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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-0811-21**

JASPER FRAZIER,

Appellant,

v.

**NEW JERSEY DEPARTMENT
OF CORRECTIONS,**

Respondent.

Submitted March 14, 2023 – Decided August 8, 2023

Before Judges Rose and Gummer.

On appeal from the New Jersey Department of Corrections.

Jasper Frazier, appellant pro se.

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

PER CURIAM

Jasper Frazier, an inmate in state prison, appeals from an October 19, 2021 final agency decision of the New Jersey Department of Corrections (Department), upholding a finding of guilt and sanctions imposed for committing prohibited act *.260, which is "refusing to submit to mandatory medical or other testing," N.J.A.C. 10A:4-4.1(a)(2)(xxviii). Specifically, Frazier was found guilty of refusing to submit to mandatory COVID-19 testing. We affirm.

I.

On September 28, 2021, a Senior Correctional Police Officer (SPCO) filed a disciplinary report stating that on September 27, 2021, Frazier had refused to take a COVID-19 test. Frazier was charged with violating prohibited act *.260. Frazier was served with a copy of the disciplinary report containing the charge on September 28, 2021. Frazier pleaded not guilty and requested and was afforded the assistance of a counsel substitute.

A hearing was held on October 8, 2021. Frazier did not give a statement, submit any evidence, call any witnesses, or request to cross-examine any adverse witnesses at the hearing. His counsel substitute requested "leniency."

The disciplinary hearing officer (DHO) found Frazier guilty of committing prohibited act *.260 and sanctioned him to 120 days in the

restorative housing unit, 100 days of loss of communication time, thirty days of loss of recreation privileges, and thirty days of loss of canteen, email, television, and radio privileges. Imposing those sanctions, the officer concluded Frazier "needs to consider the safety of others."

Frazier administratively appealed the decision based on the following reasons: a "violation of [s]tandards," a "misinterpretation of the facts," and "other: policy, [N.J.A.C.] 10A:4-9.8/[N.J.A.C.] 10A:4-.9.9." He admitted he had "refuse[d] to submit to a mandatory medical testing," attributing his refusal to "being sick and throwing up because of stomach and/or acid pills taken" and to his belief "the test would come back inconclusive." He asserted he had not been given "the paper stating it was mandatory or state law that he ha[d] to be tested for COVID-19" or that refusing testing would lead to a "loss of privileges." He contended the Department had failed to "inform" him of the disciplinary hearing within seven days of the alleged violation and had not informed him in writing that "due to COVID-19 the hearing would be delayed." He contended the DHO had been "biased" and had "suppresse[d] evidence of innocence."

The Department upheld the decision, finding:

[t]here [wa]s no medical record indicating [he was] too sick or ill to submit a specimen There was not a

violation of standards since [he was] placed on a quarantine status (for [his] protection and for those around [him]) which supersedes the Discipline Hearing Process timeframes. Lastly, [Frazier] stated that evidence was suppressed by the DHO but [he] failed to produce the evidence or even state what the evidence [wa]s.

On appeal, Frazier argues the Department violated his due-process rights by failing to advise his hearing would not take place within seven days of the alleged violation; investigate or obtain evidence about his reasons for refusing to take the test and never wrote a conduct report about anyone else who had refused to take the test; and present him with evidence of his guilt or with a summary of the confidential evidence on which it had relied; and by "with[olding] mandatory paper from [the] Governor of New Jersey stating [Frazier] had to take [a] COVID-19 test and if he didn't he would receive a conduct report." He also contends he was protected under the Americans with Disabilities Act, 42 U.S.C. §§ 12101 - 12213, due to his chronic heartburn condition.

II.

Our review of a final administrative decision 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)); see also N.J.A.C. 10A:4-9.15(a) (an adjudication of guilt on a disciplinary charge must be based on "substantial evidence"). "Substantial evidence has been defined alternatively 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)).

When reviewing a prison disciplinary matter, we also consider whether the Department followed the regulations adopted to afford inmates procedural due process. See McDonald v. Pinchak, 139 N.J. 188, 194-95 (1995); Jacobs v. Stephens, 139 N.J. 212, 220-22 (1995). "Prison disciplinary proceedings are not part of a criminal prosecution, and the full panoply of rights due [to] a defendant in such proceedings does not apply." Jenkins v. Fauver, 108 N.J. 239, 248-49 (1987) (quoting Wolff v. McDonnell, 418 U.S. 539, 556 (1974)). The inmate's more limited procedural rights, initially set forth in Avant v. Clifford, 67 N.J. 496, 525-46 (1975), are codified in a comprehensive set of regulations. N.J.A.C. 10A:4-9.1 to -9.28. Those regulations "strike the proper balance between the

security concerns of the prison, the need for swift and fair discipline, and the due-process rights of the inmates." Williams v. Dep't of Corr., 330 N.J. Super. 197, 203 (App. Div. 2000).

Applying these principles, we are satisfied substantial credible evidence in the record supported the finding of guilt and Frazier received all the procedural due process to which he was entitled. Frazier was charged with committing prohibited act *.260, for refusing to take a COVID-19 test. The charge was supported by the SCPO's disciplinary report. Frazier decided to present no evidence at the hearing refuting the charge or explaining why he had refused to take the test. He has since conceded he refused to take it. He belatedly asserted in his administrative appeal that he had refused to take the test because he was sick, had taken medication, and believed the test result would be inconclusive. As the Department correctly found, nothing in the record supports those assertions.

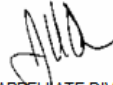
We also perceive no due-process violations. Frazier complains he was not given notice that the hearing would take place more than seven days after his refusal to take the test. He does not assert insufficient notice of the hearing or that he did not have enough time to prepare for it. N.J.A.C. 10A:4-9.8(b) provides that an inmate is entitled to a hearing "within seven calendar days of

the alleged violation . . . unless such hearing is prevented by exceptional circumstances, unavoidable delays or reasonable postponements." Pursuant to N.J.A.C. 10A:4-9.9, a "failure to adhere" to that timeframe "shall not mandate the dismissal of a disciplinary charge," but the DHO "or Adjustment Committee may, in its discretion, dismiss a disciplinary charge because of a violation of time limits," considering "[t]he length of the delay," "[t]he reason for the delay," "[p]rejudices to the inmate in preparing his/her defense"; and "[t]he seriousness of the alleged infraction." Considering those factors, not dismissing the charge due to a four-day delay in the hearing was not an abuse of discretion.

To the extent we do not address any other argument raised by Frazier on appeal, it is because Frazier did not present the argument to the Department, despite his opportunity to do so, see J.K. v. N.J. State Parole Bd., 247 N.J. 120, 138 n.6 (2021), or because the argument does not have sufficient merit to warrant further 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