

STATE OF VERMONT

SUPERIOR COURT  
Washington Unit

CIVIL DIVISION  
No. 21-CV-3375

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JERRY HOFFMAN,  
Appellant,

v.

VERMONT DEP'T OF CORRECTIONS  
Appellee.

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RULING ON THE STATE'S MOTION TO DISMISS

Appellant Jerry Hoffman seeks review under 28 V.S.A. § 724 of a case staffing decision dated July 7, 2022. The State filed a motion to dismiss, arguing that the court lacks subject matter jurisdiction because the case staffing arose out of a nontechnical violation of furlough conditions. As the court has ruled in numerous cases, review is not available under § 724 for nontechnical violations, those violations amounting to a new crime. Mr. Hoffman opposes dismissal, arguing that the record is insufficient to demonstrate that his furlough was terminated for having committed criminal conduct as opposed to merely having been cited for it. He thus argues that his violation was technical in nature and review is available.

The record shows that, while on furlough, Mr. Hoffman received a citation to appear in court for simple assault. A citation represents a police officer's allegation of probable cause; the citation is issued in lieu of arrest. For that reason, he was returned to the facility and charged with, among other things, violating condition C1, which bars being cited or charged but also bars committing "any act punishable by law." Mr. Hoffman waived a hearing, thereby generally admitting guilt. The hearing officer found him guilty on that basis, writing generally, "NOS supported."

The question is whether the hearing officer's decision can reasonably be interpreted to include a determination that Mr. Hoffman committed a new crime as opposed to simply being accused of committing a new crime. See generally *Geraw v. Vt. Dep't of Corr.*, No. 21-CV-2443 (Vt. Super. Ct. Jan. 21, 2022) (discussing this issue).

In some cases, this court has concluded that an inmate's hearing waiver, and thus admission to all violations asserted against him, is sufficient to demonstrate that the hearing officer's determination of guilt extends to the commission of a new crime even though the hearing officer's language might not have expressly said as much. In those cases, the administrative records have been replete with police affidavits, witness statements, or other evidence providing sufficient context indicating that the hearing officer's generally stated finding included the specific one (criminal conduct actually

occurred) necessary to conclude that the violation was nontechnical.

This case is different. The administrative record includes the citation, but that is only an allegation of criminal conduct. Otherwise, the only relevant records are second-hand corrections officer reports of dealing with the aftermath of Mr. Hoffman having been cited. That is all. Even considering the informality of the administrative proceeding, this is insufficient. In the context of this administrative record, the court cannot conclude that the hearing officer's determination of guilt included a finding that Mr. Hoffman's conduct amounted to a new crime. The State's motion to dismiss will be denied on the basis asserted by the State.

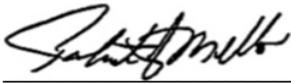
However, the face of the record clearly shows that the court lacks jurisdiction for a different reason. Mr. Hoffman's case staffing occurred on July 7, 2021. He purports to have signed the notice of appeal on September 8, 2021. It appears to have been first received by either the court or the DOC no earlier than October 27, 2021, long after the 30-day appeal period had expired. See V.R.C.P. 74(b); V.R.A.P. 4(a)(1).

The court lacks jurisdiction on that basis and will dismiss for that reason. However, because Mr. Hoffman has not had a fair chance to brief this issue, dismissal will not take effect for 10 days. Mr. Hoffman shall file any objection to dismissal on this basis within 10 days, after which, if he does not, dismissal will be entered.

#### Order

The State's motion to dismiss is granted subject to a 10-day objection period as set forth above. If no objection is filed, dismissal will be entered, and the State shall submit a form of judgment. V.R.C.P. 58(d).

SO ORDERED this 1<sup>st</sup> day of April, 2022.



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Robert A. Mello  
Superior Judge