ENTRY ORDER

SUPREME COURT DOCKET NO. 2015-305

DECEMBER TERM, 2015

Shawn Foster	}	APPEALED FROM:
	}	
v.	}	Superior Court, Chittenden Unit,
	}	Civil Division
Andrew Pallito, Commissioner, Vermont	}	
Department of Corrections	}	DOCKET NO. 65-1-15

In the above-entitled cause, the Clerk will enter:

Considering the parties' memoranda of law filed in response to this Court's show cause order, we dismiss as moot the above appeal, currently scheduled for the January 6, 2016 term before a three-justice panel. In the above appeal, the incarcerated plaintiff challenged a programming decision that required him to complete a special program before being eligible for furlough. He alleged that the decision was based on false facts. The Department of Corrections (DOC) agreed that the decision indicated it was based on certain facts and that those facts were indeed inaccurate, but argued that the decision was actually based on other, accurate facts. The superior court ruled that there was a more than sufficient basis for the decision, putting aside the false facts. Defendant appealed this ruling. On August 5, 2015, however, defendant was furloughed back into the community. Because he was re-incarcerated on October 16, 2015, he argues that his claims are not moot because they are "capable of repetition yet evading review." State v. Rooney, 2008 VT 102, ¶ 11, 184 Vt. 620 (mem.). We disagree. This narrow exception to the mootness doctrine applies only when the challenged action is too short in duration to be fully litigated before its expiration and there is "a reasonable chance that the same complaining party would be subjected to the same action again." Id. (quotation omitted). Here, the notion that DOC would rely on the same false facts again in making a program decision is highly speculative at best and not reasonably possible, given that DOC acknowledged that the facts in question were false.

BY THE COURT:

Paul L. Reiber, Chief Justice

John A. Dooley, Associate Justice

Beth Robinson, Associate Justice