SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3020-22

SEAN JONES,

Appellant,

v.

NEW JERSEY DEPARTMENT OF CORRECTIONS,

Respondent.

Submitted May 28, 2024 – Decided June 17, 2024

Before Judges Marczyk and Chase.

On appeal from the New Jersey Department of Corrections.

Sean Jones, appellant pro se.

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

PER CURIAM

Appellant Sean Jones is imprisoned in the State's correctional system. He appeals pro se from the April 21, 2023 final agency decision of the New Jersey Department of Corrections ("DOC") upholding an adjudication and sanctions for committing prohibited act *.203, "possession . . . of any prohibited substances, such as drugs, intoxicants, or related paraphernalia not prescribed for the inmate by the medical or dental staff." N.J.A.C. 10A:4-4.1(a)(6)(i).[1] Based on our review of the record and the applicable legal principles, we affirm.

I.

Jones was housed in East Jersey State Prison. On March 12, 2023, Officer R. Triguero observed Jones kissing his visitor D.H., which was prohibited. Officer Triguero then observed Jones take contraband out of his mouth and place it with his hand inside the back of his pants, inserting the contraband "into his anal cavity." Jones was taken to a strip room, where Lieutenant K. Acchione saw what appeared to be a white powdery substance in Jones' mouth and an unknown object "protruding from his anal cavity." Jones was then taken to the infirmary, evaluated and cleared for contraband, and subsequently placed in the

[1] N.J.A.C. 10A:4-4.1(a) provides that "[p]rohibited acts preceded by an asterisk . . . are considered the most serious and result in the most severe sanctions."

closed custody unit for observation pending an investigation. Jones was placed on constant watch status.

Meanwhile, D.H. was placed in a holding cage and "spontaneously uttered that she passed [Jones] [twenty] pills but she d[id]n't know what they were because she didn't package them." She described the package as a "balloon, black, dark colored . . . about an inch." She stated that Jones had pressured her to bring the contraband to the prison. Lieutenant Acchione indicated in his report that after reviewing the camera footage, it confirmed that contraband was passed from D.H. to Jones, and then "secreted into his anal cavity."

On March 27, 2023, Officer R. Jimenez charged Jones with prohibited act *.215, "possession with intent to distribute or sell prohibited substances, such as drugs, intoxicants, or related paraphernalia," N.J.A.C. 10A:4-4.1(a)(1)(xviii). Officer Jiminez's report indicated that Jones attempted to introduce controlled dangerous substance contraband into a state facility when he received twenty pills wrapped in a black balloon from D.H. during a visit. The hearing officer later amended the charge to *.203. Jones requested and was granted the assistance of counsel substitute and pled not guilty to the charge. He asserted he did not possess any drugs and did not receive anything from D.H. Jones requested to be able to call D.H. as a witness and confront her regarding her

statement. The hearing officer denied Jones' request pursuant to N.J.A.C. 10A:4-9.13(a)(7) because D.H. was not an inmate under the control or custody of the DOC nor was she employed by the DOC. Jones did not request to call any other witnesses, and he did not cross-examine the DOC's witnesses. Counsel substitute argued there was insufficient evidence to support the charge because Jones had been under constant observation and provided thirteen negative stool specimens.

Disciplinary hearing officer ("DHO") Russell found Jones guilty of *.203. DHO Russell relied on the video footage[2] of the incident, reports of various officers, and D.H.'s interview. Jones was sanctioned to ninety days' restorative housing, suspended for sixty days; ninety days' loss of commutation time, suspended for sixty days; and was referred to a drug diversion program.

Jones administratively appealed the DHO's decision, arguing his due process rights were violated because of insufficient credible evidence supporting the charge and that he was not given an opportunity to call D.H. as a witness. The Assistant Superintendent ultimately upheld the decision and the sanction imposed by the DHO. The Assistant Superintendent noted "procedural due process safeguard[s]" were followed during the hearing, and the DHO's decision

[2] The video was made available to and reviewed by us on appeal.

was based on substantial evidence. Moreover, he affirmed the DHO's decision denying Jones' request to call D.H. as a witness.

II.

Jones asserts the DHO based her findings solely on the testimony of D.H. and the inconclusive video evidence. He argues there was no tangible evidence produced to substantiate D.H.'s statement. He further contends because no contraband was located that could be tested, there was no basis to support the claim he possessed drugs allegedly received from D.H. Jones claims his negative stool samples substantiated his argument that he never possessed the drugs allegedly given to him by D.H.

Jones argues the DHO acted arbitrarily in relying on "nonexistent evidence" to support a finding that he possessed what the DOC believed to be drugs. He contends the evidence proffered by the DOC was devoid of substance and was replete with evidence that contradicts the claim that Jones received drugs from D.H. He asserts the DOC did not meet the substantial evidence standard of proof required by N.J.A.C. 10A:4-9.15(a).

Jones next argues the DHO improperly precluded him from calling D.H. as a witness, as she purportedly admitted to fabricating the prior statement she gave to the DOC. Had the DHO allowed the testimony from D.H., it would have

provided an opportunity for the DHO to better evaluate the credibility issues in this matter.

The DOC counters that Jones received the full spectrum of rights accorded to a prisoner in a disciplinary hearing under Avant v. Clifford, 67 N.J. 496, 522 (1975). Specifically, he received notice of the claimed violations, disclosure of the evidence, an opportunity to be heard and present witnesses and documentary evidence, the right to confront adverse witnesses, a neutral and detached hearing officer, and a written statement by the factfinder. Jones was also provided with the assistance of counsel substitute under N.J.A.C. 10A:4-9.12(a).

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 (alteration in original) (citation omitted); accord Jenkins v. N.J. Dep't of Corr., 412 N.J. Super. 243, 259 (App. Div. 2010). "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 v.

N.J. Dep't of Corr., 461 N.J. Super. 231, 238 (App. Div. 2019) (quoting Figueroa, 414 N.J. Super. at 192).

Although we afford deference to an administrative agency's determination, our review is not perfunctory and "our function is not to merely rubberstamp an agency's decision." Figueroa, 414 N.J. Super. at 191. We must "engage in a 'careful and principled consideration of the agency record and findings.'" Williams v. N.J. Dep't of Corr., 330 N.J. Super. 197, 204 (App. Div. 2000) (quoting Mayflower Sec. Co. v. Bureau of Sec., 64 N.J. 85, 93 (1973)).

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)). In addition, prison disciplinary hearings are not part of a criminal prosecution, and the full spectrum of rights due to a criminal defendant does not apply. Avant, 67 N.J. at 521-22. However, when reviewing a determination of the DOC in a matter involving prisoner discipline, we consider not only whether there is substantial evidence that the inmate committed the prohibited act, but also whether, in

making its decision, the DOC followed regulations adopted to afford inmates procedural due process. See McDonald v. Pinchak, 139 N.J. 188, 194-96 (1995).

The Assistant Superintendent's decision upholding the DHO's determination was supported by the substantial evidence in this matter. The prison staff observed Jones kissing D.H. and removing contraband from his mouth, which he later placed in his anal cavity. Another officer also observed white powder in Jones' mouth and an unknown object protruding from his anal cavity. Moreover, Jones' visitor, D.H., acknowledged that she had passed Jones twenty pills in the dark colored balloon during her visit. The above was also corroborated by the video evidence. This evidence provided ample support for the Assistant Superintendent's decision.

Moreover, the Assistant Superintendent also correctly determined that Jones was not permitted to call D.H. as a witness at the hearing before the DHO, pursuant to N.J.A.C. 10A:4-9.13(a)(7), because she was not an inmate under the custody or control of the DOC, nor was she employed by the DOC. Jones was given an opportunity to call other witnesses but declined to do so.

In short, we are satisfied the decision was not arbitrary, capricious, or unreasonable, and we discern no basis to disturb the Assistant Superintendent's findings.

Any remaining arguments we have not addressed are without sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

Affirmed.