SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2421-20

MICHAEL BROWN,

Appellant,

v.

NEW JERSEY DEPARTMENT OF CORRECTIONS,

Respondent.

Submitted April 4, 2022 – Decided April 20, 2022

Before Judges Rose and Enright.

On appeal from the New Jersey Department of Corrections.

Michael Brown, appellant pro se.

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

PER CURIAM

Michael Brown is imprisoned in the State's correctional system. Brown appeals pro se from a final agency decision of the New Jersey Department of Corrections (DOC), upholding an adjudication and sanctions for committing prohibited act *.254, "refusing to work, or to accept a program or housing unit assignment." N.J.A.C. 10A:4-4.1(a)(2)(xvi).[1] We affirm.

While incarcerated at East Jersey State Prison on March 18, 2021, Brown was ordered to move from his single cell to a double occupancy cell located in the prison's Limited Privilege Unit (LPU). Brown refused the officer's order, stating: "I'm not moving to 3 Wing. I'll pack my overnight bag. You can lock me up." The relocation order was based on sanctions imposed on February 22, 2021 for committing prohibited act .709, "failure to comply with a written rule or regulation of the correctional facility." N.J.A.C. 10A:4-4.1(a)(4)(viii). Those sanctions included loss of JPay[2] privileges and loss of recreation privileges.

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[1] Effective May 17, 2021, prohibited act *.254 was recategorized from a Category C offense to a Category B offense. Under both categories, infractions "preceded by an asterisk (*) are considered the most serious and result in the most severe sanctions." N.J.A.C. 10A:4-4.1(a).

[2] JPay is private company providing inmates the ability to send and retrieve e-messages via personal tablets or kiosks, which typically are placed in general population housing units.

After he was charged with the present offense, Brown underwent a medical and mental health evaluation and was cleared for placement in the LPU. Following an investigation, the charge was referred to a hearing officer.

At the March 25, 2021 hearing,[3] Brown was represented by counsel substitute. Brown pled not guilty to the charge, asserting he was "not going to double bunk" and should not have been removed from his single cell. Although Brown was afforded the opportunity to present witnesses on his behalf and to confront adverse witnesses, he declined to do so. Brown's counsel substitute requested leniency. The hearing officer also considered documentary evidence, including an email from the prison's medical department that Brown did not meet the criteria for single-cell placement.

Based on the evidence presented, the hearing officer found Brown guilty of the charge. Declining Brown's request for leniency, the hearing officer imposed sanctions of 120 days in Restorative Housing and 120 days of loss of commutation time credits. Her decision noted Brown's prior history of disciplinary infractions, lack of mental health history, and the need to deter inmates from refusing housing assignments. The Assistant Superintendent

[3] According to the hearing officer's handwritten decision, the hearing was previously scheduled on three other dates. The reasons for the postponements are unclear, but Brown does not raise any claims related to the delay.

denied Brown's ensuing appeal of the hearing officer's decision. This appeal followed.

Brown now raises the following arguments for our consideration:

POINT 1

IT IS A VIOLATION OF STANDARDS AND DISREGARD FOR [SIC] [BROWN'S] RIGHT TO DUE PROCESS WHEN THE COURT LINE OFFICER FOUND [BROWN] GUILTY OF A [*.]254 CHARGE, REFUSING TO WORK OR ACCEPT A PROGRAM OR HOUSING ASSIGNMENT, BECAUSE A [*.]254 CHARGE IS NOT THE PROPER CHARGE AND THEREFORE COULD NOT BE SUPPORTED BY SUBSTANTIAL CREDIBLE EVIDENCE, [BROWN'S] SANCTION SHOULD BE REVERSED AND VACATED FOR SAID STATED REASONS.

POINT 2

SAFETY WAS ABORTED, WHEN STAFF REMOVED [BROWN] FROM [A] SINGLE CELL, TO MOVE TO THREE WING IN THE CELL WITH ANOTHER INMATE, BECAUSE EXHIBITS (C) AND (D) SHOW THAT PRISON STAFF/PSYCHOLOGY DEPARTMENT IS AWARE OF A FUTUR[E] ATTACK AND [BROWN'S] SAFETY AND THE SAFETY OF OTHERS ARE THE EXTRAORDINARY CIRCUMSTANCES THAT OUT W[]EIGH THE CAUSE FOR THE [*.]254 CHARGE, WHICH LACKS EVIDENCE AND SHOULD BE REVERSED, VACATED AND [BROWN] PLACED BACK INTO A SINGLE CELL.

POINT 3

[THE] SUPERINTENDENT AND [THE] ASSOCIATE ADMINISTRATOR, WITH THE ASSISTANCE OF THE COURT LINE OFFICER RETALIATED ON [BROWN], AFTER FINDING OUT THAT [BROWN] WROTE [TO THE DOC] AND COMPLAINED ABOUT STAFF REMOVING INMATES FROM SINGLE CELL HOUSING, ILLEGALLY, FOR ON[-]THE[-]SPOT CHARGES, YEARS BEFORE THE LOSS OF PRIVILEGE WING WAS ESTABLISHED AND [BROWN'S] SANCTION SHOULD BE REVERSED, AND [BROWN] SHOULD BE PLACED BACK INTO A SINGLE [CELL] BECAUSE THE RECORD REFLECT[S] RETALIATION.
(Not raised below)

POINT 4

IT IS A VIOLATION OF PROCEDURE FOR COURT LINE OFFICER . . . TO SANCTION [BROWN] TO [THE] RESTRICTED HOUSING UNIT, BASED UPON EVIDENCE NOT IN THE RECORD AND THEREFORE [BROWN'S] SANCTION SHOULD BE REVERSED, VACATED AND [BROWN] SHOULD BE PLACED BACK IN A SINGLE CELL.

Our review of final administrative agency decisions is limited. Malacow v. N.J. Dep't of Corr., 457 N.J. Super. 87, 93 (App. Div. 2018). "We will disturb an agency's adjudicatory decision only upon a finding that the decision is 'arbitrary, capricious or unreasonable,' or is unsupported 'by substantial credible evidence in the record as a whole.'" Blanchard v. N.J. Dep't. of Corr., 461 N.J.

Super. 231, 237-38 (App. Div. 2019) (quoting Henry v. Rahway State Prison, 81 N.J. 571, 579-80 (1980)). "Substantial evidence has been defined alternately as 'such evidence as a reasonable mind might accept as adequate to support a conclusion,' and 'evidence furnishing a reasonable basis for the agency's action.'" Id. at 238 (quoting Figueroa v. N.J. Dep't of Corr., 414 N.J. Super. 186, 192 (App. Div. 2010)).

Prison disciplinary hearings are not part of a criminal prosecution, and the full spectrum of rights due to a criminal defendant does not apply. Avant v. Clifford, 67 N.J. 496, 522 (1975). However, when reviewing a determination of the DOC in a matter involving prisoner discipline, we consider not only whether there is substantial evidence that the inmate committed the prohibited act, but also whether, in making its decision, the DOC followed regulations adopted to afford inmates procedural due process. See McDonald v. Pinchak, 139 N.J. 188, 194-96 (1995).

Having considered the record in view of the foregoing principles, we conclude sufficient credible evidence in the record supports the DOC's determination that Brown was guilty of refusing a housing unit assignment. See R. 2:11-3(e)(1)(D). Brown does not dispute that he refused to comply with the officer's order to move to a new cell. Instead, Brown contends he was entitled

to single-cell status because he was previously attacked at Northern State Prison (NSP) with a shank "by a cellmate in a double[-]man cell," and that incident has rendered him "paranoid" and "traumatized." Brown's argument is undermined by the record, which is devoid of any medical documentation supporting his claim.[4]

Nor are we persuaded by Brown's "double jeopardy" argument. Contrary to Brown's assertion, he was not sanctioned twice for his February 22, 2021 adjudication. The loss of privileges sanctions imposed on that adjudication, however, resulted in his move to the LPU. Notably, Brown provides no legal authority to support his argument. See State v. Hild, 148 N.J. Super. 294, 296 (App. Div. 1977) (holding parties are obligated to justify their positions by specific reference to legal authority). Moreover, from what we can glean from Brown's arguments, they are without sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

[4] According to Brown's merits brief, he has been relocated to NSP. However, Brown does not contend he has had contact with the unnamed inmate who previously attacked him at NSP, or that he requested to be kept separate from that inmate. The DOC's appendix includes NSP's November 4, 2021 Face Sheet Report pertaining to Brown and lists four inmates under the "KEEP SEPARATE" section. We are unaware of anything that would prevent Brown from requesting a keep separate order from the unnamed inmate if he is not included in the November 4 report.

Brown's due process claims also lack merit. As stated, an incarcerated inmate is not entitled to the full panoply of rights in a disciplinary proceeding as is a defendant in a criminal prosecution. Avant, 67 N.J. at 522. 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 counsel substitute. Id. at 523-30. Based upon our review of the record, we are satisfied that Brown received all the process an inmate is due.

Finally, we decline to address Brown's belated argument that the charge was issued in retaliation for his prior complaints about the shank attack. The issue was not presented to the DOC, despite the opportunity to do so. See Selective Ins. Co. of Am. v. Rothman, 208 N.J. 580, 586 (2012) (reiterating the principle that appellate courts ordinarily will not address an argument, raised for the first time on appeal, despite an adequate opportunity to investigate and raise the issue in a trial court).

Affirmed.