STATE OF VERMONT

SUPERIOR COURT Washington Unit	CIVIL DIVISION No. 21-CV-4086

DYLAN J. CLASS,
Appellant,

v.

VERMONT DEP'T OF CORRECTIONS
Appellee.

DECISION ON THE MERITS

In this V.R.C.P. 74 appeal, Vermont inmate Dylan J. Class 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 4, 2022, and a hearing on the merits was held via Webex on May 12, 2022.[1] 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.

Class, who is 27 years old, is serving consecutive sentences imposed in 2015, 2017 and 2018 for two escape convictions, a burglary conviction, and several convictions for violating conditions of release (Sentence Computation Record, 1-3). His minimum release date was December 19, 2020, and his maximum release date is March 5, 2029 (Id.). Class also struggles with substance use issues.

Class has a poor history of supervision in the community. DOC first placed Class on conditional re-entry status in the community in June of 2016. On February 15, 2017, using a pair of scissors, Class cut the strap of his GPS unit, discarded the unit into a bin at the Brown and Roberts Hardware store in Brattleboro, and disappeared from supervision (2/16/17 Affidavit of Henry L. Farnum, CSSII). He was promptly arrested, returned to the correctional facility and charge with the crime of felony escape.

Six days later, on February 21, 2017, while being transported by the sheriff's department from the courthouse in Brattleboro, Class somehow extricated himself from his leg irons, sprinted out of the Sally Port and ran across Putney Road, ignoring all orders to stop (2/27/17 Affidavit of Sgt. Chris Norton). He was picked up by the police later that day and charged with another felony escape.

[1] The ability to schedule this matter for a hearing on the merits was delayed by a motion to dismiss filed by DOC on February 18, 2022. The motion was denied by the Court on March 14, 2022.

On June 23, 2020, DOC again released Class into the community on reintegration furlough. However, Class promptly relapsed, violated his curfew conditions, and failed to attend mandatory appointments (DOC Case Staffing & NOS Records, at 2). As a result, he was discharged from his treatment program for "chronic non-compliance" and returned again to the correctional facility (Id.).

After reaching his minimum release date, Class was again released into the community on January 6, 2021, with orders that he reside at the RISE facility at 435 Western Avenue in Brattleboro, comply with curfew restrictions, report to his furlough officer as directed, and call his furlough officer the next day (Id., 3). The very next day, Class failed to return to the RISE facility, he failed to call his furlough officer, he went into hiding at a friend's house, and, four days later, he escaped to Florida (Id.). Class was arrested in Florida on October 26, 2021, and was transported back to Vermont, where he was re-incarcerated (Id.).

DOC found Class guilty of having violated furlough conditions, and his furlough was revoked (Id., 5-7). Following the revocation, DOC performed a "case staffing" to determine what the consequence should be for Class' violation. DOC accepted the recommendation of Class' furlough officer that he be given a two-year interrupt, which meant that Class would have to serve another two years in prison before again being eligible for furlough consideration (Id. 4). Class contends that the two-year interrupt was excessive. DOC argues that its two-year interrupt 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 warrant 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.

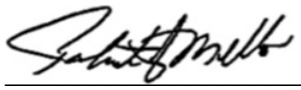
Id. §724(d)(2).

Given the record in this case, the Court cannot conclude that DOC abused its discretion in imposing a two-year interrupt of Class' furlough status. This was Class' third escape from furlough, and it occurred almost immediately after he was released from prison. Moreover, he absconded to Florida where he remained for nearly ten months until he was arrested following an argument with a girlfriend. As noted above, a furlough interrupt of 90 days or more is not an abuse of discretion if "the violation or pattern of violations indicate the offender … poses a threat to abscond or escape from furlough." 28 V.S.A. § 724(d)(2)(B).

This case is analogous to Morales v. Dept. of Corrections, Docket No. 21-CV-2301, "Decision on the Merits" (12/26/21), in which this Court reduced a four-year interrupt and imposed a two-year interrupt for a third escape from furlough. If a two-year interrupt was appropriate in that case, it is even more so in this case; this is because there were mitigating factors in Morales that are not present in this case.

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

SO ORDERED this 16th day of May, 2022.



Robert A. Mello
Superior Judge