VERMONT SUPERIOR COURT
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CIVIL DIVISION
Case No. 22-CV-01977

Joshua Rheaume, Petitioner v. Nicholas Deml, Commissioner, VT Department of Corrections and Sue Kelley, Superintendent, M.V.C.F., Respondents	DECISION ON MOTIONS FOR SUMMARY JUDGMENT

RULING ON PETITIONER'S MOTION FOR SUMMARY JUDGMENT AND RESPONDENTS' CROSS MOTION FOR SUMMARY JUDGMENT

Petitioner Joshua Rheaume brings this Rule 75 action seeking a writ of mandamus to require the Department of Corrections ("DOC") to conduct a new case-staffing regarding his furlough revocation using "correct information" about his past furlough history. Specifically, Rheaume alleges that DOC misinterpreted its Directive 430.11 and therefore improperly issued a two-year furlough interruption based on his arrest on misdemeanor charges in January 2022. Pursuant to Rule 56 of the Vermont Rules of Civil Procedure, Rheaume moves for summary judgment, arguing that because of the misinterpretation, DOC considered him at a violation level that was too high, in violation of his due process rights. DOC cross-moves for summary judgment, asserting that its interpretation of its directive was correct. The parties do not cite to any disputed material facts. For the reasons discussed below, Rheaume's summary judgment motion is DENIED and DOC's motion is GRANTED.

Factual Background

Rheaume is serving sentences for burglary (Docket No. 115-04-20 Ancr) and aggravated operating a vehicle without the owner's consent (No. 20-CR-1369). Rheaume was released on furlough in December 2019; however, shortly thereafter he was arrested for absconding from furlough and returned to prison on February 22, 2020. DOC determined the conduct underlying the arrest was a significant violation under Directive 430.11 and assessed Rheaume a 180-day furlough interruption. On September 20, 2021, he was re-released on furlough, but then arrested again on January 26, 2022. At a case-staffing, DOC determined that Rheaume's underlying conduct constituted his second significant violation and imposed a two-year furlough interruption. *See* Ex. 4 ("If the instant violation is deemed a significant violation, this would be Josh's second significant violation within a year of community supervision constituting a two-

year interrupt and the resolving of instant offenses."). DOC uses Directive 430.11's sanction grid "to guide its final determinations for cases related to significant violations of furlough":

	Risk Score		
Violation #	**Low Risk**	**Moderate Risk**	**High Risk**
1st Significant	90 days	180 days	1 Year
2nd Significant	180 days	1 Year	2 Years*
3rd + Significant	1 Year	2 Years*	4 Years*

DOC Directive 430.11.F.1.a. In addition, Directive 430.11.F.1.d provides, "Any subsequent finding of a signification violation within one year of a previous significant violation will be considered at the next violation level." Finally, Directive 430.11.F.1.e provides, "An offender who completes one year of compliant behavior will be reset to violation level #1."[1]

Rheaume filed grievances with DOC asserting that under Directive 430.11, he had only one significant violation, which were denied. After exhausting the grievance process, Rheaume filed this Rule 75 action with the Court.

Discussion

Summary judgment is appropriate where the "parties do not dispute the material facts," but rather "they disagree about the law governing th[e] dispute." *In re Ambassador Ins. Co.*, 2022 VT 11, ¶ 14 (affirming trial court's grant of summary judgment determining that Vermont and not Georgia law governed parties' insurance policy); *accord* V.R.C.P. 56(a) (the court shall grant summary judgment when the moving party "shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law"). "The court need consider only the materials cited in the required statements of fact, but it may consider other materials in the record." V.R.C.P. 56(c)(3). Here, the parties do not point to any disputed factual issues; rather, they disagree as to the legal question of how DOC Directive 430.11 should be interpreted.

"[R]eview of governmental action is governed by V.R.C.P. 74 and 75. Rule 74 applies when review is provided by statute. When legislation is silent on the mode of review, Rule 75 governs the appellate procedure if review is 'available by law.'" *Preston v. Burlington City Ret. Sys.*, 2013 VT 56, ¶ 13 (quotation omitted). In this case, the Legislature has provided a process for appeal of DOC's furlough revocation decisions in 28 V.S.A. § 724. Thus, it is unclear

[1] In their summary judgment motions, both parties discuss the application of the latest version of Directive 430.11 that went into effect in July 2022, which was included as Exhibit 9 (filed Nov. 14, 2022). However, Rheaume's furlough was revoked in February 2022. Accordingly, the Court applies the prior version of 430.11 that was in effect in February 2022. *See* https://doc.vermont.gov/sites/correct/files/documents/430.11_Response_To_Furlough_Violations_Directive-SIGNED.pdf. The Court notes that the language of 430.11.F.1.d did not change from the February 2022 to the July 2022 version, except that it has been renumbered and is now found in 430.11.E.1.d.

whether Rheaume's Rule 75 action is appropriate. However, neither party has raised this issue; instead, the summary judgment motions focus on whether DOC abused its discretion in its interpretation and application of DOC Directive 430.11. Accordingly, the Court will limit its consideration to the issues briefed by the parties.[2]

"[W]hen reviewing administrative action by the DOC under V.R.C.P. 75, [courts] will not interfere with the DOC's determinations absent a showing that the DOC clearly and arbitrarily abused its authority." *King v. Gorczyk*, 2003 VT 34, ¶ 7. Rheaume argues DOC clearly and arbitrarily abused its discretion because it relied on incorrect information in revoking his furlough. Specifically, DOC determined the appropriate sanction by considering him at the "2nd Significant" violation level on the sanctions grid, finding that he had two significant violations within a year. He asserts this is incorrect because his significant violations occurred in 2020 and 2022, more than one calendar year apart. Thus, Rheaume argues DOC should have assessed him at violation level one with a maximum of a one-year furlough interruption. DOC contends that "one year" means "one year out in the community," and therefore Rheaume was properly found to have two significant violations.

The Court agrees with DOC's interpretation, and thus concludes that DOC did not abuse its discretion in considering Rheaume to have two significant violations. We note that, construing 430.11.F.1.d and 430.11.F.1.e together and consistently, as we must, "one year" properly means "one year on furlough in the community." *See State v. Fisher*, 167 Vt. 36, 41 (1997) (courts should "not interpret [a] rule in a manner that would make one step redundant with another, but instead strive to give meaning to each and every part of the rule while interpreting it as a coherent whole"). Subsection F.1.e provides that an "offender who completes one year of compliant behavior will be reset to violation level #1." Directive 430.11 does not define "compliant behavior," but it lists many behaviors that are not compliant if the offender engages in them while on furlough. *See* Directive 430.11.B.4 & B.5. Thus, "one year" as used in Subsection F.1.e makes the most sense if read to mean "one year of furlough out in the community." Because Subsection e directly follows Subsection d, it is further reasonable to interpret Subsection d's use of the term "one year" to have the same meaning.

Rheaume argues that 430.11.F.1.d's use of the term "one year" means the 365 days following a significant violation, even if that time is spent incarcerated. However, adopting this interpretation would lead to irrational results. It would effectively preclude any offender who is given a one-year furlough interrupt for a significant violation from incurring a second significant violation (in the event he or she commits a subsequent serious violation when released on

[2] The Court also questions whether mandamus is available in this case, where the abuse of discretion asserted is that DOC's decision is not merely wrong but "very wrong because it is allegedly based on factual errors." *Inman v. Pallito*, 2013 VT 95, ¶ 16 (holding that mandamus review was not available because "our decisions allowing mandamus in certain circumstances are based not on the degree of error, but instead on whether the official actor is exercising discretion at all"). However, DOC has not objected to the Court's jurisdiction nor have the parties briefed the issue. Therefore, for purposes of this case, the Court assumes without deciding that a decision by DOC to revoke furlough that was based on an incorrect interpretation of its own policies would be an abuse of discretion sufficient to support mandamus review.

furlough again) because the one-year period will always be served in the facility. Thus, the offenders who may warrant consideration at a higher violation level based on high-risk behavior would never get there because their terms of furlough would automatically be more than one year apart. This cannot have been DOC's intention in drafting Directive 430.11.F.1 and it is contrary to the valid goal of ensuring that furlough is granted to individuals who can be safely supervised in the community and requiring individuals to be under supervision in the community without incurring additional violations in order to earn a reduction in their sanction level. *See Rhodes v. Town of Georgia*, 166 Vt. 153, 157 (1997) ("We have long held that statutes should not be construed to produce absurd or illogical consequences.").

In this case, Rheaume had not completed one full year on furlough in the community when he was arrested on new charges and incurred his second significant violation. Rather, these events occurred only about four months into his furlough term that began in September 2021. Accordingly, DOC properly found Rheaume to have two significant furlough violations under both 430.11(F)(1)(d) and (e) and considered him at the second significant violation level. Therefore, Rheaume has not demonstrated that DOC "clearly and arbitrarily" abused its discretion by issuing him a two-year furlough interrupt under its policy in place at the time.

Order

For the foregoing reasons, Rheaume's summary judgment motion is DENIED and DOC's cross-motion for summary judgment is GRANTED. DOC shall submit a proposed judgment order within 7 days of the date of this order. *See* V.R.C.P. 58(d).

Electronically signed on May 1, 2023 at 2:02 PM pursuant to V.R.E.F. 9(d).

Megan J. Shafritz
Superior Court Judge