

STATE OF VERMONT

SUPERIOR COURT
Washington Unit

CIVIL DIVISION
No. 21-CV-360

WILLIAM WHEELOCK,
Plaintiff,

v.

VERMONT DEPARTMENT OF
CORRECTIONS,
Defendant.

RULING ON MR. WHEELOCK'S MOTION TO RECONSIDER

Mr. Wheelock has sought in this case review pursuant to 28 V.S.A. § 724 of a January 2021 decision by which the DOC decided against furlough for at least another year. He had been returned to the facility from furlough most recently in early 2020. At that point, the DOC determined that he was not suitable for furlough and it would consider the matter again in a year. In its September 24, 2021 decision, the court explained that review under § 724 is not available unless the furlough decision directly arises out of a return to the facility from furlough due to a breach of furlough conditions, and in this case, the DOC's January 2021 decision does not relate back to the to the furlough violation that prompted the early 2020 case-staffing decision. Mr. Wheelock now seeks reconsideration of that decision.

“The standard for granting [a motion to reconsider] is strict, and reconsideration will generally be denied unless the moving party can point to controlling decisions or data that the court overlooked—matters, in other words, that might reasonably be expected to alter the conclusion reached by the court.” *Latouche v. North Country Union High School Dist.*, 131 F. Supp. 568, 569 (D.Vt. 2001) (quoting *Shrader v. CSX Transp., Inc.*, 70 F.3d 255, 257 (2d Cir. 1995)).

Mr. Wheelock argues that the January 2021 decision relates back to the early 2020 decision (and hence the furlough violation that prompted it), and thus should be reviewable, because the 2020 decision was a furlough *interrupt* rather than a *revocation*. In support of this argument, Mr. Wheelock presents nothing that was not before the court prior to its September 24 decision, which addressed this matter thoroughly.

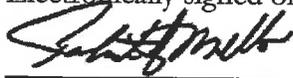
Moreover, as the court explained in that decision, neither § 724 nor DOC directives detail the nature of the “revocation” and “interrupt” concepts on which the statute depends, introducing uncertainty as to the applicability and substance of § 724. Nevertheless, in this case, it is clear that in early 2020, the DOC made a discretionary decision about Mr.

Wheelock's furlough that was not limited by § 724 and could not have contemplated § 724 because § 724 simply did not exist at that time. It merely determined in early 2020 to consider the issue of furlough again in 2021. It did nothing in 2020 to limit its discretion a year later. The 2021 decision actually on review here is that later consideration of Mr. Wheelock's appropriateness for furlough. It does not directly relate back to the furlough violation that prompted the 2020 decision.

Order

Mr. Wheelock's motion to reconsider is denied.

Electronically signed on 11/5/2021 10:34 AM, pursuant to V.R.E.F. 9(d)



Robert A. Mello
Superior Judge