

STATE OF VERMONT

SUPERIOR COURT  
Washington Unit

CIVIL DIVISION  
No. 21-CV-201

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RYAN STIMPSON,  
Plaintiff,

v.

JAMES BAKER, Interim Commissioner,  
Vermont Department of Corrections,  
Defendant.

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RULING ON CROSS-MOTIONS FOR SUMMARY JUDGMENT

Plaintiff Ryan Stimpson, an inmate in the custody of the Vermont Department of Corrections, claims that the process by which the DOC revokes furlough, following a violation of furlough conditions, violates due process insofar as the inmate is not given an opportunity at the “case staffing” stage to present evidence and argument in support of an exercise of discretion to *not* revoke furlough regardless of the violation of conditions. The parties have filed cross-motions for summary judgment addressing this issue.

Mr. Stimpson argues that the due process rights of a furlougee facing revocation are substantially the same as those of a parolee or probationers, an issue the Vermont Supreme Court has never resolved. He then relies on the following holding from *Morrissey v. Brewer*, 408 U.S. 471, 488 (1972): “The parolee must have an opportunity to be heard and to show, if he can, that he did not violate the conditions, or, if he did, that circumstances in mitigation suggest that the violation does not warrant revocation.” The furlough revocation process in Vermont is bifurcated: first there is a determination of the violation after a hearing at which the inmate may participate fully; then there is a “case staffing” to determine whether or when the inmate may again become eligible for furlough. The process affords the inmate no opportunity to participate in the case staffing. Mr. Stimpson claims a due process right to participate in the case staffing to present evidence and argument to the effect that the case staffing team should exercise its discretion to *not* revoke furlough regardless of the violation of conditions.<sup>1</sup>

The court recently addressed the identical due process issue raised here in *Vežina v.*

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<sup>1</sup> Mr. Stimpson does not argue that the process by which the DOC determines the length of an interrupt violates due process insofar as the inmate is not given an opportunity at the “case staffing” stage to present evidence and argument in support of an exercise of discretion to impose a shorter interrupt than that requested or recommended by DOC staff. Therefore, the Court does not address that question.

*Baker*, No. 21-CV-2144 (Vt. Super. Ct. Jan. 12, 2022).<sup>2</sup> It explained:

The right Mr. Vezina has seized on was clarified in a later decision of the Supreme Court as follows:

Neither *Gagnon* nor *Morrissey* considered a revocation proceeding in which the factfinder was required by law to order incarceration upon finding that the defendant had violated a condition of probation or parole. *Instead, those cases involved administrative proceedings in which revocation was at the discretion of the relevant decisionmaker.* Thus, the Court's discussion of the importance of the informed exercise of discretion did not amount to a holding that the factfinder in a revocation proceeding must, as a matter of due process, be granted discretion to continue probation or parole. Where such discretion exists, however, the parolee or probationer is entitled to an opportunity to show not only that he did not violate the conditions, but also that there was a justifiable excuse for any violation or that revocation is not the appropriate disposition.

*Black v. Romano*, 471 U.S. 606, 612 (1985) (citation omitted; emphasis added). The right thus exists when the factfinder has the discretion to return the inmate to the community regardless of a violation.

No such discretion exists in Vermont statute or the DOC's rules. According to DOC Directive 410.02, Procedural Guidelines § (5)(f):

If the Hearing Officer determines that the offender is guilty of a violation, the Hearing Officer:

- i. Will inform the offender and give to them the outcome and the facts that the Hearing Officer relied on to support the finding of guilt, on the Hearing Report Form;
- ii. Will permit the offender to enter a statement, if they wish, orally or in writing, regarding their agreement or disagreement with their guilt, and enter it on the Hearing Report Form;
- iii. Will refer the case for case staffing. (See Section 11.)

The hearing officer has no discretion to nevertheless return the inmate to furlough. He can only refer the matter for a case staffing, which is described as follows:

The Case Staffing will:

- i. Determine the length of incarceration required to control or reduce the risk for re-offense;
- ii. Determine the requirements for the offender to complete prior to release to conditional re-entry/furlough, in order to demonstrate the risk

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<sup>2</sup> Here, as in *Vezina*, it is unnecessary to resolve the debate over whether these due process principles apply to furlonghees in precisely the same manner as they do to probationers and parolees because, assuming they do, Mr. Stimpson nevertheless is not entitled to relief.

is reduced; or  
iii. Make a determination that the offender must serve their maximum sentence to control the risk to the community, themselves or others.

DOC Directive 410.02, Procedural Guidelines § (11)(a). There is no discretion in the case staffing process to immediately return the inmate to furlough regardless of the violation; nor is the case staffing team the finder of fact as to the violation of conditions.

Once a furlough violation has been found, there is no discretion to nevertheless not revoke furlough. It is automatically revoked, meaning that furlough has officially ended and the inmate is reincarcerated. The discretion then exercised in the course of the case staffing is the forward-looking enterprise as to when the inmate will again become eligible for another shot at furlough.

Mr. Stimpson acknowledges the law as described in *Vežina* but argues that the case staffing team in fact has the discretion to not revoke furlough. In this regard, however, he simply disagrees with the court's conclusion in *Vežina* that upon the determination of the violation of conditions furlough is automatically revoked, and the case staffing team has no such discretion to order otherwise.

Mr. Stimpson also argues the semantics. He claims that 28 V.S.A. § 724 distinguishes between revocation and the mere interruption of furlough, implying that an interruption is something other than a revocation for due process purposes. Section 724 permits review of certain case staffing decisions following the determination of furlough violations. It uses the language of both revocation and interruption. But an "interruption" in this context refers to the time in which the inmate will remain incarcerated before again becoming eligible for furlough. Furlough has, however, been revoked in the sense that matters: the inmate was found guilty of a violation of conditions, furlough status automatically ends for that reason, and the inmate automatically is reincarcerated.

Mr. Stimpson presents nothing here that would cause the court to deviate from its conclusion in *Vežina*, which it adopts and incorporates here.

To the extent that Mr. Stimpson suggests that the nature of the DOC's furlough revocation process may involve a dispute of fact which should be resolved on the evidence, no such factual dispute is apparent. The court's interpretation of the DOC's rules is a legal matter, not a factual one.

#### Order

For the foregoing reasons, the State's motion for summary judgment is granted, and Mr. Stimpson's is denied. Counsel for the State shall submit a form of judgment. V.R.C.P. 58(d).

SO ORDERED this 31<sup>st</sup> day of March, 2022

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

Robert A. Mello  
Superior Judge