

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF CARLTON

SIXTH JUDICIAL DISTRICT

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,

Case No.: 09-CV-20-633

Petitioners,

**MEMORANDUM, ALTERNATIVE
WRIT OF MANDAMUS
AND ORDER TO SHOW CAUSE**

v.

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

Respondents.

MEMORANDUM

I. INTRODUCTION

On April 15, 2020, Roger Foster, Kristopher Mehle and Adam Dennis Sanborn, all incarcerated at the Minnesota Correctional Facility-Moose Lake, filed a Petition for Writs of Habeas Corpus and Mandamus.¹ Concurrently, Petitioners filed a memorandum of law, declarations and affidavits in support of their writ requests.

Counsel for Respondents have entered their appearances and Respondents have not yet responded to this action. With input from the parties, on April 28, 2020, this Court ordered Respondents to file their habeas corpus return no later than May 11, 2020, with any reply from Petitioners filed by May 15, 2020.

¹ Petitioners also requested class certification under Minn. R. Civ. P. 23.01 and 23.02(a) and (b), and appointment of a special master, matters this Order does not address.

II. THE COVID-19 PANDEMIC

This lawsuit stems from the COVID-19 global pandemic which has sickened millions around the world and killed more than 50,000 people in the United States. As noted in Petitioners’ submissions, Minnesota schools are closed, non-essential businesses and government services are closed, the governor issued a stay at home order, and encouraged people to follow recommendations of the United States Centers for Disease Control and Prevention, including social distancing.

Grim trend lines have continued since the Petition was filed:

Confirmed Cases Worldwide, In The United States, <u>Minnesota, Carlton County, and Moose Lake Facility</u>	<u>April 15, 2020</u>	<u>April 28, 2020</u>
Worldwide confirmed cases ²	> 2 Million	> 3.1 Million
Worldwide Deaths	> 134,000	> 216,000
United States confirmed cases ³	610,774	994,625
United States Deaths	26,119	56,749
State of Minnesota confirmed cases ^{4,5}	1,809	4,181
State of Minnesota deaths	87	301
Carlton County Confirmed Cases ⁶	27	52
Carlton County Deaths	0	0
MDOC-Moose Lake confirmed cases ⁷	12	62
MNDOC-Moose Lake Deaths ⁸	0	0

² Data from Johns Hopkins University and Medicine Coronavirus Research Center.

³ Data from United States Centers for Disease Control and Transmission. Thirty states report widespread community transmission. In addition, the Indian Health Service reported 1,124 total cases, with more than half reported among the Navajo Nation with 636 cases.

⁴ Data from the Minnesota Department of Health.

⁵ Minnesota Department of Health data come with this caveat: “Not all suspected cases of COVID-19 are tested, so this data is not representative of the total number of people in Minnesota who have or had COVID-19.”

⁶ Carlton County data from the Minnesota Department of Health.

⁷ Data from the Minnesota Department of Corrections.

⁸ According to the MNDOC website, 33 incarcerated persons at the Moose Lake Facility tested positive, 31 are presumed positive, and 29 staff tested positive

Petitioners seek a writ of mandamus to compel Respondents to take reasonable measures to protect the Petitioners from COVID-19 by widespread testing, treatment, sanitary practices and social distancing.

III. THE WRIT OF MANDAMUS

“The authority to issue a writ of mandamus is statutory.” *State v. Wilson*, 632 N.W.2d 225, 227 (Minn. 2001); *see* Minn. Stat. §§ 586.01-12 (2019). Mandamus is neither a legal claim nor a source of a legal claim but an equitable remedy. *Sinell v. Town of Sharon*, 206 Minn. 437, 439, 289 N.W. 44, 45 (1939). Mandamus may be used only when the petitioner has a clear right to the relief sought, the agency has a clear ministerial duty to provide the relief sought, and there is no other remedy available. Minn. Stat. § 586.02 (2019).

Mandamus is an extraordinary remedy, to be granted only when the acts to be compelled are clearly and positively required by law. *Northern States Power Co. v. Minnesota Metropolitan Council*, 684 N.W.2d 485, 491 (Minn. 2004); *Tyo v. Ilse*, 380 N.W.2d 895, 897 (Minn. Ct. App. 1986). Mandamus cannot be used to control the discretion of a public official. *Powell v. Carlos Township*, 117 Minn. 372, 375, 225 N.W. 296, 297 (1929) (holding that once a town board’s discretion is exercised there is no judicial remedy). Mandamus may issue against an official only to compel a ministerial duty. *Tyo*, 380 N.W.2d at 897.

The Minnesota Supreme Court acknowledged that, over the years, it had strayed from its traditional view of mandamus, leading to mandamus being used in quite ordinary zoning matters and other inappropriate cases to direct public officials. *Mendota Golf LLP v. City of Mendota Heights*, 708 N.W.2d 162, 177-79 (Minn. 2006). The court noted that in cases following *Zion Evangelical Lutheran Church v. City of Detroit Lakes*, 221 Minn. 55, 21 N.W.2d 203 (1945), the

appellate courts had been unclear and inconsistent in defining the proper reach of mandamus.

Mendota Golf, 708 N.W.2d at 177. In *Mendota Gold*, the court reaffirmed that mandamus is not appropriate to review the exercise of discretion granted by the Legislature and cannot be used to challenge a mere error in the exercise of discretion. *Id.* at 179.

Minnesota Statutes § 586.03 directs that “[t]he writ of mandamus is either alternative or peremptory. The alternative writ shall state concisely the facts showing the obligation of the defendant to perform the act, and the defendant's omission so to do, and command the defendant that immediately after the receipt of a copy of the writ, or at some other specified time, the defendant do the required act, or show cause before the court out of which the writ issued, at a specified time and place, why the defendant has not done so, and that the defendant then and there make a return to the writ, with a certificate thereon of having done as commanded.”

The two primary purposes of mandamus are, first, to compel the performance of an official duty clearly imposed by law or, second, to compel the exercise of discretion when the exercise of discretion is required by law. *See* Minn. Stat. § 586.01 (2019). Mandamus properly issues only when a petitioner shows that there is “a clear and present official duty to perform a certain act.” *Breza v. City of Minnetrista*, 706 N.W.2d 512, 518 (Minn. Ct. App. 2005), *citing* *Kramer v. Otter Tail County Bd. of Comm’rs*, 647 N.W.2d 23, 26 (Minn. Ct. App. 2002); *N. States Power Co. v. Minn. Metro. Council*, 684 N.W.2d 485, 491 (Minn.2004).

The writ in this case is directed at the first purpose: to compel the performance of an official duty. That said, a writ of mandamus does not control the particular manner in which a duty is to be performed and does not dictate how discretion is to be exercised. *See, e.g., State v. Davis*, 592 N.W.2d 457, 459 (Minn.1999); *State ex rel. S. St. Paul v. Hetherington*, 240 Minn. 298, 301, 61 N.W.2d 737, 740 (1953); *State ex rel. Laurisch v. Pohl*, 214 Minn. 221, 226, 8

N.W.2d 227, 231 (1943). In addition, a writ of mandamus “shall not issue in any case where there is a plain, speedy, and adequate remedy in the ordinary course of law.” Minn. Stat. § 586.02.

“To be entitled to mandamus relief the petitioner must show three elements: (1) the failure of an official to perform a duty clearly imposed by law; (2) a public wrong specifically injurious to petitioner; and (3) no other adequate remedy.” *Id.* (citing *Demolition Landfill Servs., L.L.C. v. City of Duluth*, 609 N.W.2d 278, 280 (Minn.App.2000), *review denied* (Minn. July 25, 2000)). *See also In the Matter of the Welfare of the Child of S.L.J.*, 772 N.W.2d 833, 838 (Minn. Ct. App.2009), citing *Breza, supra*.

The allegations in the Petition establish (1) that the Respondents failed to perform an official duty clearly imposed by law, and (2) the existence of a legal right to the act demanded which is so clear and complete as not to admit any reasonable controversy. *Id.*, citing *Say v. Wright County*, 391 N. W.2d 32, 34 (Minn. Ct. App. 1986), *rev. denied* (Minn. Sept. 24, 1986).

That the government is obliged to provide medical care for those who are incarcerated is elementary. *Estelle v. Gamble*, 429 U. S. 97 (1976). Under our state and federal constitutions, when the State takes a person into custody and holds him against his will, they bear a corresponding duty to assume some responsibility for his safety and well-being. *Estelle v. Gamble, supra*; *Cooney v. Hooks*, 535 N. W. 2d 609 (Minn. 1985); *Sandborg v. Blue Earth County*, 601 N. W. 2d 192 (Minn. Ct. App. 1999); *rev'd on other grounds* 615 N. W.2d 61 (Minn. 2000). The Minnesota Legislature also weighed in on the issue of the safety and well-being of incarcerated persons in Minn. Stat. § 241.021, subd. 1 (2019), which requires MNDOC to promulgate rules “establishing minimum standards for [its] facilities with respect to their

management, operation, physical condition, and the security, safety, health, treatment, and discipline of persons defined or contained therein.”

Petitioners allege Respondents are in violation of MNDOC’s duty to protect them by failing to implement reasonable measures to slow or stop the transmission of the highly contagious COVID-19 virus. Certainly, the challenges posed by the contagion are substantially beyond MNDOC’s experience. Nonetheless, its duty to do so is clear. The allegations in the Petition, supported by sworn affidavits and declarations, demonstrate that thus far, MNDOC has not met its duty.

Given the seriousness of the situation, the rapid spread of COVID-19 in the Moose Lake Facility, indeed throughout the State of Minnesota and the United States, and the particular vulnerability of the Petitioners, there is no adequate legal remedy.

ALTERNATIVE WRIT OF MANDAMUS

AND ORDER TO SHOW CAUSE

1. Respondents are ordered to appear and show cause on May 19, 2020, at 1:00 p.m., why they should not be ordered to perform their legal duty to keep Petitioners reasonably safe from COVID-19 while in Respondents’ custody at the Minnesota Correctional Facility- Moose Lake, to include providing for appropriate testing, social distancing, and medical treatment, so long as the COVID-19 pandemic continues.

2. Respondents shall file a return to the Petitioner’s mandamus request and responses to the motion on or before May 11, 2020.

3. Petitioners shall have until May 15, 2020, to submit a Reply to Respondents’ Return.

4. The May 19, 2020, hearing shall be on the Zoom platform. The Carlton County Court administrator shall send Zoom invitations prior to the hearing.

BY THE COURT:

The Honorable Leslie E. Beiers
Judge of District Court