict, to invalidate the final agency action. We similarly find these arguments without merit.

Prison disciplinary hearings are not criminal prosecutions and the full spectrum of rights due to criminal defendants do not apply. See Avant v. Clifford, 67 N.J. 496, 522 (1975). Prisoners are, however, entitled to certain limited protections prior to receiving disciplinary sanctions. See id. at 523. The Avant Court explained these protections include: (1) written notice of the allegations against the inmate at least twenty-four hours before the hearing; (2) a hearing before an impartial tribunal; (3) the right to call witnesses and present evidence, subject to certain limitations due to the need for security and order in a prison setting; (4) a right to confront and cross-examine adverse witnesses, subject to the same limitations; (5) a right to a written statement specifying the evidence relied upon by the tribunal and the reasons underlying the imposed

sanctions; and (6) the assistance of counsel substitute where the inmate is illiterate or unable to mount a defense, or where the charges are complex. Id. at 525-59; see also McDonald v. Pinchak, 139 N.J. 188, 202 (1995) (reaffirming the procedural protections articulated in Avant).

A prisoner's right to a hearing before an impartial tribunal requires the tribunal be "neutral and detached." Id. at 525 (quoting Morrissey v. Brewer, 408 U.S. 471, 486 (1972)). This requirement does not mandate the tribunal be "disassociated from the administrative process . . . in order to achieve procedural fairness and impartiality." Negron v. New Jersey Dep't of Corr., 220 N.J. Super. 425, 430 (App. Div. 1987). Rather, the decisionmaker need only be uninvolved in, and independent of, the underlying circumstances giving rise to the proceedings. See Morrissey, 408 U.S. at 485-86.

We note the Diercks and Rhodes holdings relied upon a similar standard, and we disagree with appellant's contention that these cases support a finding Deputy Commissioner Ricci's participation in this appeal violated his right to an impartial tribunal, as both cases addressed a tribunal member's direct involvement in the underlying circumstances giving rise to the disciplinary action, or lack thereof. In Diercks, the Eighth Circuit held a prison supervisor who was "directly involved" in recommending the plaintiff prisoner be charged

with a disciplinary infraction violated the plaintiff's due process rights by also participating on the committee that found him guilty of the charge. 959 F.2d at 711, 713. By contrast, in Rhodes, the Third Circuit rejected a prisoner's argument he was denied an impartial hearing because a prison guard sat on the disciplinary committee, as the participating guard did not file the charges or witness the incident and therefore lacked direct or substantial involvement in the matter. 612 F.2d at 773.

We similarly conclude Piscitelli does not support appellant's assertion that the mere "potential for conflict" on Deputy Commissioner Ricci's behalf is sufficient to invalidate the final agency decision. In that case, the New Jersey Supreme Court addressed "whether the 'private interests' of certain [z]oning [b]oard members . . . clash[ed] with the exercise of their public duties." Piscitelli, 237 N.J. at 351 (quoting N.J.S.A. 40A:9-22.2). The Court explained a public official is required to disqualify themselves whenever a conflicting interest has the potential to "interfere with the impartial performance of [their] duties as a member of the public body." Id. at 352-53 (quoting Grabowsky v. Twp. of Montclair, 221 N.J. 536, 551 (2015)). The Court also stated, however, "[o]ur conflict-of-interest rules . . . do not apply to 'remote' or 'speculative' conflicts because local governments cannot operate effectively if recusals occur

based on ascribing to an official a conjured or imagined disqualifying interest."


Id. at 353 (quoting Grabowsky, 221 N.J. at 554).

As noted, Deputy Commissioner Ricci was not involved in the underlying incident leading to the charges or the BOP's adjudication and it was legal specialist John Falvey who initially recommended the loss-of-commutation-time sanction. We are satisfied Deputy Commissioner Ricci's role in approving the recommended sanction did not render her incapable of impartially reviewing appellant's appeal and the application of N.J.AC. 10A:10-3.16(f).

Additionally, the record does not reveal any pressures potentially interfering with Deputy Commissioner Ricci's duties to the public, and any alleged bias on her part in upholding the sanction is merely speculative. We therefore find no basis to determine Deputy Commissioner Ricci lacked impartiality in upholding the sanction and conclude the DOC complied with the due process requirements set forth in Avant.

Affirmed.

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


CLERK OF THE APPELLATE DIVISION