STATE OF VERMONT

SUPERIOR COURT Washington Unit	CIVIL DIVISION No. 21-CV-2443

PETER J. GERAW,
Appellant,

v.

VERMONT DEP'T OF CORRECTIONS
Appellee.

DECISION ON THE MERITS

In this V.R.C.P. 74 appeal, Vermont inmate Peter J. Geraw 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 24, 2021, and its supplemental record on December 5, 2021.[1] A a hearing on the merits was held via Webex on February 3, 2021. Appellant was present at the hearing and was represented by Emily Tredeau, 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.

Geraw is 32 years old and is serving sentences for two criminal convictions, sexual assault on a minor, and domestic assault. The sexual assault, which occurred in October of 2009, when Geraw was 20 years old, involved a 14-year-old female (DOC Record, 6-15). The second conviction arose out of events that occurred in June of 2020; it was originally charged as an aggravated domestic assault due to an allegation that it involved strangulation, but the charge was reduced to domestic assault as part of a plea agreement (Id., 4, 16). Geraw's minimum release date was August 17, 2020, and his maximum release date is October 2, 2025 (Id., 21).

Geraw has a poor record of supervision in the community. As some point following his conviction for sexual assault on a minor, Geraw was released into the community on probation. In July of 2015, however, he was re-incarcerated, and his probation was subsequently revoked, because he had violated his probation conditions by engaging in violent or threatening behavior, accessing the internet, and using pornography or erotica (Id. 1). At some point Geraw was then released back into the community on furlough, but on June 19, 2020, he was re-incarcerated on the aggravated domestic assault charge referred to above (Id.).

[1] The five-month delay in getting to merits was due to DOC's having filed two motions to dismiss, the first, filed in late September, was withdrawn in late October, and the second, filed on December 9, 2021, was denied by the Court on January 21, 2022.

On October 5, 2020, DOC placed Geraw on community supervision furlough for a second time, and DOC assigned him a residence in an apartment building at 13 Kingman Street in St. Albans, Vermont. Geraw was given conditions that he had to comply with while on furlough, including condition C1 ("I will not be cited...." for a new offense) and condition C3 ("I will not engage in threatening, violent or assaultive behavior.") (DOC Supplemental Record, 18).

On May 5, 2021, the police were called to 13 Kingman Street "for a report of Peter Geraw ... yelling threats to beat up another tenant of his apartment building" (Id., 14-17). Earlier that day, Eric Mossey (the "other tenant") and his girlfriend had gone downstairs to ask Geraw to turn down the volume of the music he was playing in his car in front of the building ((Id.). Geraw "screamed" at Mossey's girlfriend, "began to march toward her," and threatened to beat Mossey up (Id.). As a result, Mossey and his girlfriend called the police. Then, when the police arrived, Geraw was very confrontational and insulting towards them (Id.).

During the course of that investigation, the police learned that Geraw had earlier that day gotten into a physical fight with Damon Bruyette, another neighbor who lived across the hall from him at 13 Kingman Street (Id.). During the course of the fight, Geraw had caused scratches to Bruyette's throat (Id.). The St. Albans police concluded that the incident had been a mutual affray and cited both Geraw and Bruyette for simple assault (Id.). It appears, however, that no charges were actually filed, or, if charges were filed, they were dismissed prior to any arraignment.

On May 18th Courtney Whittemore of the St. Albans Community Restorative Justice Council called Geraw's supervising furlough officer to complain that Geraw had been "hate texting" her all night and that the text messages had resumed again at 7:00 that morning (Id., 8). According to Whittemore, Geraw's text messages had contained "some threatening messages" and had "called out" CJC staff, blaming them for his "current situation," even though Geraw had not been a client of CJC "for a period of time" (Id.). Whittemore also indicated that some of Geraw's text messages contained threats against his furlough officer (Id.).

Later that day the furlough officer visited with Whittemore and took a screen shot of one of the text messages that Geraw had sent to her. In the message, Geraw had made several insulting comments about his furlough officer, calling him, among other things, a "scumbag," "a sicko," and a "f****** bitch" and accusing him of "inappropriately touch[ing] his kids" (Id., 7). Geraw's text message to Whittemore also stated "tell that f*** you better not f****** call me today or I'll meet him after work in the parking garage" (Id.). The furlough officer interpreted that message as a threat to assault him in the parking lot after work (Id.). The furlough officer therefore arrested Geraw later that day and lodged him in the correctional facility for violating conditions C1 and C3 of his furlough conditions (Id.).

A DOC hearing officer found Geraw guilty of having violated conditions C1 and C3 of his furlough conditions, and his furlough was revoked (Id., 1-3). Following the revocation, DOC performed a "case staffing" to determine what the consequence should be for Geraw's violation. Geraw's furlough officer recommended a 6-month interrupt, but DOC decided that Geraw 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 (DOC Record, at 2). DOC based its decision on the "number of [Geraw's] violations and risk scores as well as threatening a staff person" (Id.).

Geraw contends that the one-year interrupt was excessive. He notes that he had been on furlough in the community without incident for seven months before he was cited, but not charged, with a new crime. He also denies any intent to threaten his furlough officer and claims that he only wanted to set up a meeting with the officer in the parking lot after work that day. In addition, Geraw notes that his furlough officer recommended only a 6-month interrupt. Geraw concludes, therefore, that the Court should reduce his interrupt to six months and order him released back into the community. 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 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 one-year interrupt of Geraw's furlough status. Geraw has been convicted to two violent offenses, sexually assaulting a 14-year-old girl in 2009, and

assaulting a domestic partner in 2020. He was released on furlough on the condition that he not engage in threatening, violent or assaultive behavior while in the community. He nonetheless engaged in a pattern of violent and threatening behavior in the community. On May 5th he got into a physical fight with one neighbor (Damon Bruyette) and then threatened to beat up another neighbor (Eric Mossey). Geraw also "screamed" at Mossey's girlfriend when she asked him to turn down the volume of his music, and he was confrontational and insulting towards the police when they came to investigate the complaint. Then, after receiving a citation from the police, Geraw spent a whole night "hate texting" Courtney Whittemore, making threats and blaming CJC staff for his "current situation," even though he had not been a CJC client for some time.

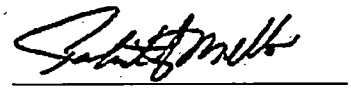
Moreover, in one of those text messages Geraw threatened to meet his furlough officer in the parking lot after work if the officer tried calling him about the citation he had received. Geraw's claim, that he did not intend his test message as a threat and that he only wanted to set up a meeting with the officer, lacks credibility. If Geraw had only wanted to set up a meeting with his furlough officer, he would have sent a message to the officer, not a series of "hate texting" messages to a CJC member. Moreover, the language Geraw used (tell him "you better not f****** call me today or I'll meet him after work in the parking garage") is not the language one would use to set up a friendly meeting. Geraw's text message was also full of angry insults towards the furlough officer, calling him a "scumbag" and "a sicko" who "inappropriately touched his kids." The text message was clearly intended to be threatening.

In light of these circumstances, it was reasonable for DOC to conclude that Geraw could no longer be safely supervised in the community. He had gotten into a fight with one neighbor, he had threatened to beat up another neighbor, he had acted aggressively towards a woman who asked him to turn down his music, he had spent a night "hate texting" a CJC official even though he was no longer a client of CJC, and he had also threatened his own furlough officer. In addition, Geraw's two earlier stints in the community also had to be terminated on account of violent and threatening behavior. As noted above, a furlough interrupt of 90 days or longer is not an abuse of discretion if "the offender's risk to reoffend can no longer be adequately controlled in the community" or if "the violation or pattern of violations indicate the offender poses a danger to others or to the community...." 29 V.S.A. § 724(d)(2)(A) and (B).

Lastly, a one-year interrupt in this case is consistent with rulings this Court has made in similar cases in the past. *See, for example,* McGlynn v. Dept. of Corrections, Docket No. 21-CV-1759, Decision on the Merits (December 22, 2021) (affirming a one-year interrupt for resuming heavy drinking and engaging in violence) *and* Gero v. Dept. of Corrections, Docket No. 21-CV-2445, Decision on the Merits (December 6, 2021) (affirming a one-year interrupt for reportedly engaging in threatening behavior and repeatedly losing approved housing as a result).

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

SO ORDERED this 7th day of February, 2022



Robert A. Mello
Superior Judge