

STATE OF VERMONT

SUPERIOR COURT
Washington Unit

CIVIL DIVISION
No. 21-CV-2989

DAVID SPARKS,
Appellant,

v.

VERMONT DEPT OF CORRECTIONS
Appellee.

FILED

DEC 30 2021

VERMONT SUPERIOR COURT
WASHINGTON CIVIL

DECISION ON THE MERITS

In this V.R.C.P. 74 appeal, Vermont inmate David Sparks 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 October 26, 2021, and a hearing on the merits was held via Webex on December 27, 2021. Appellant was present at the hearing and was represented by Jill P. Martin, 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.

Sparks is 36 years old and is serving a 3-36-month sentence for a burglary conviction in 2020; his sentence is consecutive to sentences he received on earlier convictions from 2017-2019 for DUI #2, leaving the scene of an accident, false information to a law enforcement officer, simple assault on a law enforcement officer, retail theft, petty larceny, and violating conditions of release (DOC Sentence Computation Record, 1-10). His minimum release date was June 26, 2020, and his maximum release date is June 28, 2025 (Id., 10).

Sparks struggles with significant substance abuse issues. His longest period of sobriety was from 2009-2017, a period of eight years. He relapsed, however, in 2017, and from 2017-2019 he picked up most of the criminal convictions referred to above, for which he was placed on probation. Unfortunately, from 2019 onward Sparks has demonstrated an inability or unwillingness to abide by conditions of release, which have made him difficult to supervise in the community (DOC Case Staffing & NOS Record, 2-3, 6-7, 12).

In early 2019, Sparks accumulated several probation violations for using forbidden substances (cocaine, heroin, suboxone and alcohol), violating his curfew, failing to abide by his electronic monitoring agreement, and failing to engage in treatment; therefore, his probation was revoked in July of 2019 (Id., 2). Sparks was released from the correctional facility in late September of 2019, but in early November he was returned to jail for again violating conditions (Id.; see also DOC Infraction History, 27-35).

On November 11, 2019, DOC sent Sparks to the Serenity House for residential substance abuse treatment, but on November 18th Sparks was terminated from that program on account of his violation of Serenity House rules and requirements. DOC gave him a 60-day interrupt for that violation (Id.; Infraction History, 36).

Sparks was released from prison again on January 14, 2020, and was sent to Valley Vista, another residential substance abuse treatment facility. Sparks was discharged from Valley Vista a couple of weeks later, but on February 4th he was arrested and charged with burglary, for which he was subsequently convicted (Id.; Infraction History, 37-42).

On July 20th, DOC again released Sparks into the community and instructed him to participate in and successfully complete substance abuse treatment at Bradford Psychiatric Associates. However, Sparks was terminated from the Bradford Associates program for failing to comply with its requirements, he stopped reporting to his furlough officer, and his whereabouts were unknown. On August 19, 2020, he was arrested and returned to prison, and on September 3, 2020, he was given a six-month interrupt (Id.; Infraction History, 43-44).

On March 11, 2021, DOC released Sparks from the correctional facility and placed him on community supervision furlough. Upon his release, Sparks was instructed to reside at the DISMAS House, a sober living facility at 103 Park Avenue in Rutland, Vermont, and to comply by its rules and policies (Id., 2, 6-7, 9-11). He was also ordered to wear a GPS unit at all times, abide by an 8:00 pm curfew, and report to his furlough officer, Megan Champine, when told to do so (Id.).

Shortly after arriving at the DISMAS House, Sparks began using illegal substances and violating his furlough conditions (Id.). On April 3rd Sparks overdosed on cocaine and alcohol, requiring police and EMT intervention (Id.). In response, Officer Champine ordered Sparks to enter the residential treatment facility at Valley Vista. Sparks arrived at Valley Vista on April 7th and was discharged on April 22nd, but five days later he left the DISMAS House never to return, he allowed his GPS unit to die, and he completely disengaged with his furlough officer (Id.). On April 30th, the DISMAS House terminated Sparks from its facility for violating its rules and policies (Id., 12; Infraction History, 48-54). Sparks was arrested in Rutland on July 28th and returned to the correctional facility; he had been missing for three months.

On August 2, 2021, DOC found Sparks guilty of having violated his furlough conditions by absconding from furlough, and his furlough was revoked (Id., 5). Following the revocation, DOC performed a “case staffing” to determine what the consequence should be for Spark’s violation. DOC decided that Sparks should be given a “two-year interrupt,” which meant that Sparks would have to serve another two years in prison before again being eligible for furlough consideration (Id. 3). This was consistent with the recommendation of Champine, his furlough officer, who reported, “I have been unable to supervise and make any substantial progress with David in the community in the last three years” (Id.).

Sparks contends that the two-year interrupt was excessive and that he should be immediately returned to the community. Sparks claims that the DISMAS House is located

in a part of Rutland known locally as “The Gut,” where drugs are known to be plentiful and easy to get, so it should have come as no surprise that he would quickly resume using drugs there. After his overdose, Sparks claims that he asked Champine to let him reside with his sister or girlfriend, where he would have support from family members, but that Champine insisted on his returning to DISMAS House, even though he had been allowed to live with his sister and girlfriend during prior releases from prison. According to Sparks, Champine’s decision made him feel that was “being set up” to fail, so he left the DISMAS House and stayed with his mother and girlfriend anyway. Over the following three months, Sparks acknowledges that he avoided reporting to his furlough officer and continued actively to use illegal drugs, but he denies that he absconded from furlough because he never left Rutland during those months, and he continued to stay with his mother and girlfriend who live just 100 yards from where the probation and parole office is located. Lastly, Sparks argues that he does not pose a risk to anyone and can be safely returned to the community. Counsel for DOC argues that its two-year interrupt should be affirmed because efforts to supervise Sparks in the community have been “a complete and total failure.”

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).

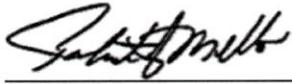
Given the record in this case, the Court cannot conclude that DOC abused its discretion in interrupting Sparks's furlough status. Upon his release on furlough, Sparks immediately relapsed and within days overdosed on cocaine and alcohol. Then, following his release from Valley Vista, Sparks left the DISMAS House, allowed his GPS unit to die, and actively evaded supervision by his furlough officer for three months. That constituted absconding, whether he remained in Rutland for the entire three months, or not. Moreover, it was the second time he absconded from furlough, the first time having been in August of 2020, when he was given a six-month interrupt. Furthermore, the furlough officer's insistence that Sparks reside at DISMAS House did not "set him up" for failure. DISMAS House is a well-respected institution devoted to providing half-way houses and services for people transitioning back into the community after a period of incarceration. It was Spark's responsibility to avail himself of those services and to avoid relapsing on drugs, no matter where the DISMAS House was located. Instead, he chose to relapse and abscond. 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 Sparks that DOC abused its discretion in imposing a two-year interrupt. A two-year interrupt was excessive given the circumstances of this case. First, Sparks did not commit any act of violence or pick up any new criminal charges during the three months that he was on escape status. Second, although Sparks has a significant substance abuse problem, he was sober from 2009-2017, a period of eight years. Thus, there is hope for him, despite his poor performance on supervision and failures at residential treatment since 2019. Lastly, Sparks will be maxing out in June of 2025, unless he picks up new charges before then, so DOC should not wait until July of 2023 before attempting again to reintegrate him back into the community.

On several occasions, this Court has affirmed decisions by DOC to impose a one-year interrupt for absconding from furlough under circumstances similar to this case. For example, in Wright v. Vermont Dep't. of Corrections, Docket 21-CV-2307, Decision on the Merits (December 13, 2021) this Court affirmed a one-year interrupt where the furlougee had failed on furlough twice before, had failed at residential treatment before, had badly relapsed on drugs and had run from supervision. Similarly, in Jonathan Welch v. Vermont Dep't. of Corrections, Docket 21-CV-2805, Decision on the Merits (December 29, 2021), this Court affirmed a one-year interrupt where the furlough absconded from the residential treatment facility, removed his GPS unit, absconded to New York State for two years, and had picked up new criminal charges while on escape status. If a one-year interrupt was appropriate in those cases, a one-year interrupt is also appropriate in this case.

For the foregoing reasons, DOC's two-year interrupt of the Appellant's community supervision furlough is reversed, and a one-year interrupt is imposed instead. This one-year interrupt began to run on July 28, 2021, the date on which Sparks was arrested in Rutland and returned to custody.

SO ORDERED this 30th day of December, 2021.

A handwritten signature in black ink, appearing to read "Robert A. Mello". The signature is written in a cursive style with a horizontal line underneath it.

Robert A. Mello
Superior Judge