SUPREME COURT OF NEW JERSEY
DOCKET NO. 084230

FILED
MAR 22 2020
Heather J. Baker
CLERK

CRIMINAL ACTION

In the Matter of the Request to Commute or Suspend County Jail Sentences

CONSENT ORDER

This matter having come before the Court on the request for relief by the Office of the Public Defender (see attached letter dated March 19, 2020), seeking the Court's consideration of a proposed Order to Show Cause (see attached) designed to commute or suspend county jail sentences currently being served by county jail inmates either as a condition of probation for an indictable offense or because of a municipal court conviction; and

The Court, on its own motion, having relaxed the Rules of Court to permit the filing of the request for relief directly with the Supreme Court, based on the dangers posed by Coronavirus disease 19 ("COVID-19"), and the statewide impact of the nature of the request in light of the Public Health Emergency and State of Emergency declared by the Governor. *See* **Executive Order No. 103 (2020) (Mar. 9, 2020); and**

The Office of the Attorney General, the County Prosecutors Association, the Office of the Public Defender, the American Civil Liberties Union of New Jersey having engaged in mediation before the Honorable Philip S. Carchman, P.J.A.D. (ret.); and

The parties having reviewed certifications from healthcare professionals regarding the profound risk posed to people in correctional facilities arising from the spread of COVID-19; and

The parties agreeing that the reduction of county jail populations, under appropriate conditions, is in the public interest to mitigate risks imposed by COVID-19; and

It being agreed to by all parties as evidenced by the attached duly executed consent form;

IT IS HEREBY ORDERED, that

A. No later than 6:00 a.m. on Tuesday, March 24, 2020, except as provided in paragraph C, any inmate currently serving a county jail sentence (1) as a condition of probation, or (2) as a result of a municipal court conviction, shall be ordered released. The Court's order of release shall include, at a minimum, the name of each inmate to be released, the inmate's State Bureau of Identification (SBI) number, and the county jail where the inmate is being detained, as well as any standard or

specific conditions of release. Jails shall process the release of inmates as efficiently as possible, understanding that neither immediate nor simultaneous release is feasible.

1. For inmates serving a county jail sentence as a condition of probation, the custodial portion of the sentence shall either be served at the conclusion of the probationary portion of the sentence or converted into a "time served" condition, at the discretion of the sentencing judge, after input from counsel.
2. For inmates serving a county jail sentence as a result of a municipal court conviction, the custodial portion of the sentence shall be suspended until further order of this Court upon the rescission of the Public Health Emergency declared Executive Order No. 103, or deemed satisfied, at the discretion of the sentencing judge, after input from counsel.

B. No later than noon on Thursday, March 26, 2020, except as provided in paragraph C, any inmate serving a county jail sentence for any reason other than those described in paragraph A shall be ordered released. These sentences include, but are not limited to (1) a resentencing following a finding of a violation of probation in any Superior Court or municipal court, and (2) a county jail sentence not tethered to a

probationary sentence for a fourth-degree crime, disorderly persons offense, or petty disorderly persons offense in Superior Court. The custodial portion of the sentence shall be suspended until further order of this Court upon the rescission of the Public Health Emergency declared Executive Order No. 103, or deemed satisfied, at the discretion of the sentencing judge, after input from counsel. Jails shall process the release of inmates as efficiently as possible, understanding that neither immediate nor simultaneous release is feasible.

C. Where the County Prosecutor or Attorney General objects to the release of an inmate described in Paragraph A, they shall file a written objection no later than 5:00 p.m. on Monday, March 23, 2020. Where the County Prosecutor or Attorney General objects to the release of an inmate described in Paragraph B, they shall file a written objection no later than 8:00 a.m. on Thursday, March 26, 2020.

1. The objection shall delay the order of release of the inmate and shall explain why the release of the inmate would pose a significant risk to the safety of the inmate or the public.
2. Written objections shall be filed by email to the Supreme Court Emergent Matter inbox with a copy to the Office of the Public Defender.

3. The Office of the Public Defender shall provide provisional representation to all inmates against whom an objection has been lodged under this Paragraph.
4. The Office of the Public Defender shall, no later than 5:00 p.m. on Tuesday, March 24, 2020, provide responses to any objections to release associated with inmates described in Paragraph A, as it deems appropriate. The Office of the Public Defender shall, no later than 5:00 p.m. on Thursday, March 26, 2020, provide responses to any objections to release associated with inmates described in Paragraph B, as it deems appropriate.
5. The Court shall appoint judge(s) or Special Master(s) to address the cases in which an objection to release has been raised.
    a. On or before Wednesday, March 25, 2020, the judge(s) or Special Master(s) will begin considering disputed cases arising from Paragraph A; on or before Friday, March 27, 2020, the judge(s) or Special Master(s) will consider disputed cases arising from Paragraph B.
        i. The judge(s) or Special Master(s) shall conduct summary proceedings, which shall be determined on the papers. In the event the judge(s) or Special

Master(s) conduct a hearing of any sort, inmates' presence shall be waived.

ii. Release shall be presumed, unless the presumption is overcome by a finding by a preponderance of the evidence that the release of the inmate would pose a significant risk to the safety of the inmate or the public.

iii. At any point, the Prosecutor may withdraw its objection by providing notice to the judge(s) or Special Master(s) with a copy to the Office of the Public Defender. In that case, inmates shall be released subjected to the provisions of Paragraphs D-I.

iv. If the judge(s) or Special Master(s) determine by a preponderance of the evidence that the risk to the safety of the inmate or the public can be effectively managed, the judge(s) or Special Master(s) shall order the inmate's immediate release, subject to the provisions of paragraphs D-I.

1. The Order of the judge(s) or Special Master(s) may be appealed on an emergent basis, in a summary manner to the Appellate Division.
2. Should a release Order be appealed, the release Order shall be stayed pending expedited review by the Appellate Division.
3. The record on appeal shall consist of the objection and response filed pursuant to this Paragraph.

v. If the judge(s) or Special Master(s) determine by a preponderance of the evidence that risks to the safety of the inmate or the public cannot be effectively managed, the judge(s) or Special Master(s) shall order the inmate to serve the balance of the original sentence.
    1. The Order of the judge(s) or Special Master(s) may be appealed on an emergent basis, in a summary manner to the Appellate Division.

2. Should an Order requiring an inmate to serve the balance of his sentence be appealed, the Appellate Division shall conduct expedited review.

3. The record on appeal shall consist of the objection and response filed pursuant to this Paragraph.

b. The judge(s) or Special Master(s) should endeavor to address all objections no later than Friday, March 27, 2020.

D. Any warrants associated with an inmate subject to release under this order, other than those associated with first-degree or second-degree crimes, shall be suspended. Warrants suspended under this Order shall remain suspended until ten days after the rescission of the Public Health Emergency associated with COVID-19. *See* Executive Order No. 103 (2020) (Mar. 9, 2020).

E. In the following circumstances, the county jail shall not release an inmate subject to release pursuant to Paragraphs A, B, or C(5)(a)(iii) or (iv), absent additional instructions from the judge(s) or Special Master(s):

1. For any inmate who has tested positive for COVID-19 or has been identified by the county jail as presumptively positive for COVID-19, the county jail shall immediately notify the parties and the County Health Department of the inmate's medical condition, and shall not release the inmate without further instructions from the judge(s) or Special Master(s). In such cases, the parties shall immediately confer with the judge(s) or Special Master(s) to determine a plan for isolating the inmate and ensuring the inmate's medical treatment and/or mandatory self-quarantine.
2. For any inmate who notifies the county jail that he or she does not wish, based on safety, health, or housing concerns, to be released from detention pursuant to this Consent Order, the county jail shall immediately notify the parties of the inmate's wishes, and shall not release the inmate without further instructions from the judge(s) or Special Master(s). In such cases, the parties shall immediately confer with the judge(s) or Special Master(s) to determine whether to release the inmate over the inmate's objection.

F. Where an inmate is released pursuant to Paragraphs A, B, or C(5)(a)(iii) or (iv), conditions, other than in-person reporting, originally imposed by the trial court shall remain in full force and effect. County jails shall inform all inmates, prior to their release, of their continuing obligation to abide by conditions of probation designed to promote public safety. Specifically:

1. No-contact orders shall remain in force.
2. Driver's license suspensions remain in force.
3. Obligations to report to probation officers in-person shall be converted to telephone or video reporting until further order of this Court.
4. All inmates being released from county jails shall comply with any Federal, State, and local laws, directives, orders, rules, and regulations regarding conduct during the declared emergency. Among other obligations, inmates being released from county jails shall comply with Executive Order No. 107 (2020) (Mar. 21, 2020), which limits travel from people's homes and mandates "social distancing," as well as any additional Executive Orders issued by the Governor during the Public Health Emergency associated with COVID-19.

5. All inmates being released from county jails are encouraged to self-quarantine for a period of fourteen (14) days.

6. Unless otherwise ordered by the judge(s) or Special Master(s), any inmate being released from a county jail who appears to be symptomatic for COVID-19 is ordered to self-quarantine for a period of fourteen (14) days and follow all applicable New Jersey Department of Health protocols for testing, treatment, and quarantine or isolation.

G. County Prosecutors and other law enforcement agencies shall, to the extent practicable, provide notice to victims of the accelerated release of inmates.

1. In cases involving domestic violence, notification shall be made. N.J.S.A. 2C:25-26.1. Law enforcement shall contact the victim using the information provided on the "Victim Notification Form." Attorney General Law Enforcement Directive No. 2005-5.

a. Where the information provided on the "Victim Notification Form" does not allow for victim contact, the Prosecutor shall notify the Attorney General.

b. If the Attorney General, or his designee, is convinced that law enforcement has exhausted all reasonable efforts to contact the victim, he may relax the obligations under N.J.S.A. 2C:25-26.1.

2. In other cases with a known victim, law enforcement shall make all reasonable efforts to notify victims of the inmate's accelerated release.

3. To the extent permitted by law, the Attorney General agrees to relax limitations on benefits under the Violent Crimes Compensation Act (N.J.S.A. 52:4B-1, *et seq*.) to better provide victims who encounter the need for safety, health, financial, mental health or legal assistance from the State Victims of Crime Compensation Office.

H. The Office of the Public Defender agrees to provide the jails information to be distributed to each inmate prior to release that includes:

1. Information about the social distancing practices and stay-at-home guidelines set forth by Executive Order No. 107, as well as other sanitary and hygiene practices that limit the spread of COVID-19;

2. Information about the terms and conditions of release pursuant to this consent Order;
3. Guidance about how to contact the Office of the Public Defender with any questions about how to obtain services from social service organizations, including mental health and drug treatment services or any other questions pertinent to release under this consent Order.

I. Any inmate released pursuant to this Order shall receive a copy of this Order, as well as a copy of any other Order that orders their release from county jail, prior to their release.

J. Relief pursuant to this Order is limited to the temporary suspension of custodial jail sentences; any further relief requires an application to the sentencing court.

3/22/2020 9:50 p.m.	/s/Stuart Rabner
Date	Chief Justice Stuart Rabner, for the Court

The undersigned hereby consents to the form and entry of the foregoing Order.

3/22/2020	/s/Gurbir S. Grewal
Date	Office of the Attorney General
3/22/2020	/s/Angelo J. Onofri
Date	County Prosecutors Association of New Jersey
3/22/2020	/s/Joseph E. Krakora
Date	Office of the Public Defender
3/22/2020	/s/Alexander Shalom
Date	American Civil Liberties Union of New Jersey