

STATE OF VERMONT

SUPERIOR COURT
Washington Unit

CIVIL DIVISION
No. 21-CV-2305

AARON M. LaFOUNTAIN,
Appellant,

v.

VERMONT DEP'T OF CORRECTIONS
Appellee.

FILED

DEC 29 2021

VERMONT SUPERIOR COURT
WASHINGTON CIVIL

DECISION ON THE MERITS

In this V.R.C.P. 74 appeal, Vermont inmate Aaron M. LaFountain 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 August 16, 2021, and a hearing on the merits was held via Webex on December 14, 2021.¹ Appellant was present at the hearing and was represented by Jill P. Martin, 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.

LaFountain is 33 years old and is serving sentences for driving under the influence and domestic assault. On January 13, 2021, DOC placed LaFountain on community supervision furlough and gave him a number of conditions that he had to comply with while on furlough, including condition C3 (“I will not engage in threatening, violent or assaultive behavior.”) (DOC Record, 12-13).

On May 19, 2021, Julie Cadorette, LaFountain’s furlough officer, received a call from an officer with the Morrisville Police Department who told her that he had received a call from LaFountain’s girlfriend stating that LaFountain had been physical with her “the other day” and had pulled her by her hair into the apartment in front of their child (Id., 14). The officer also told Cadorette that a neighbor had also reported to him that LaFountain had gotten into a physical altercation with his girlfriend (Id.).

Cadorette then spoke with a social worker for the Department for Children and Families, who had visited LaFountain’s girlfriend on May 19th. The social worker informed Cadorette that she was “very concerned” because the girlfriend had reported to her that LaFountain had punched her in the head three times on Friday May 14th (Id.).

The social worker also gave Cadorette a sworn statement stating that, when she

¹ DOC filed a motion to dismiss this appeal, but then withdrew the motion several weeks later, which explains why there was a delay in scheduling the merits hearing.

arrived at the girlfriend's apartment on May 19th, she could see that the girlfriend had been crying, so she asked the girlfriend if she was alright and what was going on (Id., 19). According to the affidavit, the girlfriend replied that she and LaFountain had had a verbal altercation earlier in the day and that the police were looking for him. According to the affidavit, the girlfriend went on to tell the social worker that LaFountain had been "mean" to her, that he had "struck" her "in the back of the head three times ... last Friday at the apartment," and that he had "hit her 'like I was a grown man'" (Id.). According to the affidavit, this incident had happened "in front of a friend who was visiting the apartment and the friend had to take Aaron [i.e., LaFountain] off of her" (Id.). According to the affidavit, the girlfriend also told the social worker that LaFountain's "behaviors" had changed recently, that he had been "verbally and physically aggressive," and that he "pays for her cell phone and ... has a key to the apartment, so it is difficult for her to get away from him" (Id.). The girlfriend also reportedly told that social worker that she (the girlfriend) was unwilling to write a statement or complain to LaFountain's probation officer because, if she did, "he will kill me" (Id.).

On May 21, 2021, Cadorette received a phone call from LaFountain's girlfriend. According to Cadorette's notes of the conversation, the girlfriend "talked about how she was scared of Aaron and scared to write a statement" (Id., 10). The notes go on to quote the following statements made to Cadorette by the girlfriend:

She said Aaron told her if he [sic] reported to this officer that he was physically assaultive to her he would kill her. She said she doesn't know if he said this out of anger or if he really would kill her but it was very scary for her to hear. She said his anger is very high and his emotions are very high and he has been on edge lately and she doesn't know why. She said he had been accusing her of cheating on him. She said "it's not that I don't love him I just don't think a relationship with him is a good idea anymore". [The girlfriend] said Aaron went "completely ballistic" and was "out of control" on Wednesday and that he threatened [the girlfriend's] father saying he was going to "gut him like a pig"....

(Id.)

Cadorette ordered LaFountain into her office and informed him that he was going to be transported to the correctional facility and lodged for allegedly having threatened and assaulted his girlfriend. As he was being transported by DOC to the correctional facility, LaFountain "was using obscene language consistently," and at one point "called PO Cadorette a 'cunt'" (Id., 17). Then, according to the transport team, LaFountain "unbuckled his seat belt against directions," "pulled down his mask," "began to cough," and, in a loud and angry voice, stated to the DOC drivers "I have COVID and I hope you get it" (Id.). According to DOC's transport team, LaFountain "continued his threatening behavior throughout ... [the] transport" (Id.).

On May 24th DOC found LaFountain guilty of having violated condition C3 of his furlough conditions, and his furlough was revoked (Id., 56). Following the revocation, DOC performed a "case staffing" to determine what the consequence should be for LaFountain's violation. Cadorette recommended a one-year interrupt, but DOC decided that LaFountain should receive "a two-year interrupt," which meant that he would have to serve another two

years in prison before again being eligible for furlough consideration (Id. 4). DOC based its decision both on LaFountain's having threatened and assaulted his girlfriend and on his act of coughing on the transport officers in the transport vehicle saying that he had COVID and hoped they would get it too (Id.).

LaFountain contends that the two-year interrupt was excessive and that he should be released back to the community immediately. He denies threatening or assaulting his girlfriend and points out that she never gave DOC a written statement saying that he did. LaFountain claims that he has suffered from a cognitive disability since childhood that causes him to get upset and say things that he shouldn't. In addition, he argues that the members of DOC's transport team were never in danger of catching COVID from him and had no real reason to fear that they might. DOC argues that its two-year interrupt 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 imposing a two-year interrupt of LaFountain's furlough status. LaFountain

violated his furlough condition, that he “not engage in threatening, violent or assaultive behaviors” while under supervision,” by assaulting his girlfriend and threatening to kill her if she reported him to the authorities. Although he denies doing these things, he was found guilty by a hearing officer following a hearing at which he had an opportunity to be heard. Moreover, the girlfriend orally confirmed to Cadorette that LaFountain had assaulted her and threatened to kill her. Under these circumstances, the DOC hearing officer did not need a written statement from the girlfriend in order to find LaFountain guilty of having committed the violation.

In addition, while being transported to the correctional facility, LaFountain pulled down his mask, coughed on the officers, and said, in a loud and angry voice that he had COVID and hoped that they caught it too. LaFountain argues that the officers were in no danger of catching COVID from him, and had no real reason to fear that they might, since the windows of the vehicle were open and a plastic shield separated him from others in the vehicle. However, LaFountain’s efforts to minimize his behavior are unpersuasive. His actions occurred within the close confines of a motor vehicle, his statements were made in anger and with the obvious intent to intimidate, and the members of his transport team were in fact intimidated by his actions.

Lastly, LaFountain’s cognitive disability provides no excuse for the threatening and violent behavior that he was found to have engaged in towards his girlfriend and DOC staff.

Absent any aggravating factors, the Court might have been inclined to reduce LaFountain’s two-year interrupt to one year. *See, for example, Gero v. Vermont Dep’t. of Corrections*, Docket No. 21-CV-2445, Decision on the Merits (Mello, J., December 6, 2021) (affirming a one-year interrupt for violation of condition C3). However, there are aggravating factors justifying a two-year interrupt in this case. LaFountain’s actions towards the DOC officials, as he was being transported to the correctional facility during an ongoing pandemic, justify an additional response. In addition, LaFountain’s prior supervision history was very poor, featuring numerous and repeated violations of conditions, including conditions that he have no contact with the girlfriend, for which he had already received numerous sanctions, including a 90-day interrupt. Given LaFountain’s conduct and history, it was reasonable for DOC to conclude that, despite its interventions, LaFountain’s risk to others in community could no longer be mitigated on furlough. As noted earlier, a furlough interrupt of 90 days or longer is not an abuse of discretion if “the violation or pattern of violations indicate the offender poses a danger to others or to the community...” 29 V.S.A. § 724(d)(2)(B).

For the foregoing reasons, DOC’s two-year interrupt of the Appellant’s community supervision furlough is affirmed.

SO ORDERED this 29th day of December, 2021.



Robert A. Mello
Superior Judge