

STATE OF VERMONT

SUPERIOR COURT  
Washington Unit

CIVIL DIVISION  
No. 21-CV-3298

ANDREW REYNOLDS,  
Appellant,

v.

VERMONT DEP'T OF CORRECTIONS  
Appellee.

RULING ON THE STATE'S MOTION TO DISMISS

Vermont prisoner and appellant Andrew Reynolds seeks Rule 74 review of a Department of Corrections case-staffing decision pursuant to 28 V.S.A. § 724, which permits limited review of certain decisions following a furlough violation. The decision at issue “interrupts” his furlough eligibility for at least one year. The State has filed a motion to dismiss, arguing that the decision is not subject to review under § 724 because it arises out of a “nontechnical” violation of furlough—a violation amounting to a crime, in this case a sex offender registry violation. Mr. Reynolds argues that he is entitled to review because his violation of furlough conditions as actually determined by the hearing officer—failure to satisfy graduated sanctions—is not a crime.

The facts are straightforward. While on furlough, Mr. Reynolds allegedly committed a new crime as described above. As a result, he was given several “graduated sanctions”—sanctions that were imposed while he remained on furlough. He failed to comply with the graduated sanctions. As a result, he was returned to the facility and charged with not complying with the graduated sanctions.<sup>1</sup> He waived a hearing, thereby admitting the charges, and thus was found guilty. The hearing officer made no specific findings of fact. Thus, though he appears to have clearly committed a crime while on furlough, as determined in the furlough suspension process, his violation of conditions related only to noncriminal conduct: failing to comply with graduated sanctions.

As Mr. Reynolds sees it, those facts are determinative of the availability of review under § 724. The State, on the other hand, asks the court to rely instead on the crime that was committed, even though it was not used as a basis for a furlough violation.

Review under § 724 is available when an inmate is sanctioned with a revocation or a

<sup>1</sup> He was also charged with violating curfew and consuming a regulated drug without a prescription, presumably cannabis. Nothing in the record indicates that either was a “crime.” The State argues that the only crime for § 724 purposes is the sex offender registry violation, and the case-staffing records specifically state that Mr. Reynolds was returned to the facility due to the lack of compliance with graduated sanctions (not consuming cannabis).

90-days or longer interrupt of furlough following a “technical” violation of furlough conditions. “[T]echnical violation’ means a violation of conditions of furlough that does not constitute a new crime.” 28 V.S.A. § 724(d)(1). The court interprets “violation” to refer to a violation of furlough conditions *as determined at the furlough violation hearing*. There is no crime of violating a furlough condition. Thus, a “violation of conditions of furlough that does not constitute a new crime” must refer to the underlying conduct resulting in the violation.

In this case, Mr. Reynolds committed a crime while on furlough. The DOC chose not to charge him with a furlough violation for having done so. Instead, it gave him graduated sanctions. When he failed to comply with the graduated sanctions, it charged him with that. The DOC never charged him with having committed a crime, or conduct amounting to a crime, and thus he was never given any opportunity to contest any such allegation before a DOC hearing officer. The State’s position, in essence that the court should look for any criminal conduct committed on furlough in the available evidence regardless whether it ever was charged by the DOC, does not comport with the inmate’s due process rights, and it improperly involves the court in the furlough violation process, which § 724 does not address. Section 724 deals exclusively with the result of a furlough violation, not its determination.

There is no nontechnical violation for § 724 purposes in this case. Mr. Reynolds’ furlough violation was technical in nature, and his interrupt is 90 days or longer. Section 724 review therefore is available.

#### Order

For the foregoing reasons, the State’s motion to dismiss is denied.

SO ORDERED this 7<sup>th</sup> day of December, 2021



---

Robert A. Mello  
Superior Judge