STATE OF VERMONT

SUPERIOR COURT
Washington Unit

CIVIL DIVISION
Docket No. 62-1-15 Wncv

CHRISTOPHER HOCH
Plaintiff

v.

ANDREW PALLITO
Defendant

DECISION
The State's Motion to Dismiss

Plaintiff Christopher Hoch is an inmate currently serving his sentence on conditional re-entry furlough subject to numerous conditions, several of which he finds unnecessarily onerous, including GPS monitoring, a lack of driving privileges, and a complete ban on computer use. He grieved his opposition to these conditions without success and then filed a Rule 75 petition. The State filed a motion to dismiss arguing that the court lacks subject matter jurisdiction because the conditions fall within the unreviewable discretion of the Department of Corrections. Mr. Hoch opposes dismissal claiming that the complete ban on computer use violates his constitutional rights. He has not expressly opposed dismissal of his claims based on other conditions.

Conditions other than computer use

There is no apparent basis for review of the conditions other than computer use. Mr. Hoch is attempting to directly challenge the Commissioner's discretion in imposing those conditions and there is no corresponding constitutional claim. The imposition of furlough conditions is not quasi-judicial and thus certiorari review is not available. No ministerial obligation or clear duty is at issue that might support mandamus review. No other writs have any apparent application. See *Rheaume v. Pallito*, 2011 VT 72, ¶¶ 6–8, 190 Vt. 245, 249 (discussing the writs that most commonly may support Rule 75 review). The court lacks subject matter jurisdiction to review these conditions.

Computer use

Mr. Hoch is attempting to challenge the constitutionality of the restriction on computer use rather than the exercise of discretion per se. The constitutional question is not shielded from review. As the Vermont Supreme Court has held:

> Although discretionary programming decisions are not reviewable by courts, constitutional claims are. The fact that a colorable constitutional claim implicates a programming decision committed to the DOC's discretion does not insulate the alleged constitutional violation from judicial review. . . . To the extent that

> petitioner is not merely challenging the propriety of the programming decision here, but is raising a colorable constitutional claim, his claim is reviewable.

In re Girouard, 2014 VT 75, ¶ 12. The same rationale applies here.

The State objects, however, that the constitutional issue is not cognizable under Rule 75 and Mr. Hoch instead should be required to amend the complaint.

The court construes the pleadings "to do substantial justice," V.R.C.P. 8(f), and generally resists empty exercises in furtherance of the interests in a "just, speedy, and inexpensive determination," V.R.C.P. 1. At this point, the case has been limited to one clear constitutional claim and the parties and the court know what it is. The case may proceed without amendment.

ORDER

For the foregoing reasons, the State's motion to dismiss is granted in part and denied in part.

Dated at Montpelier, Vermont this 3rd day of September 2015.

Mary Miles Teachout
Superior Judge