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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-1336-21**

NESTOR FRANCISCO,

Appellant,

v.

NEW JERSEY DEPARTMENT
OF CORRECTIONS,

Respondent.

Argued February 6, 2023 - Decided March 9, 2023

Before Judges Mawla and Marczyk.

On appeal from the New Jersey Department of Corrections.

Nestor Francisco, appellant, argued the cause pro se.

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

PER CURIAM

Appellant Nestor Francisco, appeals from a December 9, 2021 Final Agency Decision (FAD) of the New Jersey Department of Corrections (DOC) denying his request to translate legal documents, including his trial transcript, from English to Spanish. Having reviewed the record in light of the applicable legal principles, we affirm.

I.

Appellant is a Spanish-speaking inmate at the New Jersey State Prison.¹ This dispute centers around appellant's request for access to bilingual services in the prison's law library and his request for the translation of various legal documents, including his trial transcript, which is over 1,000 pages long. Appellant stated he needed translation services so he could understand his trial records and prepare for his appeal.²

In July 2020, appellant submitted an inquiry wherein he claimed he was being denied adequate access to the prison law library and bilingual paralegals.

¹ Appellant was convicted of murder, related weapons offenses, and tampering with evidence. He was sentenced to an aggregate fifty-year term subject to forty-two and one-half years of parole ineligibility.

² It is not entirely clear what appeal appellant is referencing. His direct appeal on the underlying criminal conviction had already been filed and was pending at the time he filed this appeal. We subsequently issued a reported decision in State v. Francisco, 471 N.J. Super. 386 (App. Div. 2022). Appellant's petition for certification before our Supreme Court is pending.

The prison responded, because of the COVID-19 social distancing restrictions, appellant needed to file a request form and indicate he needed a Spanish-speaking interpreter so one could be appropriately scheduled for appellant. Although appellant received assistance, he still filed inquiries and grievances in which he complained, among other things, he was not being given free translation services for his legal documents. The prison advised he could ask his attorney for translations and also extended his law library pass.

Appellant filed a grievance on October 12, 2021, requesting a translation.

On December 9, 2021, the DOC responded:

The cost to translate the trial transcript is \$31,877.85. This is not a reasonable cost for the [DOC] to incur. You may wish to contact the [c]ourt which provided the transcript or your defense attorney. In the alternative, the [DOC] has Spanish[-s]peaking paralegals that can assist with your legal questions. You also have [the] option to request additional law library [time.] Thank you[.]

On December 23, 2021, appellant responded the notice on the prison walls stated inmates were entitled to free translations and interpretation.³ Appellant also

³ The notice, in relevant part, reads: "The [DOC] provides meaningful access to non-English speakers and limited English proficient (LEP) individuals detained in [DOC] correctional facilities. If you are in need of an interpreter in matters of safety, quasi-legal, medical, mental health, and programming[, DOC] will provide one at no cost." (Emphasis added).

asserted the paralegals were not qualified to translate his legal papers because they were not certified translators. The prison reiterated appellant already had access to the Spanish-speaking paralegals and he could request additional time in the law library.

Appellant raises the following points on appeal:

POINT I

THE APPELLATE COURT SHOULD ORDER THAT THE PRISON OFFER PROOF THAT IT HAS PROVIDED THE NON-ENGLISH SPEAKING APPELLANT ACCESS TO THE COURTS VIA A PERSON TRAINED IN THE LAW WHO[] WAS ABLE TO COMMUNICATE WITH THE APPELLANT[] BECAUSE THE PRISON'S UNSUBSTANTIATED CLAIM THAT IT HAS SO PROVIDED SUCH ASSISTANCE IS A FARCE, AND VIOLATES THE APPELLANT'S FEDERAL AND STATE CONSTITUTIONAL RIGHT TO HAVE ACCESS TO THE COURTS AND EQUAL PROTECTION OF THE LAWS, U.S. CONST., AMEND XIV.

POINT II

THE APPELLATE DIVISION SHOULD ORDER THAT THE PRISON PROVIDE THE APPELLANT REALISTIC ASSISTANCE BY A PERSON TRAINED IN THE LAW FOR A NON-ENGLISH SPEAKING PRISONER TO HAVE ACCESS TO THE COURTS SO HE CAN CHALLENGE HIS CONVICTION AND SENTENCE IN ACCORD WITH THE FEDERAL AND STATE CONSTITUTIONAL RIGHT TO HAVE ACCESS TO THE COURTS AND

EQUAL PROTECTION OF THE LAWS, U.S. CONST., AMEND XIV., WHICH GUARD[S] AGAINST RACIAL DISCRIMINATION AND ALIEN DISCRIMINATION.

POINT III

THE APPELLATE DIVISION SHOULD ORDER THAT THE PRISON PROVIDE REALISTIC TRANSLATION AND INTERPRETATION SERVICES AT NO COST TO INDIGENT NON-ENGLISH SPEAKING PRISONERS FOR PERTINENT LEGAL DOCUMENTS SO THEY CAN UNDERSTAND AND COMMUNICATE WITH COURTS, AND THE DEPARTMENT OF CORRECTIONS STAFF.

More particularly, appellant claims he needs assistance in translating "[c]ourt [r]ules, [e]vidence [r]ules, [c]riminal [c]ode[s], [c]ase [l]aw, legal briefs, [and] trial transcripts[,]" and neither Spanish-speaking paralegal is able to meet his needs because they are not "certified translators" and could only help with the translation of certain documents.⁴ Appellant further contends he should have access to translation software. Appellant argues he was advised the paralegals could translate documents, but could not translate extended briefs or entire transcripts. He further asserts the DOC must honor the posted

⁴ However, appellant's reply brief indicates he is "not arguing . . . he is entitled to a certified translator."

notifications that no-cost interpreting services would be provided for matters involving "safety, quasi-legal, medical, mental health, and programming"

The DOC counters it properly denied appellant's request for a translation of his trial transcript because of the exorbitant cost of the transcript and appellant's ability to obtain interpreting services through his public defender. In addition, the DOC reiterated it had provided Spanish-speaking paralegals at the law library to assist appellant with his questions. It further asserted the prison notice regarding interpreter services is for assistance dealing with staff and processes within the prison and not for the purpose of translating voluminous legal transcripts. The DOC maintains appellant's access to the law library, the availability of an interpreter through appellant's public defender, coupled with the prison providing Spanish-speaking paralegals, satisfies appellant's right to legal access to the courts. The DOC observes that notwithstanding its recommendation for appellant to contact his defense attorney, who assisted him on his direct appeal, it does not appear appellant has done so.⁵

⁵ The DOC further argues that although appellant has not asserted a claim under 42 U.S.C. § 1983, it would fail in any event because he has not demonstrated he suffered an actual injury such that the lack of a translation of his trial transcript impeded his ability to pursue a non-frivolous claim. Concerning appellant's argument he is entitled to certified translators, the State points to New Jersey Judiciary Language Access Plan, N.J. Directives Dir. 1-17 (Jan. 2017) which

II.

We begin by addressing our standard of review and general governing legal principles. Our review of agency determinations is limited. See In re Stallworth, 208 N.J. 182, 194 (2011); Brady v. Bd. of Rev., 152 N.J. 197, 210 (1997); Figueroa v. N.J. Dep't of Corr., 414 N.J. Super. 186, 190 (App. Div. 2010). We will not reverse an administrative agency's decision unless it is "arbitrary, capricious, or unreasonable, or not supported by substantial credible evidence in the record as a whole." Stallworth, 208 N.J. at 194 (citation omitted); accord Jenkins v. N.J. Dep't of Corr., 412 N.J. Super. 243, 259 (App. Div. 2010).

In determining whether an agency action is arbitrary, capricious, or unreasonable, we consider whether: (1) The agency followed the law; (2) substantial evidence supports the findings; and (3) the agency "clearly erred" in applying the "legislative policies to the facts." In re Carter, 191 N.J. 474, 482-83 (2007) (quoting Mazza v. Bd. of Trs., 143 N.J. 22, 25 (1995)). Applying that well-established standard, we accord particular deference to the expertise and

provides, "[a]ny translator or translation company may 'certify' a translation. Such a 'certification' is no guarantee of the accuracy of the translation. A translator does not need to be 'certified' to provide a 'certified translation.'" (Emphasis added).

"broad discretionary powers" of the Commissioner of Corrections in managing the State prisons pursuant to his statutory responsibilities. See, e.g., Jenkins v. Fauver, 108 N.J. 239, 252 (1987).

"We cannot substitute our judgment for that of the agency where its findings are supported by substantial credible evidence in the record." Johnson v. Dep't of Corr., 375 N.J. Super. 347, 352 (App. Div. 2005) (citation omitted). "The burden of demonstrating that the agency's action was arbitrary, capricious or unreasonable rests upon the [party] challenging the administrative action." In re Arenas, 385 N.J. Super. 440, 443-44 (App. Div. 2006).

III.

"Prisoners have a constitutional right of access to the courts." Bounds v. Smith, 430 U.S. 817, 821 (1977), abrogated by Lewis v. Casey, 518 U.S. 343 (1996). "The fundamental constitutional right of access to the courts requires prison authorities to assist inmates in the preparation and filing of meaningful legal papers by providing prisoners with adequate law libraries or adequate assistance from persons trained in the law." Lewis, 518 U.S. at 346 (quoting Bounds, 430 U.S. at 828). However, because there is no "abstract, freestanding right to a law library or legal assistance, an inmate cannot establish relevant actual injury simply by establishing that his prison's law library or legal

assistance program is subpar in some theoretical sense." Id. at 351. New Jersey recognizes the constitutional right of access to the courts and providing inmates with adequate law libraries and resources in its legal access regulations set forth in N.J.A.C. 10A:6-2.1 to -2.16.

Guided by the foregoing principles, we determine the DOC did not abuse its discretion, and appellant has failed to demonstrate the DOC did not provide him with meaningful access to the courts, given the availability of Spanish-speaking paralegals and access to the prison library. Initially, we note appellant concedes he has "at all times during his criminal [proceedings] had an interpreter to translate the proceedings" He also acknowledges an interpreter has been available for him in communicating with his public defender. Moreover, the DOC has provided two Spanish-speaking paralegals at the prison library. Additionally, while appellant claims he is unable to challenge his conviction and sentence because he needs assistance in translating the "[c]ourt [r]ules, [e]vidence [r]ules, [c]riminal [c]ode[s], [c]ase [l]aw, legal briefs, [and] trial transcripts[,]" the record belies his claim, as a direct appeal has already been filed. Furthermore, there was no indication in the record he was unable—with the assistance of his counsel and interpreter—to file a meaningful appeal or assist in his defense because of interpreting or translation issues. In short,

appellant has failed to demonstrate how the paralegals' failure to translate his voluminous trial record and other legal documents hindered his efforts to pursue his direct appeal. See Lewis, 518 U.S. at 356. The paralegals' affidavits show that even though they are not certified translators, they were willing to help appellant with translating certain of the documents, which means they could assist appellant in understanding his papers for purposes of preparing for appeal. Furthermore, by appellant's own admission, he had a public defender who communicated with him through an interpreter. In other words, the appellant had the means to prepare his direct appeal, which was heard and decided.

It is not reasonable for the DOC to expend \$31,877.85 to translate appellant's trial transcript when there are other reasonable and less costly means through which appellant can gain an understanding of his trial record. Furthermore, appellant erroneously relies on the notices posted throughout the prison for the proposition he is entitled to free translations of limitless legal documents. However, that notice only applies to interpretation services for various medical, safety, and quasi-legal prison-related matters. It was not designed for the wholesale translations of trial records, transcripts, statutes, court rules, caselaw, and other legal documents. Furthermore, appellant provides no authority for his argument the DOC must provide access to

translation software, and there is no requirement for same in the legal access regulations set forth in N.J.A.C. 10A:6-2.1 to -2.16.

The DOC reasonably complied with regulations governing inmate access to legal materials as it provided appellant with access to the law library and interpreting services through bilingual paralegals. N.J.A.C. 10A:6-2.1 to -2.16. Accordingly, we determine the DOC's actions were not arbitrary, capricious, or unreasonable. To the extent we have not otherwise addressed appellant's arguments, they are without 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