

STATE OF VERMONT

SUPERIOR COURT  
Washington Unit

CIVIL DIVISION  
No. 21-CV-2443

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PETER GERAW,  
Appellant,

v.

VERMONT DEPT' OF CORRECTIONS  
Appellee.

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RULING ON THE STATE'S MOTION TO DISMISS

Appellant Peter Geraw seeks review under 28 V.S.A. § 724 of a case staffing decision dated May 26, 2021. The State filed a motion to dismiss, arguing that the court lacks subject matter jurisdiction because the case staffing arose out of a nontechnical violation of furlough conditions. As the court has ruled in numerous cases, review is not available under § 724 for nontechnical violations, those violations amounting to a new crime. Mr. Geraw does not take issue with that interpretation of the statute. However, he argues that there never was any determination that he engaged in conduct amounting to a new crime, and thus his violation was technical in nature and reviewable under § 724.

The record shows that, while on furlough, Mr. Geraw received a citation to appear in court for simple assault. A citation represents a police officer's allegation of probable cause; the citation is issued in lieu of arrest. The citation itself specifically says, "An information charging You with this offense will be presented at the time of your appearance."<sup>1</sup>

Prior to his furlough suspension hearing, the DOC accused Mr. Geraw of "[b]eing charged with a new crime" and "[a]ssaulting or threatening to assault someone." The hearing officer's decision, in its entirety, is as follows: "C1: On 5.15.21 you were served citation. Being served with a citation is being charged with new crime. C3: You sent threatening text messages from your phone. You were involved in a fight. Fighting is violent behavior." As noted above, a citation is not the same as an information (formal charge).

Condition C1 is: "I will not be cited or charged; I will not commit any act punishable by law, including city and municipal code violations." Condition C3 is: "I will not engage in threatening, violent, or assaultive behavior."

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<sup>1</sup> Mr. Geraw submitted an affidavit from a lawyer to the effect that the citation served on him was never followed up with an information by the prosecutor. In other words, despite the citation, there was never a formal charge against him. That may be so, but it is irrelevant in this case. The arraignment that never happened was scheduled to happen long after the case staffing that did happen. The issue here is the underlying conduct as determined by the hearing officer, not the subsequent procedure of things in a potential criminal case.

Section 724 provides review in the case of technical furlough violations. A technical violation is one for which the underlying conduct “does not constitute a new crime.” 28 V.S.A. § 724(d)(1). A nontechnical violation thus is one for which the underlying conduct is a new crime.

The question in this case is whether the hearing officer’s decision can reasonably be interpreted to include a determination that Mr. Geraw committed a new crime. The court agrees with Mr. Geraw that, in the specific circumstances of this case, the decision is not reasonably so construed.

Under condition C1, merely being cited by a police officer is sufficient to warrant the suspension of furlough. But a citation is just an accusation by a police officer. Section 724, on the other hand, depends on whether the furloughee actually engaged in chargeable criminal conduct. Obviously, one can be accused of something one did not do. By *merely* noting the fact of the citation, the hearing officer neither explicitly nor implicitly made *any* determination as to the nature of the underlying conduct. With no determination of criminality under C1, the court declines in these circumstances to infer that the vague findings under C3 reasonably imply such a determination.

With no determination by the hearing officer that Mr. Geraw engaged in criminal conduct, the court presumes that the violation was technical in nature for § 724 purposes, and thus review is available.

#### Order

The State’s motion to dismiss is denied. This case will be set for a bench trial.

SO ORDERED this 18<sup>th</sup> day of January, 2022.



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Robert A. Mello  
Superior Judge