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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-1021-20**

TYQUAN GIBBS,

Appellant,

v.

**NEW JERSEY DEPARTMENT
OF CORRECTIONS,**

Respondent.

Submitted April 25, 2022 – Decided June 1, 2022

Before Judges Mayer and Bishop-Thompson.

On appeal from the New Jersey Department of Corrections.

Tyquan Gibbs, appellant pro se.

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

PER CURIAM

Appellant Tyquan Gibbs, currently an inmate at New Jersey State Prison, appeals from a final determination of the New Jersey Department of Corrections (DOC) finding him guilty of prohibited act *.002,¹ assaulting any person; and prohibited act, *.708, refusing to submit to a search, and imposing sanctions. We affirm.

On September 29, 2020, Gibbs was involved in a physical altercation with two officers in a housing unit. Officers Keith McKeivitt and Richard Williamson suspected that Gibbs was going to other cells passing or receiving contraband. According to Williamson, Gibbs was seen walking cell to cell when he was ordered to allow inspection of a magazine he was holding and return to his cell. Gibbs disobeyed the order. When Williamson attempted to take the magazine from Gibbs, he "refused," "forcibl[y] resisted," and "began wrestling" with Williamson. While Williamson was wrestling Gibbs to the ground, Gibbs attempted to bite him. Williamson's uniform shirt was "ripped and torn," which rendered the uniform shirt "destroyed and unusable."

¹ Generally, "DOC inmate disciplinary regulations classify 'asterisk offenses' as prohibited acts considered to be the most serious violations, resulting in the most severe sanctions." N.J.A.C. 10A:4-4.1. See also Hetsberger v. Dep't of Corr., 395 N.J. Super. 548, 556 (App. Div. 2007).

Gibbs then struck Williamson with "closed fist punches" to the face and head. Gibbs also "hooked his finger" inside Williamson's mouth and scratched the inside of his mouth. Williamson struck Gibbs in the face and head with a closed fist, while ordering Gibbs to stop resisting. Unable to restrain Gibbs, the officers called a code 33 – an emergency, officer in need of assistance. A code 33 response team arrived and secured Gibbs.

Williamson was transported to Capital Health via DOC transport where he received three stitches in his left elbow, a tetanus shot, and antibiotics for the cuts in his mouth. Williamson remained on medical leave during Gibbs's disciplinary hearing.

McKevitt corroborated Williamson's version of events. McKevitt assisted Williamson with gaining Gibbs's compliance as he was "striking and trying to bite" Williamson. McKevitt ordered Gibbs to stop resisting and put his hands behind his back. Gibbs did not comply, and McKevitt "struck Inmate Gibbs with a closed fist" and ordered Gibbs to stop resisting. Gibbs continued to disregard the order. McKevitt attempted to gain control of Gibbs's arms and legs to stop him from assaulting Williamson. Gibbs continued to resist and McKevitt "swung his closed fists at [Gibbs] again" as he tried to gain Gibbs's

compliance. Gibbs continued resisting even as McKevitt attempted to handcuff him. McKevitt handcuffed Gibbs with the assistance of the response team.

McKevitt secured a pornographic magazine from Gibbs and discovered a "betting sheet," inside the magazine. The items were confiscated and secured.

Sergeant Joshua McGann responded to the code 33 to video record the code 33 escort and placement of Gibbs. McGann started recording when Sergeant Michael Haywood and Officers Kamil Zander and Alberto Vellon were escorting Gibbs to the clinic to be "cleared for placement." McGann turned off the camera after Gibbs was escorted to another cell, searched, and secured.

Gibbs was charged with committing prohibited acts *.002 and *.708. The charges were served on September 30, 2020, and the DOC conducted an evaluation to determine Gibbs's mental status and level of responsibility at the time of the infraction. The evaluation found that Gibbs's behavior was volitional and that he was aware of and responsible for his actions.

An investigation was conducted. Gibbs did not submit questions to be directed to any of the officers, noting it was "irrelevant and repetitive." When Gibbs learned Williamson was out on medical leave due to the incident and his return date was unknown, Gibbs chose not to confront McKevitt. Gibbs declined

to sign the memo from the investigating sergeant, and gave no reason for refusing to sign.

Gibbs made the following statement during the investigation, "[he] rel[ied] on the statement [he] made on the hand-held camera movie video of S[ergeant] McGann on 9-29-2020." The matter was thereafter referred to a Disciplinary Hearing Officer (DHO).

Gibbs pleaded not guilty and declined the assistance of a counsel substitute. He requested and was provided with a copy of all documentary evidence supporting the charges. Gibbs also requested a copy of the video of the incident. The DHO viewed the video with Gibbs, which captured the beginning of the incident but not what happened once Gibbs and the officers were on the ground, due to the "clarity of the video [and] location of cell/camera." Gibbs's request to view the video of him being escorted to the clinic was denied as irrelevant since the incident had already occurred and review of that portion of the video would not assist in his defense.

After several postponements, the disciplinary hearing occurred on October 14, 2020. At the hearing, Gibbs, in his defense, offered the following statement: "I don't really remember what happened due to my head getting hit.

I will rely on the video. I want full dismissal. There was no conversation between me and him."

Gibbs offered no other statements, presented no witnesses, and declined to cross-examine the witnesses against him.

The DHO showed Gibbs the adjudication report and the evidence considered. Gibbs refused to sign line sixteen of the adjudication report, acknowledging that the information in lines one through fifteen accurately reflected what took place at the disciplinary hearing because he believed the video was altered from the original format. The DHO noted that Gibbs claimed the video was altered from its original format,² but the DHO determined that the claim was wholly unfounded.

At the conclusion of the hearing, the DHO found Gibbs guilty of prohibited acts *.002 and *.708. The DHO noted that the video supported the officers' claim that Gibbs resisted when Williamson attempted take the magazine from Gibbs. The DHO also explained that Gibbs's "legal argument" and request

² Gibbs alleged he was subjected to sexual abuse, harassment, retaliation and intimidation on the date of the incident, and this is what was removed from the "altered" video of the incident. Prison Rape Elimination Act (PREA) sexual abuse investigation disposition reported the PREA allegation was investigated and determined to be unsubstantiated.

for confrontation "did not support [Gibbs's] claims or discredit written reports/video."

As it related to the imposition of sanctions, the DHO also considered that Gibbs appeared to "accept no responsibility for the incident," his extensive and recent disciplinary history, including several past assaults and incidents of non-compliance, and Williamson's medical leave status. The DHO sanctioned Gibbs to: restitution of \$48, confiscation of his magazine, 365 days' loss of commutation time, 365 days of Restorative Housing Unit, 30 days' loss of TV, 30 days' loss of JPay, Inc.³ emails, and a referral for a mental health evaluation.

Gibbs filed an administrative appeal from the DHO's determination. The Assistant Superintendent upheld the guilty finding and the sanctions imposed. This appeal followed.

On appeal, Gibbs argues: (1) the guilty finding was not based on substantial and uncontroverted evidence; (2) the Eighth and Fourteenth amendments due process and fair hearing rights were violated; and (3) the sanctions imposed were an excessive punishment. We reject Gibbs's arguments.

³ JPay is private company that partners with state, county, and federal correctional facilities. It provides inmates the ability to send and retrieve e-messages through the use of personal tablets, or kiosks, that are typically placed in general population housing units.

Our standard of review of a final agency decision is limited. Figueroa v. N.J. Dep't of Corr., 414 N.J. Super. 186, 190 (App. Div. 2010). Reversal is appropriate only when the agency's decision is arbitrary, capricious, or unreasonable, or unsupported by substantial credible evidence in the record as a whole. Ramirez v. Dep't of Corr., 382 N.J. Super. 18, 23 (App. Div. 2005) (quoting Henry v. Rahway State Prison, 81 N.J. 571, 579-80 (1980)); see also In re Taylor, 158 N.J. 644 (1999) (holding that a court must uphold an agency's findings, even if it would have reached a different result, so long as "sufficient credible evidence in the record supports the agency's conclusions").

A disciplinary hearing officer's decision that an inmate is guilty of a prohibited act must be based on substantial evidence in the record. Figueroa, 414 N.J. Super. at 191. "Substantial evidence means such evidence as a reasonable mind might accept as adequate to support a conclusion." Id. at 192 (internal quotation marks omitted).

The limited due process rights to which inmates in our prisons charged with disciplinary infractions are entitled were first enumerated by our Supreme Court in Avant v. Clifford, 67 N.J. 496, 522-30 (1975), and are codified in DOC regulations, N.J.A.C. 10A:4-9.1 to -9.28. In a disciplinary proceeding, an inmate is not entitled to "the full panoply of rights" afforded to a defendant in a

criminal prosecution. Avant, 67 N.J. at 522 (quoting Morrissey v. Brewer, 408 U.S. 471 (1972)). An inmate is entitled to written notice of the charges at least twenty-four hours prior to the hearing; an impartial tribunal; a limited right to call witnesses and present documentary evidence; a limited right to confront and cross-examine adverse witnesses; a right to a written statement of the evidence relied upon and the reasons for the sanctions imposed; and, where the charges are complex, the inmate is permitted the assistance of a counsel substitute. Id. at 525-33.

Having reviewed the record, we are satisfied that there was substantial credible evidence in the record to support the finding of guilty on the *.002 and *.708 charges. Gibbs has not demonstrated that the DOC's decision was arbitrary, capricious, or unreasonable. See Bowden v. Bayside State Prison, 268 N.J. Super. 301, 304 (App. Div. 1993) (holding the "burden of showing the agency's action was arbitrary, unreasonable[,] or capricious rest on the appellant").

The video of the incident considered by the DHO demonstrated the catalyst for the physical altercation, Gibbs's resistance to a direct order from Williamson. Moreover, Gibbs offered no evidence to rebut the video and various incident reports.

We next address, and reject, Gibbs's claim that the DHO failed to afford him due process before rendering the decision. Gibbs received all the due process rights afforded under Avant notwithstanding his assertions to the contrary. The DHO conducted the disciplinary proceeding consistent with DOC regulations and Avant, including providing him with timely notice of the charges and the opportunity to receive legal assistance, which he declined. Specifically, as noted by the DHO, Williamson was out on medical leave and Gibbs chose not to confront McKeivitt. Gibbs also had the right of confrontation and to be heard before an impartial tribunal; the ability to examine and review all evidence supporting the charges; and the right to appeal.

We are satisfied based upon our review of the record that the DOC complied with all applicable regulations and considered all sufficient credible evidence before it. The DOC's final agency decision was not unreasonable as it was consistent with the law and supported by substantial credible evidence, and as such, the guilty finding and sanctions imposed were not arbitrary, capricious, or unreasonable.

To the extent we have not addressed Gibbs's remaining arguments, we find them to be without sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(D) and (E).

Affirmed.

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



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