

STATE OF VERMONT

SUPERIOR COURT
Washington Unit

CIVIL DIVISION
No. 21-CV-2144

JAMES VEZINA,
Appellant,

v.

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

RULING ON THE STATE'S MOTION TO DISMISS

Vermont prisoner and appellant James Vezina filed this action seeking Rule 74 review of a Department of Corrections case-staffing decision on January 27, 2021 pursuant to 28 V.S.A. § 724, which permits limited review of certain decisions following a furlough violation. The decision at issue would ensure that Mr. Vezina is not eligible for furlough for an extended time. The State has filed a motion to dismiss. Though the disputed decision does not appear to have arisen out of a technical violation of furlough conditions, the State does not seek dismissal on that basis. Rather, it argues solely that the notice of appeal was not filed in a timely manner.

A Rule 74 notice of appeal is required to be filed within 30 days of the disputed decision. V.R.C.P. 74(b); V.R.A.P. 4(a)(1). In this case, the decision was on January 27, 2021, and the notice of appeal was filed on July 2, 2021, long after 30 days had elapsed. However, Mr. Vezina asks the court to treat his notice as timely filed due to “excusable neglect.” V.R.C.P. 6(b)(1)(B).¹

According to the representations of his attorney, Annie Manhardt, and several exhibits, most of the delay in this case was attributable to confusion over whether a notice of appeal pursuant to 28 V.S.A. § 724 must await the exhaustion of administrative remedies. The current version of § 724 became effective on January 1, 2021. It permits an inmate to immediately appeal from a case-staffing decision in appropriate circumstances. Prior to this version of the statute, the DOC specifically enabled inmates to seek administrative review of case-staffing decisions. DOC Directive 410.02, Procedural Guidelines § 6(g). However, in an “interim memo,” signed on December 30, 2020, and effective on January 1, 2021, the DOC deleted § 6(g) from Directive 410.02, presumably to eliminate administrative review now that, at least in some cases, direct review in court would be available. While the interim memo modifies the substance of Directive 410.02, the

¹ Both parties apply the Rule 6 excusable neglect standard to Mr. Vezina’s argument. For that reason, the court applies that standard.

face of the directive has not been changed, requiring one to synthesize the two to understand their intended effect.

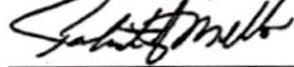
While normally ignorance of the law is no excuse, the court believes the circumstances here warrant some accommodation. Mr. Vezina appears to have reasonably diligently pursued an administrative grievance following the disputed decision, and then he sought Rule 75 review. There is no indication in the record that the DOC did anything to educate prisoners as to the new procedure, either when it was adopted or when unnecessary grievances started getting filed, and there is no indication that the DOC specifically told Mr. Vezina in response to his grievance that he should have simply filed a notice of appeal instead. See 28 V.S.A. § 854(3) (“All inmates shall be informed of the grievance procedure, which shall be available to all inmates.”). When counsel finally learned what happened, the Rule 75 case was promptly withdrawn and the notice of appeal filed.

There is no prejudice to the State. The Court is satisfied that this is a case of excusable neglect and will treat Mr. Vezina’s notice of appeal as timely.

Order

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

Electronically signed on 10/13/2021 3:57 PM, pursuant to V.R.E.F. 9(d)



Robert A. Mello
Superior Judge