

STATE OF VERMONT

SUPERIOR COURT
Washington Unit

CIVIL DIVISION
No. 21-CV-~~2447~~ 1797

RONALD TRUELL,
Appellant,

v.

JAMES BAKER, COMMISSIONER,
VERMONT DEPT OF CORRECTIONS
Appellee.

RULING ON THE STATE'S MOTION TO DISMISS
AND MR. TRUELL'S MOTION TO AMEND

Vermont prisoner and appellant Ronald Truell filed this action seeking Rule 74 review of a Department of Corrections "case staffing" pursuant to 28 V.S.A. § 724, which permits limited review of certain case-staffing decisions following a furlough revocation. The State filed a motion to dismiss, arguing (among other things) that the case staffing at issue, an ordinary programming determination, is not subject to review under § 724. In response, Mr. Truell concedes the point, and has requested to amend his "petition" pursuant to Rule 15(a) to change the basis of his claim from 28 V.S.A. § 724 to Rule 75 (without further explanation as to what the basis under Rule 75 would be).

There is no "petition" to amend. Rule 15(a) permits a party, in appropriate circumstances, to amend a "pleading." V.R.C.P. 15(a). The pleadings consist of "a complaint and an answer; a disclosure under oath, if trustee process is used; a reply to a counterclaim denominated as such; an answer to a cross-claim, if the answer contains a cross-claim; a third-party complaint, if a person who was not an original party is summoned under the provisions of Rule 14; and a third-party answer, if a third-party complaint is served." V.R.C.P. 7(a). A Rule 74 appeal, on the other hand, is initiated with a mere notice of appeal, V.R.C.P. 74(b), which is sufficient on its own to trigger the court's jurisdiction without any related pleadings.

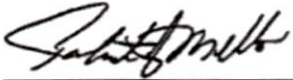
Even if the court were to overlook the Rule 15 issue, an ordinary Rule 75 claim cannot so simply be substituted for a case begun under Rule 74. Under Rule 74, and unlike Rule 75, Mr. Truell was not required to serve the State with process under V.R.C.P. 4, and under 28 V.S.A. § 724 he had no need to exhaust administrative remedies. He has not explained how his proposed amendment would accommodate these issues. He also has not attempted any showing that his claim, seeking to challenge a routine programming decision under Rule 75, would find jurisdiction in this court. See generally *Rheame v. Pallito*, 2011 VT 72, 190 Vt. 245; *Inman v. Pallito*, 2013 VT 94, 195 Vt. 218.

Mr. Truell has not shown that leave to amend would be a wise use of the court's discretion. It is unnecessary to address the other issues raised by the parties.

Order

For the foregoing reasons, the State's motion to dismiss is granted, and Mr. Truell's motion to amend is denied.

SO ORDERED this 5th day of October, 2021.

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

Robert A. Mello
Superior Judge