

VERMONT SUPERIOR COURT
Washington Unit
65 State Street
Montpelier VT 05602
802-828-2091
www.vermontjudiciary.org



CIVIL DIVISION
Case No. 25-CV-01933

Louis Gilbeau Jr v. Nicholas Deml et al

FINDINGS AND ORDER

Petitioner Louis Gilbeau has filed the present Rule 75 appeal seeking review of the Respondent Department of Correction’s January 13, 2023 decision to terminate him from the Vermont Treatment Program for Sexual Abusers (VTPSA). Petitioner claims that his termination lacked due process and that it should be cancelled based on this lack of due process under the reasoning of *Barber v. Handy*, Dckt. No. 22-CV-833, at 2023 WL 5338899, at *3 (May 9, 2023) (Tomasi, J.). The Department disagrees with the application of *Barber* in the present case and also argues that Petitioner filed both his grievance and Rule 75 appeal out of time.

Petitioner’s primary argument is that his removal from the VTPSA program was punitive and that he was entitled to a due process hearing before his removal. Removal from a sex abuse treatment program is not automatically entitled to due process hearings. *Rose v. Touchette*, 2021 VT 77, ¶¶ 21–25. As detailed by the Vermont Supreme Court, the primary question for the Court’s review is whether the termination could be considered “punishment.” *Id.* This is a fact specific analysis that follows three factors derived from the United States Supreme Court’s decision in *Bell*. *Bell v. Wolfish*, 441 U.S. 520, 538–39 (1979). These factors include: “(1) whether the intent of the government officials is to punish, (2) whether the purpose of the restriction in question is for some legitimate governmental purpose, and (3) whether the restriction is excessive in relation to its purpose.” *Rose*, 2021 VT 77, at ¶ 21.

Petitioner relies heavily on the analysis in *Barber*, a Vermont trial court decision. *Barber*, 2023 WL 5338899, at *3. In *Barber*, the trial court found that Petitioner’s removal from

a Risk Intervention Service program constituted a punishment because it was punitive in nature. This conclusion arose from the fact that the termination resulted in the inmate's credit being stripped; was accompanied by a six-month suspension; required him not to incur any additional DRs; and removed any services or action plan following the termination. Id.

Background Facts

Petitioner is currently at the tail-end of a 17-year sentence for an assaultive crime.¹ As part of Petitioner's plea agreement, he was obligated to enroll in and successfully participate in an 18-month sex abuse treatment programs prior to his release.

Petitioner initially began the VTPSA program in February 2010. He was terminated from the program in 2010 for discipline report concerning a threat to his roommate. After six months, Petitioner was eligible for re-enrollment, and he re-started it in May of 2011. He was terminated a second time in November 2011 based on another disciplinary report for arguing and allegedly assaulting another inmate. After another cooling-off period, Petitioner re-enrolled in the VTPSA program a third time in April 2012, but he was terminated in April 2013 for having phone contact with the victim of his underlying offense. Petitioner's fourth enrollment lasted from May 2019 until January 2020 when he was terminated based on an assault-related disciplinary violation.

Petitioner's fifth and final enrollment extended from 2022 until January 2023 when he was again terminated, this time for allegedly diverting his medications, making sexualized comments and proposals to a transgender inmate as well as generalized issues with his attitude. The termination letter notes:

- Your behaviors continue to negatively impact the Programming Unit, your peers, and RIS as a learning environment and this also creates an unsafe environment.
- The above behaviors are in violation of RIS agreement 11 which states "I know that rule violations or DRs may result in a Corrective Action Plan (CAP) and/or removal from RIS." RIS agreement 12 which states. "I will apply the knowledge and skills I learn in RIS when dealing with situations that have caused me to offend or get in other trouble in the past. I will speak with my RIS Team when I am having difficulty using these skills."

¹ Petitioner is set to be released on Friday, June 26, 2026 after serving his maximum sentence.

Pet. Ex. 3 at 1 (Notice of Corrective Action Plan and Security Termination, Jan. 13, 2023).

At no time during these events did petitioner file a grievance or seek review of his termination from any of the five VTPSA enrollments. In the spring of 2024, Petitioner sent a letter to the Commissioner of the Department of Corrections seeking permission to be put on furlough and to enroll in a private sex abuse treatment program at his own expense. On June 3, 2024, the Commissioner's Office denied the request, noted that he had already had five opportunities to complete the program, and reported that the Central Staffing Committee had reviewed his request and made the determination. Petitioner took no action to appeal to seek review of this determination.

On March 2, 2025, Petitioner filed a grievance with the Department based on his prior removals from the VTPSA program. This grievance was denied, and Petitioner timely appealed the grievance through the administrative process. Petitioner filed the present Rule 75 appeal in May 2025 when the last grievance step was exhausted.

Legal Analysis

Before the Court can review the substance of Petitioner's complaint, it must address the issue of timing, and whether this Court has jurisdiction to hear the present appeal, or whether it is untimely and stale. V.R.C.P. 12(b)(6).

The present action is a Rule 75 appeal from a grievance filed in March of 2025, but the substance of Petitioner's appeal arises from the January 2023 determination by the RIS committee to Terminate his enrollment in the VTPSA. It is this action that is at the heart of Petitioner's appeal and for which he seek both review and relief.

Under Rule 75, "the complaint shall be filed within 30 days after notice of any action or refusal to act of which review is sought unless the court enlarges the time in accordance with Rule 6(b), and, in the event of a failure to act, within six months after expiration of the time in which action should reasonably have occurred." V.R.C.P. 75(c). Rule 6(b) sets out two standards for enlarging this time. The first is if an extension is requested before the original time expires. In such cases, a moving party need only establish "good cause." V.R.C.P. 6(b)(1)(A). If the motion comes after the expiration of time, then the moving party must show that the failure

to file or request an extension arose because of “excusable neglect.” *Id.* at 6(b)(1)(B). The term excusable neglect requires proof that the delay was beyond the control of the moving party, was done in good faith, and will not result in prejudice to the other party or to the judicial process. *In re Town of Killington*, 2003 VT 87A, ¶ 16.

In this case, the present appeal comes more than 2 years and four months after Petitioner’s fifth termination from the VTPSA program. The present hearing occurred a mere two days prior to Petitioner’s release from the facility following completion of his maximum sentence. Petitioner claims that his delay in pursuing his claims was due to the fact that he was unaware that he was entitled to due process because his termination pre-dated the *Barber* decision by four months, and he did not become aware of the *Barber* decision until nearly two years after his termination.

This reasoning does not constitute excusable neglect for three reasons.²

First, the case law of *Barber* is neither the first iteration of the concept of due process for removing an inmate from programing as punishment, nor a unique extension of pre-existing case law. At the time of Petitioner’s termination, both *Rose* and *Bell* had been decided. The holding of *Barber* is expressly based on *Rose* and an earlier case, *Borden v. Hoffmann*, 2009 VT 30, ¶¶ 16–21. While *Barber* provides analysis that mirrors the termination process Petitioner received, the reasoning is not novel. As well reasoned and well written as *Barber* may be, the Court cannot find that its publication changed or clarified the landscape or nature of Petitioner’s rights beyond what already existed in January 2023.

Second, even to the extent that *Barber* drew some unique insight, it was published nearly two years prior to the grievance process. Petitioner provides no explanation of why he waited so long after *Barber* to file his grievance. While he may have not been aware of *Barber* personally, there is nothing to indicate that *Barber* or the cases it relies upon were not broadly available.

Third, this delay runs contrary to the Department’s own rules under Directive 320, which states that a grievance or appeal from a decision must be made within 14 days from the

² Beyond his testimony and argument at the hearing, Petitioner has not made a formal argument explaining how the present petition meets the definition of excusable neglect. Nevertheless, the Court has review the present filing and allowed Petitioner to present testimony regarding this issue as part of his hearing.

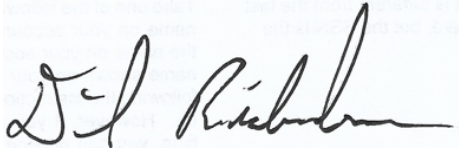
completion of the informal grievance process. Vt. Dept. of Corrections, Directive 320, at 9 (Aug. 3, 2023).³ The purpose of these rules and limitations is, as the Directive states, “to resolve conflict in a timely manner and identify opportunities for DOC service improvement.” Id. at 2. In this case, if Petitioner truly sought to challenge the termination of his programming and attempt a sixth effort at completing the program, the time was prior to his final months of incarceration when a meaningful remedy could be applied. Delaying the appeal creates prejudice to the Department, runs contrary to its rules and policies, and undermines the intent of both the grievance process and the programming requirement.

For these reasons, the Court finds that Petitioner cannot meet his burden of showing excusable neglect sufficient to extend the timelines for a Rule 75 appeal beyond the 30 days or even six months following Petitioner’s January 13, 2023 termination. As such, the present petition is untimely, and the Court cannot take jurisdiction of this appeal. It must be **Dismissed**. *Coutu v. Town of Cavendish*, 2011 VT 27, ¶¶ 12, 13.

ORDER

Based on Rule 12(b)(6), the present matter is **Dismissed** as untimely. The denial of Petitioner’s grievance is **Affirmed**.

Electronically signed on 6/24/2026 8:25 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.

Daniel Richardson
Superior Court Judge

³ This version of the Directive superseded Directive 320.01, which was promulgated on Jan. 1, 2006 and was in effect at the time of Petitioner’s Jan. 13, 2023 termination from VTPSA. This older directive also had the 14-day requirement. See <https://www.law.umich.edu/special/policyclearinghouse/Documents/Vermont%20Grievance%20Policy.pdf> (last visited Jun. 24, 2026).