

STATE OF VERMONT
WASHINGTON COUNTY

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2007 MAY -2 A 11: 56

WILLIAM WHEELOCK,)
Plaintiff,)
v.)
STEVEN GOLD, Commissioner,)
Vermont Department of Corrections,)
Defendant.)

Washington Superior Court
Docket No. 83-2-05 Wncv SUPERIOR COURT
WASHINGTON COUNTY

DECISION
Cross-Motions for Summary Judgment

In this Rule 75 Review of Governmental Action case, Plaintiff William Wheelock, an inmate in the custody of the Commissioner of the Department of Corrections, challenges the DOC's decision to require him to successfully complete 24 months of the Cognitive Self Change program prior to eligibility for furlough. The parties have filed cross-motions for summary judgment, and oral argument was heard on April 24, 2007.

The basic facts appear to be undisputed. Mr. Wheelock, while incarcerated, participated in the Cognitive Self Change program (CSC) and completed 17 months prior to his release on probation on October of 2002. On July 12, 2004, his probation was revoked and he was ordered to serve the entirety of the previously suspended portion of his lengthy underlying sentence. See Probation Revocation Mittimus.

Apparently, when DOC personnel were preparing for sentencing during the probation revocation proceedings, they decided that if Mr. Wheelock's probation in fact were revoked, then he would be reclassified from a "Level A" offender to a "Level B" offender, and he would be required to successfully complete 24 months of the Cognitive Self Change program, which would involve retaking phase 1, prior to any subsequent community release. Because probation was revoked, Mr. Wheelock's classification change and new programming requirement occurred. During the pendency of this case, DOC has redone the LSI inventory and has reviewed and reaffirmed both the reclassification decision and the programming requirement decision.

Mr. Wheelock's claim in this case boils down to a challenge to DOC's decision that he is not entitled to credit for his several months of previous participation in the Cognitive Self Change program against the new 24-month CSC requirement. He is seeking to become eligible for parole, and the extent of the CSC requirement affects his eligibility. He believes that he is entitled to credit for his prior completion of phase 1, and should not have to retake the entire program.

The Vermont Supreme Court recently summarized the purpose of Rule 75 review as follows:

Our review [under Rule 75] is limited. As we have explained, the relief available Rule 75 represents “the modern equivalent of extraordinary relief by mandamus or certiorari.” The purpose of mandamus is generally to require a public official or body to perform a simple ministerial duty imposed by law, although it may be available to enforce even discretionary duties “[w]here there appears, in some form, an arbitrary abuse of power vested by law in an administrative officer . . . which amounts to a virtual refusal to act or to perform a duty imposed by law.” The purpose of certiorari is to review judicial or quasi-judicial action of a lower court or tribunal “in regard to substantial questions of law affecting the merits of the case.” Under either writ, the standard of review is “necessarily narrow.”

Ahern v. Mackey, 2007 VT 27, ¶ 8 (citations omitted).

Mr. Wheelock acknowledges that the DOC has broad discretion to make programming decisions, but argues that when DOC makes rules, it limits its own exercise of discretion, and must make programming decisions consistent with its own rules. He argues that the classification and programming decisions that result in the requirement that he redo the entire 24 months of CSC constitute an abuse of that discretion because they violate the DOC’s own rules. However, Mr. Wheelock has not shown that the reclassification decision was an abuse of discretion, nor has he identified any rule that requires DOC to give credit for past program participation against a new programming requirement.

The court has carefully reviewed the Directive provisions Mr. Wheelock cites. There is no showing that any rule addresses the issue of whether one’s participation in the CSC or any program for any particular period of time at one point necessarily limits how long one may or ought to be required to participate in the program at some later point. No other circumstances in this case suggest any abuse of discretion. In fact, it is reasonable that DOC should have discretion to determine that, based on an inmate’s performance, prior participation in a program was not effective, and discretion to require the inmate to repeat a program if experience shows it to be appropriate.

Based on the undisputed facts, Plaintiff has not shown that the reclassification and programming decisions under challenge in this case constitute an abuse of discretion, or a violation of applicable rules, and Defendant is entitled to summary judgment.

ORDER

For the foregoing reasons,

Mr. Wheelock's motion for summary judgment is *denied*; and
DOC's motion for summary judgment is *granted*.

Dated at Montpelier, Vermont this 2nd day of May 2007.

Mary Miles Teachout
Mary Miles Teachout
Superior Court Judge