

STATE OF VERMONT

SUPERIOR COURT
Washington Unit

CIVIL DIVISION
No. 21-CV-3510

IAN DENNIS,
Appellant,

v.

VERMONT DEPARTMENT OF
CORRECTIONS
Appellee.

DECISION ON THE MERITS

In this V.R.C.P. 74 appeal, Vermont inmate Ian Dennis 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 6, 2021, and a hearing on the merits was held via Webex on February 1, 2022. Appellant was present at the hearing and was represented by Kelly Green, Esq. Appellee was represented by Robert C. Menzel, 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.

Dennis, despite his young age (he is 27), has a lengthy criminal record, including convictions for aggravated assault on two law enforcement officers, escape from furlough, domestic assault, and violation of an abuse prevention order, among other things (DOC Record, 1, 10-11). His minimum release date was June 12, 2021, and his maximum release date is November 5, 2024 (Id.). Dennis also has a severe substance use disorder (Id.). In addition, Dennis has an extensive prison disciplinary record, including 17 major disciplinary infractions (Id.).

Dennis also has a poor community supervision history. On March 14, 2017, DOC placed Dennis on community supervision furlough, but he immediately violated his furlough conditions by using illegal drugs, violating curfew, visiting places where he was not authorized to go, and failing to engage in substance treatment (Id., 2). He was arrested on April 17th and lodged in the correctional facility, after having been on furlough for just 34 days. He was given a six-month interrupt for those violations and was released on furlough again on November 13, 2017 (Id.).

One week after being placed back on furlough, Dennis again resumed using illegal drugs and visiting places where he was not permitted to go (Id.). Dennis had to be reincarcerated briefly for violating his furlough conditions again, after which he was again returned to the community (Id.). Once back in the community, however, Dennis again

resumes using illegal substances, he absconded from the sober living facility where he had been told to reside, and he assaulted two law enforcement officers when they tried to arrest him for violating his furlough conditions (Id.). He had been on furlough for just a month. Dennis was given a 3½-7-year sentence for those assaults. Reynolds remained incarcerated until those charges were resolved and was then released back into the community on furlough on June 23, 2021 (Id.).

Dennis was given several conditions that he had to comply with during this latest time on furlough, including conditions that he reside with his sister in Rutland, allow his supervising officer to visit him anywhere and at any time, provide his supervising officer with any changes in his contact information, be accessible to his furlough officer by phone and voice mail at all times, satisfactorily participate in his outpatient substance abuse treatment program, and not purchase, possess, or consume illegal drugs or regulated drugs without a valid prescription (Id., 12-16).

A week after being returned to the community on furlough, Dennis failed to report to his medicated assisted treatment provider, failed to give his provider a urine sample and resumed actively using cocaine (Id., 2). He used cocaine every day thereafter, which caused him to “space out” (his words), miss meetings with his furlough officer, and become isolated from this family. Then, Dennis began using heroin. From July 23rd onward, the furlough officer was able to contact Dennis only once; the officer ordered Dennis to report to his office, but Dennis did not do so (Id., 2, 10-11). On three occasions in July and August of 2021, Dennis’ furlough officer tried to visit him at home, but Dennis was not there on any of those occasions. Therefore, Dennis was arrested on September 22, 2021, and returned to the correctional facility (Id., 3). He had been out on furlough for just three months.

DOC found Dennis guilty of having violated his furlough conditions, and his furlough was revoked (Id., 4-6). Following the revocation, DOC performed a “case staffing” to determine what the consequence should be for Dennis’ 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). Dennis contends that the two-year interrupt is excessive, and that he should be immediately returned to the community, because he did better on furlough this time than he had the previous two times, he was honest with his furlough officer about his resumed use of cocaine, his furlough officer never put him on a specific reporting schedule and never ordered him into intensive substance abuse treatment, he continued to reside with his sister and work at a construction job while on furlough, he committed no new acts of violence in the community, he is now back on his Suboxone treatments, and he has committed no disciplinary infractions since being re-incarcerated. DOC contends that its decision 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).

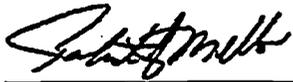
Given the record in this case, the Court cannot conclude that DOC abused its discretion in deciding to interrupt Dennis' furlough status. This was his third failure at community supervision furlough and his second time absconding from furlough supervision. Moreover, none of his stints on furlough lasted very long. On each of the three occasions when he was placed on furlough, Dennis promptly resumed using illegal substances, stopped communicating with his furlough officer, and failed to make any effort to get the substance abuse treatment that his furlough officer deemed he needed. Given Dennis' extensive and serious criminal history, his resumption of cocaine and heroin use, as well as his failure to stay in touch with his furlough officer, it was reasonable for DOC to conclude that he could no longer be safely supervised in the community. 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). Moreover, the statute expressly provides that it is not an abuse of discretion for DOC to interrupt furlough status for 90 days or longer if "the offender's risk to reoffend can no longer be adequately controlled in the community, and no other method to control noncompliance is suitable...." Id., § 724(d)(2)(A).

However, the Court agrees that a two-year interrupt is too long. Although Dennis stopped communicating with his furlough officer, he did continue to reside with his sister and continue working. Moreover, he did not engage in any acts of violence or commit any new crimes on this most recent occasion. In addition, the Court also notes that Dennis' maximum release date is November 4, 2024 (Id., 10). DOC should not wait until September of 2023 before attempting again to reintegrate him back into the community.

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; given appellant's extensive and serious criminal history, DOC reasonably concluded he could no longer be safely supervised in the community). *See, also*, Sparks v. Dept. of Corrections, Docket No. 21-CV-2989, Decision on the Merits (December 30, 2021) (reversing a two-year interrupt and imposing a one-year interrupt instead for absconding for three months (second escape from furlough), relapsing on drugs, and failing at treatment and supervision; court also noted that he would be maxing out in July of 2025, so DOC should not wait until July of 2023 before attempting again to reintegrate him back into the community). 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 September 22, 2021, the day he was arrested and returned to the correctional facility.

SO ORDERED this 2nd day of February, 2022.



Robert A. Mello
Superior Judge