

**STATE OF VERMONT**

**SUPERIOR COURT  
Orleans Unit**

**CIVIL DIVISION  
Docket No. 21-CV-247**

**TODD HOYTE**

**v.**

**JAMES BAKER**

**DECISION  
Petition for Writ of Habeas Corpus**

Petitioner is incarcerated following return to prison from furlough, and seeks habeas corpus relief on the grounds that his furlough revocation hearing was not conducted with the required due process, and therefore his confinement is unlawful. He is represented by Attorney Annie Manhardt. Respondent, the Commissioner of the Department of Corrections, is represented by Attorney Robert Menzel. By agreement, the attorneys submitted the case on a written stipulation of facts and stipulated exhibits. The court heard oral argument on March 19, 2021 by Webex.

Based on the facts, the memoranda, and the arguments, the court makes the following Findings of Fact and Conclusions of Law, and denies habeas corpus relief.

**Facts**

Mr. Hoyte was released from prison on furlough in November 2019 under a Furlough Agreement with the following standard conditions, among others:

- A. I will not be cited, or charged, or commit any act punishable by law, including city and municipal codes.
- B. ...
- C. I will not engage in threatening, violent, or assaultive behavior.

In August 2020, he was arrested for allegedly violating his Furlough Agreement and returned to prison. In the Notice of Suspension Report issued to him, he was accused of violating the following conditions:

- i. Being charged with a new crime
- v. Committing or threatening an act that poses an articulable risk to the community, victim(s), a particular citizen, staff, or self
- iii. Assaulting or threatening to assault someone

The allegations were based on numerous statements he posted on his Facebook page. The Facebook posts are in Exhibit 3, pages 11-32. Among them are the following:

"Coming back to Mass to kill X cops and some shitbags next week. . .can't wait

"BANG!!!! YOUR FUCKIN DEAD

"I've got a M-16 lol

"Death to Franklin co.states attorneys office. . .

"[Name redacted] BE WORRIED FAT PIG...YOUR DAYS ARE NUMBERED

"Ashland police dept need all hands on deck...so I can smoke you all at once

"[Name redacted] OF ATF...SORRY I BS YOU BUT IM LOADED BUD

"Hey...uncle Sam...got a back pack for you and Ashland police dept...

"Coming back to Mass to get justice [name redacted] next week...make sure your boys are on ball...or lose your life"

At his furlough revocation hearing, he pled not guilty to each of the three charges. He admitted to making the Facebook posts, but argued that they did not constitute "threatening." He was found not guilty of being charged with a new crime, but guilty of the two charges of violating conditions that were not in his Furlough Agreement. The hearing officer made the following written findings regarding those two conditions:

Regarding "v" above:

1. "You admitted to running a Facebook page under the name Todd Hoyte.
2. "You admitted to writing all statements contained within this packet.
3. "You made multiple threatening statements.
4. "Those statements were directed at particular and specific citizens."

Regarding "iii" above:

1. "You admitted to running a Facebook page under the name Todd Hoyte.
2. "That Facebook page published multiple threatening statements.
3. "You threatened violence against multiple people."

In sum, the conduct that formed the basis of any alleged violation is not at issue. He admitted making the Facebook posts, and their content is undisputed. As a result of that conduct, he was found guilty of two violations involving "threatening" that were not in his Furlough Agreement, while he was not charged with the condition that was in his Furlough Agreement that prohibited "threatening behavior."

## **Conclusions**

### Due Process

Petitioner argues that his due process rights were violated when his furlough was revoked for violating conditions of which he had no notice. This could certainly be a basis for a due process violation if he had been charged with violating conditions that were not only not in his Furlough Agreement but were unlike any of his furlough conditions. However, there is no question, based

on Condition C, that he knew that a condition of his furlough was not to engage in threatening behavior.

The prohibition against “threatening behavior” of which he had clear notice (Condition C) is broader than, and inclusive of, the charges of which he was found guilty. Provisions “v” and “iii” define forms of threatening behavior with some specificity, whereas Condition C, to not engage in “threatening behavior,” has a broader scope. Any argument he made in his defense against conditions “v” and “iii” (that the conduct was not threatening) was also applicable to a charge of violating Condition C. He was on clear notice that any form of “threatening behavior” would constitute a furlough violation. At his hearing, he had full opportunity to defend against a charge of threatening behavior, and he did so. Thus, the court declines to find that Mr. Hoyte did not have sufficient notice of the charge against him as a matter of due process.

#### Threatening Behavior

Petitioner asks the court to apply the Vermont Supreme Court’s interpretation of “threatening behavior” for probation violations as set forth in *State v. Harwood*, 2020 VT 65, specifically that “verbal statements constitute threatening behavior in the probation context when the statements are ‘intended to put another in fear of harm or to convey a message of actual intent to harm a third party.’” *Id.* at ¶24.

The court declines to hold that that is the standard that must be met, but the undisputed conduct constitutes threatening behavior whatever definition of “threatening behavior” is used, including the standard from *Harwood*. There are multiple statements of intent to inflict violence, specifically with guns, against several individually named persons (whose names the court has redacted) as well as against specified groups of people associated with specific offices or work sites. This is not a situation of an isolated statement reflecting a momentary emotional outburst made in a context in which the statement does not support an inference of intent. On the contrary, these were repeated threats of gun violence made in a public forum indicating a persistent motivation to harm any of a number of specified people. This pattern of statements to harm in a violent manner, made in a forum designed to convey the messages to the targeted individuals, is sufficient to show an intent to put those individuals in fear of harm.

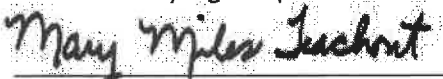
#### Other

While the attorneys made legal arguments concerning required procedure for habeas relief and other matters, in view of the foregoing analysis, it is unnecessary to address them.

#### **Order**

For the foregoing reasons, the petition for a writ of habeas corpus is *denied*.

Electronically signed pursuant to V.R.E.F. 9(d) on March 26, 2021 at 10:53 AM.



Mary Miles Teachout  
Superior Court Judge