

STATE OF VERMONT

SUPERIOR COURT
Washington Unit

CIVIL DIVISION
Docket No. 342-10-20 Wncv

CABDIGANNI KADAWE,
Plaintiff,

v.

JAMES BAKER, COMMISSIONER,
VERMONT DEPT' OF CORRECTIONS
Defendant.

RULING ON CROSS-MOTIONS FOR SUMMARY JUDGMENT

Inmate Cabdiganni Kadawe claims that the Vermont Department of Corrections improperly “case staffed” him after determining that he violated his furlough conditions by relying on alleged misconduct for which he had not been found guilty. He originally requested that the court vacate the case-staffing decision and remand for a new one. Between then and now, he maxed out the sentence he was serving at the time of the case-staffing, and the State now argues that this case is moot. Mr. Kadawe argues that it is not moot because his agency record will follow him in the future, and he remains in custody on other charges at this time. He asks now that the DOC “correct” the record relating to the errant case-staffing. The parties have filed cross-motions for summary judgment addressing Mr. Kadawe’s right to relief.

The facts are undisputed. Mr. Kadawe was on furlough when he allegedly engaged in criminal acts culminating in a high-speed chase that extended into Canada, and for which he subsequently acquired six new criminal charges. He was returned to incarceration pending a hearing to determine whether he had violated his furlough conditions. He was originally charged (docket no. 61920204) with violating conditions A (criminal activity) and I (submission to drug and alcohol tests). He was later separately charged (docket no. 406110) with violating conditions D (reporting to probation officer), F (alcoholic beverages), and J (residing at approved residence), but not conditions A or I and not any other conditions encompassing the alleged criminal conduct. He pleaded guilty to the noncriminal violations asserted in docket no. 406110, and the matter was referred for a case-staffing. For whatever reason, the DOC never took any action on the other docket, which included the violation encompassing criminal conduct.

The DOC processes furlough violations according to procedures described at Directive 410.02, which obviously are intended to comply with the inmate’s due process rights. In short, where DOC personnel determine that an alleged violation of conditions warrants it, the inmate is returned to the facility from the community and is promptly

given a “due process hearing.” The hearing procedure is described at Directive 410.02, Procedural Guidelines §§ 1–11. The role of the hearing officer is to determine guilt or innocence. *Id.*, Procedural Guidelines § 5(d). If the inmate is not guilty, he is promptly returned to the community. If the inmate is guilty, the hearing officer “[w]ill refer the case for case staffing.” *Id.*, Procedural Guidelines § 5(f)(iii). In either event, the hearing officer solely determines whether the inmate is guilty or not guilty. The hearing officer does not impose any sort of sanction if the inmate is guilty. The *consequence* of a determination of guilt is a separate process, the “case staffing.” The inmate does not participate in the case-staffing. It is a highly discretionary determination about what to do with the inmate in light of the violation of conditions.

At Mr. Kadawe’s case-staffing, the DOC considered his criminal conduct while on furlough even though he had never been found to have violated any furlough condition encompassing it. Its records do not show that it considered the conduct underlying the actual violations to which he pleaded guilty. In other words, it essentially completely ignored the determination of guilt and instead focused on alleged conduct that had been charged but not pursued to any final determination of guilt.

Mr. Kadawe’s argument is salient. He had a right to due process in the course of the revocation of his furlough, he was notified of the charges, he pleaded guilty to them, and then he was case-staffed largely based on violations for which he had never been found guilty, essentially rendering his due process hearing a pointless exercise.

The State argues that it is entitled to summary judgment because (1) Mr. Kadawe’s claim cannot fall under Rule 75; (2) it improperly seeks review of an unreviewable case-staffing decision; (3) he failed to preserve the issue in the course of his grievance proceedings; and (4) the case is moot. The State does not directly argue that the DOC’s conduct complied with Mr. Kadawe’s due process rights. In response, among other things, Mr. Kadawe argues that if the court concludes that Rule 75 review is not available, then it can review the case under Rule 74 and 28 V.S.A. § 724(c).

The jurisdictional arguments

The State’s jurisdictional arguments are meritless. As the State readily concedes, Mr. Kadawe’s claim is that the DOC violated his procedural due process rights. The State argues that this could only be a mandamus claim under Rule 75 but does not explain why it could not be a certiorari claim, which applies to quasi-judicial proceedings such as the administrative proceeding in this case, other than to argue that Rule 75 is not available when a statutory claim is, and in that regard the State expressly identifies 42 U.S.C. § 1983. It apparently dismisses § 1983 as a basis for Mr. Kadawe’s claim, however, because Mr. Kadawe (through counsel) continues to refer to the claim opaquely as a Rule 75 claim, and in the alternative as a Rule 74 claim arising out of 28 V.S.A. § 724(c).

The case-staffing decision in this case was never subject to § 724(c) review. Among other reasons, it occurred long before that appeal provision came into existence. There is no basis for any review under Rule 74, which principally applies when there is a statutory right to appeal.

Rule 75 is *never* a legal claim. It is a procedure applicable to certain types of

unusual claims when other recognized causes of action are not available. Nevertheless, inmates (and their counsel) often fail to clearly articulate an independent legal claim or the basis for review under Rule 75 and instead vaguely assert a “Rule 75 claim.” While that is a poor practice, often the underlying claim, as in this case, is obvious. The State itself has clearly identified Mr. Kadawe’s claim: he is asserting a procedural due process violation. No one is confused about that. The court does not lack jurisdiction over due process claims, which can be presented under 42 U.S.C. § 1983 if certiorari is not more appropriate in this context. Despite this, the State apparently would have the court dismiss this case simply because Mr. Kadawe has referred to the nature of his claim vaguely. The State does not explain how the substance of this case would be any different if Mr. Kadawe more specifically identified the nature of his claim, the State never sought a more definite statement of Mr. Kadawe’s claim, and in fact the State clearly always has been aware of the nature of Mr. Kadawe’s claim. The State’s “sporting theory of justice” is out of step with contemporary procedural rules and accomplishes little but unnecessary distraction. *J & K Tile Co. v. Wright & Morrissey, Inc.*, 2019 VT 78, ¶ 22, 211 Vt. 179 (citation omitted); see V.R.C.P. 8(f) (“All pleadings shall be so construed as to substantial justice.”).

The court also disagrees with the State’s characterization that Mr. Kadawe is improperly seeking review of the case-staffing decision. Mr. Kadawe is seeking review of the due process he was afforded in the furlough revocation process. He is not challenging the substance or outcome of the case-staffing decision.

Preservation

The court is satisfied that Mr. Kadawe sufficiently preserved his claim in the course of exhausting his administrative remedies. Although he could have been clearer, he challenged the case-staffing decision based on the violations to which he pleaded guilty, and his grievance was denied due to the violations that had never been determined.

The due process violation

The State never clearly argues that there was not a due process violation in this case other than by trying to distinguish this case from *Gay v. Menard*, No. 605-10-16 Wncv (Vt. Super. Ct. Sept. 15, 2017). In *Gay*, the DOC expressly found the inmate not guilty of a specific violation of conditions relating to violent conduct but then case-staffed him based on the same allegations of violence. While the *Gay* court characterized the issue as one of arbitrariness for having found Mr. Gay not guilty of certain conduct but then case-staffing him for that very conduct, the court understands that arbitrariness as relating to the disregard of the inmate’s due process rights. It is patently unfair procedurally for the DOC to have done in *Gay* what it did. One does not get convicted of drunk driving but then get sentenced for burglary. The court thus remanded the case for a new case-staffing responding to the violations that were actually found and without commenting on the substance or outcome of the case-staffing decision otherwise, making clear that it was not reviewing that.

The court fails to see how the issue in this case is any different. The State argues that the difference is that Mr. Kadawe was not determined to be innocent of the conduct considered at his case-staffing. This argument flips the due process script, however. Two hallmarks of due process include fair notice and a reasonable opportunity to be heard.

Wilkinson v. Austin, 545 U.S. 209, 226 (2005) (“Our procedural due process cases have consistently observed that these are among the most important procedural mechanisms for purposes of avoiding erroneous deprivations.”). Mr. Kadawe was never given any chance to be heard as to the conduct underlying the case-staffing decision. Finding him guilty of certain misconduct but then case-staffing him based on completely different misconduct was a bait-and-switch—it eviscerated his opportunity to be heard.

The court understands that the DOC, in conducting a case-staffing in these circumstances, is not simply fashioning a sanction, and it is properly concerned with the larger context, including public safety, the inmate’s rehabilitation and treatment, and future furlough eligibility. But when the immediate purpose of the case-staffing is to respond to the violation of furlough conditions, it cannot premise its decision on the furlough violation that was never determined, but easily could have been, without violating the inmate’s right to due process. To have considered the alleged criminal misconduct at the case-staffing, all the DOC had to do was charge him with the appropriate violation of conditions and pursue that charge to determination. It did charge him, but then it inexplicably failed to pursue that charge to determination. It cannot remedy its own lack of diligence at Mr. Kadawe’s expense.

Remedy

As in *Gay*, in these circumstances, ordinarily the court would vacate the case-staffing decision and remand for a new one. The State, however, argues that this case has become moot because Mr. Kadawe has maxed out the sentence for which he had been case-staffed. However, Mr. Kadawe continues to be held on the new charges he incurred while on furlough. While the decision reached at the disputed case-staffing no longer directly affects him, Mr. Kadawe is concerned that the record showing the reasoning for the decision, which describes the criminal behavior for which no violation of conditions ever was determined, will likely have collateral consequences in the future as case-staffings generally consider previous furlough experiences and the inmate’s institutional record generally.

The State has not explained how Mr. Kadawe’s institutional record would not affect him in the future, assuming his current charges lead to a new sentence, simply by maxing out his previous sentence, and the court fails to see how that would be the case.

Accordingly, rather than remanding for a new case-staffing, the DOC is ordered to “correct” the record so that the case-staffing decision that summarizes the criminal misconduct at issue in this case no longer appears in Mr. Kadawe’s institutional record.

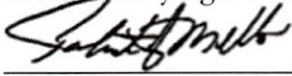
Order

For the foregoing reasons, the State’s motion for summary judgment is denied, and Mr. Kadawe’s motion is granted to the following effect:

- (1) the DOC shall correct the case-staffing record within 10 days, and
- (2) notify counsel for Mr. Kadawe of compliance with this order promptly thereafter.

Counsel for Mr. Kadawe shall submit a form of judgment. V.R.C.P. 58(d).

Electronically signed on 10/19/2021 3:10 PM, pursuant to V.R.E.F. 9(d)

A handwritten signature in black ink, appearing to read "Robert A. Mello", written over a horizontal line.

Robert A. Mello
Superior Judge