

STATE OF VERMONT

SUPERIOR COURT
Washington Unit

CIVIL DIVISION
No. 21-CV-2990

DALTON MITCHELL,
Appellant,

v.

VERMONT DEPARTMENT OF
CORRECTIONS
Appellee.

DECISION ON THE MERITS

In this V.R.C.P. 74 appeal, Vermont inmate Dalton Mitchell 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 October 28, 2021, and a hearing on the merits was held via Webex on November 29, 2021. 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.

Mitchell, who is 26 years of age, was convicted of several offenses in 2017, including simple assault on a law enforcement officer, domestic assault, violation of an abuse prevention order, and possession of a regulated drug, among other things (DOC Case Staffing Record, 15-19). As a result of those convictions, Mitchell’s minimum release date was December 20, 2017, and his maximum release date is February 27, 2025 (DOC Sentence Computation Record, 2).

On September 23, 2020, DOC placed Mitchell on community supervision furlough. He was given several conditions that he had to comply with while on furlough, including condition C10 (“Before any changes occur in my contact information, I will notify my supervising officer, or designee, with current, accurate contact information so that I can be reached by email, phone, place of employment, mailing address, and/or physical address.”) and condition S22 (“I will continue to reside at an approved residence while on supervision.”) (Id., Case Staffing Record, 8-11).

Dalton’s approved residence was with his aunt on Church Street in Rutland. Dalton had other family members in the community, and while on furlough Dalton worked at his uncle’s landscaping business, among other places. He had a supportive family in Rutland, as a result of which Dalton was able to avoid people who had been a bad influence on him and remain substance free the entire time he was on furlough, despite having a history of

substance abuse.

Mitchell had a number of different supervising officers while on furlough. Each of them required Mitchell to report in from time to time by cell phone, which he regularly did. The record reflects only one occasion when Mitchell was not at his assigned residence after curfew, for which he received a graduated sanction (DOC Incident-Infraction Record, page 82 of 88). Mitchell did so well on furlough that one of his supervising officers said he planned to recommend Mitchell for parole.

On June 21, 2021, Mitchell and his aunt had an argument, following which his aunt called Mitchell's supervising officer. Mitchell claims that his aunt told the officer that she wanted Mitchell to get mental health counseling. DOC's record, however, states the aunt indicated to another officer, who reported to Dalton's supervising officer, that Dalton could not live at her home anymore (DOC Case Staffing Record, 12). Dalton's supervising officer sent Dalton a message at the cell phone number that Dalton had been contacting him from, and the following day he received a response from Dalton's cousin saying that Dalton was no longer residing at the residence and that the phone was no longer a good number for him. The cousin added, "you're probably going to have to find him on the street" (Id., 14).

On June 23rd, the supervising officer requested a return on mittimus, asserting that Mitchell was a "Furlough Absconder" (Id., 13). The supervising officer did this without first making any effort to confirm the accuracy of the information reported above. Had the supervising officer done an investigation, he would have discovered that Dalton was still residing with his aunt on Church Street in Rutland, with her consent. DOC issued an arrest warrant on June 29th, and on August 7th, Mitchell was arrested at his aunt's house and returned to the correctional facility.¹ Mitchell had been successfully on furlough for almost a year when he was arrested.

On August 12, 2021, a hearing officer for DOC found Mitchell guilty of having violated conditions C10 and S22 of his furlough conditions (Id., 3-5). Although Mitchell asked that his aunt be called as a witness to testify at the revocation hearing, she was not called as a witness, and the record provides no explanation as to why (Id.). Mitchell was found guilty of violating the conditions.

Following the revocation, DOC performed a "case staffing" to determine what the consequence should be for Mitchell'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 again on furlough (Id., 2). Mitchell contends that the one-year interrupt is excessive. 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

¹ The police had come to arrest the cousin and found Mitchell there instead.

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).

The Court agrees with Mitchell that DOC abused its discretion in imposing a one-year interrupt of his furlough status for violating conditions C10 and S22. DOC did not revoke Mitchell’s furlough for failing to make satisfactory progress in his reentry program or for any pattern of violations; indeed, he had made exemplary progress in his reentry program, and he had committed no new offenses while on furlough. Mitchell in fact continue to reside with his aunt, and, although he should have informed his supervising officer that he no longer had access to his cousin’s cell phone for purposes of communicating with the officer, that minor technical violation could hardly support so harsh a penalty as a one-year interrupt.

Mitchell’s interrupt has already lasted nearly 3 months. That is more than a sufficient sanction for this technical violation of his furlough conditions.

For the foregoing reasons, DOC’s one-year interrupt of the Appellant’s community supervision furlough is reversed. DOC shall reinstate the Appellant to his furlough status at the first opportunity.

SO ORDERED this 3rd day of December, 2021.



Robert A. Mello, Superior Judge