

enforcement to take petitioner into custody. Second, independent of the above incident, petitioner's probation officer contacted the manager for approval to lodge petitioner for loss of housing, and the manager approved the request.

At the furlough revocation hearing, petitioner was assisted by a fellow inmate acting as a hearing assistant. The hearing assistant offered to contact witnesses for petitioner and was provided that opportunity. When the hearing assistant attempted to answer substantive questions on petitioner's behalf, the hearing officer did not permit him to do so. The manager had no role prior to or during the hearing.

The hearing officer found petitioner guilty of violating the furlough conditions requiring him to reside at an approved residence, report to his probation officer as directed, and refrain from engaging in threatening or violent or assaultive behavior.

Petitioner appealed the revocation. Under DOC directive 410.02(6), the appeal went to the district manager—the same person who had signed the “Return to Custody on Mittimus Request” and had approved the request to lodge the petitioner for loss of housing. Department of Corrections, Furlough Violations, Directive 410.02 (eff. May 1, 2012), <https://doc.vermont.gov/sites/correct/files/documents/policy/correctional/410.02-Violations-of-FRCRPAF.pdf> [<https://perma.cc/Z4UF-ARZV>]. The manager reviewed the evidence and documents, and listened to the recording of the furlough revocation hearing. She ultimately upheld the hearing officer's decision. Petitioner also initiated a grievance related to his loss of housing, which was denied and upheld by the manager. He appealed that to a Corrections Executive, and it was denied. Petitioner appealed to the DOC Commissioner and the Commissioner did not reply.

Petitioner filed a Rule 75 complaint with the civil division arguing that he was improperly terminated from his housing, he did not fail to report to his probation officer as directed, he did not engage in violent or assaultive behavior, and the proceedings before the DOC violated his due process rights in various ways.

Prior to the hearing on the merits, the court explained that the specific claims at issue were petitioner's arguments that his due process rights were violated because: (1) his hearing assistant was precluded from answering questions for him at the revocation hearing; (2) the district manager conducted the administrative appeal when she was involved in the original suspension decision; and (3) the Commissioner but did not respond to his appeal.

After the hearing, the civil division issued a written decision. As to the limitations placed on the hearing assistant, the civil division concluded that petitioner was not denied due process and the hearing officer properly refused to permit the hearing assistant to provide substantive evidence on petitioner's behalf. The civil division explained that the hearing assistant's role is limited and does not include the ability to present evidence for the inmate. DOC Directive 410.02.

As to the district manager's role in the appeal, the civil division concluded that it was error for the district manager to adjudicate the appeal when she was involved in the underlying circumstances and decisions to charge petitioner with violating his furlough conditions. Under the statute governing inmate grievances, grievance procedures must provide for a person not involved in the actions giving rise to the grievance. 28 V.S.A. § 854. Citing this statute and general

principles of due process, the civil division held that petitioner was entitled to an administrative review by an impartial individual and remanded to the DOC.² Petitioner then appealed the civil division order to this Court.

Review of governmental action under Rule 75 in the nature of certiorari involves a very narrow standard of review. See In re Town of Bennington, 161 Vt. 573, 574 (1993) (mem.). In a Rule 75 proceeding, the reviewing court “is typically limited to review of questions of law” and the review of evidentiary issues is limited to “whether there is any competent evidence to justify the adjudication.” Garbitelli v. Town of Brookfield, 2011 VT 122, ¶ 6, 191 Vt. 76 (quotation omitted).

On appeal, petitioner challenges the merits of the furlough suspension decision, arguing that the evidence does not support the determination that he engaged in threatening behavior. He challenges the determination that he was not complying with the transitional housing program requirements or that he failed to meet with his probation officer. And he argues that various process issues during the furlough-suspension hearing, including not allowing cross examination of witnesses, violated his due process rights and undermine the suspension decision. He invokes the due process violation arising from the district manager’s conduct of the administrative appeal, and seeks immediate release and compensatory damages. To the extent that petitioner challenges the hearing officer’s decision on account of claimed process deficiencies or based on insufficient evidence, we decline to address the arguments because we do not have before us the final judgment after remand. A final judgment is a prerequisite to jurisdiction in this Court. Huddleston v. Univ. of Vt., 168 Vt. 249, 251 (1998). Where an agency decision is appealed and the superior court remands, there is no final disposition. See Appeal of Cliffside Leasing Co., Inc., 167 Vt. 569, 570, 701 A.2d 325, 325 (1997) (dismissing appeal for lack of final judgment where environmental court remanded to zoning board). Pursuant to the trial court’s remand, the hearing officer’s determination was subject to a new administrative appeal, and then appeal to the Commissioner, before it could be the subject of judicial review. If, on remand, the hearing officer’s determination is upheld through the administrative-review process, petitioner may seek judicial review of his challenges before the civil division. Until then, with respect to petitioner’s challenges to the suspension of his furlough, we do not have a final judgment to review.

To the extent that petitioner argues that he is entitled to immediate release on account of the due-process violation identified by the civil division, we conclude that the civil division did not err in remanding the matter to the DOC for a new and independent administrative appeal of the suspension decision rather than ordering that petitioner be released. The remand was sufficient to remedy the identified deficiency in the administrative-appeal process, and, although the furlough-suspension process contemplates that an administrative appeal of a furlough suspension will be completed within thirty days of the appeal, DOC Directive 410.02(6)(c)(ii), the DOC directive expressly provides that the failure to conclude the appeal within that time does not result in the automatic reversal of the hearings officer’s decision. DOC Directive 410.02(6)(c)(iii).

² The civil division concluded that any error in the Commissioner’s failure to respond to petitioner’s appeal was moot because after a new administrative appeal on remand, petitioner would have another opportunity to appeal to the Commissioner.

Affirmed in part, dismissed in part.

BY THE COURT:

Beth Robinson, Associate Justice

Karen R. Carroll, Associate Justice

William D. Cohen, Associate Justice