STATE OF VERMONT

SUPERIOR COURT Washington Unit	CIVIL DIVISION No. 21-CV-4096

JASON A. FRYE,
Appellant,

v.

VERMONT DEPARTMENT OF CORRECTIONS
Appellee.

DECISION ON THE MERITS

In this V.R.C.P. 74 appeal, Vermont inmate Jason A. Frye 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 January 25, 2022, and a hearing on the merits was held via Webex on April 25, 2022. 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.

Frye, who is 37 years of age, has several criminal convictions dating back to 2007, including assault and robbery, escape, grand larceny, uttering a forged instrument, simple assault on a correctional officer, and, most recently, DUI #2 (DOC Record, 43-44). His minimum release date was June 19, 2021, and his maximum release date is July 3, 2025 (Id.). Frye also has a severe substance use disorder (Id.). In addition, Frye has an extensive prison disciplinary record, including 35 major disciplinary infractions (Id., 24).

Frye also has a poor community supervision history. On May 17, 2013, while on parole in Virginia, Frey tested positive for cocaine, absconded from his assigned residence and stopped going to counseling (Id., 25). He was incarcerated for eight months for those violations (Id.). Frye was then released back into the community in Vermont on February 12, 2014, and he made parole on May 4, 2017, but he picked up a DUI # 2 conviction on May 10, 2019, for which he was put on probation (Id., 25, 43-44). On November 27, 2020, however, Frye was found asleep at the wheel of a car which was stopped with the engine running in the middle of Leclair Street in Winooski; a sample of Frye's blood taken that same day tested positive for methamphetamine, amphetamine and fentanyl, among other things (Id., 28-40). As a result, Frye was arrested and charged with DUI #3 in February of 2020, and his parole was revoked for committing a new offense, failing to reside at his assigned housing, and failing to meet with his parole officer as required (Id., 25-27, 41-42).

In September of 2021, DOC released Frye to Valley Vista, a residential intensive substance abuse treatment facility in Bradford, Vermont (Id., 2, 6-7). Frye completed Valley Vista on October 1, 2021, and DOC then placed him on community supervision furlough, with instructions that he reside at RISE, a half-way house in Burlington, Vermont (Id., 15-19). Frye was given a number of other conditions that he also had to comply with while on furlough, including conditions that he not purchase, possess or consume any regulated drugs without a valid prescription, that he abide by an 8 p.m.-6 a.m. curfew, and that he report in person to his furlough officer on October 15, 2021 (Id.).

Four days later, on October 5, 2021, Frye tested positive for alcohol, cocaine, methamphetamines, and fentanyl, among other things, and, when asked about it by a RISE staff member, Frey told the staff member to "mind [his] own fucking business," and walked out the door, even though it was after curfew (Id., 2, 6-7). RISE immediately discharged Frye from its half-way house and reported Frye's relapse and discharge to his furlough officer (Id.). After walking out of RISE, Frye made no effort to report his whereabouts or doings to his furlough officer until November 30, 2021, when he turned himself in (Id.).

DOC found Frey guilty of having violated his furlough conditions, and his furlough was revoked (Id., 4-5). Following the revocation, DOC performed a "case staffing" to determine what the consequence should be for Frye's violation. DOC decided that he should receive "a two-year interrupt," which meant that Frye would have to serve another two years in prison before again being eligible for release on furlough (Id., 2). Frye contends that the two-year interrupt is excessive, and that his interrupt should be reduced, because he turned himself in, and because he had committed no new crimes or acts of violence while on furlough in the community. 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).

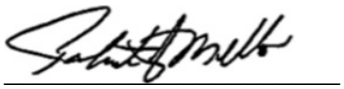
Given the record in this case, the Court cannot conclude that DOC abused its discretion in deciding to interrupt Frye's furlough status. This was his third failure at supervision in the community and his second time absconding from supervision. Moreover, he had relapsed, lost his assigned housing, and stopped reporting to his furlough officer just days after his release on furlough. Given Frye's criminal history, his resumption of drug use, as well as his failure to stay in touch with his furlough officer, it was reasonable for DOC to conclude that he could no longer be safely supervised in the community. 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). 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).

However, the Court agrees that a two-year interrupt is too long. Frye did not engage in any acts of violence or commit any new crimes while on community supervision furlough, and he voluntarily turned himself in, albeit some six weeks after missing his October 15th appointment. Moreover, Frye has proven that he can succeed in the community for a considerable length of time, given adequate support and supervision. In addition, the Court also notes that Frye's maximum release date is July 3, 2025. DOC should not wait until November of 2023 before attempting again to reintegrate him back into the community.

This case is analogous to Dennis v. Dept. of Corrections, Docket No. 21-CV-3510, Decision on the Merits (February 2, 2022) (reversing a two-year interrupt and imposing a one-year interrupt instead for failing at furlough for the third time, relapsing on cocaine and heroin, failing to do substance abuse treatment, and failing to stay in touch with his probation officer; court also noted that he would be maxing out in April of 2024, so DOC should not wait until September of 2023 before attempting again to reintegrate him back into the community). *See, also,* Sparks v. Dept. of Corrections, Docket No. 21-CV-2989, Decision on the Merits (December 30, 2021) (reversing a two-year interrupt and imposing a one-year interrupt instead for absconding for three months (second escape from furlough), relapsing on drugs, and failing at treatment and supervision; court also noted that he would be maxing out in July of 2025, so DOC should not wait until July of 2023 before attempting again to reintegrate him back into the community). If a one-year interrupt was appropriate in those cases, it is also appropriate in this case.

For the foregoing reasons, DOC's two-year interrupt of the Appellant's community supervision furlough is reversed, and a one-year interrupt is imposed in its place. The one-year interrupt began on November 30, 2021, the day he was arrested and returned to the correctional facility.

TO ORDERED this 2nd day of May, 2022.



Robert A. Mello
Superior Judge