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**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1329-22**

DERRICK FREDERICK,

Appellant,

v.

**NEW JERSEY DEPARTMENT
OF CORRECTIONS,**

Respondent.

Submitted April 15, 2024 – Decided May 31, 2024

Before Judges Gilson and Jacobs.

On appeal from the New Jersey Department of Corrections.

Derrick Frederick, appellant pro se.

Matthew J. Platkin, Attorney General, attorney for respondent (Janet Greenberg Cohen, Assistant Attorney General, of counsel; Katherine Ellen Chrisman, Deputy Attorney General, on the brief).

PER CURIAM

Derrick Frederick, who is incarcerated in state prison, appeals from a September 20, 2022 final agency decision of the New Jersey Department of Corrections (the Department), which upheld findings of guilt and sanctions imposed for committing three prohibited acts: *.306, conduct which disrupts or interferes with the security or orderly running of the correctional facility; *.202, possession of a weapon; and *.004, fighting with another person. Frederick argues that those findings were not supported by substantial, credible evidence and his due process rights were violated. We reject those arguments and affirm because there is substantial, credible evidence supporting the findings and Frederick was accorded the process he was due.

I.

The charges against Frederick arose out of a fight he had with three other inmates. On September 8, 2022, Senior Correctional Police Officer Brandy Peterson observed Frederick fighting with inmates Jeremy Lopez, Shaquan Knight, and Michael Burgos. Peterson reported that he saw the four inmates exchange closed-fist punches. Peterson called a "Code 33," notifying other officers that there was an emergency and requesting their response. The four inmates were ordered to stop fighting and to lie down on the ground. Eventually, the inmates complied, and each of them was escorted from the scene and

examined. Lopez was found to have three puncture wounds, and he stated that Frederick had stabbed him several times with a weapon.

Correctional staff reviewed video footage from surveillance cameras in the area of the fight and noted that Frederick had passed something to inmate Shukri Dunell. Dunell was then observed following another group of inmates down the stairs to the yard and dropping something by a water fountain. A search of that area did not reveal any weapon. Searches of Dunell's person and his cell also did not yield any weapon. Dunell, however, admitted that he had taken a weapon from Frederick and dropped it in the yard.

Frederick was charged with committing prohibited acts *.306, *.202, and *.004. He was assigned counsel substitute, and a hearing was conducted before a disciplinary hearing officer.

At the hearing, Frederick pled not guilty and argued that he did not have a weapon and that he was the one who was being punched. He declined to call any witnesses and did not ask to confront any adverse witnesses.

The disciplinary hearing officer found Frederick guilty of all three charges and imposed sanctions, which included: 365 days in the restorative housing unit; 240 days' loss of commutation time; thirty days' loss of television, radio,

JPAY player, JPAY email, and media; thirty days' loss of phone privileges; thirty days' loss of recreational privileges; and a referral to mental health.

Frederick administratively appealed, and the Department upheld the findings of guilt and the sanctions imposed. Frederick now appeals from the Department's final agency decision. He argues that the Department violated his due process rights and that the findings of guilt on each charge were not supported by substantial, credible evidence. In particular, Frederick focuses on the possession of a weapon charge, contending that there was insufficient evidence to support that charge.

Our review of an 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, 580 (1980)); see also N.J.A.C. 10A:4-9.15(a) (providing that a finding of guilt on a disciplinary charge must be based on "substantial evidence"). "Substantial evidence has been defined alternately 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.'" Blanchard, 461 N.J. Super. 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)). Inmates' 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 that substantial, credible evidence in the record supports the findings of guilt and that Frederick received all the procedural due process to which he was entitled. Frederick received

notice of the charges more than twenty-four hours before the hearing. He was also accorded the assistance of counsel substitute at the hearing. The hearing was then conducted before the disciplinary hearing officer. Frederick had the opportunity to call and confront witnesses, although he elected not to do either.

The finding of guilt for possession of a weapon was supported by the investigation report, Lopez's statement that Frederick stabbed him, and Dunell's statement that Frederick had given him a weapon that he dropped in the yard. There was also corroborating evidence that Lopez had three puncture wounds on his arm, torso, and chest.

The finding that Frederick had fought with other persons was also supported by the incident reports, which included an account of the observations by Peterson, who witnessed the fight and the exchange of punches. Frederick failed to present any evidence that he was acting in self-defense. See N.J.A.C. 10A:4-9.13(f) (listing the evidence an inmate must present to prove self-defense); see also DeCamp v. N.J. Dep't of Corr., 386 N.J. Super. 631, 640 (App. Div. 2006) (explaining what a hearing officer must consider in evaluating an inmate's claim of self-defense).

Finally, the finding of conduct which disrupted or interfered with the security or orderly running of the facility was supported by the evidence that a

Code 33 had to be called. As a result, the four inmates had to be ordered to stop fighting, secured, and escorted to separate cells.

Frederick offered no evidence to rebut the information contained in the incident reports. Instead, he contends that the evidence against him was hearsay. Hearsay evidence is permitted in administrative hearings so long as the adjudication is not based solely on the hearsay. See Ruroede v. Borough of Hasbrouck Heights, 214 N.J. 338, 359 (2013) (quoting Weston v. State, 60 N.J. 36, 51 (1972)). The statements by Lopez and Dunell were corroborated by the evidence in Peterson's report. In that regard, the Department was entitled to rely on all testimony and statements that were part of the investigation. See Blanchard, 461 N.J. Super. at 246-47 (reasoning that the Department could have presented or interviewed witnesses who observed the inmate engaging in drug transactions as circumstantial evidence of the inmate's possession of prohibited substances); Ramirez v. Dep't of Corr., 382 N.J. Super. 18, 24 (App. Div. 2005) (explaining that when assessing an inmate's request for a polygraph in a disciplinary appeal, the prison administrator can consider documentary or testimonial evidence, including statements by another inmate).

In short, having reviewed the record, we conclude that Frederick received all the process to which he was due and there was substantial, credible evidence supporting the findings of his guilt of prohibited acts *.306, *.202, and *.004.

Affirmed.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.


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