

STATE OF VERMONT

SUPERIOR COURT
Washington Unit

CIVIL DIVISION
No. 21-CV-4086

DYLAN CLASS,
Appellant,

v.

VERMONT DEP'T OF CORRECTIONS
Appellee.

RULING ON THE STATE'S MOTIONS TO DISMISS

Vermont prisoner and appellant Dylan Class has filed two actions seeking Rule 74 review of related case-staffing decisions of the Department of Corrections pursuant to 28 V.S.A. § 724, which permits limited review of certain decisions following a furlough violation. The actions have been consolidated for all purposes, V.R.C.P. 42(a).¹ The DOC has purported to give Mr. Class a 2-year furlough suspension for a technical furlough violation (triggering his first appeal), and then subsequently, a concurrent 2-year furlough suspension for a nontechnical furlough violation (triggering his second appeal). The State seeks dismissal of the first appeal because it became moot when the second case staffing occurred. It seeks dismissal of the second appeal because it improperly seeks § 724 review following a nontechnical violation of furlough. Both motions are denied.

Mr. Class absconded while on furlough. He was eventually picked up in Florida and was cited for one or more crimes. His “date of return” to the Vermont facility was November 3, 2021. Following a notice of suspension hearing, he was found, among other things, to have been “cited in Florida which violates condition #1.” He was not, however, actually found to have committed any new crime. At the ensuing case staffing (Case Staffing 1) on December 1, 2021, he was expressly treated as having committed a technical violation of furlough only, that is, a violation of furlough conditions not amounting to a new crime. He was given a 2-year “interrupt” to run from November 3, 2021.

A month later, he was charged criminally with escape from furlough, 13 V.S.A. § 1501(b), due to the conduct on furlough that preceded Case Staffing 1. He was issued a new notice of suspension premised on this “new” criminal conduct. He presumably was found guilty of it, though the administrative record does not include those records describing the outcome of any second NOS hearing. At the ensuing case staffing (Case Staffing 2) on January 26, 2022, he was expressly treated as having committed a nontechnical violation of furlough, that is, a violation of furlough conditions amounting to a new crime. He was given a new 2-year interrupt, indicated to run from November 3, 2021, yet also subject to

¹ The other case is docketed at 22-CV-535. For the sake of clarity, the consolidated action will proceed under this docket exclusively.

resolution of his criminal charges.


Case Staffing 2 is void. The DOC cannot suspend furlough that does not exist, and it cannot keep redoing the same furlough suspension process to change the outcome. The record is clear that the DOC was aware of Mr. Class's conduct on furlough prior to the first NOS and Case Staffing 1. At that point, he was no longer on furlough. There was no legitimate point to the second NOS and Case Staffing 2, and its only effect would be to deprive Mr. Class of his statutory right to seek review from Case Staffing 1 under § 724. The DOC's attempt at avoiding § 724 in this manner is fundamentally unfair and will not be enforced by the court.

Because Mr. Class's furlough was suspended for technical reasons only (Case Staffing 1), § 724 review may proceed to a hearing on the merits.

Order

For the foregoing reasons, the State's motions to dismiss are denied. The second NOS and Case Staffing 2 are vacated and shall be expunged. The clerk shall schedule a hearing on the merits.

SO ORDERED this 14th day of March, 2022



Robert A. Mello
Superior Judge