

VERMONT SUPERIOR COURT  
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CIVIL DIVISION  
Case No. 23-CV-01109

Roger Patenaude v. Vermont Department of Corrections

## FINDINGS, CONCLUSIONS, AND JUDGMENT

The present matter is an appeal from a case staffing determination, which determined that Petitioner Roger Patenaude violated Conditions 1 and 3 of his terms and conditions of community supervised furlough and is subject to a one-year furlough interrupt. Petitioner appeals this determination on three bases: (1) that agency's record is not sufficient to show a violation of Condition 1; (2) that the violation was not a significant violation as that term is defined under DOC Directive 430.11; and (3) that the Department failed to consider potential lower sanctions. This matter came before the Court for a bench trial on August 18, 2023. Petitioner was represented by the Prisoners' Rights Office, and the Department was represented by the Attorney General's Office.

### Background

Petitioner was released on community supervised furlough in September 2022. In January 2023, he was lodged for a potential suspension of furlough based on the allegation that he violated Condition 1 of his furlough ("I will not be cited or charged; I will not commit any act punishable by law, including city and municipal code violations.") based on a citation for an alleged simple assault that occurred in St. Albans. The second basis for the notice of suspension arose from the allegation that Petitioner violated Condition 3 ("I will not engage in threatening, violent, or assaultive behavior.") based on allegations in an affidavit filed by Laura Sweet in her stalking complaint against Petitioner, which was found to have probable cause and granted on a temporary, ex parte basis.

On February 2, 2023, the Department held a hearing. Petitioner signed a waiver of appearance form for this hearing and did not attend. On appeal, Petitioner notes that while he signed the waiver form, he did not check either of the boxes indicating the nature of his election. As such, the Court interprets the document not to be an admission of guilt or waiver of his right to challenge the weight of the evidence on appeal. This is further supported by Petitioner's initial statements to the Department

that are captured in the initial incident report, and which deny the allegations underlying both violations.

For the hearing and as part of the administrative record, the Department had the following relevant documents: (1) the January 27, 2023 Incident Report; (2) Petitioner's Probation and Parole Report; (3) Petitioner's Conditions of Supervision; (4) the January 26, 2023 Simple Assault Citation from the Franklin County Sheriff's Department; (5) Laura Sweet's affidavit and complaint against Petitioner; (6) the Temporary Order against Stalking; and (6) the case staffing form. Much of Petitioner's primary argument focuses on the fact that the record has no other evidence of Petitioner's assault charge apart from the short citation. There is no charging document or law enforcement affidavit and no manner to determine if there was probable cause to conclude a violation of Condition 1.

### Standard of Appeal

The present appeal is a de novo review of the Department's case staffing record. 28 V.S.A. § 724(c)(1). By statute, the Court's review is limited to "determine whether the decision to interrupt or revoke an offender's community supervision furlough status was an abuse of discretion by the Department . . ." Id. at (c)(2). An abuse of discretion in the decision to revoke or interrupt furlough is presumed for any period greater than 90 days 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.
- (C) The offender's violation is absconding from community supervision furlough. As used in this subdivision, "absconding" means: based on the criteria set forth in subdivision (d)(2) of this section.

28 V.S.A. § 724(d)(2).

In this case, the Department has not sought to dismiss the complaint as a non-technical violation constituting a new crime as defined in Section 724(d)(1). Nor is there evidence to suggest an absconding charge under Section 724(d)(2)(C). Instead, the sole question on appeal is whether the record indicates under subsections A & B a risk to re-offend that cannot be controlled and a pattern of violations.

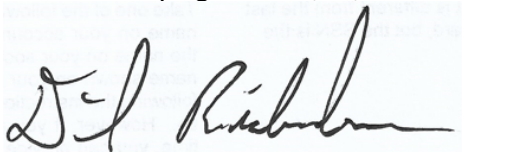
Looking at the record in totality, the Court finds that the Department had sufficient evidence to make its findings under Section 724(d)(2)(B) based primarily on the stalking affidavit and complaint

submitted by Laura Sweet. The affidavit, while containing some inconsistencies, lays out testimony to support the finding that Petitioner threatening her in both direct and indirect ways on multiple occasions. The information and allegations in this affidavit comprise significant violation of Condition 3. When coupled with Petitioner's high risk status as determined by the Department from his ORAS scores, the application of a one-year revocation of furlough is consistent with the Department's regulations under Department of Corrections Directive # 430.11, at p. 11.

**ORDER**

Based on the foregoing, the Court finds no abuse of discretion, and the record is sufficient to sustain the Department's initial determination. The Department's decision is **Affirmed**, and Petitioner's appeal is **Denied**.

Electronically signed on 8/25/2023 4:59 PM pursuant to V.R.E.F. 9(d)

A handwritten signature in black ink, appearing to read "D. Richardson", is written over a light blue rectangular background. The signature is cursive and fluid.

Daniel Richardson  
Superior Court Judge