

STATE OF VERMONT

SUPERIOR COURT
Washington Unit

CIVIL DIVISION
No. 21-CV-2301

MARTIN "SERENDIPITY" MORALES,
Appellant,

v.

VERMONT DEP'T OF CORRECTIONS
Appellee.

FILED

DEC 27 2021

VERMONT SUPERIOR COURT
WASHINGTON CIVIL

DECISION ON THE MERITS

In this V.R.C.P. 74 appeal, Vermont inmate Martin "Serendipity" Morales 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 23, 2021, and a hearing on the merits was held via Webex on December 14, 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.

Morales, who is 32 years old, is serving a 6-25-year sentence imposed in 2013 for burglary, unlawful restraint, and aggravated domestic assault, first degree, with a weapon, among other things (DOC Record, 7-13). He is also autistic and suffers from significant mental illness. His minimum release date was February 25, 2019, and his maximum release date is June 4, 2036 (Id., 51).

DOC first placed Morales on community supervision furlough in August of 2019 (Id., 18-19). Morales was released on the condition that they not leave the State of Vermont without their furlough officer's permission (Id.). On Christmas Day 2019, Morales left Vermont and returned to their parents' home in Cairo, New York, where Morales' parents had lived for 35 years, and where Morales had grown up. Morales did not have the permission of their furlough officer to leave the State of Vermont, and their doing so was problematic because Morales' victim from the 2013 convictions lived near Cairo, New York.

The reason why Morales returned to Cairo, N.Y. was because Morales' paternal grandmother, with whom Morales was very close, had recently suffered a heart attack, and she was hospitalized at Mt. Sinai Hospital near Cairo. Morales spent about a week in Cairo. For the entire week, Morales resided with their parents and spent most of their time visiting with their grandparents at the hospital. On December 31st, in a phone call with Morales, the furlough officer informed Morales that they had left Vermont in violation of

their furlough conditions and that a warrant would be issued for their arrest unless they promptly turned themselves in. Two days later, on January 2nd, Morales' father drove them to Vermont, where Morales surrendered to the DOC authorities (Id.).

DOC incarcerated Morales' for a few days in January and then released them back into the community on furlough later that same month (Id., 3, 16-17). Morales was ordered to reside at the Pathways halfway house in Burlington, Vermont, and to engage in specified mental health and substance abuse treatment programs (Id.). Morales did not fully comply with DOC's community treatment referrals, and on May 4th Morales again left Vermont without permission and returned to their parent's home in Cairo, New York. The following day, Morales' furlough officer sent Morales an email ordering them to return to Vermont, but Morales refused to do so (Id.). Morales remained in Cairo for four months before being arrested there in September 2020 (Id.). While there, Morales again resided with their parents, visited their very ill grandmother (she died in August), remained in touch with their COSA team in Vermont, and engaged in mental health and substance abuse treatment arranged for by Morales' father in the Cairo area.¹ DOC gave Morales a six-month interrupt for that second violation of furlough (Id.).

On May 25, 2021, DOC placed Morales on community supervision furlough for the third time. Morales was assigned a room at the DISMAS House in Burlington, Vermont, and was told to reside there while on furlough. Morales was given a number of conditions that they had to comply with while on furlough, including conditions that they reside at the DISMAS House, obey a curfew while there, and remain within the State of Vermont (Id., 24-30).

Upon release from the correctional facility, Morales traveled to Winooski with Bill McNeely, who, according to the furlough officer's notes, was Morales' "intimate partner" (Id., 14-15). Upon arriving in Winooski, Morales checked in at the DISMAS House, but Morales then left the DISMAS House claiming to be having suicidal thoughts after having been sexually assaulted by McNeely on the way to Winooski. The furlough officer telephoned McNeely on May 26th to find out where Morales was, only to be told that Morales was with him (McNeely) in Guildhall, Vermont. Morales was eventually arrested on June 10th in Lancaster, New Hampshire; Morales had not spent a single night at the DISMAS House (Id.).

DOC found Morales guilty of having violated furlough conditions, and Morales' furlough was revoked (Id., 41-42). Following the revocation, DOC performed a "case staffing" to determine what the consequence should be for Morales's violation. Morales' furlough officer recommended that Morales be given a two-year interrupt (Id., 2), but DOC decided that Morales should receive a four-year interrupt, which meant that Morales would have to serve another four years in prison before again being eligible for furlough consideration (Id. 3). DOC based its decision on Morales' history of criminal convictions, their "high" risk of reoffending, and their two prior furlough violations (Id.).

Morales contends that the four-year interrupt was excessive. Morales points out that they he did not commit any act of violence or other crime while on furlough, nor did they attempt to contact the victim of the crimes for which they were convicted in 2013 while

¹ Morales' father Ivan has spent the past 25 years working with the mentally disabled in New York State

they were in Cairo, New York. In addition, Morales argues that the furlough violations were the result of DOC's decision to release them without adequate advance preparations and without any money, phone, car or prescribed mental health medications, which, when combined with their autism, made it difficult if not impossible for Morales to comply with their furlough conditions. Morales also testified at the merits hearing that it would have been unsafe for them to remain at the DISMAS House. DOC argues that its four-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 warrant 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 interrupting Morales' furlough status. This was Morales' third escape from furlough and the third time that he knowingly left the State of Vermont without permission. Moreover, Morales' excuses for absconding from the DISMAS House are not credible; while DOC's advance preparations for Morales' release may not have been optimal, Morales has no one but themselves to blame for knowingly and intentionally absconding for the third time. As noted above, a furlough interrupt of 90 days or more is not an abuse of discretion if "the violation or pattern of violations indicate the offender ...

poses a threat to abscond or escape from furlough.” 28 V.S.A. § 724(d)(2)(B).

However, the Court agrees with Morales that DOC abused its discretion in imposing a four-year interrupt. A four-year interrupt was excessive given the circumstances on this case. Although Morales clearly absconded three times, there were mitigating circumstances in each instance. The first violation lasted for one week, when Morales went to Cairo, New York to visit with his very ill, thought to be dying grandmother, with whom he was very close. DOC considered that violation to be so minor that it released Morales back into the community within days after he turned himself in. During the entirety to the second violation, Morales resided with his parents, committed no new offenses, remained in touch by phone or Facetime with the COSA team in Vermont, and engaged in mental health and substance abuse treatment arranged for by Morales’ father in Cairo. As for the third violation, although there is no credible evidence that the DISMAS House would have been an unsafe place for Morales to stay at, there is credible evidence that DOC’s advance preparations for Morales’ release back into the community were less than optimal. It is perhaps for these reasons that Morales’ furlough officer recommended a two-year furlough interruption.

This Court approved a four-year furlough interrupt in the case of North v. Vermont Dep’t. of Corrections, Docket No. 21-CV-2593, “Decision on the Merits,” November 15 2021. For several reasons, however, North is factually distinguishable from this case. First, the North case involved a fourth escape from furlough, committed by an individual with an extensive history of violence, including not only multiple criminal convictions but also over 200 disciplinary violations, 37 involving assaults on other inmates and 11 involving assaults on correctional staff. Second, none of the mitigating factors that exist in this case were present in North. Third, Morales’ own furlough officer recommended a two-year interrupt, which was not the case in North.

For the foregoing reasons, DOC’s four-year interrupt of the Appellant’s community supervision furlough is reversed, and a two-year interrupt is imposed instead. The two-years began to run on June 10, 2021, the date on which Morales was arrested in New Hampshire and returned to custody in Vermont.

SO ORDERED this 27th day of December, 2021.



Robert A. Mello
Superior Judge