STATE OF VERMONT

SUPERIOR COURT Washington Unit	CIVIL DIVISION No. 21-CV-3298

ANDREW REYNOLDS, Appellant, v. VERMONT DEPARTMENT OF CORRECTIONS Appellee.	FILED JAN 14 2022 VERMONT SUPERIOR COURT WASHINGTON CIVIL

DECISION ON THE MERITS

In this V.R.C.P. 74 appeal, Vermont inmate Andrew Reynolds 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 November 29, 2021, and a hearing on the merits was held via Webex on January 6, 2022. Appellant was present at the hearing and was represented by Kelly Green, Esq. Appellee was represented by Lauri A Fisher, 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.

Reynolds, who is 30 years of age, has a long criminal record, including convictions in 2014 of aggravated domestic assault second degree (with a prior VAPO) and lewd and lascivious behavior, and convictions in 2019 of eluding a law enforcement officer, careless or negligent operation of a motor vehicle, and unlawful trespass (DOC Record, 18, 310-322). As a result of his 2014 convictions, Reynolds is a registered sex offender, who will need to complete sex offender treatment and domestic abuse treatment before he can be released prior to his maximum release date, which currently is in two more years (Id., 2). Reynolds also has a severe opioid use disorder for which he must complete substance use treatment (Id., 2, 16-18). In addition, Reynolds has an extensive prison disciplinary record, including more than 20 major disciplinary infractions (Id., 2, 19-242).

Reynolds also has a poor community supervision history. In 2018 DOC placed Reynolds on community supervision furlough, but he immediately violated his furlough conditions by using illegal drugs on numerous occasions and failing to engage in substance treatment (Id.). He was given a one-year interrupt for those violations and was released on furlough again in 2019 (Id.).

Two months after being placed back on furlough, Reynolds had to be reincarcerated briefly for violating his furlough conditions again, after which he was again returned to the community (Id.). Once back in the community, however, Reynolds resumed his use of

illegal substances, he failed to participate satisfactorily in his sex-offender treatment program, and he failed to comply with the graduated sanctions that his furlough officers imposed on him for various lesser violations. Then, in August of 2019, Reynolds was arrested after leading the Wilmington Police on a high-speed vehicle chase in which he nearly ran an officer off the road; that event resulted in the 2019 criminal convictions referred to above. Reynolds was given another furlough interrupt and was then released back into the community on furlough on October 19, 2020 (Id.).

During the first eight months of this latest time on furlough, Reynolds did rather well on community supervision. He resided with his sister in an apartment that she rented in Wilmington, Vermont, he held a full-time job, he took care of his two children several days a week, he did his counseling and programming, he stayed away from illegal drugs, he paid thousands of dollars towards the fines he had accumulated from his 2019 convictions, he wore his GPS bracelet, he complied with his curfew, and he took over his sister's lease when she moved to another town. This was the first time Reynolds had ever stayed "clean" (his word) for eight months, held a full-time job for eight months, or had an apartment of his own. Reynolds did commit some 28 technical violations of his furlough conditions during that eight-month period, but they were minor infractions which his furlough officer treated leniently to help promote Reynolds' continued success in the community (Id. 243-264).

However, on June 25, 2021, during a home visit from his furlough officer, Reynolds admitted that he had relapsed on heroin (Id., 265-266). The furlough officer ordered Reynolds to remain under house arrest (i.e., not leave home except to go to work, treatment or the pharmacy) until Reynolds could get into a residential treatment facility. On July 16, 2021, Reynolds entered the Serenity House, but ten days later he was discharged without having completed the program because he had failed to participate enough to benefit from the program (Id., 16-17). DOC allowed Reynolds to remain in the community despite his discharge from the Serenity House, but he failed to return to work full time, he did not schedule any follow-up substance abuse treatment in the community, and his participation in sex-offender treatment deteriorated (Id., 2).

On August 20, 2021, Reynolds informed his furlough officer that he had been cited for having failed to register with the sex-offender registry as required by law (Id., 267-275). In response, the furlough officer assigned Reynolds to write a "thinking report" and to turn it in within 7 days. Reynolds did not do the report, even after being given additional time to complete it, so his furlough officer gave him 3 hours of work crew as a graduated sanction. When Reynolds failed to comply, the officer increased the sanction to 24 hours of work crew. Reynolds made no effort to schedule or perform any of the assigned work crew hours.

On September 17, 2021, during another home visit from his furlough officer, Reynolds admitted that he had again relapsed on heroin (Id.). The furlough officer put Reynolds back on GPS and house arrest and instructed him to immediately seek residential substance abuse treatment at the Serenity House or Valley Vista. Reynolds replied that he did not need residential treatment and could handle this on his own, but his furlough officer insisted that he get residential treatment. Reynolds failed to do so, however, and he also failed to comply with his house arrest restrictions On September 20, 2021, DOC arrested Reynolds and returned him to the correctional facility for failing to comply with house

arrest, failing to arrange for or perform work crew, and failing to make any effort to get into residential substance abuse treatment (Id.).

DOC found Reynolds guilty of having violated his furlough conditions, and his furlough was revoked (Id., 3-4). Following the revocation, DOC performed a "case staffing" to determine what the consequence should be for Reynold'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.). Reynolds contends that the one-year interrupt is excessive because his only violations, failing to write a "thinking report" and to do work crew, were minor in nature. DOC contends that its decision 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 Reynold's furlough status. Reynold's furlough was not terminated because he failed to write a "thinking report" or to do his assigned work crew. His furlough was violated chiefly because he had relapsed on heroin

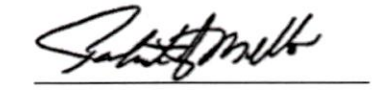
and had failed to make any effort to get the substance abuse treatment that his furlough officer deemed needed. In addition, Reynold's participation in sex-offender treatment had deteriorated, and he had made no effort to register with the sex offender registry, despite having been cited for it. Reynold's two earlier stints on furlough, in 2018 and 2019, had also failed because he had relapsed on drugs, failed to get required treatment, and committed new offenses.

As noted earlier, an 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." 28 V.S.A. § 723(b). Reynolds clearly failed in his substance abuse reentry program, and his participation in sex-offender programming had deteriorated.

Moreover, 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...." Id. §724(d)(2)(A). Based upon the record in this case, it was reasonable for DOC to conclude that Reynold's risk to reoffend could no longer be controlled in the community, despite DOC's efforts to help him succeed in the community.

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

SO ORDERED this 14th day of January, 2022.



Robert A. Mello
Superior Judge