

STATE OF VERMONT

SUPERIOR COURT
Washington Unit

CIVIL DIVISION
No. 21-CV-2091

BILLY LEE BEAUPRE,
Appellant,

v.

VERMONT DEPARTMENT OF
CORRECTIONS
Appellee.

DECISION ON THE MERITS

In this V.R.C.P. 74 appeal, Vermont inmate Billy Lee Beaupre 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 August 2, 2021, and a hearing on the merits was held via Webex on November 29, 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.

Beaupre, who is 44 years of age, has been convicted of four DUIs, one twenty years ago, and the other three between 2018 and 2019 (DOC Record, 34-36). He started drinking alcohol and experimenting with drugs when he was in high school, and he has struggled with addiction ever since, particularly within the past three-four years. As a result of those convictions, Beaupre's minimum release date was January 6, 2020, and his maximum release date is January 12, 2026 (Id., 56).

In January of 2020, DOC placed Beaupre on community supervision furlough, first in Middlebury and then in Burlington. DOC revoked that furlough nearly a year later, in December of 2020, however, because Beaupre had allowed his GPS unit to die, he had failed to maintain contact with his probation officer, and he had been non-compliant with his required treatment, among other things (Id., 1).

In January of 2021, DOC again placed Beaupre on community supervision furlough in Burlington. Beaupre was instructed to reside at the Phoenix House and to participate in its substance abuse ("RISE") program. He was also given several conditions that he had to comply with while on furlough, one of which was "I will report to my supervising officer, or designee, as required" (Id., 15-17).

In February of 2021, just a month after being put back of furlough, Beaupre left the

Phoenix House and failed to contact his probation officer for several days (Id., 1, 46). The probation officer learned of this on February 16th, when he received an email from Jimmy Searle at RISE dated February 14th, saying that Beaupre had not been seen at the Phoenix House since February 12th and that efforts to reach him via his cell phone number had been unsuccessful (Id.). When the probation officer spoke with Beaupre the following day, Beaupre said he would try to get back into RISE, but the Phoenix House refused to accept Beaupre back when he tested positive for alcohol consumption (Id., 46-47).

On April 1, 2021, Beaupre failed to report to his probation officer as directed (Id. 48). The officer tried calling Beaupre on his cell phone on April 2nd, 8th and 13th, leaving Beaupre a voice mail message each time, but Beaupre did not return any of his calls (Id.). On April 14th, the officer spoke with Beaupre's sisters, who were listed as his emergency contacts. The sisters informed the officer that they had not heard from Beaupre since April 5th. One sister told the officer that she "fears he is using drugs and is worse than ever before," and the other sister confirmed that she "also fears he is using drugs heavily and in a very bad way" (Id.). The probation officer tried reaching Beaupre again on the 14th, and, when Beaupre did not answer, the officer left him a voice mail message that a warrant would be issued if he did not immediately call back (Id.). When Beaupre failed to comply, a "return on mittimus" ("ROM") was authorized on April 15th.

Beaupre would have been arrested and returned to prison then, but the ROM was cancelled on April 26th when his probation officer learned that Beaupre had been hospitalized at the University of Vermont Medical Center with severe burns and a severe infection (Id., 1, 6). The burns had occurred when Beaupre fell onto a hot stove after injecting himself with heroin, and the infection occurred from his use of the IV (Id. and Beaupre's testimony at merits hearing). When the probation learned that Beaupre would require several weeks of skin grafts and other treatment, and that he would then need follow-up after-care upon discharge from the hospital, arrangements were therefore made for Beaupre to reside at a rehab facility called the Bel-Air Motel following his discharge from the hospital (Id.).

On May 24th, Beaupre informed his probation officer that he expected to be released from the hospital shortly, and the officer instructed Beaupre to call him immediately after he was discharged (Id. 6). Beaupre was discharged on May 26th, but he did not call his probation officer as directed. The officer only learned about his discharge the following day, May 27th, from Beaupre's sister (Id.). The probation officer then called the Bel-Air Hotel, only to learn that Beaupre was not scheduled to arrive there until June 1st, which meant that his whereabouts were, once again, unknown (Id.). The probation officer called Beaupre that same day, May 27th, and left him a voice mail message instructing him to immediately return his call (Id.). Twenty minutes later the probation officer left Beaupre another voice mail message stating that an arrest warrant would be issued unless Beaupre returned his call (Id.).

Beaupre never returned either call. DOC personnel discovered Beaupre on June 15th when they spotted him standing out in front of the Bel-Air Hotel (Id. 2, 6). Beaupre informed them that he had been residing at the Bel-Air since June 1st, and he claimed that he had left his previous probation officer a detailed message to that effect (that officer later denied ever receiving such a message). Beaupre was instructed to report to his probation officer in person the following day, and, when he did so, he was arrested and returned to

the correctional facility (Id.).

DOC found Beaupre guilty of having violated the condition that he report to his supervising officer as required, and his furlough was revoked (Id., 1-4). Following the revocation, DOC performed a "case staffing" to determine what the consequence should be for Beaupre'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 release on furlough (Id., 2). The case staffing committee agreed with Beaupre's probation officer, who recommended a one-year interrupt because, "This is his [Beaupre's] second significant offense in the past year of community time. He continues an inability to communicate, make appointments, and follow his furlough conditions. Substance use is prevalent and he's failed to engage in treatment thus far" (Id., 2, 48).

Beaupre contends that the one-year interrupt is excessive because he is rated as only a moderate risk to reoffend and he was in fact residing where he was supposed to be (i.e., at the Bel-Air Hotel) when his furlough was revoked. DOC argues that its determination 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 warrants 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 Beaupre's furlough status. Beaupre's drug and alcohol use while on furlough were both dangerous and uncontrolled, despite DOC's efforts to get him the substance abuse treatment and supervision that he needed to safely remain in the community. Beaupre lost his place at the Phoenix House when he absconded from there and was terminated from the program. It appears that he had gone on a drinking binge inasmuch as, when he applied to be readmitted to their RISE program, he was turned down when he tested positive for alcohol. Beaupre then disappeared for nearly the entire month of April, not only from supervision but also from his family, who feared for his safety. Their fears were proven well founded when Beaupre had to be hospitalized for several weeks for severe burns and a severe infection caused by his heroin use. Beaupre's first furlough in 2020 had been revoked at least in part for the same reason, i.e., because he had been non-compliant with his substance abuse treatment. Despite being given a second chance, Beaupre's pattern of non-compliance continued during this, his second furlough opportunity.

As noted earlier, 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." 28 V.S.A. § 723(b). It does not appear that Beaupre was committed to his reentry program (i.e., his substance abuse treatment program), and he certainly failed to make satisfactory progress in that program.

Moreover, the statute expressly provides that it is not an abuse of discretion for DOC to interrupt furlough status for 90 days or longer if "the offender's risk to reoffend can no longer be adequately controlled in the community, and no other method to control noncompliance is suitable..." Id. §724(d)(2)(A). Based upon the record in this case, it was reasonable for DOC to conclude that Beaupre's risk to reoffend could no longer be controlled in the community, and that DOC had done everything it reasonably could have to obtain his compliance with its efforts to keep him safe in the community.

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

SO ORDERED this 6th day of December, 2021.



Robert A. Mello
Superior Judge