

STATE OF VERMONT

SUPERIOR COURT
Washington Unit

CIVIL DIVISION
No. 355-7-19 Wncv

RICHARD PIKE,
Petitioner,

v.

MIKE TOUCHETTE,
Respondent.

RULING ON THE STATE'S MOTION TO DISMISS

Vermont prisoner Richard Pike filed this case seeking Rule 75 review of the Department of Corrections' decision to classify him as a "Level C" offender, which affects his opportunities for early release, among other things. The DOC has filed a motion to dismiss arguing that classification decisions are per se unreviewable, and this court necessarily lacks subject matter jurisdiction over this case.

After filing his complaint, along with attachments detailing the grievance he pursued prior to suit, Mr. Pike came to be represented by counsel from the Prisoners' Rights Office. Each iteration of the stipulated scheduling order anticipated that counsel would file an amended complaint. The parties engaged in discovery, no amended complaint ever was filed, the State filed its motion to dismiss, and Mr. Pike has filed no opposition to dismissal.

The original complaint is unclear as to any legal basis for Mr. Pike's claim. He asserts that, prior to being designated Level C, he was told to do certain programming and he did. He asserts that he had a contractual right to furlough or at least not being designated Level C if he completed that programming successfully, but he offers no details about any such "contract" that might indicate that any such agreement possibly could be legally enforceable. He also complains about alleged statements that his "probation officer" made in support of his Level C designation that he considers false and retaliatory, such as that his domestic violence victim's jaw was broken when in fact it was not. All such allegations are extremely vague and insufficient to describe a legal claim other than a direct challenge to the classification decision. See *In re Girouard*, 2014 VT 75, ¶ 16, 197 Vt. 162 (citation omitted) ("We understand the concern that retaliation claims by prisoners are prone to abuse. We support the notion that 'wholly conclusory' complaints alleging retaliation can be dismissed at the pleading stage.").

Nothing in the record clarifies Mr. Pike's claim, and he has remained silent in response to the State's characterization of it as simply a direct challenge to the DOC's classification decision. In these circumstances, the court is unable to discern any other

well-pleaded claim in the complaint and so construes it.

On that basis, the State's motion is granted. The DOC generally has broad discretion to establish and implement a system of classification for inmates. 28 V.S.A. § 102(c)(8). There is no general statutory right to appeal classification decisions, or Level C classifications in particular, and Mr. Pike has not identified any legal claim that could have the effect of collaterally challenging such a determination. The question then turns to whether Mr. Pike has identified any applicable relief in the nature of the old writs—such as mandamus or certiorari—now cognizable under Rule 75 to which he may be entitled.

He has not done so and none is apparent in his pleadings. See generally *Inman v. Pallito*, 2013 VT 94, 195 Vt. 218; *Rheaume v. Pallito*, 2011 VT 72, 190 Vt. 245.

Order

For the foregoing reasons, the State's motion to dismiss is granted. The State shall submit a form of judgment. V.R.C.P. 58(d).

SO ORDERED this 23rd day of December, 2021.



Robert A. Mello
Superior Judge