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**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3964-19**

JULIO PINA-CANTENA,

Appellant,

v.

**NEW JERSEY DEPARTMENT
OF CORRECTIONS,**

Respondent.

Submitted September 12, 2022 – Decided November 28, 2022

Before Judges Smith and Marczyk.

On appeal from the New Jersey Department of Corrections.

Julio Pina-Cantena, appellant pro se.

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

PER CURIAM

Petitioner, Julio Pina-Cantena appeals the final decision of the New Jersey Department of Corrections (DOC) finding Pina-Cantena committed prohibited act *.254¹, refusing to accept a housing assignment, and imposing corresponding disciplinary sanctions, including: fifteen-days' loss of recreation; ninety-days administrative segregation; and sixty-days' loss of commutation time. We affirm.

I.

On May 7, 2020, at 4:05a.m., petitioner, then an inmate at Bayside State Prison, exited his Unit C cell during the morning mess movement. He entered the day room area and stated to Corrections Officer Phillips that he would not return to his cell. Officer Phillips gave petitioner a direct order to return, but petitioner refused, stating, "I'm not going back to my cell. I'm not going to live here anymore." A second corrections officer, Sergeant Praul, came to assist and gave petitioner another direct order to return to the cell. Petitioner refused again. Despite the concern he expressed for his safety, petitioner was returned to the cell.

At 9:00a.m., petitioner was served notice of charges against him, including committing prohibited acts *.254, refusal to accept a housing

¹ N.J.A.C. 10A:4-4.1(a)(2)(xvi).

assignment and *.256, refusal to obey an order of any staff member.² Later the same day, petitioner was transferred from Bayside State Prison to the Southern State Correctional Facility.

After being served with the charges, petitioner submitted a detailed handwritten statement on May 10, 2020. Petitioner explained his actions by stating that he had just been moved from a cell in Unit B to a cell in Unit C on May 6, the day before the incident. He alleged that once other inmates told his new Unit C cellmate that he was gay, the cellmate immediately subjected petitioner to obscene threats and lewd conduct, including exposing himself and masturbating in front of petitioner.³ Petitioner further stated that he observed his cellmate in possession of three razors. The DOC postponed the hearing on

² Prohibited act *.256 is not before us on appeal, as the hearing officer found petitioner not guilty of the charge.

³ Petitioner denies he is gay, however, this fact is irrelevant. We note that the DOC does not condone discrimination of any kind. N.J.A.C. 10A:31-14.3 states

(a) There shall be no discrimination on the basis of race, creed, color, ancestry, gender identity or expression, national origin, religion, economic status, political belief, affectional or sexual orientation, marital status, nationality or disability

(b) Care, custody and treatment services of inmates shall be provided equally to male and female inmates.

[N.J.A.C. 10A:31-14.3 (emphasis added).]

the charges until the allegations of improper sexual conduct by petitioner's cellmate could be investigated. On May 14, 2020, the DOC concluded that the allegations were unsubstantiated, and commenced the disciplinary hearing on petitioner's *.254 charge. Petitioner requested and the DOC granted him representation by a counsel substitute.

The hearing officer considered the documents submitted by the corrections officers, including: the preliminary incident report; the authorization for prehearing disciplinary housing placement; the special custody report regarding medical clearance for transport; the special custody report of Sgt. Praul; petitioner's statement; and the Special Investigations Division Report finding the sexual assault allegations unsubstantiated. Petitioner relied upon his written statement, and the record shows he declined the opportunity to present witnesses on his behalf or cross-examine any DOC witnesses.

The officer noted petitioner had a history of *.254 violations and that his allegations of sexual misconduct or assault by the cellmate were unsubstantiated after departmental investigation. Noting that inmates cannot choose where they wish to reside, the hearing officer found petitioner guilty of committing prohibited act *.254, and imposed sanctions. Petitioner appeals,

arguing his due process rights were violated because: the DOC failed to provide him notice of the hearing; the hearing officer erred by disregarding evidence tending to establish petitioner's innocence or excuse his conduct; the hearing officer was not impartial; and the hearing officer denied petitioner an opportunity to present a defense.

II.

Our role in reviewing the decision of an administrative agency is limited. In re Taylor, 158 N.J. 644, 656 (1999); Figueroa v. N.J. Dep't of Corr., 414 N.J. Super. 186, 190 (App. Div. 2010). We will not upset the determination of an administrative agency absent a showing that it was arbitrary, capricious, or unreasonable; that it lacked fair support in the evidence; or that it violated legislative policies. Henry v. Rahway State Prison, 81 N.J. 571, 579-80 (1980) (citing Campbell v. Dep't of Civ. Serv., 39 N.J. 556, 562 (1963)).

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. Russo v. N.J. Dep't of Corr., 324 N.J. Super. 576, 583 (App. Div. 1999). Therefore, we may not vacate an agency's determination because of doubts as to its wisdom or because the

record may support more than one result. De Vitis v. N.J. Racing Comm'n, 202 N.J. Super. 484, 489-90 (App. Div. 1985).

However, "although the determination of an administrative agency is entitled to deference, our appellate obligation requires more than a perfunctory review." Figueroa, 414 N.J. Super. at 191 (quoting Blackwell v. Dep't of Corr., 348 N.J. Super. 117, 123 (App. Div. 2002)). We are not "relegated to a mere rubber-stamp of agency action," but rather we must "engage in a 'careful and principled consideration of the agency record and findings.'" Williams v. Dep't of Corr., 330 N.J. Super. 197, 204 (App. Div. 2000) (quoting Mayflower Sec. v. Bureau of Sec., 64 N.J. 85, 92-93 (1973)).

A prison disciplinary proceeding "is not part of a criminal prosecution and thus the full panoply of rights due a defendant in such a proceeding does not apply." Avant v. Clifford, 67 N.J. 496, 522 (1975) (quoting Morrissey v. Brewer, 408 U.S. 471, 480 (1972)). Our Supreme Court prescribed limited due process protections due prisoners prior to their subjection to discipline. Id. at 519 n.21. These protections include written notice of the charges and timely adjudication; a hearing before an impartial tribunal; representation, if requested, by counsel-substitute; a limited ability to call witnesses and

confront adverse witnesses; and a limited ability to present documentary evidence. Id. at 525-30.

The discipline of prisoners for violations of rules and regulations rests solely within the discretion of the DOC. See N.J.S.A. 30:1B-6, -10. The due process safeguards established by the DOC for the administration and implementation of inmate discipline are set forth in N.J.A.C. 10A:4-1.1 to -12.3.

The report containing allegations of offenses against an inmate "shall be served upon the inmate within [forty-eight] hours after the violation" N.J.A.C. 10A:4-9.2. The DOC must ensure an investigating or reporting staff member delivers the report to the inmate, and that the date and time of delivery is recorded. Ibid. The inmate "shall have [twenty-four] hours to prepare [their] defense." Ibid.

III.

We take each of petitioner's arguments in turn. The record shows petitioner was served notice mere hours after the incident. The record also shows that petitioner was represented by substitute counsel who declined to present witnesses on his behalf, even though he had the opportunity to do so. There was sufficient evidence in the record to support the hearing officer's

finding that petitioner refused to enter his designated housing unit, in violation of prohibited act *.254. The detailed reasons cited by petitioner for his refusal to follow a direct order to return to his unit, while concerning, are not sufficient for us to vacate the Department's determination because of doubts as to its wisdom, or because the record could have supported a contrary result. De Vitis, 202 N.J. Super. at 489-90. Those reasons were before the hearing officer⁴, who nonetheless found petitioner had committed the prohibited act. In light of our limited role in reviewing administrative matters, we defer to the Department's final decision based on the record before it. Figueroa, 414 N.J. Super. at 190.

Finally, we find petitioner's claim that the hearing officer was biased against him without merit. Petitioner offered no support for this allegation. The Department's final decision was not arbitrary and capricious, nor was it unreasonable. It was based on fair support in the record. Henry, 81 N.J. at

⁴ As noted above, the DOC postponed the hearing on the charges until the allegations of improper sexual conduct by petitioner's cellmate could be investigated and it was subsequently determined the allegations were unsubstantiated. Additionally, we note that the record shows petitioner was transferred from Bayside to Southern State on May 7, the date of the incident. The record further shows that petitioner has not returned to Bayside.

579-80. Any claims by petitioner which are not addressed here 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.



CLERK OF THE APPELLATE DIVISION