

STATE OF VERMONT

SUPERIOR COURT
Washington Unit

CIVIL DIVISION
No. 21-CV-2307

NICOLE WRIGHT,
Appellant,

v.

VERMONT DEPARTMENT OF
CORRECTIONS
Appellee.

FILED

DEC 13 2021

VERMONT SUPERIOR COURT
WASHINGTON CIVIL

DECISION ON THE MERITS

In this V.R.C.P. 74 appeal, Vermont inmate Nicole Wright 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 18, 2021, and a hearing on the merits was held via Webex on December 6, 2021. Appellant was present at the hearing and was represented by Emily Tredeau, Esq. Appellee was represented by Robert C. Menzel, 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.

Wright, who is 38 years of age, is serving a 2-5-year sentence for assault and robbery with a weapon; her maximum release date is February 11, 2023 (DOC Record, at 82-88, 105, 110).¹ Wright also suffers from severe substance abuse and mental health issues (Id., 1).

In 2019 DOC placed Wright on community supervision furlough with instructions for her to reside at, and participate in the Northern Lights substance abuse treatment program (Id., 1, 59-70). When Wright tested positive for having used meth, DOC placed her on a GPS and gave her a schedule that she had to follow as a sanction for violating her furlough conditions. DOC then discovered that instead of following her schedule, Wright had been shoplifting merchandise from several retail establishment and selling the stolen goods for cash. DOC revoked her furlough, and on April 10, 2020, DOC released her to the Vermont Foundations of Recovery House, which was another treatment facility (Id.).

Wright did not do any better in her second furlough than she had done in her first (Id., 1, 42-52). Shortly after arriving at the Vermont Foundations house, Wright again relapsed and was kicked out of the program. DOC then sent her to the Serenity House, which was a residential treatment facility. About ten days later, however, Wright left the Serenity House against medical advice, and she went missing for some twenty days before

¹ Citations are to the DOC Record as reorganized by DOC Attorney Menzel.

DOC arrested Wright, returned her to the correctional facility, and gave her a six-month interrupt.

DOC released Wright onto community supervision furlough for the third time in December of 2020. Wright was given several conditions that she had to comply with, including the requirements that she reside where she was supposed to and participate in, comply with, and successfully complete the various mental health and substance abuse treatment programs that DOC made available to her in the community (Id., 33-37). Shortly after being placed back on furlough, however, Wright began using cocaine, meth and heroin again, and she quickly spiraled out of control (Id., 3, 5-23, 29-32, 38).

In January of 2021, just a month into her furlough, Wright's legs became infected from "shooting up" meth. DOC sent her to Valley Vista, a residential substance abuse treatment program. Wright completed the program, but immediately relapsed in the car on her way back to her assigned residence. Later in her furlough, DOC sent Wright to Valley Vista for a second time, but Wright left the facility against medical advice (Id.).

In April Wright's suboxone provider informed DOC that Wright needed a higher level of care because of her ongoing drug use and failures to make appointments. In addition to missing doctors' appointments, Wright also failed to appear for scheduled meetings with her treatment team. Then, On April 30th Wright was discharged from the Howard Center's intensive outpatient mental health treatment program due to her continued absences and minimal participation (Id.).

On May 18, 2021, Pathways terminated Wright's tenancy at its residence in the community. The reasons given for evicting Wright from the facility included "dangerous activity that threatens the health and safety of other occupants," "suspected drug activity," "drug paraphernalia in and around the unit," and "serious damages to the unit causing it to become uninhabitable" (Id.). Wright also refused DOC's offer to send her to another residential drug treatment facility.

DOC would have arrested Wright then, but she had to be hospitalized due to infections in her arm and foot caused by her continuing drug use. When DOC discovered that Wright had left the hospital against medical advice and gone to stay with a friend who was a suspected drug user, DOC arrested her, and she was returned to the correctional facility on June 3, 2021.

DOC charged Wright with violating her furlough conditions by failing to reside where she was supposed to and failing to participate in, comply with, and make satisfactory progress in her mental health and substance abuse treatment programs in the community (Id., 29-32). Wright admitted to the violations and her furlough was revoked. Following the revocation, DOC performed a "case staffing" to determine what the consequence should be for Wright's violation. DOC decided that she should receive "a one-year interrupt," which meant that she would have to serve another year in prison before again being eligible for release on furlough (Id., 4). As Wright's case manager put it, "Wright failed to be compliant with her case plan during this release and was discharged from multiple programs making her unsupervisable in the community on furlough status" (Id., 3).

Wright does not deny that DOC had good reason to interrupt her furlough status

and re-incarcerate her in June of 2021. She acknowledges that she had relapsed on cocaine, meth and heroin, and that she had spiraled out of control while on furlough, due, she claims, to her not being on the proper mood stabilizer medication. Wright contends, however, that she has stabilized over the past six months, both in terms of her mental health and her substance abuse, and that the interrupt has fully served its purpose. More specifically, she points out that she is now on methadone, she has successfully completed DOC's mental health and substance abuse counseling programs, and she is engaging in educational classes designed to help her succeed in the community. In support of her contention, Wright cites to a letter written on her behalf by Abigail McRae, her drug and alcohol counselor. According to the letter:

... Wright has been engaging in individual counseling sessions as well as group counseling sessions working on relapse prevention and integrative change therapy (ICT). Wright has been working on emotional regulation, discussing the patterns of her addiction, working on her co-occurring disorders, learning coping and problem-solving skills, discussing relapse prevention, and use due to emotional trauma.... Wright has used her time in my office to identify negative triggers that she will avoid when released back into the community.... Wright has made significant changes since beginning treatment starting with her thoughts on life and following with the actions, she has used to prevent the negative consequences. Wright will continue to engage in substance use counseling for the remainder of her incarceration. She appears excited to learn new coping techniques as well as work on past trauma that has been inflicted due to negative relationships, and/or drugs... It is a pleasure to work with Wright.

(Exhibit A). In conclusion, Wright argues that requiring her to complete another six months in prison would be tantamount to punishing her for being mentally ill.

DOC opposes Wright's request. DOC argues that the sole issue in an appeal under 28 V.S.A. § 724 is whether DOC abused its discretion in revoking a person's furlough, or interrupting it for 90 days or more. DOC further argues that the only facts that are relevant to that determination are the facts as they existed at the time of the case staffing that resulted in the revocation or interrupt. Therefore, DOC contends that this Court has no authority to modify the interrupt after the fact based on how Wright's performance since her re-incarceration. DOC further contends that its decision to interrupt Wright's furlough for a year was appropriate, and the additional six months that she needs to serve in prison is not intended to be punitive but to allow her build on her progress to date.

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 Wright's furlough status. Wright's drug use while on furlough was both dangerous and uncontrolled, despite DOC's efforts to get her the substance abuse and mental health treatment and supervision that she needed to safely remain in the community. She twice failed Valley Vista's residential substance abuse treatment program, her suboxone physician could not help her because of her continuing drug use and failures to make appointments, the Howard Center terminated her from its mental health treatment program due to her absences and minimal participation, she lost her housing at Pathways for "dangerous activity that threatens the health and safety of other residents" and "serious damages to the unit causing it to become uninhabitable," she contracted infections in her arms and feet that required hospitalization due to her "shooting up" of illicit drugs, and she then left the hospital against medical advice and ran from furlough supervision.

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). It does not appear that Wright was committed to her reentry program (i.e., her substance abuse and mental health treatment programs), and she certainly failed to make satisfactory progress in either program.

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 Wright's risk to reoffend could no longer be controlled

in the community, and that DOC had done everything it reasonably could have to obtain her compliance with its efforts to keep her safe in the community.

As noted earlier, Wright does not deny that DOC had good reason to interrupt her furlough status and reincarcerate her in June of 2021. Her contention is that this Court should reduce the interruption from one year to six months based upon the excellent progress she has made in addressing her mental health and substance abuse issues. The Court agrees that Wright has made very commendable progress on both fronts. However, for the following reasons, the Court would not reduce her interruption to six months at this time, even if the Court agreed that it has the authority to do that in this case.²

As noted above, Wright was on furlough twice before, once in 2019 and again in 2020. Both times she violated her furlough conditions by engaging in conduct similar to what she did in 2021. Moreover, DOC gave Wright a six-month interrupt following her furlough revocation in mid-2020, and that interrupt clearly proved to have been too short, given the fact that she immediately relapsed on cocaine, meth and heroin upon her return to furlough for a third time in December of 2020. She has certainly made excellent progress since her reincarceration in June of 2021, but she clearly needs additional time to build on her progress over the past six months and prove that she truly can succeed in the community next time.

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

SO ORDERED this 13th day of December, 2021.



Robert A. Mello
Superior Judge

² Because the issue has not been adequately briefed by either party in this case, the Court will not now address DOC's contention that this Court has no authority to modify an interrupt after the fact based on an appellant's actions following his or her re-incarceration.