FILED
SUPREME COURT
STATE OF WASHINGTON
APRIL 23, 2020
BY SUSAN L. CARLSON
CLERK

THE SUPREME COURT 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 STEVEN SINCLAIR, Secretary of the Washington State Department of Corrections, Respondents.	)	**ORDER** No. 98317-8

On April 23, 2020, the Court (Judge Lisa Worswick participated as justice pro tem) heard oral argument on the "PETITIONERS' PETITION FOR A WRIT OF MANDAMUS" and the "PETITIONERS' MOTION TO AMEND PETITION FOR A WRIT OF MANDAMUS." After full consideration, the Court determined by majority to enter the following order with opinions to follow.

Now, therefore, it is hereby

ORDERED:

1. "PETITIONERS' PETITION FOR A WRIT OF MANDAMUS" is DENIED; the Petitioners have not shown that the Respondents are currently failing to perform a mandatory, nondiscretionary duty in addressing the COVID-19 risk at the Department of

Corrections facilities, nor shown other constitutional or statutory grounds for the relief they request.

2. "PETITIONERS' MOTION TO AMEND PETITION FOR A WRIT OF MANDAMUS" is DENIED; on the record presented, the Petitioners have not shown the Respondents' actions constitute deliberate indifference to the COVID-19 risk at the Department of Corrections facilities, and thus cannot establish unlawful restraint.

DATED at Olympia, Washington this 23rd day of April, 2020.

For the Court

Stephens, C.J.

CHIEF JUSTICE

No. 98317-8

GONZÁLEZ, J. (dissenting) — On April 10, 2020, we unanimously granted accelerated review of Petitioners' motion for immediate relief, in part. We directed the Governor and Secretary Sinclair to immediately exercise their authority to take all necessary steps to protect the health and safety of the named petitioners and all Department of Corrections (DOC) inmates in response to the COVID-19 outbreak and to report to the Court in writing no later than April 13, 2020, all steps that have been taken and will be taken and their emergency plan for implementation. We exercised our authority, by court order, to do so because this is an extraordinary situation with grave consequences for not just those incarcerated without sufficient safeguards, but also for the broader community.

Respondents Governor Inslee and Secretary Sinclair then filed their plan. It showed both substantial progress and continuing problems in DOC facilities. We also received an update and today heard oral argument regarding the ongoing challenges and responses. The majority denies relief in the form of a writ and denies the Petitioners' motion to amend to add a claim of habeas corpus and/or a personal restraint petition.

We dissent because while a writ of mandamus is a limited mechanism for providing relief, it may allow the Court to order the Executive branch to comply with its duty to protect incarcerated individuals and to implement its own protection guidelines outlined in the April 13, 2020 and April 20, 2020 Report to the Court. Also, we would have accepted the State's offer to provide an updated report in two weeks on the State's continuing progress to take all necessary steps to protect the health and safety of DOC inmates in response to the COVID-19 outbreak, including their ongoing plans for implementation, before deciding whether the Petitioners' claims have merit.

Finally, we would grant the motion to amend to include the personal restraint petition (PRP) claims by these five named prisoners. This court has original jurisdiction over such PRPs and can, therefore, retain the claim as a PRP if granted. RAP 16.3(c); RAP 16.5(d); RAP 1.2(a). Petitioners assert a claim that is cognizable under the PRP rules. *E.g.*, RAP 16.4(c)(6). Difficult questions would remain to be determined after granting the motion: whether these petitioners can file on the behalf of a class, an open question in our court; and whether these petitioners (or others in a possible class) can prevail on the merits of a PRP challenge to conditions of confinement under the standards of either the Eighth Amendment or our state's Article I, section 14. That does not mean that the motion to amend is futile; it means that the motion to amend satisfies our procedural and jurisdictional prerequisites and that there are important issues of first impression to be addressed on the merits, including issues of fact regarding the conditions of the state's prison during this COVID-19 crisis. Therefore, we respectfully dissent.

González, J.

Gordon McCloud, J.

Yu, J.

Montoya-Lewis, J.