

HSTATE OF VERMONT

SUPERIOR COURT
Washington Unit

CIVIL DIVISION
No. 21-CV-3564

WILLIAM O. BREWER,
Appellant,

v.

VERMONT DEPARTMENT OF
CORRECTIONS
Appellee.

DECISION ON THE MERITS

In this V.R.C.P. 74 appeal, Vermont inmate William O. Brewer 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 December 26, 2021, and a hearing on the merits was held via Webex on March 24, 2022. Appellant was present at the hearing and was represented by Emily Tredeau, Esq. Appellee was represented by Lauri A. Fisher, 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.

Brewer, who is 57 years of age, has a lengthy record of criminal convictions in several states, including convictions for domestic assault, violations of abuse prevention orders, obstructing justice, larceny, breaking and entering, driving under the influence, and escape from furlough, among other things (DOC Record, 1). His most recent conviction was in 2009 for first degree aggravated domestic assault, for which he is presently serving a 7-15-year sentence (Id., 12, 40). His minimum release date was December 15, 2015, and his maximum release date is September 5, 2023 (Id., 32). Brewer also has a severe substance use disorder involving both alcohol and drugs (Id.).

Brewer also has a poor community supervision history. In March of 2016, DOC placed Brewer on furlough in the community for the first time, but Brewer relapsed on cocaine and heroin, and in October of 2016 his furlough was revoked following an overdose (Id., 73-74, 79-81). After a few days in jail, Brewer was released back into the community, but five months later he was incarcerated again after relapsing on cocaine, heroin and alcohol (Id., 66-70). For that offense, Brewer was given a two-month interrupt, and in June 2017 he was released for the third time, only to be re-incarcerated two months later for illegal use of Suboxin (Id., 78). After another few days in jail, Brewer was released for the fourth time, but he was arrested and returned to prison two months later for again relapsing on alcohol (Id., 77). For this fourth violation, Brewer was given a one-year interrupt because of his pattern of repeatedly relapsing and failing to complete needed

domestic violence programming (Id., 66-70).

In September of 2018, Brewer was released again back into the community, but two months later he was re-incarcerated for relapsing on alcohol (Id., 75-76). Following a three-month interrupt for that offense, Brewer was released into the community on furlough for the sixth time in February of 2019, but he relapsed again, and four months later, on June 2, 2019, Brewer admitted himself to the Brattleboro Retreat for detox and other services (Id., 39-58). Arrangements were made for Brewer to transition to the Serenity House's residential care facility in Wallingford, following his discharge from the Brattleboro Retreat, but Brewer failed to go to the Serenity House, he failed to return to his assigned residence at the Phoenix House, and he stopped reporting to his furlough officer (Id.). Brewer was arrested several days later in Brattleboro; at the time of his arrest, Brewer appeared to be intoxicated, but he refused to give the officers a breath test, and he threatened the officers with physical harm if they tried to arrest him (Id.). Brewer was given an eighteen-month interrupt for that offense (Id.).

On December 8, 2020, DOC released Brewer into the community on furlough for the seventh time. He was given several conditions he had to comply with, including condition C16 ("I will not purchase, possess, or consume illegal drugs and/or regulated drugs without a prescription from a licensed health care professional."), condition C21 ("I will refrain from the use of alcoholic beverages while on community supervision furlough due to risk-related charges from the past...."), Condition 22 ("I will continue to reside at an approved residence while on supervision."), and condition C23 ("I will abide by any curfew imposed by my supervising officer, or designee.") (Id., 13-15). Brewer was instructed to reside at the Phoenix House and to participate in its RISE program, and he was given access to several support services to help him succeed in the community, including general assistance, "3Squares," MAT (medicated assisted treatment) through a Dr. Nelson, individual counselling services with a Cindy Marble, VocRehab services, and outpatient mental health and substance abuse treatment services through PHNE (Id., 18-19).

On January 17, 2021, Brewer failed to return to the Phoenix House and went missing for a few days after receiving a Federal stimulus check (Id., 19-21, 37-38). Three days later Brewer called his furlough officer from the Brattleboro Memorial Hospital ("BMH"), he claimed that he had suffered a "mental breakdown," and he admitted that he had relapsed and resumed using cocaine, heroin and alcohol (Id.). It was agreed that, upon discharge from BMH, Brewer would go to the Brattleboro Retreat to detox and stabilize his mental health, and that he would then go to the Serenity House for residential substance abuse treatment (Id.). Brewer completed the Serenity House residential program on February 17th, and he returned to the Phoenix House the following day, as promised (Id.). Brewer's furlough officer put him on a GPS unit, to monitor his future compliance with curfew requirements, and Brewer thanked the officer for giving him "another chance to remain in the community" (Id., 21).

Brewer relapsed again in April of 2021, this time on "alcohol, cocaine and benzos" (Id. 22-23, 35-36). He spent the night in the emergency room at the BMH and was admitted to the Brattleboro Retreat the following day (Id.). Following that incident, Brewer remained in compliance with his furlough conditions until the weekend of June 5-6, 2021, when he relapsed again on alcohol and cocaine (Id., 24-25, 33-34). Brewer again checked himself into the BMH, he was again transferred to the Brattleboro Retreat, and he was ordered by

his furlough officer to check into the Serenity House for intensive substance abuse treatment as soon as a bed became available (Id.). Brewer completed two-weeks of inpatient substance abuse treatment at the Serenity House on July 23, 2021, after which he remained in compliance with his furlough conditions and reentry program for three months (Id., 25-26). On October 4, 2021, however, Brewer was terminated from the Phoenix House after having failed to return to the facility for two days (Id., 8-9, 16-17, 26-27). On October 6th, Brewer called his furlough officer and admitted to having relapsed again on “two eight balls” of cocaine and “less than a 12 pack” of beer and to having again checked himself into the BMH (Id.). Brewer was arrested outside of the hospital and returned to the correctional facility that same day (Id.).

DOC found Brewer guilty of having violated his furlough conditions, and his furlough was revoked (Id., 5-7). Following the revocation, DOC performed a “case staffing” to determine what the consequence should be for Brewer’s violation. DOC decided that he should receive “a two-year interrupt,” which meant that he would have to serve another two years in prison before again being eligible for release on furlough (Id., 3). Brewer contends that the two-year interrupt is excessive, and that he should be immediately returned to the community, because he was only gone from his residence for two days, he called his furlough officer and admitted to what he had done, he had not threatened anyone, and he had committed no new crimes. DOC contends that its decision should be affirmed because Brewer is a violent listed offender who can no longer be safely controlled in the community.

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 deciding to interrupt Brewer's furlough status. This was his seventh failure at furlough, and it failed for the same reason as all his earlier furloughs had failed. Moreover, none of his stints on furlough lasted very long. On each of the seven occasions when he was placed on furlough, Brewer repeated the same pattern of remaining sober for a few months and then relapsing on alcohol and drugs, despite DOC's efforts to provide him with the services he needed to succeed in the community. Moreover, because his stint on furlough have all been so short, he has never completed community-based domestic violence programming, despite his history of domestic violence. Under these circumstances, it was reasonable for DOC to conclude that Brewer was not making satisfactory progress in his reentry program. 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).

However, for several reasons the Court agrees that a two-year interrupt is too long. First, although Brewer relapsed four times during the ten months he was on furlough this last time, he remained in touch with his furlough officer, he promptly admitted to what he had done, and he checked himself into the hospital and sought treatment on each occasion. In addition, he underwent intensive inpatient substance abuse treatment at the Serenity House twice during his last time on furlough. Thus, he made a serious effort to remain sober, and did remain sober most of the time that he was on furlough this last time, despite his severe substance use disorder.

Second, although Brewer does have a violent past, he did not engage in any acts of violence or commit any new crimes while on furlough for those ten months. Indeed, it appears that he has not been convicted of any crime since 2008. Thus, though his conduct violated his furlough conditions, it did not pose a danger to others in the community.

Lastly, the Court also notes that Brewer's maximum release date is September 5, 2023. To impose a two-year interrupt at this time would be tantamount to giving up on Brewer altogether, despite the evidence of his efforts to remain sober in the community. If Brewer is not given another chance at furlough, then he will be released from prison on September 5, 2023, without any supports designed to keep him or the community safe.

This case is analogous to Reynolds v. Dept. of Corrections, Docket No. 21-CV-3298, Decision on the Merits (January 14, 2022) (affirming a one-year interrupt after furlough was revoked for the third time for again relapsing on heroin and failing to get substance abuse treatment for it in the community) and Wright v. Dept. of Corrections, Docket No. 21-CV-2307, Decision on the Merits (December 12, 2021) (affirmed a one-year interrupt for relapsing dangerously on drugs, twice failing residential substance abuse treatment, failing her suboxone treatment, losing her housing and engaging in dangerous and destructive behavior). *See, also*, Beaupre v. Dept. of Corrections, Docket No. 21-CV-2091, Decision on

the Merits (December 5, 2021) (affirming a one-year interrupt for relapsing on drugs and alcohol, overdosing on heroin, failing to follow up on substance abuse treatment, losing his residence at the Phoenix House, and disappearing from supervision for a month). If a one-year interrupt was appropriate in those cases, it is also appropriate in this case.

For the foregoing reasons, DOC's two-year interrupt of the Appellant's community supervision furlough is reversed, and a one-year interrupt is imposed in its place. The one-year interrupt began on October 6, 2021, the day he was arrested and returned to the correctional facility.

SO ORDERED this 30th day of March, 2022.

A handwritten signature in black ink, appearing to read "Robert A. Mello", written over a horizontal line.

Robert A. Mello
Superior Judge