

STATE OF VERMONT

SUPERIOR COURT
Washington Unit

CIVIL DIVISION
No. 21-CV-2092

JAKE BUCK,
Appellant,

v.

VERMONT DEPARTMENT OF
CORRECTIONS
Appellee.

DECISION ON THE MERITS

In this V.R.C.P. 74 appeal, Vermont inmate Jake Buck 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 2, 2021, and a hearing on the merits was held via Webex on November 30, 2021. Appellant was present at the hearing and was represented by Kelly Green, Esq. Appellee was represented by Robert C. Menzel, 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.

Buck, who is 33 years of age, has been convicted of several offenses, most recently in May of 2020 for attempting to elude a law enforcement officer, careless and negligent operation of a motor vehicle, driving with a suspended license, reckless endangerment, and, because there were two 5-year-old children in the vehicle at the time, cruelty to a child under the age of ten, all stemming from events that had occurred in September of 2019 (DOC Record, 2, 19-21). As a result of those convictions, Buck’s minimum release date was October 25, 2020, and his maximum release date is August 31, 2023 (Id., 38).

On October 26, 2020, DOC placed Buck on community supervision furlough. He was given several conditions that he had to comply with while on furlough, one of which was “I will report to my supervising officer, or designee, as required” (Id., 15). Buck signed his furlough conditions after they were explained to him by his furlough officer, thereby acknowledging that he understood them (Id., 3).

Buck suffers from persistent depression disorder, for which he needs medication and mental health counseling, and a substance abuse disorder, for which he needs substance abuse counseling and medicated assistance (Suboxone). Shortly after going on furlough, Buck lost three close family members, an uncle who died in February, a grandfather who died in mid-March, and an aunt who died in early May. He became depressed, stopped regularly seeing his counselors, stopped taking his medications, and relapsed.

While on furlough, Buck resided at a residence in Newport that had been approved by DOC. He also frequently stayed overnight with his girlfriend, who was pregnant with their child, and who resided with her mother in Newport. The girlfriend's mother suffered from kidney disease as well as a broken and infected leg. As a consequence, the mother needed assistance, both day and night, getting to and from the bathroom, and she often caused a mess that had to be cleaned up. Buck helped carry his girlfriend's mother to and from the bathroom and helped clean her up after her accidents. Although it was heavy and distasteful work, it made Buck feel needed and useful to be able to help his girlfriend's sick mother.

On March 4, 2021, Buck's supervising officer, Martel, gave him a verbal warning for not reporting to her as directed (Id., 3). He had failed to call Martel when he was supposed to. Martel gave Buck clear instructions to call and check in with her every Wednesday at 9:00 am (Id.). During the week of March 15-19, however, Buck did not call to check in with Martel (Id.). From March 22nd through the 24th, Martel made multiple attempts to contact Buck by cell phone, with no success (Id.).

On March 26, 2021, Martel arranged for Officers Hardy and Webster to deliver an appointment card to Buck's approved residence, instructing him to report to Martel's office at 9:00 a.m. on March 30th (Id.). Buck got the card but failed to comply with Martel's directive because he feared that he would be arrested and sent back to jail for having failed to call in as required. More specifically, Buck feared that he would miss his child's birth and would no longer be able to help his girlfriend's mother if he reported to Martel's office, where he was sure he would be arrested and returned to prison. Buck telephoned Martel later that day to say that he had missed the appointment because he had "overslept," which was not true (Id.). Martel instructed Buck to come to her office at 8:00 am the next day (Id.).

Instead of going to Martel's office on April 1st as instructed, Buck sent Martel text messages stating that he did not want to report to her office because he did not want to go to jail (Id.). Martel replied that Buck was not going to jail, and she ordered him to immediately report to her office that day, but Buck did not believe her and disobeyed the order (Id.). Therefore, on April 2nd, Martel submitted a request for a return on mittimus, asserting that Buck had absconded and that his whereabouts were unknown (Id.). On April 12th DOC issued a warrant for Buck's arrest (Id.). Buck was arrested by the Newport police and lodged at the correctional facility on June 2nd (Id.).

On June 3rd DOC found Buck guilty of having violated the condition that he report to his supervising officer as required, and his furlough was revoked (Id., 11-12). This was the only condition that Buck was found to have violated on this occasion.

Following the revocation, DOC performed a "case staffing" to determine what the consequence should be for Buck'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 release on furlough (Id., 2). DOC based its decision on Buck's history of convictions, his perceived risk of reoffending, and the fact that his furlough had been revoked once before, in 2019, at the time of the convictions referred to above (Id.). Buck contends that the one-year interrupt is excessive. DOC argues that its determination

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 warrants 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).

The Court agrees with Buck that DOC abused its discretion in imposing a one-year interrupt of his furlough status for violating the condition that he report to his supervising officer as required. DOC did not revoke Buck's furlough for failing to make satisfactory progress in his reentry program or for any pattern of violations; he was revoked for the single violation noted above.

Buck was clearly in the wrong in failing to report to his supervising officer when and as directed. A furlough officer cannot adequately supervise a furlougee in the community if the furlougee does not report in as required. Buck was out of communication with Martel from March 30th to June 3rd. DOC was perfectly justified in concluding that his violation warranted a response. However, the circumstances of that violation did not warrant such a severe response.

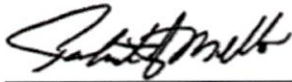
Although Buck had failed to report as directed, he had not absconded, nor were his

whereabouts unknown. For the entire time he was on furlough, Buck remained in the residence or at his girlfriend's house where he was supposed to be and where he was helping a sick woman cope with her severe disability.¹ Moreover, DOC knew he was there; Martel had an appointment card delivered to him at the residence on March 26th, and he was still there in the community when he was arrested on June 3rd. If DOC had any real doubts as to Buck's whereabouts, it would have been a simple matter to confirm that he was still at his residence, but DOC made no effort to do that before declaring him to have absconded. In the end, Buck's fears proved to be true; due to his arrest and the one-year interrupt, he missed the birth of his child, and his girlfriend's mother is now in a nursing home.

Buck's interrupt has already lasted 5 months. That is more than a sufficient sanction for this technical violation of his furlough conditions.

For the foregoing reasons, DOC's one-year interrupt of the Appellant's community supervision furlough is reversed. DOC shall reinstate the Appellant to his furlough status at the first opportunity.

SO ORDERED this 3rd day of December, 2021.



Robert A. Mello
Superior Judge

¹ For this reason, this case is distinguishable from cases such as James North v. Vermont Dep't of Corrections (Docket No. 21-CV-2593) and Steven Aspen v. Vermont Dep't of Corrections (Docket No. 21-CV-2302) where the furlougee truly did abscond and go missing.