

STATE OF VERMONT

SUPERIOR COURT
Washington Unit

CIVIL DIVISION
No. 21-CV-2446

THOMAS HAMBLIN,
Appellant,

v.

VERMONT DEPARTMENT OF
CORRECTIONS
Appellee.

VT Superior Court
Washington Civil

JAN 13 2022

FILED

DECISION ON THE MERITS

In this V.R.C.P. 74 appeal, Vermont inmate Thomas Hamblin challenges a Department of Corrections (“DOC”) case-staffing decision pursuant to 28 V.S.A. § 724. The Court received DOC’s furlough revocation record on September 2, 2021, and a hearing on the merits was held via Webex on January 10, 2022.¹ 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.

Hamblin, who is 36 years of age, has been convicted of several offenses, including burglary (three times), grand larceny, escape, domestic assault (twice), and attempted aggravated assault, among others (DOC Record, Part 2, pp. 91-94). He has an extensive history of incarcerations going back to when he was a teenager, including over 150 disciplinary infractions while incarcerated, most of which were relatively minor but some of which were serious (Id., 6-63). In addition, he has substance abuse issues and a poor history of supervision in the community (Id. and 1-5).² DOC considers him a high risk to reoffend (Id., 86-88). As a result of his criminal convictions, Hamblin’s minimum release date was January 30, 2020, and his maximum release date is August 10, 2027 (Id., 94).

In September of 2020, DOC placed Hamblin on community supervision furlough in Burlington, Vermont, and instructed him to reside with his brother at 244 North Champlain Street in Burlington. He was also given a curfew requiring him to be at his residence from 9:30 p.m. to 5:00 a.m. every day (DOC Record, Part 1, pp. 11-13). Hamblin was also given several conditions that he had to comply with while on furlough, including condition C4 (requiring him to report to his supervising officer as required), condition C5

¹ Part of the delay in getting to merits in this case was due to the fact that DOC filed, and then later withdrew a motion to dismiss this appeal.

² See also DOC Record Part 1, pp. 1-4, 13-28 and 59-93).

(requiring him to allow his supervising officer to visit him at his home at any time), condition C10 (requiring him to be available to his supervising officer by email and cellphone at all times), condition C11 (requiring him to check his voice mail messages daily and respond to any messages from his supervising officer daily), condition SC22 (requiring him to reside at his approved residence), and SC23 (requiring him to abide by his curfew) (Id., 11-13).

Hamblin substantially complied with his furlough conditions while on furlough. He met with his supervising officer when told to do so, which meetings, because of COVID-19, were mostly by phone rather than in person. He resided first at a sober house in Burlington, and then at his brother's apartment, as required. Hamblin did his required programming. He was also gainfully employed while on furlough, first at Overhead Door and then at CAMCO Supply in Williston. He commuted by taking the early bus to work in the morning, he worked until 5:30 or 6:00 pm, and returned to his apartment by bus in the evening. That continued until April of 2021, when he lost his job due to COVID.

On May 11, 2021, Hamblin reported in to his supervising officer by cell phone, as required, and he was told to report back again by phone at noon on May 20th (Id., 4, 9-10). The following day, May 12th, another furlough officer, who was covering for Hamblin's regular officer, tried reaching Hamblin by phone, but Hamblin did not answer, and the officer could not leave a message because Hamblin's phone was off (Id.). On May 14th the officer again tried reaching Hamblin by phone only to get a recording saying that Hamblin's phone was "unable to take calls at this time" (Id.).

On May 20th Hamblin's two furlough officers went to Hamblin's apartment building for the purpose of attempting to meet with him in person (Id.). The time when they arrived is not stated in the record, but it must have been during the daytime since there is no claim that Hamblin ever violated his curfew. The officers knocked several times on the front and back doors of the building, but no one answered the door. A neighbor came out and told the officers to try another door, saying that she knew Hamblin lived there and she believed he was home since she had just seen him. The officers knocked at that side door several times, but no one answered. Hamblin's supervising officer left his card in the doorway with a written message instructing Hamblin to call him. The officers then returned to their office. Hamblin did not call his supervising officer that day, despite having been told to do so on May 11th, and despite the note that the officer left in his hallway that day (Id.).

Before leaving work on May 20th, the supervising officer tried calling Hamblin again, only to receive a recorded message saying that the phone was "unable to accept calls" (Id.). On May 25th the officer tried twice to reach Hamblin by phone, once in the morning and again in the afternoon, but the phone merely rang for a while and then stopped. On May 28th the officer tried once again to reach Hamblin by phone; this time he received a message stating "the person you are trying to reach cannot take calls at this time" (Id.). On June 4th the officer signed a return on mittimus request, claiming that Hamblin had "absconded," and on June 12th Hamblin was arrested in Essex Junction as he was going to pick up his daughter from his mother's house, and he was returned to the correctional facility (Id.). Hamblin had been on furlough in the community for almost nine months. This had been his first and only significant violation of conditions while on furlough this time.

A DOC hearing officer found Hamblin guilty of having absconded by failing to

remain in contact with his supervising officers, and his furlough was revoked (Id., 1-5). Following the revocation, DOC performed a “case staffing” to determine what the consequence should be for Hamblin’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.). DOC based its decision on Hamblin’s “risk scores & number of violations” (Id.). Hamblin 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 Hamblin that DOC abused its discretion in imposing a one-year interrupt of his furlough status. His only violations during this time on furlough were failing to call his supervising officer on May 20th, as ordered, and failing to be available by cell phone to his furlough officer from May 12th to June 12th. DOC did not revoke Hamblin’s furlough for failing to make satisfactory progress in his reentry program or for any pattern of violations committed while on furlough this time. DOC does not claim that Hamblin absconded from Vermont, failed to continue residing where he was supposed to, or failed to comply with his curfew. Moreover, there is no evidence that Hamblin had relapsed on

drugs, committed any new crime, or injured anyone.

Hamblin was clearly in the wrong in failing to report to his supervising officer on May 20th as directed, and in failing to enable his phone to receive messages from his furlough officer. A furlough officer cannot adequately supervise a furlougee in the community if the furlougee does not report in as required and cannot be reached. Hamblin was out of communication with his furlough officers from May 12th to June 12th. 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.

At the hearing on the merits, counsel for DOC argued that DOC acted reasonably under the circumstances because it had a 20-year history with Hamblin during which he had repeatedly failed community supervision by absconding, relapsing on drugs and committing new crimes. According to counsel, Hamblin's failure to be in contact with his furlough officer for a month was a warning sign that he was spiraling out of control again. Therefore, DOC's one-year interrupt was not an abuse of discretion because, having tried repeatedly to reach Hamblin by phone and at his apartment for a month without success, his furlough officers reasonably concluded that Hamblin's risk to reoffend could no longer be adequately controlled in the community.

The Court agrees that DOC had good cause to reincarcerate Hamblin for a brief period of time for failing to report in on May 20th and remaining out of touch for a month, especially in light of his long criminal history and multiple failures at community supervision. The Court does not agree, however, that the violations here warranted a one-year interrupt. As noted earlier, "[i]t shall be abuse of the Department's discretion to ... interrupt furlough status for 90 days or longer for a technical violation, unless ... 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). Here, Hamblin had been in full compliance with his furlough conditions, including the requirements that he report to his officer as instructed and be available to his officer as required, for eight months. The only time he had failed to report when told to do so was on May 20th. Moreover, there is no evidence that Hamblin had relapsed on drugs or engaged in any other kind of risky behavior. The record here does not support a conclusion that in June of 2021, Hamblin posed such a risk to reoffend that he needed to be reincarcerated for another year.

Hamblin's interrupt has already lasted 7 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 13th day of January, 2022



Robert A. Mello, Superior Judge