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No. 98317-8

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.

**PETITIONERS' EMERGENCY MOTION TO ACCELERATE
REVIEW, FOR APPOINTMENT OF A SPECIAL MASTER AND
FOR IMMEDIATE RELIEF**

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. IDENTITY OF MOVING PARTIES

Petitioners Shyanne Colvin, Shanell Duncan, Terry Kill, Leondis Berry, and Theodore Roosevelt Rhone seek the relief designated below on their own behalf and on behalf of all other similarly situated people.

II. FACTUAL BACKGROUND

There has been an outbreak of COVID-19 in the Minimum Security Unit at the Monroe Correctional Complex (MCC-MSU).¹ The Department of Corrections (DOC) has issued two press releases in which it acknowledges that three people living in that one housing unit have tested positive for the disease.² However, DOC on its website admits that in fact at least six people living in MCC-MSU and five staff members have tested positive.³ These six positive tests have all occurred within the last two or three days. At present, it is unclear how many other people

¹ See Wash. St. Dep't of Corrections; *COVID-19 Information* (Apr. 8, 2020), <https://www.doc.wa.gov/news/covid-19.htm>.

² Wash. St. Dep't of Corrections, *Press Release: First Positive COVID-19 Test for Incarcerated Individual within Washington State Correctional Facility* (Apr. 5, 2020), <https://www.doc.wa.gov/news/2020/04052020p.htm> (hereinafter April 5 DOC Press Release); Wash. St. Dep't of Corrections, *Press Release: Additional Positive COVID-19 Tests for Incarcerated Individuals within Monroe Correctional Complex* (Apr. 7, 2020), <https://www.doc.wa.gov/news/2020/04072020p.htm> (hereinafter April 7 DOC Press Release).

³ DOC COVID-19 Information *supra* n. 1. DOC's reported numbers of staff infections are uncertain because DOC itself is not testing any staff members. Instead, DOC is relying upon "self-reports" from staff as to their positive tests. DOC has no independent verification regarding the actual number of staff who are or have been infected with COVID-19. *Id.*

have already become infected with COVID-19, among the more than 400 people who live in MCC-MSU.

Two of the Petitioners, Terry Kill and Shanell Duncan, live in the affected unit at MCC-MSU and are in immediate danger of contracting COVID-19, if they have not already. While refusing to provide any information or take steps that the Petitioners, people living in Washington's prisons and public health officials have demanded for weeks, DOC has instead called in many members of the Washington State Patrol to intimidate the people living in MCC-MSU.⁴ DOC's response to the COVID-19 crisis has proven dangerously ineffective, and as a result people are falling ill. Accordingly, the Court must step in and take immediate action.

III. RELIEF REQUESTED

This Court has already expedited review of the original petition for a writ of mandamus and oral argument is currently scheduled for April 23. The Petitioners respectfully urge the Court to take steps before that date in order to address the immediate emergency at MCC-MSU. The Court should act now to protect the Petitioners and all other people living in that unit.⁵

⁴ Supplemental Declaration of Terry Kill at ¶ 35.

⁵ In compliance with RAP 17.4, Petitioners' counsel informed Respondents' counsel of this motion seeking accelerated review by electronic mail at 8:28 p.m. on April 8, 2020.

The Petitioners ask the Court to expedite consideration of this emergency motion pursuant to RAP 17.4, appoint a special master pursuant to RAP 16.2(d) to provide the Court with information regarding the current emergency at MSU-MCC and about DOC's other actions to address the COVID-19 pandemic there and elsewhere, and issue an emergency order requiring DOC to immediately test every person who has been held in MCC-MSU at any point in the last 14 days for COVID-19, take all necessary and proper steps to ensure that appropriate screening, isolation and quarantine are done, and begin immediate releases of people living in MCC-MSU who fall within one of the categories the Petitioners have previously identified, as medically appropriate.⁶

IV. REASONS WHY RELIEF SHOULD BE GRANTED

A party may seek "expedited consideration" on a motion in an emergency.⁷ The party moving for accelerated review must demonstrate that "adequate relief cannot be given if the motion is considered in the

⁶ The Petitioners, acting upon the best available public health science, have asked the Court to order the Governor and Secretary Sinclair to immediately begin releasing people who fall within one of the following categories; (1) people over the age of 50; (2) people with underlying medical conditions, including pregnancy, which render them more vulnerable to COVID-19; and (3) people who are within 18 months of their release date. *See* Petition for a Writ of Mandamus at 57-67. Such releases are essential in order to meet the COVID-19 pandemic that threatens the people who live in Washington's prisons.

⁷ RAP 17.4(b).

normal course.”⁸ The court considers the urgency of the request and the consequence of delay.⁹

The outbreak that Petitioners and many other stakeholders have been warning about for weeks has begun, the Court must immediately step in to address it because the Governor and Secretary Inslee refuse to do so. An interim ruling and interim relief is appropriate because of the urgency of the circumstances. The emergency relief that the Petitioners have requested in this motion cannot wait until the Court hears oral arguments on April 23.

As discussed in the Petition and Petitioners’ brief in support, this Court has the authority to enter a declaration and issue a writ of mandamus requiring both the Governor and Secretary Sinclair to take immediate actions.¹⁰ Furthermore, this Court has authority to appoint a special master pursuant to RAP 16.2(d). It cannot be credibly argued that time is not of the essence here.

⁸ RAP 17.4(b).

⁹ *Louthan v. King Cty.*, 94 Wn.2d 422, 423, 617 P.2d 977 (1980) (court granted direct and accelerated review “because of an imminent deadline in the sale of certain King County general obligation bonds.”); *see also*, 3 Wash. Prac., Rules Practice, RAP 18.12 (8th ed.) (explaining under a different expedited review procedure that “[t]here are times when it is necessary for the court to act swiftly, particularly in matters relating to affairs of the state ... or when irreparable harm to a party would result from delay”).

¹⁰ Petitioners’ Petition and their Brief In Support of The Writ of Mandamus filed in this Court on Monday, April 7, lay out in significant detail relevant facts and legal argument. The Petitioners respectfully refer the Court to those pleadings rather than restate those allegations and arguments, herein. In addition, the Petitioners’ have provided the Court with two additional supplemental declarations that directly address the emergency at MCC-MSU. *See* Supplemental Declaration of Terry Kill; Declaration of Julia Bladin.

At least six people living in MCC-MSU and five DOC staff members who work at MCC have now tested positive for COVID-19.¹¹ DOC has only publicly provided information regarding three people who have tested positive and has begun restricting information about the current circumstances at MCC-MSU and elsewhere.¹² One of the few people that DOC has publicly acknowledged having tested positive is 68 years old.¹³ Many Washington State Patrol officers arrived on the MCC campus on Wednesday morning. It appears that DOC may be using a show of force rather than take other more appropriate public health measures to resolve the legitimate concerns of people trapped in MCC-MSU. People living in MCC-MSU are scared and not being appropriately protected.¹⁴

As Petitioners' experts opined more than two weeks ago, no matter what steps DOC put in place to keep COVID-19 out of the prisons, it would be unable to do so. Those opinions have proven correct and yet DOC continues to refuse to take the basic steps that other jurisdictions and

¹¹ See DOC COVID-19 Information *supra* n.1.

¹² See April 5 DOC Press Release *supra* n. 2; April 7 DOC Press Release *supra* n. 2.

¹³ See April 7 DOC Press Release *supra* n. 2.

¹⁴ Any disturbance that may occur at MCC-MSU is an absolutely foreseeable event given DOC's unwillingness to meet its basic constitutional duties to protect the people under its care. Rather than take appropriate public health steps, DOC has ignored the best available science, threatened the health and safety of hundreds of people, and now, responded with overwhelming force that has only exacerbated an already awful situation for which DOC is responsible.

all independent public health officials agree is essential, reducing the number of people who can become infectious in Washington's prisons.¹⁵

Unfortunately, DOC is hiding information from the public, from the Petitioners and from this Court. DOC announced on Wednesday that it will provide no further details about any subsequent positive test that may occur in any DOC facility beyond the three tests that it has publicly acknowledged.¹⁶ The two press releases that DOC has issued include no information about the three additional people who have tested positive at MCC-MSU, about any of the staff members who have tested positive, about how the disease may have gotten inside MCC-MSU, about why six people became infected so quickly, or any explanation regarding why many Washington State Patrol officers arrived at MCC on Wednesday morning.¹⁷

As detailed, in the declarations of Mr. Kill and others, DOC does not have the facilities at MSU-MCC to properly quarantine and isolate people who have become infected from the many other people who live in

¹⁵ See Petitioners' Brief at III.C.1 at 12-14, II.D.1 at 22-23 (discussing scientific consensus that prisons must reduce population in order to appropriately combat COVID-19 and protect the most vulnerable people currently living behind bars and all people who will not be released).

¹⁶ See April 7 DOC Press Release *supra* n.1.

¹⁷ Compare April 5 DOC Press Release and April 7 DOC Press Release (neither press release includes essential, basic information).

that unit.¹⁸ The outbreak itself proves that DOC's efforts at screening and effectively quarantining people have been disastrously ineffective.

Given these unfortunate but utterly foreseeable facts, this Court must require DOC to be candid about what is happening. It is therefore essential that the Court appoint a special master to get answers and provide the Court and the Petitioners with accurate and unbiased information about DOC's actions and plans.¹⁹ Furthermore, the Court must take immediate steps to protect the people living in MCC-MSU, because neither the Governor nor Secretary Inslee are willing to do so.

The Respondents continue to refuse to take the most basic public health step and reduce the number of people in Washington's prisons. They have had over two weeks to respond to the initial Petition and have yet to provide any statement or response. The outbreak has begun and rather than address it properly, the Respondents have brought in overwhelming force to keep people in line. This Court must immediately step in because as discussed in detail herein, in the Petition and the

¹⁸ See Supp. Kill Decl. at ¶¶ 3-35 (describing how fluidly people move between units in MCC-MSU and the lack of appropriate social distancing or even effective quarantine between people and tiers at MCC-MSU); also, Kill Decl. at PSD 301-03; ¶¶ 9-25 (describing open air, dormitory style sleeping hall in MCC-MSU where 30 to 40 people share same bathrooms and other facilities).

¹⁹ This Court has previously recognized that appointing a special master is one way the Court may meet its own obligation to ensure the State's compliance with its duties. In *McCleary v. State*, the Court stated, "[o]ur prior experience and the experience of other courts suggests there are numerous options, including retaining jurisdiction in the trial court, retaining jurisdiction in this court, or perhaps appointing a special master or oversight entity." *McCleary v. State*, 173 Wn.2d 477, 546, 269 P.3d 227 (2012) (citation omitted).

Petitioners' Brief in Support, the Respondents must be ordered to meet their constitutional and statutory obligations to protect the life, health, and safety of people in DOC custody.

IV. CONCLUSION

The Court should agree to hear this emergency motion on an expedited schedule, it should appoint a special master pursuant to RAP 16.2 and it should immediately order the Respondents to take the other actions requested herein to protect the people currently living in MCC-MSU.

RESPECTFULLY SUBMITTED this 9th day of April, 2020.

COLUMBIA LEGAL SERVICES

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

COLUMBIA LEGAL SERVICES, INSTITUTIONS PROJECT

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- rachael@dr-wa.org
- sbuergel@paulweiss.com
- talner@aclu-wa.org
- tdavis@aclu-wa.org
- teresa.chen@piercecountywa.gov
- tim.lang@atg.wa.gov

Comments:

Emergency Motion to Accelerate Review, for Appointment of Special Master, and for Immediate Relief

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

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