

VERMONT SUPERIOR COURT  
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CIVIL DIVISION  
Case No. 22-CV-02643

Joel Cione v Department of Corrections

### RULING ON THE MERITS

This is an appeal from a revocation of furlough by the Department of Corrections (DOC), filed pursuant to 28 V.S.A. § 724(c). A hearing took place on September 21, at which Mr. Cione testified.

#### Facts

Mr. Cione was in the community on furlough. He is an admitted alcoholic and reported his slip-ups to his probation officer each time they happened. He had a job and a place to live, and worked very hard. His employer was also his landlord, a man Cione describes as a “blessing from God” because he has been so supportive. Cione can return to the same job and apartment when he is released.

In December of 2021, Cione drank a whole bottle of vodka and blacked out. He says he woke up and discovered he had someone else’s phone, which he returned within 24 hours. He was charged with assault and robbery in connection with that incident. He has not been convicted. Based upon that incident, his furlough was revoked in February of 2022 and he was given a one-year interrupt. The findings supporting the interrupt were as follows:

You were cited for charges associated with a new crime. That you engaged in actions in violation of conditions 3. That you did engage in violent and threatening behavior. That the affidavit and the field reports support the allegations of said behavior.

Agency Record Part 1, p. 5. The Condition 3 referred to is not to engage in threatening, violent, or assaultive behavior. Id. p. 9 (Conditions of Supervision, No. 3).

The affidavit of probable cause indicates that the police received a report that two males assaulted and robbed a woman of cash and a phone while she was walking in Burlington. The affidavit goes on to say that the officer watched a video of the incident captured on a camera on a nearby building, and the video confirmed the woman's account. In addition, the officer personally recognized Cione as one of the assailants. Id. pp. 16-17.

### Discussion

Cione argues that the violation for which his furlough was revoked was a “technical” violation that did not constitute a new crime, because he has not actually been convicted of a crime, and thus he has the right to review here because his interrupt was more than 90 days. He further argues that the length of the sanction is an abuse of discretion. DOC argues that it was not a technical violation, and that in any case the sanction was reasonable and not an abuse of discretion.

The statute only allows court review in cases of a “technical” violation of furlough. That is defined as “a violation of conditions of furlough that does not constitute a new crime.” 28 V.S.A. § 724(d)(1). Cione's argument that a “new crime” means that the person has to actually be convicted of the crime is illogical because that would mean that the furlough could not be revoked for many months or years while the criminal charges worked their way through the system. While it is true that there is a risk of a furlough revocation for someone innocent of the charged crime, there is no right to be furloughed


in the first place. The Legislature could not have intended that one could be charged with a serious crime, yet not have his or her furlough revoked until a trial or guilty plea.

The court concludes that the revocation based upon the affidavit of probable cause, and the fact that Cione was charged with felony assault and robbery, did not constitute a technical violation. Thus, the court has no authority to review the length of the interrupt.

Order

The appeal is dismissed.

Electronically signed on October 3, 2022 pursuant to V.R.E.F. 9(d).



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Helen M. Toor  
Superior Court Judge