

STATE OF VERMONT

SUPERIOR COURT
Washington Unit

CIVIL DIVISION
No. 21-CV-1759

SHAN McGLYNN,
Appellant,

v.

JAMES BAKER, COMMISSIONER,
VERMONT DEPARTMENT OF
CORRECTIONS
Appellee.

FILED

DEC 22 2021

VERMONT SUPERIOR COURT
WASHINGTON CIVIL

DECISION ON THE MERITS

In this V.R.C.P. 74 appeal, Vermont inmate Shan McGlynn 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 July 7, 2021, and a hearing on the merits was held via Webex on December 20, 2021.¹ Appellant was present at the hearing and was represented by Kelly Green, Esq. Appellee was represented by Timothy P. Connors, 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.

McGlynn, who is 48 years of age, has been convicted of several offenses, including burglary, forgery, grand larceny, violations of abuse prevention orders, and false information to a police officer, among other things. (DOC Record, 31-37). McGlynn also suffers from severe alcoholism. As a result of his convictions, McGlynn’s minimum release date was July 26, 2019, and his maximum release date is February 26, 2024 (Id., 48).

In February of 2020, DOC placed McGlynn on community supervision furlough in Burlington. He was given several conditions that he had to comply with while on furlough, including condition C2 (“I will report (within 24 hours) any contact I have with law enforcement to my supervising officer, or designee.”), condition C3 (“I will not engage in threatening, violent, or assaultive behavior.”) and condition S21 (“I will refrain from the use of alcoholic beverages while on community supervision furlough....”) (Id., 15-19).

For a while, McGlynn did well on furlough. He had a job with the University Moving Services, and he started a program to provide Narcan to homeless individuals at

¹ The reason for the delay in resolving this appeal is largely because DOC filed a motion to dismiss in which it asserted that this Court had no jurisdiction to adjudicate this matter. Because the motion raised a question of jurisdiction, the motion had to be resolved before the Court could consider the merits of the appeal. The Court denied the motion on December 7, 2021, and the hearing on the merits took place on December 20th.

encampments, shelters and temporary hotel accommodations who had overdosed on opiates. He obtained the Narcan from the Vermont Department of Health, and his efforts to save the lives of overdose victims received public recognition. In October of 2020, however, McGlynn started drinking heavily again after his fiancé died from an overdose.

On January 29, 2021, the police responded to a complaint about a disturbance allegedly involving McGlynn and another individual at the Days Inn in Burlington (Id., 2-5). When the police arrived, they attempted to arrest McGlynn, who was extremely intoxicated (his BAC was .237) and who actively resisted their efforts to arrest him. Following his release from custody, McGlynn failed to report his encounter with law enforcement to his furlough officer, as required by his furlough conditions. On February 1, 2021, the furlough officer reached McGlynn by phone and ordered him to report to the probation office. When McGlynn failed to do so, he was arrested and returned to prison (Id.). He has been in prison for 10½ months and has been sober that entire time.

A hearing officer found McGlynn guilty of violating his furlough conditions by consuming alcohol, resisting arrest and failing to report his encounter with law enforcement to his furlough officer within 24 hours (Id., 7). Following the revocation, DOC performed a “case staffing” to determine what the consequence should be for McGlynn’s violations. DOC decided that he should receive “a one-year interrupt,” which meant that he would have to serve another year in prison before again being eligible for release on furlough (Id., 2).

McGlynn contends that the one-year interrupt is excessive because this was his first significant violation of furlough, he had been doing important work administering Narcan to overdose victims before his fiancé passed away, and he believes he can safely return to the community because he is sober and has been for the past 10 ½ months. DOC argues that its determination 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 one-year interrupt of McGlynn's furlough status. McGlynn did well on furlough at first; he had a good job and he helped create a program to administer Narcan to homeless overdose victims. That was all highly commendable. However, McGlynn began drinking heavily again in October of 2020, and on January 29th he had a BAC of .237, which is extremely high. Moreover, law enforcement had to be called to a disturbance between McGlynn and another individual at the Days Inn, and, when they arrived, McGlynn physically resisted arrest. That constituted an act of violence.

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). McGlynn clearly failed to make satisfactory progress in his reentry program. To the contrary, he relapsed and engaged in violent behavior.

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). Based upon the record in this case, it was reasonable for DOC to conclude that McGlynn's risk to reoffend could no longer be controlled in the community, because he had resumed drinking heavily and posed a danger to others.

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

SO ORDERED this 22nd day of December, 2021.



Robert A. Mello
Superior Judge