STATE OF VERMONT

SUPERIOR COURT Washington Unit	CIVIL DIVISION No. 22-CV-35

TERRICK CRAFT,
Appellant,

v.

VERMONT DEPARTMENT OF CORRECTIONS
Appellee.

DECISION ON THE MERITS

In this V.R.C.P. 74 appeal, Vermont inmate Terrick Craft challenges a Department of Corrections ("DOC") case-staffing decision pursuant to 28 V.S.A. § 724. The Court received the Department of Correction's furlough revocation record on January 5, 2022, and a hearing on the merits was held via Webex on February 22, 2022. 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.

Craft, who is 38 years of age, has been convicted of several quite serious offenses, including aggravated assault, possession of a weapon for an unlawful purpose, aggravated arson, obstructing justice, and unlawful trespass into an occupied residence, among other things (DOC Record, 1). He has already spent nine years in prison for these offenses and still has a lengthy maximum sentence to serve.

DOC placed Craft on community supervision furlough on March 2, 2021 (Id., 3). He was given several conditions that he had to comply with while on furlough, including condition C3 ("I will not engage in threatening, violent, or assaultive behavior.") (Id., 12). This was Craft's second time on furlough. His first furlough had ended on February 13, 2020, when he received a one-year interrupt for consuming alcohol in violation of his furlough conditions (Id., 4).

On November 30, 2021, Crafts' landlord contacted the Probation and Parole Office to report concerning behavior that had been caught on two video recordings. The videos show Craft dragging his girlfriend by her hair or sweatshirt down a hallway at the apartment building where they were residing. A bystander could be heard on one of the videos screaming "Reck, Terrick Craft you're going to get yourself arrested," to which Craft responded "I don't care she got to go, she want to break shit throw shit, she got to go." (Id.,

11).

After reviewing the videos, Craft's furlough officer ordered Craft to report to the Probation and Parole Office, and, when Craft arrived, he was arrested for engaging in violent behavior. Craft objected, claiming that his arrest was unfair because DOC had not done an investigation into the videos, and he asserted that he had just been playing a game with his girlfriend (Id.). However, he was returned to the correctional facility and charged with having violated his furlough conditions (Id.).

Craft's girlfriend submitted a sworn statement to DOC denying that Craft had committed any act of violence against her. She stated:

> … We had been fooling around and Mr. Craft stated he was going to throw me into the snow. It had just fallen hours prior. I was not hurt in anyway. I feel violated that my privacy was invaded. Terrick has been nothing but good to me since this relationship started. This situation is a Big misunderstanding. I am NOT a victim. I was not violated by Terrick Craft. However, I do feel violated by who ever made a fabricated story.

(Id., 17). A friend also provided a sworn statement to DOC saying, 'Ashley [the girlfriend] and Terrick and I were fooling around with one another throwing snow at one another when Terrick tried to pick up Ashley and attempt to throw her in the snow. No one was hurt during this fun event between the three of us. This was all just harmless fun." (Id., 18).

A hearing officer nonetheless found Craft guilty of violating condition C3 of his furlough conditions. The hearing officer found: "On or about 11/30/21 you did behave in a threatening, violent, and assaultive manner when you did, as recorded on video, drag another person by their hair consistent with a violent assault and with body language and speech with rate, tone, pitch and volume consistent with threatening behaviors…." ((Id., 6). As the hearing officer began to read his findings out loud at the conclusion of the hearing, Craft abruptly stood up and became confrontational with corrections staff (Id., 2, 4). Craft then walked out of the hearing room and refused orders to lock back into his cell, saying that whichever staff member sprayed him he was "coming for them first" (Id.). In the end, Craft had to be emergency transported to another correctional facility (Id.).

Following the revocation hearing, DOC performed a "case staffing" to determine what the consequence should be for Craft's violation. DOC decided that he should receive "a two-year interrupt," which meant that he would have to serve another two years in prison before again being eligible for release on furlough (Id., 4).

Craft contends that the two-year interrupt is excessive and that he should be immediately returned to the community. Craft asserts that he had been employed and doing fine on furlough for nine months, that he complied with his furlough conditions, and that he had not committed any violent or threatening act against his girlfriend. According to Craft, he and his girlfriend had just been horsing around and having some playful fun on November 30, 2021. Craft further contends that, although he has been a model inmate for the past five years, DOC overreacts in response to anything he does because of his violent past, which, he believes, explains why DOC gave him a one-year interrupt for "having a

beer after work one day," and has now given him a two-year interrupt for horsing around with his girlfriend. 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).

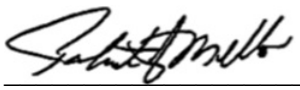
Given the record in this case, the Court cannot conclude that DOC abused its discretion in imposing a two-year interrupt of Craft's furlough status. The Court has reviewed the videos of the events of November 30, 2021, and the videos clearly refute the claim of Craft and his girlfriend that they were merely "playing a game," or just "fooling around," or enjoying some "playful fun." The video shows Craft dragging his girlfriend down a hallway by her sweatshirt until the sweatshirt comes off revealing her breasts. Although there are a number of people observing the encounter, no one is laughing and neither Croft nor his girlfriend is smiling. To the contrary, the girlfriend can be heard saying "stop" and "let me go," and, in response to Craft's statement that "she got to go," she can be heard saying "I'm leaving" and "I'm packing my shit." The parties clearly were having an argument, one that resulted in the girlfriend being angrily dragged on her back down a hallway. As noted earlier, the statute expressly provides that it is not an abuse of discretion for DOC to interrupt furlough status for 90 days or longer if "the offender's risk

to reoffend can no longer be adequately controlled in the community, and no other method to control noncompliance is suitable…." 28 V.S.A. § 724(d)(2)(A).

This was Craft's second failure at furlough. Moreover, his conduct at the conclusion of his revocation hearing, when he became confrontational and threatening towards staff, refused orders to lock back into his cell, and had to be emergency transported to another correctional facility, constitute aggravating factors justifying an enhanced response. This case is similar to another case where this Court affirmed a two-year interrupt of community supervision furlough for violating condition C3. *See* LaFountain v. Dept. of Corrections, Docket # 21-CV-2305, Decision on the Merits (December 29, 2021) (affirming a two-year interrupt for threatening and assaulting appellant's girlfriend and then coughing on the transport officers saying that he had COVID and hoped they would get it too).

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

SO ORDERED this 24th day of February, 2022.



Robert A. Mello
Superior Judge