STATE OF VERMONT

SUPERIOR COURT Washington Unit	CIVIL DIVISION No. 22-CV-2318
CHRIS R. BEAN, Appellant, v. VERMONT DEP'T OF CORRECTIONS Appellee.	

DECISION ON THE MERITS

In this V.R.C.P. 74 appeal, Vermont inmate Chris R. Bean 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 July 13, 2022, and a hearing on the merits was held via Webex on October 6, 2022. Appellant was present at the hearing and was represented by Emily Tredeau, Esq. Appellee was represented by Patrick T. Gaudet, 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.

Bean is 62 years old and is serving sentences for two felony convictions of lewd and lascivious conduct with females under the age of sixteen; his first conviction was on June 22, 1999, he was put on probation for that conviction, his probation was revoked on November 10, 2003, and his second conviction was on February 16, 2018 (DOC Record, 22-37). Bean's minimum release date was February 22, 2020, and his maximum release date is February 22, 2028 (Id., 48).

On February 24, 2020, DOC placed Bean on community supervision furlough. Bean was given conditions that he had to comply with, including a condition that he "successfully enroll in, participate in, and complete a treatment program for individuals who have exhibited sexually harmful behavior as directed by my supervising officer, or designee, and as approved by the Department of Corrections…." (Id., p. 13). Bean was assigned to participate in and complete a community-based sex offender program provided by Zachary Scott at Effective Counseling Solutions, LLC (Id., 2).

At first, Bean was resistant to receiving sex-offender treatment in the community because, having completed sex-offender treatment while incarcerated, he did not feel that he needed further treatment in the community (Id., 2, 15). Nevertheless, he participated in the required treatment, although his progress in treatment was "slow, with limited engagement" (Id.).

On May 10, 2022, Bean was given a polygraph examination, during which he made several disclosures which he had not mentioned to his treatment providers. The disclosures included that he had been drinking periodically, using pornography on his computer, and watching young females at the bus stop from his window at home (Id., p. 20). A few days later, Bean made additional admissions to his treatment group, including: that he had been consuming alcohol for several months; that he had "repeatedly found himself" looking out his window watching young females as they boarded and exited from the school bus, wondering what they would "look like up close"; that he had been "regularly viewing pornography over approximately the past nine months," searching for "topless females around the age of eleven or twelve"; and that he had failed to report any of this to his treatment team because "he did not want to talk to others" about his risk factors, he was "handling them on his own," he did not see his drinking as a problem, and his watching young girls at the bus stop was "not illegal" and was "not hurting anyone" (Id. 3, 15-16).

These disclosures were a matter of concern to Bean's furlough officer and treatment provider because use of alcohol, attraction to minor females, viewing pornography, and hiding his behaviors from his treatment providers were all risk factors associated with his previous convictions (Id.). Bean's treatment provider asked Bean to write a report explaining how he planned to mitigate these risks moving forward. His response "lacked depth" and was deemed insufficient. As a result, on May 16, 2022, the treatment provider, Zachary Scott, wrote a letter terminating Bean from treatment at Effective Counselling Solutions, LLC (Id., 15-17). Scott's letter stated: "It is because of your noncompliance with treatment expectations, engagement in high-risk offense supportive attitudes and behaviors, and your unwillingness to make changes to you manage your risks that you are being terminated from treatment with ECS" (Id.).

DOC found Bean 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 Bean's violation. Bean's furlough officer argued for a two-year interrupt, but DOC decided instead 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. 3). Bean contends that the one-year interrupt was excessive. He points out that he did not commit any act of violence or other crime during the two years that he was on furlough, and he contends that he was making progress in treatment and doing well in the community. Bean argues that his interrupt should be reduced to six months because the evidence shows that he can be safely supervised in the community. 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 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 for a technical violation 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)(1). The scope of the appeal is limited to determining whether DOC's decision to interrupt or revoke the offender's furlough "was an abuse of discretion by the Department based on the criteria set forth in subdivision (d)(2) of this section," and "[t]he length of interruption or revocation may be a consideration in the abuse of discretion determination." Id §724(c)(2). The criteria to be used in determining whether there was an abuse of discretion are as follows:

> 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;
>
> (B) The violation or pattern of violations indicate the offender poses a danger to others [or]
>
> (C) The offender's violation is absconding from community supervision furlough….

Id. §724(d)(2). Lastly, the statute provides that "[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., §724(c)(1).

Given the record in this case, the Court cannot conclude that DOC abused its discretion in imposing a one-year interrupt of Bean's furlough status. Bean 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. Despite two years in community-based sex-offender treatment, however, Bean made little progress. He continued to engage in the kinds of conduct that were associated with his prior convictions, and he demonstrated no appreciation for the risks that such conduct posed for young females in the community. Under these circumstances, it was reasonable for his furlough officer to conclude that Bean had demonstrated "a lack of ability to process risk and utilize protective factors to remain safe in the community" (Id., p. 3). 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 17th day of October, 2022.

Robert A. Mello
Superior Judge