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**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3046-20**

LUCRETIA STONE,

Appellant,

v.

**NEW JERSEY DEPARTMENT
OF CORRECTIONS,**

Respondent.

Submitted January 10, 2023 – Decided April 21, 2023

Before Judges Sumners and Susswein.

On appeal from the New Jersey Department of Corrections.

Lucretia Stone, appellant pro se.

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

PER CURIAM

Lucretia Stone is serving a life sentence, with a mandatory minimum term of thirty years, at Edna Mahan Correctional Facility for three counts of felony murder, three counts of reckless manslaughter, and one count of arson. Stone submitted a rule exemption request pursuant to N.J.A.C. 10A:1-2.7 to change her custody status from gang minimum to full minimum. The Department of Corrections (DOC) denied her request because N.J.A.C. 10A:9-4.8 prevents inmates convicted of arson from possessing a custody status lower than gang minimum.

The DOC reasoned that Stone's custody status change would not satisfy one of the six circumstances listed in N.J.A.C. 10A:1-2.4(c). The regulation states:

(c) The Commissioner may exempt a correctional facility . . . from adherence to a rule . . . for good cause shown in a particular situation or in instances when strict compliance with a rule or all of its requirements would result in:

1. An undue hardship, unfairness or injustice;
2. An inability to meet a therapeutic, rehabilitative or medical need;
3. A security risk or imminent peril to the overall management, safe or orderly operation of a correctional facility, community program or operational unit;

4. An inability to utilize existing technology or apply technological innovations in order to meet penological objectives;
5. An inability to meet an operational need to ensure management effectiveness and efficiency; or
6. An inability to reasonably meet a time period requirement.

[N.J.A.C. 10A:1-2.4(c).]

Stone appealed, and the DOC filed a motion for remand for further consideration. We granted the motion but retained jurisdiction.

On remand, the DOC denied Stone's request anew, reasoning that none of the N.J.A.C. 10A:1-2.4(c) instances would occur. The DOC found a reduction in custody status is "a privilege and not a right" and, given Stone's criminal and institutional history, gang minimum is the appropriate status, so compliance with N.J.A.C. 10A:9-4.8 would not create undue hardship, unfairness, or injustice. The DOC also held Stone's gang minimum custody status "does not prevent [her] from meeting any therapeutic, rehabilitative or medical needs" and ensured it could fulfill its "duty to maintain a safe and secure environment."

Finally, the DOC concluded "operational needs are currently met with [Stone's] gang minimum status."¹

Before us, Stone asserts undue hardship, unfairness, or injustice would occur without a rule exemption because: (1) she had no prior criminal record and has served more than twenty-five years in prison; (2) she has been charge-free for more than ten years; and (3) other inmates with comparable sentences, who she will not identify, have been granted full minimum custody status. Stone contends her custody status prevents her from meeting a rehabilitative need because, while she has completed all the programing in the maximum/medium security section of the prison, she cannot gain access to programs in the full minimum section, such as Focus on the Victim, which she alleges is considered a "must take" by the Parole Board. Stone also argues the DOC failed to adequately explain how: (1) granting her full minimum status would lead to institutional insecurity and (2) its operational needs are currently being met through her gang minimum status. See N.J.A.C. 10A:1-2.4(c)(3) and (5). Lastly, Stone maintains Smith v. N.J. Dep't of Corr., 346 N.J. Super. 24 (App.

¹ The DOC also found N.J.A.C. 10A:1-2.4(c)(4) and (6) were inapplicable. This finding is conceded by Stone.

Div. 2001), requires a consideration of all the N.J.A.C. 10A:9-3.3(a)² factors in classifying an inmate's custody status and, since those factors were not considered, the DOC's decision was improper.

Our review of an administrative agency's decision is limited. Circus Liquors, Inc. v. Governing Body of Middletown Twp., 199 N.J. 1, 9 (2009). "Ordinarily, an appellate court will reverse the decision of the administrative agency only if it is arbitrary, capricious or unreasonable or it is not supported by substantial credible evidence in the record as a whole." Mejia v. N.J. Dep't of Corr., 446 N.J. Super. 369, 376 (App. Div. 2016) (quoting Henry v. Rahway State Prison, 81 N.J. 571, 579-80 (1980)). "The burden of demonstrating that the agency's action was arbitrary, capricious or unreasonable rests upon the [party] challenging the administrative action." In re Adoption of Amends. to Ne., Upper Raritan, Sussex Cty. & Upper Del. Water Quality Mgmt. Plans, 435 N.J. Super. 571, 582 (App. Div. 2014) (alteration in original) (quoting In re Arenas, 385 N.J. Super. 440, 443-44 (App. Div. 2006)).

We are unpersuaded by Stone's arguments. Preliminarily, the N.J.A.C. 10A:9-3.3(a) factors are irrelevant to this analysis. Stone's reliance on Smith is

² N.J.A.C. 10A:9-3.3(a) details twenty-three factors that must be considered by the Institutional Classification Committee when making custody status decisions.

misplaced because that case did not involve a rule exemption request. Smith held the N.J.A.C. 10A:9-3.3(a) factors shall be considered when making custody status determinations. See 346 N.J. Super. at 32-33. Because Stone seeks to acquire a custody status change, she must first receive a rule exemption, since she is ineligible for full minimum status due to her arson conviction. See N.J.A.C. 10A:9-4.8(a) and (d). Therefore, N.J.A.C. 10A:1-2.4(c), not N.J.A.C. 10A:9-3.3(a), governs the DOC's determination because Stone appeals the denial of a rule exemption request.

The DOC's decision that Stone's gang minimum status does not cause "undue hardship, unfairness or injustice" was not arbitrary, capricious, or unreasonable. N.J.A.C. 10A:1-2.4(c)(1). Gang minimum status is the lowest status she can attain due to her arson conviction. Moreover, Stone's progress report indicates she has received twenty-one disciplinary charges during her incarceration, with the latest in 2013. Although she has not received a disciplinary charge in about ten years, the DOC's decision that her current custody status was appropriate was proper considering "a reduction in custody status is a privilege and not a right." N.J.A.C. 10A:9-4.2. Finally, Stone's argument that other inmates with similar convictions and arrests received rule exemptions is not supported by the record.

The DOC's determination that Stone's custody status "does not prevent [her] from meeting any therapeutic, rehabilitative or medical needs" is also not arbitrary, capricious, or unreasonable. Stone did not provide evidence supporting her assertion that she has completed every program available to her at gang minimum status. There are also no required programs to be granted parole, so her argument that the Focus on the Victim course is necessary to be granted parole is incorrect. See N.J.A.C. 10A:71-3.11. Her current custody status gave her access to many rehabilitative programs and her participation in those programs will be considered during her next parole hearing. See id. Therefore, while the DOC has a duty to rehabilitate, N.J.S.A. 30:1B-6(m), Stone did not provide any evidence the agency cannot fulfill that duty while maintaining her gang minimum status under N.J.A.C. 10A:9-4.8.

Stone misunderstands N.J.A.C. 10A:1-2.4(c)(3) by arguing the DOC's response does not explain why placing her in full minimum status would lead to a security risk. The regulation instead asks whether keeping Stone's gang minimum status would cause a security risk, and Stone fails to prove it would.

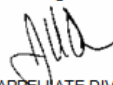
Finally, the DOC's reasoning for denying Stone's rule exemption—maintaining her gang minimum status ensures institutional security and meets operational needs, N.J.A.C. 10A:1-2.4(c)(3) and (5)—was brief. However, it

was not arbitrary, capricious, or unreasonable because Stone provides no evidence indicating these findings were incorrect.

To the extent we have not addressed any arguments raised by Stone, they 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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