

FILED
SUPREME COURT
STATE OF WASHINGTON
3/25/2020 8:00 AM
BY SUSAN L. CARLSON
CLERK

No. _____

SUPREME COURT OF THE STATE OF WASHINGTON

SHYANNE COLVIN, SHANELL DUNCAN, TERRY KILL, LEONDIS
BERRY, and THEODORE ROOSEVELT RHONE,

Petitioners,

v.

JAY INSLEE, Governor of the State of Washington, and STEPHEN
SINCLAIR, Secretary of the Washington State Department of Corrections,

Respondents.

DECLARATION OF LEONDIS BERRY

Nicholas Allen, WSBA #42990
Nicholas B. Straley, WSBA #25963
Janet S. Chung, WSBA #28535
Columbia Legal Services
101 Yesler Way, Suite 300
Seattle, WA 98104
Telephone: (206) 464-1122
Attorneys for Petitioners

I, Leondis Berry, declare under penalty of perjury under the laws of the United States of America, that the following statements are true and correct to my best knowledge and belief:

1. My name Leondis Berry.
2. My birthdate is June 20, 1973.
3. My DOC number is #715214.
4. I have been at Stafford Creek Corrections Center (SCCC)

in Aberdeen, Washington, since [REDACTED], 2018. I am in H-5 Unit, B-Wing.

5. I live in a cell with another individual. The entire B-Wing is 2-man cells. The entire prison is set up that way, with the exception of segregation.

6. There are approximately 136 prisoners in B-Wing.

7. All of the 16 showers in my unit are community showers. They are separated just over chest level. They clean them pretty regularly and then once per week, they spray bleach all over them. But considering what is going on, no amount of cleaning is enough.

8. There are 4 bathrooms in B-Wing. Each bathroom has 2 urinals and 2-3 toilets. Toilets and urinals are shared throughout the day by all 136 prisoners in the unit. The toilets and urinals are cleaned about 3 times per day – morning, afternoon, and evening. Prisoners also have

access to a pink disinfectant spray in the bathroom to spray the area.

However, no extra cleaning efforts have been taken in light of the COVID-19 crisis. There are signs posted to make people aware of the risk of COVID-19, but that is it.

9. There are about 6 sinks in each bathroom in the unit, for a total of 24. The sinks are shared by all 136 prisoners in the unit. The sinks are cleaned three times per day.

10. In B-Wing, there is a dayroom full of tables, a microwave, and 7 phones.

11. In the dayroom, there are 4 people to a table and there are 24 tables that are approx. 2-3 feet apart from each other. Generally, there are about 50-60 people in the dayroom. People in the dayroom are always within close proximity to each other. While DOC suspended visits, this has not been adequate to address social distancing problems among prisoners in the wing. Furthermore, DOC is not enforcing any social distancing practices among prisoners in the wing.

12. There are two community microwaves that are being used all day everyday by all 136 individuals. They are not cleaned very often – only about once per day.

13. There are 7 general phones in my unit and 1 attorney phone, and 2 JPay machines and 1 kiosk. Phones are not being cleaned

after every use. Kiosks require you to touch the palm of your hand on the machine and it is not cleaned after every use. 136 people share these phones over the course of the day.

14. People are still going to the yard, the gym, and to work and school areas.

15. On the yard, there is no social distancing. Anywhere from 100 – 400 people might be out on the yard at any given time, and there are groups of people who are in close proximity to each other.

16. In the dayroom, there is one community ice machine and one community sink. These are not well maintained over the course of the day. These are generally not cleaned daily.

17. I am in bunk beds with my cellmate. He sleeps right above me. We have two individual sides of the room that are about 3-5 ft. apart from each other. This is the case for each of the 64 cells.

18. Prisoners in my wing have not been provided with hand sanitizer. There are 3 soap dispensers in each bathroom, and that is the only access to hand washing materials I have in my wing. DOC has only posted signs requesting that people wash their hands more often and the proper way to wash hands. However, there have been no formal gatherings by DOC to explain the seriousness of COVID-19 and the steps people should be taking to address it. Staff, however, have plenty hand sanitizer

for themselves. We dry our hands with hand towels. We are issued 3 hand towels that we can turn in every day to laundry, but there is no requirement that we turn them in every day, and oftentimes people will not turn them in every day.

19. The only thing DOC has cut back on is visitation – anything from the outside is cutdown. But there have been not reductions to other facility activities. Prisoners are still programing.

Medical History

20. In 2007, I had a massive heart attack. At the time I was a DOC out-of-state placement in Oklahoma. I was airlifted from Oklahoma to Texas and had emergency surgery because 2 of my arteries were blocked. 3 months later, I had another massive heart attack and was again airlifted from Oklahoma to Texas for another surgery to clear a third blocked artery.

21. As a result of those heart attacks, the muscles in the entire bottom left side of my heart are dead. That means that I have been diagnosed for sudden cardiac death.

22. In 2011, I had another surgery where a pacemaker put in my heart. I take 5 different medications 2 times per day to maintain heart health.

23. In 2018, the battery on my pacemaker died, so I had a fourth surgery to replace it. So, in total, I have had 4 surgeries on my heart over the past 12 years.

24. I see a cardiologist 2 times per year minimum. I am limited physically. I can only do limited exercises, not including cardio exercises. I also require a healthy diet.

25. I have an Ejection Fracture (EF) of 30%, where normal is between 50-60%.

26. I am very concerned about COVID-19 at SCCC. From everything I know, I fall into the category of vulnerable people should I be exposed to it. I am in constant fear about what would happen to me should I be exposed to the virus, especially since DOC has not provided me with a clear plan about what would happen if I were to become infected with COVID-19. I know there is no cure for COVID-19 and that people are dying every day.

27. People are not taking steps at this prison to address COVID-19. DOC is not enforcing or putting any emphasis on any of the best practices, besides suspending visits.

28. Yesterday, I experienced shortness of breath and heart palpitations, which is common with my condition; however, I am hypersensitive about this due to COVID-19. There is an onsite nurse in my

unit that I went to. The nurse said if this gets worse, I should call a medical emergency.

Work

29. I work from 7 am – 2 pm as a mentor in my unit. I am in a unit for people with serious mental illness called the Skill Building Unit (SBU). I assist with people who are physically ill – push people in their wheelchair, etc. I am also a TA for education classes in the unit. Whatever the SB program participants need, I help out with. As a result, I have to be in close contact with about 50 people per day.

Chow Hall

30. I am social distancing, so right now I am not going to chow hall. I eat in my room. Last time I went to chow hall was about 1-2 months ago because of COVID-19. So, I eat only off of commissary so I don't risk anything. I know that exposure to COVID-19 for me could result in very serious harm or even death, so I have to self-isolate with regards to meals.

31. Everyone else is going to chow hall. It is set up like the day room. There are 3 – 4 times more tables in the chow hall than in the day room – about 40-60 tables. There is also close proximity between the tables and close proximity between people at the tables, with four seats at a table. There are 2-3 feet of space between the tables.

32. Using commissary as the only source of food requires me to use my limited resources.

Who I Am

33. I have been a mentor since April 2019. I want to be able to help out fellow prisoners in my unit because I know they are vulnerable and seen as different from the general population. I know this because I have family member who has mental health issues too.

34. My ERD is March 2029. I have been in DOC since 2001.

35. I have been married for about 10 and-a-half years. I have 4 kids and 6 grandkids If I was released, I would live with my wife in Arlington, Washington. I have many members of the community who have advocated for my release and would support me if released.

36. I have a clemency petition in place, which was filed in September 2019 by my attorney.

37. I would have a job in the community if released.

38. My last major infraction was in 2015.

39. Columbia Legal Services has permission to move forward with litigation against DOC on my behalf to try and help the situation here given the dangerous public health crisis.

//

//

DATED this 19th day of March 2020, in Aberdeen, Washington.

I am unable to sign this document as it was prepared in Washington, but I have had it read to me over the telephone and authorize Nick Allen to sign it on my behalf.

A handwritten signature in black ink, appearing to be "Nick Allen", written in a cursive style.

Leondis Berry, by Nicholas B. Allen, WSBA #42990

CERTIFICATION RE AUTHORIZATION TO SIGN
ON BEHALF OF DECLARANTS

I, Nicholas B. Allen, declare under penalty of perjury under the laws of the State of Washington:

1. I am counsel for the petitioners in this action.
2. Due to shortened time and limitations on access to the declarants due to the current public health emergency, distance, shortened time, and prison procedures, I was unable to obtain physical signatures from the declarants.
3. I personally spoke with following declarants over the telephone on the dates and times stated herein. I drafted each declarant's declaration while on the telephone with them. At the conclusion of the call, I read each declarant's declaration to them, and each declarant stated to me that they believed the contents to their declaration to be true and correct, and authorized me to sign the declaration on their behalf.

<u>Declarant</u>	<u>Date</u>
Leondis Berry	March 19, 2020
William Burkett	March 20, 2020
Francis Cota	March 29, 2020

DATED this 22nd day of March, 2020 at Seattle, Washington.



Nicholas B. Allen, WSBA #42990

COLUMBIA LEGAL SERVICES, INSTITUTIONS PROJECT

March 24, 2020 - 7:18 PM

Transmittal Information

Filed with Court: Supreme Court
Appellate Court Case Number: 98317-8
Appellate Court Case Title: Shyanne Colvin et al. v. Jay Inslee et al.

The following documents have been uploaded:

- 983178_Other_20200324191806SC941006_4403.pdf
This File Contains:
Other - Declaration
The Original File Name was 20 0319 Berry Decl - FINAL_Redacted.pdf

A copy of the uploaded files will be sent to:

- Jeff.Even@atg.wa.gov
- janet.chung@columbialegal.org
- jeffe@atg.wa.gov
- nick.straley@columbialegal.org
- tim.lang@atg.wa.gov

Comments:

Declaration in Support of Petition for Mandamus

Sender Name: Maureen Janega - Email: maureen.janega@columbialegal.org

Filing on Behalf of: Nicholas Brian Allen - Email: nick.allen@columbialegal.org (Alternate Email: nick.allen@columbialegal.org)

Address:

Columbia Legal Services, Institutions Project
101 Yesler Way, Suite 300
Seattle, WA, 98104
Phone: (206) 287-9662

Note: The Filing Id is 20200324191806SC941006