STATE OF VERMONT

SUPERIOR COURT Washington Unit	CIVIL DIVISION No. 22-CV-154
CODY METEVIER, Appellant, v. VERMONT DEP'T OF CORRECTIONS Appellee.	

DECISION ON THE MERITS

In this V.R.C.P. 74 appeal, Vermont inmate Cody Metevier 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 19, 2022, and a hearing on the merits was held via Webex on April 28, 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.

Metevier is 30 years old and is serving sentences for convictions of lewd and lascivious conduct with two females under the age of sixteen; he was on probation for the first offense when he was convicted of the second offense (DOC Record, Part I, 25-26). Metevier's minimum release date was May 2, 2019, and his maximum release date is March 12, 2023 (Id., Part II, 95-104, 110).

In late October of 2020, DOC placed Metevier on community supervision furlough for the first time. DOC assigned him an apartment at the Barre Community Justice Center's transitional residential facility on Second Street in Barre, where he was told to reside and participate in their re-entry program while on furlough (Id., Part I, 38-42). Metevier was given conditions that he had to comply with, including conditions that he maintain gainful employment, participate successfully in sex offender counseling, and not participate in friendships or relationships with individuals who have children unless approved in advance by his supervising officer (Id.). In addition, he was given a curfew requiring him to be in his apartment in Barre from 8 p.m. to 8 a.m, every day (Id.).

Metevier failed to comply with his conditions while on furlough (Id., Part I, 25-26, 35-36). After approximately seven months of sex offender counseling, Metevier had completed only about two months' worth of work; he had habitually failed to complete assignments until threatened with suspension from treatment (Id.). In addition, during the entire time he was on furlough, Metevier had told his supervisors that he was gainfully

employed. In late April of 2021, however, his supervisors discovered that Metevier had lost his job in January and had been unemployed for three months. When asked what he had been doing all those months, Metevier acknowledged that he had been hanging out with friends and with Brandy Hunt, a woman with whom he was not allowed to have contact because she had custody of a young child. Then, on April 22, 2021, Metevier disappeared from his assigned residence for four days. When asked about this on April 28th, Metevier at first lied and claimed that he had been sick in his room for the four days; after being confronted with evidence to the contrary, however, Metevier then admitted that he had spent the four days with his step-father and with Brandy Hunt. On April 29th the Barre Community Justice Center terminated Metevier from its facility, which left him without an approved residence in the community (Id., Part II, 93-94). As a result, DOC returned Metevier to the correctional facility and gave him a six-month interrupt (Id. Part I, 25-26).

DOC placed Metevier back on furlough for a second time on November 1, 2021. Metevier was again ordered to reside at the Barre Community Justice Center facility on Second Street in Barre, and he was given a strict curfew requiring him to be in his apartment at all times except for scheduled events approved in advance by his furlough officer (Id., 10-12). He was also required to wear a GPS unit so that his whereabouts could be monitored.

Unfortunately, however, Metevier immediately resumed his pattern of violating his furlough conditions and lying about what he was doing (Id., 14-21). On November 5, 2021, Metevier went out riding with Fred Hunt, even though he had no permission to do that. On November 16th he was fired by the Skinny Pancake when they discovered that he had lied on his application about his criminal history. Then, for five days in a row, from November 25th though the 29th, Metevier repeatedly violated his curfew by visiting people and traveling to places without his furlough officer's permission. On December 1, 2021, the Barre Community concluded that Metevier's pattern of behavior was placing the community at risk, and they terminated him again from their re-entry program (Id.). As a result, DOC arrested Metevier and returned him again to the correctional facility.

DOC found Metevier 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 Metevier'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 furlough consideration (Id. 2). Metevier contends that the one-year interrupt was excessive. He points out that he did not commit any act of violence or other crime while he was on furlough. DOC argues that its one-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:

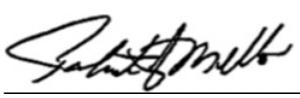
> It shall be abuse of the Department's discretion to revoke furlough or interrupt furlough status for 90 days or longer for a technical violation, unless:
>
> (A). the offender's risk to reoffend can no longer be adequately controlled in the community, and no other method to control noncompliance is 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 one-year interrupt of Metevier's furlough status. Metevier has twice been convicted of sex offenses against minors, so he needs to be carefully supervised in the community until he has successfully completed sex offender treatment to DOC's satisfaction. He has made little progress in his sex offender treatment, however, and he has engaged in a pattern of repeatedly violating furlough conditions designed to assure that the community remains safe. As noted above, it is not an abuse of discretion for DOC to impose an interrupt of 90 days or more where "the offender's risk to reoffend can no longer be adequately controlled in the community, and no other method to control noncompliance is suitable." 28 V.S.A. § 724(d)(2)(A).

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

SO ORDERED this 4th day of May, 2022.



Robert A. Mello
Superior Judge