

STATE OF VERMONT

SUPERIOR COURT
Washington Unit

CIVIL DIVISION
No. 21-CV-2088

JOHN SHEEHY,
Appellant,

v.

JAMES BAKER, COMMISSIONER,
VERMONT DEPT' OF CORRECTIONS
Appellee.

RULING ON THE STATE'S MOTION FOR SUMMARY JUDGMENT

Vermont prisoner and appellant John Sheehy filed this action seeking 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. Mr. Sheehy was returned to the facility from furlough in 2019. He was case-staffed at that time and has been in prison ever since. The 2021 case-stuffing at issue here was not immediately preceded by furlough. It is a subsequent case-staffing following the 2019 case-staffing. The State has filed a motion for summary judgment arguing that review of the 2021 decision did not arise directly out of a furlough violation, as in *Wheelock v. Vt. Dep't of Corr.*, No. 21-CV-360, Ruling on Motion In Limine (Vt. Super. Ct. Sept. 24, 2021), and therefore review is not available. Mr. Sheehy has opposed summary judgment, arguing that review is available regardless of any connection to a furlough violation and, in effect, that the DOC deferred on any decision in 2019 until the most recent case-staffing. In other words, he argues that the 2021 decision relates back to his 2019 furlough despite the 2019 case-staffing.

The court requested further briefing on whether review is available for a “nontechnical” furlough violation (a violation of conditions amounting to a new crime), as there is no dispute that Mr. Sheehy’s 2019 furlough violation was nontechnical in nature. Following that briefing, the court rules as follows.

On further briefing, the State argues that review is not available in this case because § 724 applies to technical violations only. The court acknowledges the State’s position that review also is not available because the 2021 case-staffing is merely a subsequent, routine evaluation of Mr. Sheehy’s suitability for furlough. However, in this case, the court declines to rule on that issue. There is no dispute that, even if the 2021 decision could relate back to the 2019 furlough, the breach of conditions in 2019 was nontechnical—it arose out of new crimes. Review under § 724 is not available in the case of nontechnical furlough violations.

Mr. Sheehy argues that § 724 review is available regardless whether the violation is technical or nontechnical.

Section 724, in its entirety, reads as follows:

(a) Authority of the Department. The Department shall identify in the terms and conditions of community supervision furlough those programs necessary to reduce the offender's risk of reoffense and to promote the offender's accountability for progress in the reintegration process. The Department shall make all determinations of violations of conditions of community supervision furlough pursuant to this subchapter and any resulting change in status or termination of community supervision furlough status.

(b) 90-day interruption or revocation. Any interruption of an offender's community supervision furlough after the Department has found a technical violation of furlough conditions shall trigger a Department Central Office case staffing review and Department notification to the Office of the Defender General if the interruption will be 90 days or longer.

(c) Appeal. An offender whose furlough status is revoked or interrupted for 90 days or longer shall have the right to appeal the Department's determination to the Civil Division of the Superior Court in accordance with Rule 74 of the Vermont Rules of Civil Procedure. The appeal shall be based on a de novo review of the record. The appellant may offer testimony, and, in its discretion for good cause shown, the court may accept additional evidence to supplement the record. The 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 pursuant to subsection (d) of this section.

(d) Technical violations.

(1) As used in this section, "technical violation" means a violation of conditions of furlough that does not constitute a new crime.

(2) 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.

28 V.S.A. § 724. Mr. Sheehy focuses exclusively on the first sentence of § 724(c) to argue that it expansively permits review in any case in which "furlough status is revoked or interrupted for 90 days or longer."

The sentence that Mr. Sheehy focuses on has to be viewed in isolation to support his argument. "The words of a statute are not to be read in isolation, however, but rather in

the context and structure of the statute as a whole.” *In re Vermont Verde Antique Intern., Inc.*, 174 Vt. 208, 211–12 (2002). In context, review clearly is available only for “technical” violations, violations of furlough conditions that do not amount to new crimes.

Section 724(c) specifically says that, on appeal, the appellant has the burden of proving that the DOC “abused its discretion in imposing a furlough revocation or interruption for 90 days or longer *pursuant to subsection (d) of this section.*” (Emphasis added.) Subsection (d), in turn, defines a technical violation, and it expresses the standards by which to measure abuses of discretion regarding technical violations. It is thus clear that, in appealing, the appellant has the burden of proving an abuse of discretion regarding a technical violation. There are no similar provisions applicable to nontechnical violations. With no statutory standards for measuring abuses of discretion regarding nontechnical violations, the court would have no way to meaningfully provide the review that § 724 contemplates. The review available under § 724(c) extends to technical violations only.

Section 724(b) also requires the DOC to notify the Office of the Defender General of any revocations or 90-day or greater interruptions following technical violations only. This presumably is intended to ensure that the Prisoners’ Rights Office has notice of cases in which review is available. If review also were available in the case of nontechnical violations, one would think notice to the Prisoners’ Rights Office would be every bit as warranted. The court presumes that the legislature made this distinction for a reason, namely, that review is simply not available in the case of nontechnical violations.

Review is available under § 724 for case-staffings following statutorily defined technical violations of furlough conditions only. Thus, even if Mr. Sheehy’s 2021 case-staffing could relate back to his 2019 furlough, review nevertheless would not be available because the operative furlough violation was nontechnical in nature.

Order

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

SO ORDERED this 6th day of December, 2021.



Robert A. Mello
Superior Judge