

STATE OF VERMONT

SUPERIOR COURT
Washington Unit

CIVIL DIVISION
No. 21-CV-2593

JAMES NORTH,
Appellant,

v.

VERMONT DEPT OF CORRECTIONS
Appellee.

DECISION ON THE MERITS

In this V.R.C.P. 74 appeal, Vermont inmate James North 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 November 8, 2021. Appellant was present at the hearing and was represented by Kelly Green, 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.

North is 43 years old and has been convicted of several criminal offenses, including, most recently, three escapes from furlough, three assaults on correctional officers, and carrying a dangerous/deadly weapon, among other things. (DOC Record, 42-46). He also suffers from significant mental illness, including, as he describes it, personality disorder, bipolar syndrome, schizophrenia, depression and anxiety. His symptoms include paranoia and hallucinations, which he says he experiences to some degree nearly every day. He was first diagnosed with mental illness when he was eight years old, and he has been institutionalized for mental illness in the past.

In December of 2020, DOC placed North on community supervision furlough and assigned him a room at the DISMAS House in Winooski, Vermont, where he was told to reside during his furlough. DOC also made referrals for North to receive mental health and substance abuse assessments and treatment in the community. North was given a number of conditions that he had to comply with while on furlough (Id., 16-17). His conditions included the requirement that he report to his probation officer as instructed, allow his probation officer to visit him at his residence at any given time, keep his probation officer updated as to his contact information, and remain accessible to his probation officer by phone and email. (Id.).

On April 14, 2021, in a telephone call with his probation officer, North admitted that he had been using methamphetamine “on and off” while on furlough, because it helped him

with his “stress and anxiety” (Id. 21). That violated another condition of North’s furlough. The probation officer told North that he would be receiving a graduated sanction for that violation and that he would need to schedule a substance use assessment prior to his next check in. North replied that he understood (Id.).

The following month, North left the DISMAS House and went to stay with his girlfriend, Lauren Holcomb, who lived in Burlington. North testified that he panicked and left the DISMAS house after hallucinating that his pile of clothes was moving. North was gone for about two weeks before his probation officer discovered that he had absconded from the DISMAS House. North also failed to call in to his probation officer on May 24th, 25th and 26th, and, when his probation officer tried to call North or leave him a voice mail message, he discovered that North’s cell phone was not working (according to North, his girlfriend had smashed it). On May 27th, DOC issued a warrant for North’s arrest, and he was picked up by the Winooski Police on June 9th. By then, North had been missing for a month, and he had not made any efforts to follow up on the mental health or substance abuse referrals that DOC had made for him in the community (Id. 3-8).

DOC found North guilty of having violated his furlough conditions, and his furlough was revoked (Id., 2-5). Following the revocation, DOC performed a “case staffing” to determine what the consequence should be for North’s violation. DOC decided that he should receive “a four-year interrupt,” which meant that he would have to serve another four years in prison before again being eligible for furlough consideration (Id. 3). DOC based its decision on North’s history of criminal convictions, his “high” risk of reoffending, his prior furlough violations, and his record of over 200 disciplinary violations while in prison, 37 of which had involved assaults on other inmates, and 11 of which had involved assaults on corrections staff (Id.).

North contends that the 4-year interrupt was excessive. He points out that he did not commit any act of violence or other crime while he was on furlough. In addition, he argues that his furlough violations were the result of his mental illness, which makes it impossible for him to follow up on needed treatment referrals in the community on his own, without the assistance of others. North acknowledges that officers of the Department of Corrections cannot be expected to provide him with the level of assistance that he needs, but he notes that specialists in the Department of Mental Health do have that expertise. Therefore, he concludes that DOC should place him back on furlough in the community but transfer him to the supervision of the Department of Mental Health, which can give him the support he needs to succeed. As North’s attorney put it at the hearing on the merits, “We shouldn’t be jailing him for being mentally ill.” DOC argues that its 4-year interrupt should be affirmed and that North’s proposed referral to the Department of Mental Health is beyond the scope of this Rule 74 appeal.

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 imposing a four-year interrupt of North’s furlough status. This was North’s fourth escaped from furlough. On June 3, 2015, North was convicted of escaping or walking away from furlough, on August 14, 2017, he was again convicted of escape from furlough, and on January 15, 2019, he was for the third time convicted of that same offense (*Id.* 42-46). By the time of this fourth occurrence in 2021, escape from furlough was no longer a crime, but North’s actions in 2021, of absconding from the DISMAS House and failing to report to his probation officer, repeated a pattern of conduct that had re-occurred every two years or so since 2015. 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).

In addition, North admits that he made little effort while on furlough to follow up on the mental health and substance abuse treatment referrals that DOC had made for him in the community. As noted above, an inmate’s continuation on furlough is conditioned on “satisfactory progress in his or her reentry program.” 28 V.S.A. § 723(b). North blames his failure on his mental illness, which he claims makes it impossible for him to make and keep such appointments without help from others. This explanation, however, even if true, does not change the fact that satisfactory progress was not being made.

It may well be that North should be transferred to the custody of the Department of Mental Health. It is clear from the record that he is very sick, and, as his attorney says, “We shouldn’t be jailing him for being mentally ill.” However, that question appears to be beyond the scope and purpose of a Rule 74 review of a furlough revocation. Moreover, even

if this Court had authority to consider that issue in this appeal, the Court would need the testimony of competent experts before it could decide which Department should be supervising him. No such testimony was presented at the hearing in this case.

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

SO ORDERED this 15th day of November, 2021.



Robert A. Mello
Superior Judge