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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-2584-20**

DARREN PIEPER,

Appellant,

v.

**NEW JERSEY DEPARTMENT
OF CORRECTIONS,**

Respondent.

Submitted November 10, 2022 – Decided December 23, 2022

Before Judges DeAlmeida and Mitterhoff.

On appeal from the New Jersey Department of Corrections.

Darren Pieper, appellant pro se.

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

PER CURIAM

Appellant Darren Pieper, an inmate at the Adult Diagnostic and Treatment Center (ADTC), appeals from the August 11, 2020 final determination of the Department of Corrections (DOC) adjudicating him guilty of prohibited act .702, unauthorized contacts with the public, in violation of N.J.A.C. 10A:4-4.1(a)(3)(xvii). We affirm.

I.

Pieper is incarcerated for the second-degree sexual assault of a child who was at least thirteen but less than sixteen while he was more than four years older than the victim. N.J.S.A. 2C:14-2(c)(4). He was assigned to ADTC after a finding under the Sex Offender Act, N.J.S.A. 2C:47-1 to -10, that his offending conduct was characterized by a pattern of repetitive and compulsive behavior.

Pieper began serving his sentence at ADTC on January 29, 2020. Both before and after he arrived at the facility, Pieper had communications with a fourteen-year-old child, prompting the child's parents to contact the Special Investigations Division (SID) at ADTC. They requested that Pieper cease all communications with their child, who was not related to him.

On May 11, 2020, Pieper was charged with committing prohibited act .702. After a hearing, on May 19, 2020, Pieper was adjudicated guilty of the charge and sanctioned. Pieper alleges these charges were later dismissed.

SID officers later intercepted outgoing correspondence from Pieper addressed to a fourteen-year-old. On the envelope, the addressee's name was followed by "Esq.," in an apparent attempt to disguise the correspondence as legal mail. In addition, the handwritten return address on the envelope was a street address in New York, not the name and address of the prison in which Pieper was incarcerated. Two other letters intended for the minor were intercepted after officers found them inside other outgoing correspondence from Pieper. Both were mislabeled as legal mail.

On July 16, 2020, a corrections sergeant conducted an investigation, completed a disciplinary report detailing the above-described information, and charged Pieper with committing prohibited act .702.¹ The next day, an officer delivered a copy of the written disciplinary charge to Pieper and referred the matter to a disciplinary hearing officer.

After postponements attributable to Covid-19 pandemic restrictions and staffing furloughs, a hearing was held on the charge on August 6, 2020. Pieper was assisted by an inmate counsel substitute. He denied the charge, claiming he did not know any fourteen-year-olds, that he did not write "Esq." on the

¹ Pieper was also charged with committing prohibited act .701, unauthorized use of the mail, 10A:4-4.1(a)(5)(xiv). This charge was later dismissed as repetitive of the .702 charge.

envelope, and that one of the intercepted letters was a legal document intended for the person holding his power-of-attorney so that that person could mail it to the intended recipient. Pieper declined the opportunity to call witnesses at the hearing. Counsel substitute requested leniency.

The hearing officer adjudicated Pieper guilty of the offense. The hearing officer found that Pieper failed to offer any evidence to discredit the staff report that he attempted to send correspondence to a child after the child's parents requested that he cease all communication with the minor. Noting that sanctions were necessary to deter unauthorized contact with the public and acknowledging Pieper's prior adjudication of a similar charge, the hearing officer sanctioned him to a sixty-day loss of commutation credits, a thirty-day loss of recreational privileges, a thirty-day loss of telephone privileges, and a thirty-day loss of access to the system that allows inmates to purchase goods from the commissary.

Pieper filed an administrative appeal. He acknowledged his guilt and stated, "[i]nmate asks for leniency in light of the time he has already spent in solitary.² He realizes now that his actions were unacceptable and takes responsibility for them." On August 11, 2020, Assistant Superintendent Raupp

² Pieper's reference to solitary confinement is an apparent reference to the time he spent in administrative segregation as a sanction for his prior adjudication of committing prohibited act .702.

upheld the hearing officer's decision, found the DOC complied with procedural safeguards, deemed the sanctions appropriate, and denied Pieper's request for leniency, given his status as a sex offender who has victimized a minor.

This appeal follows. Pieper argues, among other things: (1) the adjudication is duplicative of the charge of which he was adjudicated in May 2020, which was, he alleges, later dismissed; (2) the record contains insufficient evidence that he wrote and attempted to send the letters in question; (3) he was denied due process because he was denied the opportunity to present evidence, did not see the evidence against him, the hearing was unjustly delayed, and the hearing officer considered a confidential psychological report about him; (4) the hearing officer was not impartial; and (5) the charge should have been downgraded to on-the-spot discipline with a warning.

II.

Our review of a final agency decision is limited. Reversal is appropriate only when the agency's decision is arbitrary, capricious, or unreasonable, or unsupported by substantial credible evidence in the record as a whole. Henry v. Rahway State Prison, 81 N.J. 571, 579-80 (1980); see also In re Taylor, 158 N.J. 644, 657 (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 exists to support the agency's conclusions). "[A]lthough the determination of an administrative agency is entitled to deference, our appellate obligation requires more than a perfunctory review." Figueroa v. N.J. Dep't of Corr., 414 N.J. Super. 186, 191 (App. Div. 2010) (quoting Blackwell v. Dep't of Corr., 348 N.J. Super. 117, 123 (App. Div. 2002)).

"A finding of guilt at a disciplinary hearing shall be based upon substantial evidence that the inmate has committed a prohibited act." N.J.A.C. 10A:4-9.15(a). "Substantial evidence" is "such evidence as a reasonable mind might accept as adequate to support a conclusion." Figueroa, 414 N.J. Super. at 192 (quoting In re Pub. Serv. Elec. & Gas Co., 35 N.J. 358, 376 (1961)). In other words, it is "evidence furnishing a reasonable basis for the agency's action." Ibid. (quoting McGowan v. N.J. State Parole Bd., 347 N.J. Super. 544, 562 (App. Div. 2002)).

In addition, an inmate is not accorded the full panoply of rights in a disciplinary proceeding afforded a defendant in a criminal prosecution. Avant v. Clifford, 67 N.J. 496, 522 (1975). Instead, prisoners are 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 assistance of a counsel substitute. Id. at 525-33; accord Jacobs v. Stephens, 139 N.J. 212 (1995); McDonald v. Pinchak, 139 N.J. 188 (1995).

Having reviewed the record in light of these precedents, we conclude there is ample evidentiary support for the DOC's final adjudication. The record contains evidence that Pieper attempted to communicate with a minor, using deceptive tactics to disguise the correspondence as legal mail. In his administrative appeal, Pieper acknowledged that his behavior was unacceptable and asked for leniency.

We also are satisfied Pieper received all due process protections to which he is entitled. The delay in Pieper's hearing was the result of restrictions and staffing issues relating to the Covid-19 pandemic. In addition, the record contains no support for his remaining due process arguments, which we conclude lack sufficient merit to warrant 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.



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