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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-3485-19

OLUTOKUNBO EFUNNUGA,

Plaintiff-Appellant,

v.

CAMDEN COUNTY
CORRECTIONAL FACILITY,¹

Defendant-Respondent.

Submitted May 2, 2022 – Decided May 18, 2022

Before Judges Fasciale and Firko.

On appeal from the Superior Court of New Jersey, Law
Division, Camden County, Docket No. L-4296-19.

Olutokunbo Efunnuga, appellant pro se.

Emeshe Arzón, Camden County Counsel, attorney for
respondent (Krista A. Schmid, Assistant County
Counsel, on the brief).

¹ Defendant is improperly referred to as "Camden County Correctional Facility." We will refer to defendant by its correct designation, Camden County Department of Corrections (CCDC), in our opinion.

PER CURIAM

Olutokunbo Efunnuga, an inmate at Bayside State Prison, appeals from the March 11, 2020 Law Division order affirming the CCDC's finding that he engaged in a fight with another inmate, engaged in conduct which disrupts or interferes with the security or orderly administration of the correctional facility, and imposed disciplinary sanctions. We affirm.

Efunnuga has been housed on the maximum-security block at Bayside State Prison following his arrest for first-degree robbery in June of 2018. On October 23, 2018, Officer Luis Rentas noticed Efunnuga had a black eye. Officer Rentas notified Sergeant Christopher Jones of his observation and an investigation commenced as to the cause of Efunnuga's injury. The other inmates on the subject block were locked into their cells while Officer Ted Ambrose and Officer John Jones performed a cell check of each cell to ascertain if any other inmates had visible signs of injury. Following review of a surveillance video, the officers determined Efunnuga and another inmate, Jose Sanabria, entered a cell together earlier that day and an altercation occurred between them.

When initially questioned about how he sustained the eye injury, Efunnuga claimed he was elbowed in the face during recreation. Later,

Efunnuga admitted to Sergeant Jones and Officer Elvi Tavares that he was in a fight with another inmate, who called him a "snitch." Efunnuga was charged with prohibited acts *.004, fighting with another person, and *.306, conduct which disrupts or interferes with the security or orderly administration of the correctional facility.² On October 23, 2018, at 6:00 p.m., Efunnuga was served with the charges. The matter was referred to a three-member Disciplinary Committee for further action.

Efunnuga pled not guilty to the charges and waived his right to attend the disciplinary hearing, as evidenced by his initials on the Inmate Disciplinary Investigation Report. The hearing proceeded on October 25, 2018, without Efunnuga present. The Disciplinary Committee found Efunnuga guilty of both charges. He was sanctioned to twenty days in disciplinary detention. On October 26, 2018, Efunnuga filed a Disciplinary Board Decision appeal claiming he had not waived a hearing and requested one because Sanabria, who was charged with the same offenses, received a lesser sanction of only three days in disciplinary detention. Efunnuga also asserted Sanabria was the aggressor, and

² We note that "[p]rohibited acts preceded by an asterisk (*) are considered the most serious and result in the most severe sanctions." N.J.A.C. 10A:4-4.1(a).

that he was "being treated unfairly as a victim who fully cooperated in the investigation."

The internal appeal was denied by Captain Rebecca Franceschini, who concluded the Disciplinary Committee's decision was based on substantial evidence in the record, including observation by an officer. Captain Franceschini also found that the sanction imposed was not disproportionate to the offenses charged. On November 1, 2018, the deputy warden at the CCDC upheld the sanction.

On February 9, 2019, Efunnuga filed an appeal of the CCDC's final disciplinary decision in the Superior Court Appellate Division. On October 4, 2019, we transferred Efunnuga's appeal to the Law Division since he was challenging a decision of the CCDC, a county entity, not a state entity. Following motion practice in the Law Division, Efunnuga was provided with documents he requested from Camden County counsel. On January 27, 2020, Efunnuga served a second request for documents and filed another appeal from the CCDC's final disciplinary decision. The documents were again provided by county counsel.

Efunnuga presented four issues in his appeal to the Law Division:

- (1) he was not provided with a copy of CCDC's rules and regulations;

- (2) there was insufficient evidence to support the finding of guilt;
- (3) failure to document the evidence relied upon by the disciplinary committee; and
- (4) he was denied the right to be present at the disciplinary hearing.

On March 11, 2020, the trial court rendered its decision on the record. The court found Efunnuga's "own internal pleadings . . . are not consistent." For example, the court emphasized Efunnuga "told the story about getting elbowed in the eye playing basketball," then claimed he got into "a fight because someone accused him of being a snitch." The court also highlighted that the documentary evidence revealed Efunnuga "check[ed] a box saying that he waived his hearing" and another signature indicated "he did not seek to get a counsel substitute." In the Disciplinary Board decision, the court noted Efunnuga "claim[ed] he did not waive the hearing."

As to the merits of Efunnuga's appeal, the trial court found he admitted to being involved in an "altercation," and the sanction imposed was "not a disproportionate discipline." The court determined the Disciplinary Committee relied upon statements and reports as reflected in the Adjudication of

Disciplinary Charge form. Consequently, the trial court denied Efunnuga's appeal and entered a memorializing order.

On appeal, Efunnuga presents the following arguments for our consideration:

- I. THE FINAL DECISION OF THE [CCDC] WAS NOT BASED UPON FINDINGS OF FACT AND CONCLUSIONS OF LAW AND ALSO LACKS THE NECESSARY ELEMENTS TO SUSTAIN GUILT BASED UPON SUBSTANTIAL CREDIBLE [AND] RELIABLE EVIDENCE IN THE RECORD AS A WHOLE. (Raised below).

- II. THE DISCIPLINARY HEARINGS PROCEEDINGS CONTAINED SEVERAL INSTANCES OF VIOLATIONS TO [EFUNNUGA]'S PROCEDURAL AND SUBSTANTIVE DUE PROCESS RIGHTS. (Raised below).

Based on case law and our review of the record, the trial court's conclusion that Efunnuga fought with Sanabria is supported by substantial credible evidence. Henry v. Rahway State Prison, 81 N.J. 571, 579-80 (1980); see also N.J.A.C. 10A:4-4.1(a). Here, the Law Division's review of the final administrative agency decision was limited. Malacow v. N.J. Dep't of Corr., 457 N.J. Super. 87, 93 (App. Div. 2018) (citing Circus Liquors, Inc. v. Governing Body of Middletown Twp., 199 N.J. 1, 9 (2009)). An administrative agency's decision will not be reversed unless it is "arbitrary, capricious or

unreasonable or it is not supported by substantial credible evidence in the record as a whole." Henry, 81 N.J. at 579-80 (citing Campbell v. Dep't of Civ. Serv., 39 N.J. 556, 562 (1963)).

"'Substantial evidence' means 'such evidence as a reasonable mind might accept as adequate to support a conclusion.'" Figueroa v. N.J. Dep't of Corr., 414 N.J. Super. 186, 192 (App. Div. 2010) (quoting In re Pub. Serv. Elec. & Gas Co., 35 N.J. 358, 376 (1961)). Nonetheless, the reviewing court must "engage in a 'careful and principled consideration of the agency record and findings.'" Williams v. 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)). And, the appellate court must apply the same limited standard of review as the trial court to a local administrative agency's decision. Bressman v. Gash, 131 N.J. 517, 529 (1993).

Efunnuga's decision to waive his attendance at the disciplinary hearing does not implicate a due process concern. His handwritten initials on the Inmate Disciplinary Investigation Report confirmed he waived a hearing. He had the opportunity to request counsel substitute, and to confront and cross-examine witnesses, but declined to do so. Therefore, the Disciplinary Committee was entitled to rely upon the officers' statements and documentary evidence at the

hearing. We are satisfied the hearing was conducted in accordance with Title 10A.

We note that Efunnuga had the opportunity to raise these issues in the administrative proceedings and did not do so. Ordinarily, we decline to address issues that are raised for the first time on appeal, which in this instance was the Law Division. See In re Stream Encroachment Permit, 402 N.J. Super. 587, 602 (App. Div. 2008) (citing Bryan v. Dep't of Corr., 258 N.J. Super. 546, 548 (1992)).

Nevertheless, we are convinced the record does not support Efunnuga's claim that he was denied due process. Based on case law and our review of the record, the trial court correctly found Efunnuga was afforded an adequate procedural opportunity to present his defense. As part of his internal appeal, Efunnuga conceded an altercation occurred and that Sanabria was also sanctioned. Therefore, Efunnuga contradicted his earlier version of events when he contended there was no evidence of a fight. Moreover, the surveillance footage captured both inmates entering the cell just prior to the altercation taking place. Therefore, the Law Division's decision was based upon substantial credible evidence in the record.

Efunnuga's remaining arguments are without sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(2).

Affirmed.

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



CLERK OF THE APPELLATE DIVISION