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No. 98317-8

IN THE 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.

BRIEF OF *AMICUS CURIAE*
SOUTH CORRECTIONAL ENTITY

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I. INTRODUCTION

Amicus Curiae South Correctional Entity (“SCORE”) is a public agency operating a regional jail in Des Moines, Washington, for more than 30 jurisdictions statewide. Since the onset of the COVID-19 crisis, SCORE has been at the forefront of implementing strategies and procedures to prevent the introduction of the virus into the jail, and to protect inmates, staff, and the public. Thus far, SCORE’s efforts have been successful, with no suspected or confirmed cases. But SCORE continues to take steps to reduce the impact of an infection should one occur, including by working with its partner jurisdictions to decrease its inmate population by half. Meanwhile, SCORE continues to provide advance planning for continuity of care for its inmates scheduled for release.

This case places the Court at the heart of a nationwide debate about how correctional facilities can continue to serve their critical function of protecting the public while also providing safe and healthy conditions for inmates and staff in the face of the COVID-19 pandemic. Below, SCORE describes health and safety measures it has developed and implemented to meet the unique challenges of managing an airborne virus in a custodial environment—from regular cleaning of all touched surfaces, to technology solutions for inmates to gain remote access to the courts and other services,

to shutting down its two dormitories. Many of these measures have been or could be replicated by other facilities in Washington.

SCORE supports thoughtful early release of inmates, as evidenced by its own actions in dramatically decreasing its population. Before release, however, there should also be reentry planning to address continuity of care for inmates (including those infected with or exposed to COVID-19 or with other medical and mental health conditions), housing, and reporting mechanisms going forward. This planning is an essential tool to ensure an inmate's successful reentry and prevent harm to the public including through recidivism.

II. IDENTITY AND INTEREST OF *AMICUS CURIAE*

The Cities of Auburn, Burien, Des Moines, Federal Way, Renton, SeaTac, and Tukwila, Washington (each, a "Member City"), founded SCORE pursuant to an interlocal agreement effective October 1, 2009 (the "2009 Interlocal Agreement").¹ Each Member City is a municipal corporation located principally in southern King County, Washington.

The purpose of the 2009 Interlocal Agreement was to jointly construct, equip, maintain, and operate a consolidated regional misdemeanor correctional facility to be located in Des Moines (the "SCORE facility"). The

¹ Federal Way is no longer a Member City.

SCORE facility would serve both the Member Cities, as well as state agencies and other local governments in need of correctional services essential to the preservation of the public health, safety, and welfare. To carry out the purposes of the 2009 Interlocal Agreement and to operate, manage, and maintain the SCORE facility, the Member Cities formed a separate governmental administrative agency pursuant to the 2009 Interlocal Agreement and RCW 39.34.030(3), known as the South Correctional Entity (“SCORE”).

SCORE owns and operates the SCORE facility. The SCORE facility is a single-story building located in Des Moines near the SeaTac International Airport and approximately 15 miles south of the City of Seattle. The facility houses male and female inmates and provides housing, counseling, medical care, dental care, specialty care, mental health and addiction services, medication assisted treatment programs, transport, video court, community reentry programs, and other inmate services. The SCORE facility began operations in 2011, serving the Member Cities and approximately 37 contract agencies (as of October 1, 2019), with a total capacity of 802 inmates. The average daily population at the facility as of December 31, 2018 was 635 inmates. As of this month, the average daily population is 316.

SCORE’s vision statement is: “To protect the public, by providing secure and humane housing of inmates within its control and by providing

the best corrections services within Washington State.” SCORE is accredited by the Washington Association of Sheriffs and Police Chiefs (“WASPC”) and the National Commission on Correctional Health Care (“NCCHC”).

SCORE has declared a state of emergency regarding COVID 19, following on other state and local orders. On March 13, 2020, SCORE’s Executive Director Devon Schrum stated her intent to declare a State of Emergency, and began imposing certain operational restrictions at SCORE. SCORE’s Administrative Board found it was in the best interest of the public to ratify and declare a state of a civil emergency at SCORE due to the outbreak of COVID-19 within the region, and authorized the Executive Director to utilize the emergency powers granted under RCW 38.52.070 to preserve public health, safety, and order at SCORE.

As of this filing, SCORE has no known cases of confirmed COVID-19 within its facility. SCORE remains vigilant in its COVID-19 prevention and protective measures, which it elaborates below for the Court’s consideration in addressing the issues raised by the petition in this matter.

III. STATEMENT OF THE CASE

SCORE relies on the Statements of the Case submitted by the parties.

IV. ARGUMENT

A. SCORE Has Implemented Measures Designed to Meet the Challenges of Managing a Pandemic in a Custodial Environment.

Regional correctional facilities like SCORE are a critical and integral part of the criminal justice system and serve the public by providing secure and humane housing of inmates within their control. These facilities face unique challenges in responding to the COVID-19 pandemic as they work to protect the health and safety of inmates, employees, and the public at large. *See Comm. for Pub. Counsel Servs. v. Chief Justice of Trial Court*, ___ N.E.3d ___, No. SJC-12926, 2020 WL 1659939, at *3 (Mass. Apr. 3, 2020) (noting that “correctional institutions face unique difficulties in keeping their populations safe during this pandemic” due to, *inter alia*, increased transmittability in confined, enclosed environments and increased prevalence of underlying conditions that make COVID-19 more deadly); *Rose v. Baker*, No. 17-15009, Dkt. No. 62, at 2 n.1 (9th Cir. Apr. 9, 2020) (noting that COVID-19 is “a global crisis...that is heightened for [] prisoners” (quotation omitted)); *Basank v. Decker*, ___ F. Supp. 2d ___, No. 20 CIV. 2518 (AT), 2020 WL 1481503, at *3 (S.D.N.Y. Mar. 26, 2020) (“The nature of detention facilities makes exposure and spread of the virus particularly harmful.”).

SCORE has employed a range of strategies in its jail to prevent the introduction and/or spread of the virus. Below, SCORE has highlighted several of these strategies to help inform the Court's evaluation of the parties' differing positions on what relief may be necessary or appropriate.²

1. Managing supply constraints and concerns with PPE via targeted deployment of PPE and alternative strategies.

Like many detention facilities, SCORE does not have a sufficient supply of personal protective equipment ("PPE"), including N95 respirators and disposable gowns. While SCORE has made, and continues to make, every effort to procure additional PPE from public and private sources, global PPE shortages pose tremendous challenges for SCORE and other detention facilities in Washington (and, of course, outside the corrections system altogether). Given these shortages, at this stage, it would not be feasible for SCORE to provide PPE to everyone in the jail.

SCORE has, therefore, deployed its limited supply of PPE to areas with higher risk of exposure. For example, medical-grade PPE is being used by staff handling intake of new inmates and staff working with inmates in isolation. In addition, SCORE recently procured cloth facial coverings for use by all other staff. SCORE is only providing PPE to those inmates in

² This Amicus Brief highlights many of SCORE's efforts but is not intended to be comprehensive.

isolation or quarantine as a result of declared exposure or symptoms associated with COVID-19.

At the same time, SCORE has identified additional approaches toward preventing the spread of the virus between and among inmates and staff. Importantly, SCORE wipes down all touched surfaces in the facility four times per day with disinfectant products designed to kill viruses. SCORE provides inmates free flowing access to soap and water and single-use towels in their cells and other locations, in addition to alcohol-based hand sanitizer in intake, upon request, or prior to volunteering in the kitchen or commissary.³ As described below, SCORE has also implemented social distancing measures, medical screening for staff and inmates, reduced its inmate population and operations, and made changes to its physical facility, among other things.

2. Technology solutions to facilitate inmates' remote access to hearings, lawyers, medical providers, and visitors.

SCORE has expanded its use of secure HIPAA-compliant software and iPads to allow inmates to attend hearings and connect with services outside the jail.⁴ For court proceedings and Department of Corrections (“DOC”) hearings, inmates may participate via iPad from a designated

³ SCORE is monitoring access to alcohol-based hand sanitizer given potential safety concerns in distributing this flammable substance.

⁴ Prior to the COVID-19 emergency, SCORE was using the secure software for remote access to court hearings.

physically separate location. (Their counsel has the option to participate from a separate room in the jail or a fully remote location.) SCORE is also allowing inmates to use iPads to connect with lawyers, medical providers, community corrections officers, and mental health coordinators. SCORE's use of remote-access technology enables inmates and staff to maintain social distancing while inmates engage in these essential activities, and decreases the number of people coming in and out of the facility.

SCORE also worked with its video visit vendor to ensure that inmates are offered free video visits from home during this pandemic.

3. Coordination with medical and food providers.

It became apparent early during this crisis that SCORE needed to work closely with its medical and food providers to ensure comprehensive planning. SCORE is meeting regularly with these providers to develop end-to-end plans and identify and address potential gaps. As a result of this collaborative process, SCORE began conducting additional medical screening (temperature-check and questioning) for inmate volunteers before they assist with preparation of food. Further, in the event of actual or suspected exposure, inmates on quarantine or isolation will use only disposable trays, dishes, and utensils.

4. Social distancing measures in a custodial environment.

SCORE has changed its operations to allow for social distancing while maintaining a secure and safe environment. Intake occurs one inmate at a time, and outside access has been limited to lawyers, DOC, and the Public Health Authority (“PHA”) (i.e., no volunteers, visitors, or tours). For current inmates, SCORE has staggered programming and “hour outs” including meal times to limit the number of inmates and staff in transit or in a single room. And notably, SCORE closed its dormitory housing, as described below. Although these restrictions place a burden on inmates and staff, they are critical to decreasing the risk of introduction of the virus and allowing for social distancing during the jail’s necessary functions, including intake of new inmates, preparation and delivery of meals, and activities related to ongoing legal proceedings.

5. Medical screening of staff and inmates.

SCORE is conducting regular medical screenings (temperature and symptom check) of everyone in the jail. All new arrivals—inmates, staff arriving for a shift, and necessary visitors (lawyers, DOC, and PHA)—are screened upon arrival by a trained health professional wearing PPE. Inmates are screened one at a time and before entering SCORE’s Intake Unit for identified symptoms and/or known exposure. Inmates exhibiting symptoms or self-reporting exposure are immediately provided a mask and

are placed in medical isolation for evaluation and treatment. Inmates housed in general population have the opportunity to meet with medical staff and/or mental health staff upon request or by referral. Additionally, mental health staff are conducting regular wellness checks of the inmate population. SCORE sent its inmate screening criteria to local law enforcement so that inmates could be preliminarily screened before arrival at SCORE.

6. Reduced operations.

Although the increase in preventative health measures has helped SCORE avoid any COVID-19 cases to date, SCORE continues to plan for the possibility of a potential outbreak. With that in mind, SCORE has reduced its inmate population by half. SCORE's facility can house up to 802 individuals, with an average population before the crisis of more than 600 inmates. SCORE worked closely with its Member Cities and other partner jurisdictions to bring this number down to less than 400 inmates. Through SCORE's contracts with DOC, the number of DOC inmates transferred to SCORE is capped at 240. Further, SCORE is prioritizing mandatory bookings for certain crimes (such as, driving under the influence (RCW 46.61.502), assault in the fourth degree related to domestic violence (RCW 9A.36.041), and warrants in excess of \$10,000) and encouraging

officers to take the current situation into account in deciding whether to bring someone to the jail for booking.

Additionally, and in anticipation of a potential COVID-19 vaccine, SCORE has continued its regular practice of offering vaccinations for influenza and Hepatitis A and B. This model of providing vaccines in a custodial environment is one that can and should be replicated by other jails in order to prevent or slow future outbreaks.

7. Modifications to physical plant.

Due to its modern construction, the SCORE facility allows physical separation between staff and the reduced inmate population. SCORE shut down its two dormitories (70 beds), which could have posed risks for inmates and staff given the difficulty/impossibility of following social distancing guidelines in this type of shared living space.

SCORE has identified 79 cells in three different units that would be suitable for quarantine or isolation, if needed. Each of the three units has separate Air Handling Units designed to exchange air at a rate of nine to eleven times per hour in order to help prevent further spread of this airborne virus. SCORE also purchased higher grade filters for all of the Air Handling Units in the jail.

B. SCORE Supports Targeted Release of Inmates Subject to Advance Planning for Continuity of Care Upon Reentry.

Given the risks to inmates, staff, and the community in the event of a COVID-19 outbreak in a custodial setting, SCORE supports thoughtful release of inmates. Indeed, SCORE was only able to implement many of the measures described above due to the cooperation of SCORE's Member Cities and partners in reducing SCORE's population in half. That said, even during a public health crisis, detention facilities must continue to incarcerate people who pose a threat to the safety of our community. Further, we must be thoughtful about not only who is released, but also the steps that need to be taken **before release** to ensure continuity of care for inmates upon reentry.

SCORE often spends days or weeks coordinating community transition as part of continuity of care release planning, particularly for its medically fragile inmates. SCORE is the misdemeanor jail of choice for more than 30 different government jurisdictions. SCORE has 24/7 medical care and mental health coverage seven days a week. SCORE is thus often also the jail of choice for smaller jails requiring medical care for inmates in their custody. As a direct result of this service availability, SCORE experiences a high level of inmates withdrawing from either alcohol or opiates. SCORE is one of only a very few jails offering a comprehensive

Medication Assisted Treatment Program that offers patient education, induction and continuity of care post release.

While admittedly planning may need to be expedited under emergent circumstances, the challenges of reentry are likely to be even more acute for inmates released during the COVID-19 crisis. Individuals may need care specific to COVID-19, including testing, medical treatment, and a location for quarantine or isolation. They may need access to treatment for other medical and mental health conditions, particularly given Petitioners' request for release of inmates with underlying health conditions who are at higher risk for severe illness if infected by COVID-19. They may need other social services to help with finding safe and stable housing and meet other basic needs, this at a time when demand is increasing exponentially and supply is dropping off. And they may face challenges with reporting requirements given limited public transit and the closure of in-person services at many public buildings.

There are significant benefits to decreasing the inmate population and removing higher risk inmates from the custodial setting, but also undeniable risks to the public. Advance planning is a proven method for increasing the likelihood of successful reentry and preventing recidivism. In fact, courts across the country establishing procedures for release of inmates during the COVID-19 pandemic have, to varying degrees, required

consideration of plans for continuity of care. See, e.g., Administrative Order of the Court of Appeals of Maryland, *Guiding the Response of the Circuit Courts Sitting as Juvenile Courts During the COVID-19 Emergency* (Md. April 13, 2020)⁵ (requiring judges deciding whether to detain juveniles to consider “whether the juvenile has family or a placement resource available to meet basic food, housing, and health needs, including any period of quarantine that may be required”); *Comm. for Pub. Counsel Servs.*, 2020 WL 1659939, at *11 (ordering expedited hearings on motions for reconsideration of bail for certain pretrial detainees based on, among other things, a detainee’s release plan); *In re Matter of Request to Commute or Suspend County Jail Sentences*, No. 084230, Amended Consent Order (N.J. Mar. 23, 2020)⁶ (restricting release of county jail inmate “who self-identifies or whom the jail identifies as unable to obtain safe housing” and, for an inmate who may have COVID-19, requiring “a plan for isolating the inmate and ensuring the inmate’s medical treatment and/or mandatory self-quarantine”).

For these reasons, in granting any relief directed to early release, SCORE encourages the Court to require planning before release to address:

⁵ Available at https://www.courts.state.md.us/sites/default/files/admin-orders/20200413_guidingresponseofcircuitcourtsittingasjuvenilecourts.pdf (last visited on April 16, 2020).

⁶ Available at <https://www.njcourts.gov/public/covid19.html> (last visited on April 16, 2020).

(1) continuity of care in terms of COVID-19 and other conditions such as opioid use disorder; (2) housing; and (3) mechanisms for reporting.

V. CONCLUSION

The COVID-19 crisis poses unique and unprecedented challenges for detention facilities. The health and safety measures implemented by SCORE are thoughtfully designed to prevent the introduction and/or spread of the virus in a custodial setting. This includes the reduction of SCORE's inmate population, in collaboration with its member and partner jurisdictions, and thoughtful planning for continuity of care for inmates scheduled for release. SCORE encourages the Court to take these issues into account in furtherance of our common goal to protect the safety and health of inmates, detention facility staff, and the community at large.

RESPECTFULLY SUBMITTED this 16th day of April, 2020.

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