STATE OF VERMONT

SUPERIOR COURT Washington Unit	CIVIL DIVISION No. 21-CV-2806
TYLER WHITE, Appellant, v. VERMONT DEPARTMENT OF CORRECTIONS Appellee.	

DECISION ON THE MERITS

In this V.R.C.P. 74 appeal, Vermont inmate Tyler White 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 7, 2021, and a hearing on the merits was held via Webex on December 20, 2021. Appellant was present at the hearing and was represented by Jill Martin, 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.

White, who is 28 years of age, is currently serving 3-10-year concurrent sentences imposed in December of 2014 for burglary and grand larceny (DOC Record, 18-22). In May of 2019, he was also convicted of an escape from furlough for which he received a consecutive sentence of 30 days to 6 months (Id.).

On December 15, 2020, DOC placed White on community supervision furlough. He was given several 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 C10 ("Before any changes occur in my contact information, I will notify my supervising officer, or designee, with current, accurate contact information so that I can be reached by email, phone, place of employment, mailing address, and/or physical address.") and condition C11 ("I will be accessible to my supervising officer, or designee, via telephone....) (Id., 12-14).

White's approved residence was with his father, Ron Deuso, who lived in Graniteville, which is just south of Barre. White had no phone of his own because he did not work and could not afford one. However, White's sister, who also resided with Deuso, allowed White to use her phone to stay in contact with his furlough officer.

In early 2021, White was hospitalized at the Central Vermont Medical Center for 30

days for a serious infection. While in the hospital, White stayed in touch with his furlough officer, as required, by using the hospital's phone. Upon discharge from the hospital, White returned to his father's residence.

On February 17, 2021, White went to the Probation and Parole office in Barre to attend his parole board hearing. At the conclusion of the hearing, White's furlough officer gave White an appointment card instructing White to call him on February 25th at 9;00 a.m. (Id., 15). White failed to call his officer on the 25th, however. At the hearing on the merits, White testified that the reason he did not call his officer is because his sister had recently moved to another residence in Berlin, so he no longer had access to a phone.

On February 26th the furlough officer called the number that White had given him (i.e., his sister's cell phone number), but the phone was off, and the officer was unable to leave a voicemail or text message (Id., 15). Later that same day, the officer called White's father. Deuso reported that he had not seen White but would tell White to call the officer next time he saw him. On March 1st, the furlough officer, having still had not heard from White, concluded that White's whereabouts were unknown and that he had absconded (Id.). A warrant was therefore issued for White's arrest, and White was picked up the next day, March 2nd, and returned to prison. At no point before the warrant was issued did anyone from DOC go to Deuso's residence to see whether White was still living there. If anyone had done so, they would have found that White was still residing at his father's residence, where he was supposed to be.

On March 8, 2021, a hearing officer for DOC found White guilty of having violated conditions C4, C10 and C11 of his furlough conditions (Id., 7-9). Following the revocation, DOC performed a "case staffing" to determine what the consequence should be for White's violations. 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 again on furlough (Id., 2). White contends that the two-year interrupt is excessive. 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).

The Court agrees with White that DOC abused its discretion in imposing a two-year interrupt of his furlough status for violating conditions C4, C10 and C11. DOC did not revoke White's furlough for failing to make satisfactory progress in his reentry program, or for committing any new crime while on furlough, or for posing a danger to anyone. DOC did not even revoke him for failing to have a phone; indeed, DOC could not have done so since his furlough conditions did not require him to have a phone, only that he be accessible by phone.

DOC argues that its decision was reasonable because White had escaped or absconded from furlough twice in the past, once in 2019 and again in 2020, so this was his third time absconding from furlough. However, White did not abscond from furlough on this occasion. He in fact continued to reside in Graniteville with his father, and, although he should have informed his supervising officer that he no longer had access to his sister's cell phone for purposes of communicating with the officer, that minor technical violation could hardly support so harsh a penalty as a two-year interrupt.[1]

White's interrupt has already lasted nearly 10 months. That is more than a sufficient sanction for this technical violation of his furlough conditions.

For the foregoing reasons, DOC's two-year interrupt of the Appellant's community supervision furlough is reversed. DOC shall reinstate the Appellant to his furlough status at the first opportunity.

SO ORDERED this 21st day of December, 2021.

Robert A. Mello
Superior Judge

[1] White received a four-month interrupt for absconding in June of 2020, when his whereabouts were unknown for two months (Id. 59).