

STATE OF VERMONT

SUPERIOR COURT  
Washington Unit

CIVIL DIVISION  
No. 21-CV-2302

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STEVEN ASPEN,  
Appellant,

v.

VERMONT DEPT' OF CORRECTIONS  
Appellee.

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DECISION ON THE MERITS

In this V.R.C.P. 74 appeal, Vermont inmate Steven Aspen challenges a Department of Corrections (“DOC”) case-staffing decision pursuant to 28 V.S.A. § 724. The Court received the DOC’s furlough revocation record on August 16, 2021, and a hearing on the merits was held via Webex on November 18, 2021. Appellant was present at the hearing and was represented by Kelly Green, Esq. Appellee was represented by Timothy P. Connors, Esq. Based upon a de novo review of the record and the credible evidence admitted at the hearing, the Court makes the following findings, conclusions and orders.

Aspen is 37 years old and is serving a sentence for aggravated domestic assault, first degree; his minimum release date was December 21, 2019, and his maximum release date is November 30, 2023 (DOC Record, 4-5). He also suffers from a traumatic brain injury, because of which he received Social Security Disability benefits (Id., 2). Aspen suffered his injury in high school, when he was struck by a motor vehicle as he was crossing a street.

On January 1, 2021, DOC placed Aspen on community supervision furlough and assigned him an apartment at 21 Henry Street in Bellows Falls, Vermont, where he was told to reside with a roommate during his furlough (Id. 15-16). Because of his traumatic brain injury and disability, Aspen was not required to complete risk reduction programming in the community (Id., 1). DOC did, however, made referrals for Aspen to receive substance abuse counseling and medicated assistance treatment (Suboxone) in the community (Id.).

Aspen was given a number of conditions that he had to comply with while on furlough, including the requirement that he could only be at certain locations, report to his probation officer as instructed, allow his probation officer to visit him at his residence at any given time, keep his probation officer updated as to his contact information, and remain accessible to his probation officer by phone and email. (Id., 10-12).

Aspen followed up on his substance abuse treatment in the community, but on April

12, 2021, he missed a scheduled appointment with his supervising furlough officer. The officer attempted to contact Aspen by cell phone on April 12<sup>th</sup>, 13<sup>th</sup> and 14<sup>th</sup> without success. Then, on April 15<sup>th</sup>, the officer learned from Aspen's roommate that Aspen had not been at the assigned residence in several days (Id., 15-16). That same day, Aspen's furlough officer placed Aspen on "abscondence" status and issued an order for Aspen's return to the correctional facility; the officer noted that Aspen was not considered dangerous (Id. 5, 7, 14). Aspen was apprehended by the troopers from the Randolph State Police Barracks on June 3, 2021 (Id. 2-3). He had been missing, and his whereabouts unknown, for more than seven weeks.

DOC found Aspen guilty of having violated his furlough conditions, and his furlough was revoked (Id., 2-5). Following the revocation, DOC performed a "case staffing" to determine what the consequence should be for Aspen's violation. DOC decided that he should receive "a one-year interrupt," which meant that he would have to serve another year in prison before again being eligible for furlough consideration (Id. 2). DOC based its decision on the number of Aspen's violations and his risk scores for reoffending (Id.).

Aspen contends that the one-year interrupt was excessive. He points out that he did not commit any act of violence or other crime while he was on furlough. In addition, he argues that his furlough violations were unintentional on his part. On the later point, Aspen testified at the merits hearing that friends of his unexpectedly showed up at his apartment on his birthday and offered to take him out to a restaurant, but they ended up taking him instead to a place where he had never been to before, and where he had no cell service or means to return to Bellows Falls without someone giving him a ride. Aspen acknowledges that he should never have gotten into the car with his friends, and he expresses genuine remorse for having absconded from furlough. Aspen argues that there is no benefit in continuing to incarcerate him and that he should be placed back on furlough and given a GPS unit to wear and a cell phone to use. DOC argues that its one-year interrupt should be affirmed.

DOC may release an inmate from prison and place him or her on community supervision furlough if the inmate has served his or her minimum sentence and agrees to comply with such conditions as DOC, in its sole discretion, deems appropriate. 28 V.S.A. § 723(a). The inmate's continuation on furlough is "conditioned on the offender's commitment to and satisfactory progress in his or her reentry program and on the offender's compliance with any terms and conditions identified by the Department." Id. §723(b). If the offender commits a "technical violation" (i.e., "a violation of conditions of furlough that does not constitute a new crime") that DOC believes warrant an "interruption" of the furlough, then DOC must hold "a Department Central Office case staffing review" to determine the length of the interrupt. Id. §724(b).

An offender whose community supervision furlough is revoked or interrupted for 90 days or longer has a right to appeal DOC's determination to the Superior Court under V.R.C.P. 74. The appeal must be "based on a de novo review of the record," the appellant "may offer testimony, and the Court, in its discretion and for good cause shown, "may accept additional evidence to supplement the record." Id. §724(c). Under the statute, "[t]he appellant shall have the burden of proving by a preponderance of the evidence that the Department abused its discretion in imposing a furlough revocation or interruption for 90 days or longer...." Id. Lastly, the statute provides:

It shall be abuse of the Department's discretion to revoke furlough or interrupt furlough status for 90 days or longer for a technical violation, unless:

(A). the offender's risk to reoffend can no longer be adequately controlled in the community, and no other method to control noncompliance is suitable; or

(B) the violation or pattern of violations indicate the offender poses a danger to others or to the community or poses a threat to abscond or escape from furlough.

Id. §724(d)(2).

Given the record in this case, the Court cannot conclude that DOC abused its discretion in imposing a one-year interrupt of Aspen's furlough status. This was Aspen's second escaped from furlough; he had absconded from furlough in August of 2020 but was returned to the community and given another chance. Moreover, on this occasion Aspen was missing for more than seven weeks. In addition, Aspen's explanation of what happened is not entirely credible; for example, he went missing on April 12<sup>th</sup>, not on his birthday (April 29<sup>th</sup>), and his testimony, that he thought he had been gone for just a few days, is difficult to square with the fact that he had been missing for over seven weeks. As noted above, a furlough interrupt of 90 days or more is not an abuse of discretion if "the violation or pattern of violations indicate the offender ... poses a threat to abscond or escape from furlough." 28 V.S.A. § 724(d)(2)(B).

For the foregoing reasons, DOC's one-year interrupt of the Appellant's community supervision furlough is affirmed.

SO ORDERED this 29<sup>th</sup> day of November, 2021.



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Robert A. Mello  
Superior Judge