

STATE OF VERMONT

SUPERIOR COURT
Washington Unit

CIVIL DIVISION
No. 21-CV-2797

RANDY BARD,
Appellant,

v.

VERMONT DEPT OF CORRECTIONS
Appellee.

DECISION ON THE MERITS

In this V.R.C.P. 74 appeal, Vermont inmate Randy Bard 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 October 6, 2021, and a hearing on the merits was held via Webex on December 16, 2021. Appellant was present at the hearing and was represented by Kelly Green, Esq. Appellee was represented by Timothy P. Connors, 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.

Bard is 30 years old and is serving consecutive sentences on account of convictions in 2014 for burglary and assault and robbery with a weapon, and a conviction in 2017 for aggravated domestic assault, second degree; his minimum release date was September 17, 2019, and his maximum release date is August 20, 2026 (DOC Record, 21-42, 48-55, 59-61). He also struggles with significant substance abuse issues (Id., 1, 46, 55-58).

DOC placed Bard on community supervision furlough; his assigned residence was at the halfway house on Kingman Street, St. Albans, Vermont, where he was told to reside while on furlough (Id., 4). Bard was given a number of conditions that he had to comply with while on furlough, including condition C4 (“I will report to my supervising officer or designee, as required”), condition C11 (“I will be accessible to my supervising officer, or designee, via telephone....”) and condition SC22 (“I will continue to reside at an approved residence while on supervision”) (Id., 14-15). Bard was also accepted into the COSA (“Circle of Support and Accountability) program, and he was told to attend its regular meetings (Id., 1).

Bard did not follow up on his expected COSA meetings, and on April 19, 2021, staff advised Bard’s furlough officer that he had failed to return to his residence at 36 Kingman Street for the past three days (Id., 2, 4). On April 20th and 21st DOC staff attempted to reach Bard by phone and text, but they received no response from him, so, on April 21st, Bard’s furlough officer went to Bard’s residence at 36 Kingman Street to look for him, but

he was not there (Id.). The furlough officer also visited Bard's father to see whether he knew where Bard had gone; Bard's father advised that he had not seen his son but would reach out to Bard's mother to see if she could get him a message to call his furlough officer (Id.). On April 22nd, the officer left Bard a voicemail message instructing him to call him as soon as possible; Bard did not return the call, so a warrant was issued for his arrest (Id.).

On April 27th, the furlough officer was finally able to contact Bard by phone. Bard stated that he had left his residence and was staying with a friend (at a location that he did not disclose) because he had gotten a COVID-19 test, thinking that he might have been exposed to the virus (Id., 2). The officer ordered Bard to come to his office on April 28th, and to bring proof of testing with him. Bard never showed up, and he was arrested and lodged in the correctional facility on July 21, 2021 (Id.). He had been missing for three months.

DOC found Bard guilty of having violated his furlough conditions, and his furlough was revoked (Id., 6-8). Following the revocation, DOC performed a "case staffing" to determine what the consequence should be for Bard's violation. DOC decided 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. 2). DOC based its decision on Bard's history of having violated his furlough conditions on several other occasions in the past and on his risk scores for reoffending (Id., 1-2, 58).

Bard contends that the one-year interrupt was excessive. He acknowledges that he absconded from furlough and relapsed while absconding, but he points out that he did not commit any act of violence or other crime while he was on furlough and that he remained employed the whole time that he was on furlough. Bard also points out that has been sober since his arrest in July and that he is receiving maintenance assistance treatment for his substance abuse issues. Bard argues that there is no benefit in continuing to incarcerate him and that he should be placed back on furlough. 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 warrant 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 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). Under the statute, "[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. Lastly, the statute provides:

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; or

(B) the violation or pattern of violations indicate the offender poses a danger to others or to the community or poses a threat to abscond or escape from furlough.

Id. §724(d)(2).

Given the record in this case, the Court cannot conclude that DOC abused its discretion in imposing a one-year interrupt of Bard's furlough status. Bard failed to follow up on his treatment program in the community, he relapsed, and he absconded for three months. Moreover, he had been placed on community supervision furlough a number of times in the past, and each time he had violated his conditions and been reincarcerated. As noted above, a furlough interrupt of 90 days or more is not an abuse of discretion if "the violation or pattern of violations indicate the offender ... poses a threat to abscond or escape from furlough." 28 V.S.A. § 724(d)(2)(B). As also noted above, an 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). It does not appear that Bard was committed to his reentry programs (i.e., his COSA program), and he clearly failed to make satisfactory progress in it.

For the foregoing reasons, DOC's one-year interrupt of the Appellant's community supervision furlough is affirmed.

SO ORDERED this 23rd day of December, 2021.



Robert A. Mello
Superior Judge