

Roger Foster and Kristopher Mehle, on behalf of themselves and all others similarly situated; and Adam Dennis Sanborn, on behalf of himself and all others similarly situated,

Petitioners,

v.

Minnesota Department of Corrections; Paul Schnell, Commissioner; Minnesota Correctional Facility-Moose Lake; and William Bolin, Warden,

Respondents.

Case No.:

**MEMORANDUM IN SUPPORT OF
PETITIONERS' MOTION FOR
WRITS OF HABEAS CORPUS,
MANDAMUS AND APPOINTMENT
OF A SPECIAL MASTER**

INTRODUCTION

Petitioners are three inmates incarcerated at the Moose Lake Correctional Facility (“Moose Lake”) in the City of Moose Lake in Carlton County, where the coronavirus is running unrestrained through the inmate population and staff, with 12 out of 14 inmates tested confirmed positive with COVID-19 and another 31 presumed positive based on symptoms and close contact with persons confirmed positive with COVID-19. At least 10 guards are reported to have COVID-19, with the potential to spread COVID-19 in the broader community at large as they come and go to work in the prison. Moose Lake is the original breeding ground for COVID-19 in the Minnesota prison system. Only one other prison, Willow River Correctional Facility, has confirmed and presumed cases of COVID-19, and Willow River is located in the City of Moose Lake.

Petitioners have brought this action because Respondents have failed and refused to perform their legal duty to keep Petitioners safe. Respondents' efforts to stem the tide of COVID-19 at Moose Lake have fallen woefully short, and have endangered the health and lives of Petitioners, the inmate population, and the population of the surrounding communities.

Petitioners are entitled to more. The relief they seek here in this motion is the issuance of (1) a Writ of Habeas Corpus for Petitioners' immediate release, or alternatively, and order to show cause why they should not be released; (2) a Peremptory Writ of Mandamus requiring Respondents to perform their legal duty to keep Petitioners safe, or an Alternative Writ to show cause why they should not be required to perform this duty; and (3) an Order appointing a Special master to take control of pretrial proceedings. There is an urgency to all of Petitioners' requests because COVID-19 waits for no one, and can be stopped only by immediate, now well-known measures that Respondents have failed to take.

FACTUAL BACKGROUND

The facts that support Petitioners' Motion are attached as supporting declarations from Petitioners themselves and medical professionals. They will not be stated at length here, because time is of the essence for the Court, the parties, and the entire community.

Petitioners Roger Foster and Kristopher Mehle are Moose Lake inmates with fairly imminent release dates. Both have safe places in which to engage in social distancing and potential employment to support themselves on release. Mr. Foster has COVID-19 symptoms at the present time. Petitioner Adam Dennis Sanborn, also confined at Moose Lake, is especially vulnerable to COVID-19 as an asthmatic. He too has a safe place to go for social distancing on release. They bring their claims for habeas and mandamus writs on behalf of classes of similarly

situated inmates. But that they need not concern the Court in dealing with this Motion, which seeks no class-wide relief at this time.

Respondents are the Minnesota Department of Corrections and its Commissioner Paul Schnell and Moose Lake and its Warden William Bolin. Petitioners sue Messrs. Schnell and Bolin only in their official capacities, because they have custody of Petitioners.

As noted above, COVID-19 is burning through Moose Lake, infecting inmates and guards alike. It is COVID-19's foothold and beachhead in the Minnesota prison system, from which its tentacles will reach out wherever it is carried by staff into the community, and from there onward. It is now common knowledge that the two best ways to deal with this pathogenic invader are social distancing and extensive testing. Neither, however, is occurring at Moose Lake. Instead of best practices, the prison is operating as usual and putting the onus on the inmates to stop the spread of COVID-19. The prison continues to hold three, four, six and even eight men in cells, permit unrestricted use of showers, kiosks, vending machines and other facilities. While the prison eventually locked down the cafeteria, it did so only recently. With COVID-19 in every unit in the prison, the prison has reduced restrictions on movement, forcing inmates to police themselves. The prison does not test inmates for the virus unless they are showing obvious signs of illness which permits the virus to spread, unseen, among the population. This needs to stop, now.

PETITIONERS' ENTITLEMENT TO RELIEF

Rights of Petitioners

Petitioners may be incarcerated people convicted of crimes, but they have rights under the Minnesota Constitution, Minnesota statutes and rules, and decisions of the Minnesota Courts.

Under Article I of the Minnesota Constitution, they have rights to security and protection (Sec. 1), freedom from cruel or unusual punishment (Sec. 5), and substantive and procedural due process (Sec. 7). Under Minnesota Statutes, the Commissioner of Corrections must promulgate rules establishing minimum standards for inmate security, safety, and health (§ 241.021 subd. 1); must provide professional health care to persons confined in correctional institutions (§ 241.021 subd. 4); must ensure that those in charge of facilities comply with applicable standards for health and safety of inmates (§ 241.021 subd. 5); and must remove inmates from facilities infected with health or life-threatening contagious diseases (§ 243.57). Under Minnesota Rules, a facility where specific conditions endanger the health, welfare, or safety of inmates or staff must be restricted or condemned (Rule 2911.0300, subp. 2); a correctional facility must have a plan for 24-hour emergency care and evacuation and transfer of inmates when conditions warrant (Rule 2911.5800, subp. 4); and a correctional facility must have a policy and procedure for health-trained staff to act upon and treat inmates' health care complaints (Rule 2911.5800, subp. 8).

The facts of the Petition and accompanying declarations make clear that none of this is occurring at Moose Lake, where through neglect or refusal or inability to act, Respondents are violating each and all of these legal rights of Petitioners.

Even without regard to the foregoing Constitutional, statutory, and administrative rule-making rights, Minnesota courts have long recognized a duty of corrections officials to provide reasonably safe accommodations for those in their custody. When a person has custody of another under circumstances in which the other person is "deprived of normal opportunities of self protection," a duty is imposed on the custodian because of the special relationship that exists between custodian and detainee. *Cooney v. Hooks*, 535 N.W.2d 609, 611 (Minn. 1995). This

duty requires the government to exercise reasonable care to safeguard prisoners. *Id.*; *Davis v. State Dept. of Corrections*, 500 N.W.2d 134, 136 (Minn. Ct. App. 1993); *Sandborg v. Blue Earth County*, 601 N.W.2d 192, 196 (Minn. Ct. App. 1999). The duty of protection arises when the harm to be prevented is foreseeable under the circumstances. *Sandborg*, 601 N.W.2d at 197.

There can be no question that when Governor Tim Walz declared COVID-19 “a peacetime emergency in Minnesota,” Respondents had notice that this duty lay on their shoulders. There can also be no doubt they failed to perform it.

Habeas Corpus

Habeas corpus under Minnesota law arises from Minnesota Statutes, Chapter 589.

Section 589.01 provides:

A person imprisoned or otherwise restrained of liberty, except persons committed or detained by virtue of the final judgment of a competent tribunal of civil or criminal jurisdiction, or by virtue of an execution issued upon the judgment, may apply for a writ of habeas corpus to obtain relief from imprisonment or restraint. For purposes of this section, an order of commitment for an alleged contempt or an order upon proceedings as for contempt to enforce the rights or remedies of a party is not a judgment, nor does attachment or other process issued upon these types of orders constitute an execution.

Minnesota Courts have long recognized that this Section is appropriate for challenging conditions of confinement, and that the writ may issue upon a showing that conditions amount to cruel and unusual punishment, or otherwise infringe fundamental constitutional rights. *Kelsey v. State*, 283 N.W.2d 892, 895 (Minn. 1979):

While the habeas statute, see, Minn.St. 589.01, does not provide for the use of habeas in this kind of situation, this court clearly has the inherent judicial power to create an exception to the general rule that habeas is unavailable to a prisoner confined pursuant to a final judgment. In fact, both in Minnesota and in other states, exceptions have been made to the rule so as to provide prisoners with a ready means of relief where none would otherwise be available. Thus, habeas corpus is available under certain circumstances to test a claim of a prisoner that the conditions of his confinement constitute cruel and unusual punishment.

State ex rel. Guth v. Fabian, 716 N.W.2d 23, 26-27 (Minn. Ct. App. 2006) (“A writ of habeas corpus may also be used to raise claims involving fundamental constitutional rights and significant restraints on a defendant's liberty or to challenge the conditions of confinement.”); *State v. Schnagl*, 859 N.W.2d 297, 302-03 (Minn. 2015) (“Although we have not expressly endorsed the use of habeas corpus to challenge the Commissioner's administrative decisions regarding the length of an offender's release term, we have implicitly approved it.”).

The conditions of Petitioners’ confinement at Moose Lake, as shown in the Petition and declarations, clearly meet the standard for issuance of the writ of habeas corpus. At the very least, they require the issuance of an order to show cause why the writ of habeas corpus should not issue. There is no question that Respondents have failed to implement the two crucial steps necessary to slow the pace of COVID-19 and protect the health and lives of Petitioners: increased testing and social distancing. Confinement under such conditions, where Petitioners must helplessly await illness and even death, amounts to cruel and unusual punishment, an infringement of fundamental constitutional rights, and significant restraints on liberty requiring the remedy of habeas corpus.

Mandamus

Petitioners are likewise entitled to issuance of a writ of mandamus requiring Respondents to perform their legal duty to protect the health and safety of Petitioners.

Mandamus under Minnesota law arises under Minnesota Statutes Chapter 586.

Section 586.01 provides:

The writ of mandamus may be issued to any inferior tribunal, corporation, board, or person to compel the performance of an act which the law specially enjoins as a duty resulting from an office, trust, or station. It may require an inferior tribunal to exercise its judgment or proceed to the discharge of any of its functions, but it cannot control judicial discretion.

Under § 586.03, the writ may be either mandatory or alternative. A mandatory writ requires the immediate performance of the legal duty. An alternative writ requires the respondent to appear and show cause why the court should not require the performance of the legal duty.

Although mandamus is an extraordinary remedy, its use is appropriate when there is no plain, adequate, and speedy remedy at law. *Farmers & Merchants Bank of Cochrane v. Billstein*, 283 N.W. 138, 139 (Minn. 1938). “The two primary uses of mandamus are (1) to compel the performance of an official duty clearly imposed by law and (2) to compel the exercise of discretion when that exercise is required by law.” *Mendota Golf v. City of Mendota Hgts*, 708 N.W.2d 162, 171 (Minn. 2006). “To be entitled to a writ of mandamus compelling the performance of an official duty, a petitioner must show that (1) the county ‘failed to perform an official duty clearly imposed by law’; (2) he ‘suffered a public wrong and was specifically injured’ by the county’s failure; and (3) he has ‘no other adequate legal remedy.’” *In re Welfare of Child of S.L.J.*, 772 N.W.2d 833, 838 (Minn. Ct. App. 2009).

Petitioners believe that in this case, the mandatory writ is appropriate for two reasons. First, the breach of a legal duty is clear beyond question. Respondents have a legal duty to keep Petitioners safe while in Respondents’ custody under the Minnesota Constitution, Minnesota statutes and rules, and common law as interpreted by Minnesota courts. They are clearly not doing so. Second, and equally important, time is of the essence here. COVID-19 waits for no man at Moose Lake. It takes its victims quickly and mercilessly, and is running freely through the prison. There is no time for all deliberate speed in this matter. Lives are at stake. This is exactly the type of crisis for which a mandatory writ of mandamus is essential and should issue.

Appointment of a Special Master

This is a perfect case for appointment of a special master, as it will certainly require the close and continuing attention and oversight of the Court, which undoubtedly has many other concerns and matters calling for the Court's attention. Monitoring Respondents' performance of legal duties and compliance with court orders may likely require seeking and retaining the advice and expertise of health care professionals, a task well suited for a special master. A special master will also be important in relieving the Court of the burden of overseeing discovery and initiating and conducting alternative dispute resolution. Finally, because of the potential spread of COVID-19 to the City of Moose Lake and Carlton County and the importance of social distancing in this area, the Court should be able to avail itself of the extra pair of hands a special master can provide.

Minnesota Rule of Civil Procedure 53.01 allows for the appointment of a special master to:

- (1) perform duties consented to by the parties;
- (2) hold trial proceedings and make or recommend findings of fact on issues to be decided by the court without a jury if appointment is warranted by
 - (A) some exceptional condition, or
 - (B) the need to perform an accounting or resolve a difficult computation of damages; or
- (3) address pretrial and post-trial matters that cannot be addressed effectively and timely by an available district judge.

All of the permissible conditions except perhaps (2)(B) are present here and warrant appointment. To say COVID-19 has created exceptional circumstances is an understatement. As noted, timeliness is urgent here, to say the least. The parties and the Court will require all the help they can get to deal with this unprecedented life-threatening situation.

The courts have recognized that the appointment of a special master is within the sound discretion of the Court and is appropriate for the handling of complex matters not within the

Court's expertise, competence, or availability and schedule. *Brickner v. One Land Development Company*, 742 N.W.2d 706, 712 (Minn. Ct. App. 2007) (affirming appointment of special master in view of "the 'sheer volume' of the record . . . the length and complexity of the trial, the number of exhibits, and the request for a sizeable amount of fees and costs."); *Burdette v. Raiche*, No. A18-0626, Ramsey County District Court, File No. 62-FA-16-936, 2018 WL 5780443, *3 (Minn. Ct. App. Nov. 5, 2018) (affirming special master's appointment because of "the parties need [for] 'a more nimble process' that permits a decision-maker to make early 'real time decisions' to provide them the 'possibility to change their behavior'"); *Call v. Call*, A19-0074, LeSueur County District Court, File No. 40-CV-18-19, 2019 WL 4165018, *3 (Minn. Ct. App. Sept. 3, 2019).

Here, Petitioners request that the Court issue an order saying that the Court will appoint a special master and directing the parties to confer over the next 10 days to reach agreement on a special master, and if they cannot reach agreement, each side shall submit a list of three names with a two-page letter in support of the persons listed from which the Court will make the appointment.

CONCLUSION

On the basis of the foregoing arguments and authorities, Petitioners respectfully request this Court to issue the Writs of Habeas Corpus and Mandamus and Order Appointing a Special Master in the form of the proposed orders submitted herewith.

Respectfully submitted.

DATED: April 15, 2020

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ACKNOWLEDGEMENT

The Petitioners by the undersigned hereby acknowledge that pursuant to Minn. Stat. Sec. 549.211 sanctions may be imposed under this section.

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