

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RAMSEY

SECOND JUDICIAL DISTRICT

Arnold Baker, Deiven Branch, Gregory Green, Ronald Paul Habedank, Dameon Henley, Ronald Hill, Charles Jackson, Nathaniel Moore, Joseph Rewitzer, Deontaye Russell, Robert Raphael Schultz, Ali Washington, and Antonio Williams, on behalf of themselves and all others similarly situated,

62-CV-20-5143

Petitioners,

ORDER

v.

Minnesota Department of Corrections and Paul Schnell, Commissioner, in his official Capacity,

Respondents.

THE ABOVE-CAPTIONED MATTER came before the undersigned on December 4, 2020, upon Petitioners' motion for class certification on a writ of mandamus petition. Dan Shulman, appeared on behalf of the Petitioners, along with Teresa Nelson, Ian Bratlie, Isabella Salomão Nascimento, Clare Diegel, Cathryn Middlebrook, William Ward, and Dan Lew. Cicely Miltich appeared on behalf of the Respondents along with Stephen Forrest. All appearances were made remotely via Zoom, due to the ongoing COVID-19 pandemic.

Based on all the files, records and proceedings herein:

IT IS HEREBY ORDERED that

1. The Petitioners' request for an alternative writ of mandamus and order to show cause is granted.
2. The Petitioners' motion for class certification is deferred until after briefing and argument on the writ of mandamus.
3. The attached memorandum is incorporated herein.

Memorandum

The COVID-19 Global Pandemic

This case arises out of issues surrounding the spread of COVID-19 in the facilities run by the Minnesota Department of Corrections. The spread of COVID-19 has engendered an unprecedented global health crisis, killing over 286,000 people in the United States. According to the Minnesota Department of Health, over 350,000 Minnesotans have contracted COVID-19 and 4,027 people in the state have died after contracting the virus.

In an early response to the COVID-19 pandemic, Governor Tim Walz declared a peacetime state of emergency and has issued a series of executive orders, beginning on March 13, 2020, that directed Minnesotans to maintain social distancing, wear masks in public, limit non-essential travel, and not engage in any social activities with people outside of their household. *See, i.e.*, Executive Order 20-01). As Governor Walz has noted, Minnesota is officially in the “Red Zone” as of this writing — the most critical level of concern — for two main indicators of uncontrolled spread: test positivity rate and new COVID-19 cases. *See* Executive Order 20-99. The Governor’s most recent order further notes that the statewide percentage of positive COVID-19 tests has been steadily rising during the fall of 2020, exceeding the 10% “Red Zone” threshold since November 1, 2020. *See also* <https://www.health.state.mn.us/diseases/coronavirus/stats/covidweekly49.pdf> (*last visited Dec. 9, 2020*).

Despite the actions taken to combat COVID-19 in Minnesota’s population generally, Petitioners argue that there has been a blind spot on the COVID-19 pandemic within the Department of Corrections. Petitioners argue that Respondents have failed to act in any coordinated way to prevent COVID-19 from spreading rapidly through correctional facilities and overwhelming medical resources in nearby communities.

Petitioners Baker, Green, Hill, Jackson, Moore, Schultz, Washington, and Williams are currently committed to the Minnesota Department of Corrections and incarcerated at the Faribault facility. Petitioner Henley is committed to the Department of Corrections and incarcerated at the Lino Lakes facility. Petitioner Habedank is committed to the Department of Corrections and incarcerated at the Moose Lake facility. Petitioner Russell is committed to the Department of Corrections and incarcerated at the Red Wing facility.¹ Petitioners Branch and Russell are under the supervision of the Minnesota Department of Corrections on the work release program. While the basis for their incarcerations is not relevant here, the Court can take judicial notice that that the Minnesota Department of Corrections only incarcerates felony offenders, and as such, each Petitioner is serving at least a 366 day sentence.

Petitioners seek this writ on the basis that their close confinement and vulnerable status as incarcerated individuals puts them at substantial risk of contracting COVID-19. Petitioners are asking this Court to compel the Department of Corrections to protect them from COVID-19. Petitioners also move for an order certifying this action as a class under Minn. R. Civ. P. 23.01 and 23.02(b).

Class Certification Prematurity

Petitioners assert that their motion for a class certification is appropriate prior to the issuance of a peremptory or an alternative writ with an order to show cause, because Minnesota Rules provide that “the court must - *at an early practicable time* - determine by order whether to certify the action as a class action.” Minn. R. Civ. P. 23.03(a)(1) (emphasis supplied). At argument, Counsel for the Petitioners asked that this Court rely on an internet dictionary definition of “practicable” meaning “capable of being done with means at hand and circumstances as they

¹ Petitioner Joseph Rewitzer dismissed his claims against the Respondents on December 8, 2020.

are.” One Look Dictionary Search, <https://www.onelook.com/?w=PRACTICABLE&ls=a> (*last visited December 9, 2020*). It follows, Petitioners argue, that the Court has everything it might need to rule on the issue of class certification, even before Respondents have filed what is essentially the equivalent of an Answer under Minnesota Statutes § 586.06.

Respondents argue that although class certification is generally appropriate for courts to consider before a case is decided on the merits, “[t]his general principle is not applicable, however, where ‘the merits of the litigation are fully determinable as a matter of law, based exclusively on judicial construction of controlling state statutes.’” *Streich v. Am. Family Mut. Ins. Co.*, 399 N.W.2d 210, 214 (Minn. Ct. App. 1987) (quoting *Holisak v. Nw. Nat’l Bank of St. Paul*, 210 N.W.2d 413, 415 (Minn. 1973)).

Respondents also assert that class certification is especially premature here because Petitioners have elected to pursue a petition for mandamus, which is a special statutory proceeding under Minnesota law. Respondents argue that the Minnesota Rules of Civil Procedure do not govern proceedings seeking writs of mandamus where they are “inconsistent or in conflict” with the statutes governing that writ. *See* Minn. R. Civ. P. 81.01(a) (providing that the Minnesota Rules “do not govern pleadings, practice and procedure in the statutory and other proceedings listed in Appendix A insofar as they are inconsistent or in conflict with the rules”); Minn. R. Civ. P. Appendix A (listing “Writ of mandamus”); *see also Peterson v. State*, No. A06-2085, 2007 WL 2600802, at *2 (Minn. App. Sept. 11, 2007) (noting provisions in Minn. R. Civ. P. 15.01 did not apply to proceedings on Appendix A because the statute governing those proceedings “sets forth a specific mechanism for making written submissions to the district court”).

This Court agrees with the Respondents that the parties are not yet at the “early as practicable” point for this petition where the Court should determine whether the parties should be

certified as a class under Rule 23. Further, even if the Minnesota Rules of Civil Procedure apply to a mandamus proceeding, the Respondents should still have the opportunity to respond following the issuance of the alternative writ and order to show cause before the Court determines whether class certification is appropriate as a matter of fundamental fairness and judicial efficiency.²

Writ of Mandamus

“Mandamus is an extraordinary legal remedy.” *State v. Pero*, 590 N.W.2d 319, 323 (Minn. 1999). Mandamus is only permitted when the petitioner has a clear right to the relief sought, the government actor has a clear duty to provide the relief sought, and there is no other remedy available. Minn. Stat. § 586.02 (2019). Mandamus relief is based on equitable principles and is awarded at the discretion of the district court. *Coyle v. City of Delano*, 526 N.W.2d 205, 207 (Minn. App. 1995).

Mandamus can be granted only when the acts sought to be compelled are clearly and positively required by law. *Northern States Power Co. v. Minn. Metro. Council*, 684 N.W. 2d 485, 491 (Minn. 2004). Mandamus cannot be used to control the discretion of a public official, but instead can only be used to compel that official’s ministerial acts. *Powell v. Carlos Township*, 225 N.W. 296, 297 (1929). A ministerial act is “absolute, certain and imperative, involving merely execution of a specific duty arising from fixed and designated fact.” *Hoskin v. City of Eagan*, 632 N.W.2d 256, 259 (Minn. Ct. App. 2001). Moreover, 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. *Mendota Golf, LLP v. City of Mendota Heights*, 708 N.W.2d 162, 171 (Minn. 2006).

² The issue of class certification has been fully briefed and argued by the parties, and the record on that issue is closed. The Court will rule on that issue following the issuance of the alternative writ and the filing of the parties’ return and reply.

The Minnesota Supreme Court's traditional view of mandamus was limited to "rare cases" which involved a "clear right" to the remedy of mandamus. *See Zion Evangelical Lutheran Church of Detroit Lakes v. City of Detroit Lakes*, 21 N.W.2d 203, 205 (1945). However, in 2006, the Supreme Court acknowledged that it has strayed from that traditional view, which has led to mandamus being used in quite ordinary zoning matters and other inappropriate cases to direct public officials. *Mendota Golf LLP*, 708 N.W.2d at 178. As the court clarified in *Mendota Golf*, "[t]he clear legal duty to act which evokes a right to mandamus" does not arise with respect to an act that "principally involves the exercise of judgment and discretion." *Id.* at 178.

Under Minnesota Statutes § 586.03:

"[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."

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.

As such, 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). A writ of mandamus is only properly ordered 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).

Therefore, to be entitled to mandamus relief, the Petitioners must demonstrate 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. Ct. 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).

The DOC’s legal duty to prisoners

It is undisputed that the government has a duty to exercise reasonable care to safeguard all people within its custody. *Davis v. State Dept. of Corrections*, 500 N.W.2d 134, 136 (Minn. Ct. App. 1993). 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). Respondents also have a statutory obligation to protect the safety and wellbeing of the Petitioners under Minnesota Statutes section 241.021, subdivision 1 (2019), which requires the Department of Corrections 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.”

The DOC’s failure to exercise reasonable care

From the Court’s vantage point, it is undisputed that the Commissioner of Corrections is a dedicated public official who is committed to preserving public safety and serving those individuals who are incarcerated, as well as the families who love them. The transparency with which the Department provides information and communication about COVID-19 outbreaks is evidence of that commitment to public service.

At the same time, the Court cannot ignore the staggering number of COVID infection rates amongst the inmates and staff at the Minnesota Department of Corrections, particularly since

Judge Beiers denied the petition for a writ of mandamus in *Foster et al. v. Minnesota Department of Corrections et.al*, earlier this year. See Case No. 09-CV-20-633 (Minn. Dist. Ct., filed April 15, 2020). The statistics alone are sufficient to sustain a finding that there has been a failure within the Department to address the spread of COVID-19.

According to the Minnesota Department of Corrections website, 3,309 of its roughly 7,000 inmates have contracted COVID-19. See <https://mn.gov/doc/about/covid-19-updates/> (last accessed Dec. 9, 2020). Six people have died of COVID-19 while in the Department's custody as of this writing: three people in Faribault, one in Oak Park Heights, one in Rush City, and one in Faribault. *Id.* When Judge Beiers issued her order, 77 of the roughly 935 inmates at Moose Lake had tested positive for COVID-19. The cumulative number at Moose Lake has now nearly doubled. Most shockingly, 977 inmates out of the 1290 at the Stillwater facility have contracted COVID-19 and the Saint Cloud facility reports a cumulative positive result of 637 inmates, more than the 603 inmates currently housed on site.³ Minnesota ranks sixth in the nation for prison infection rates per capita, with an enormous surge in the fall of 2020. See The Marshall Project: A State-by-State Guide to Coronavirus in Prisons. <https://www.themarshallproject.org/2020/05/01/a-state-by-state-look-at-coronavirus-in-prisons> (last accessed Dec. 9, 2020). The infection rate of Minnesota's inmate population is 609 percent higher than Minnesota's rate outside the prison system. *Id.*

Further, Petitioners have submitted the Declarations of Dr. Lynne Ogawa, Medical Director of the Saint Paul-Ramsey County Department of Public Health, and Dr. Susan Hasti, a doctor at the Hennepin County Medical Center, expressing their concerns about the transmission of COVID-19 in a high density prison population. Petition for Writ. Ex. 1. According to Dr. Hasti,

³ Presumably there are several incarcerated individuals who have tested positive and been released, either through conditional medical release or through the normal course of the Department's protocols.

at the time the petition was filed, the Department of Corrections had failed to educate prisoners to the dangers of airborne transmission of COVID-19, the prevention of which requires strict observance of mask-wearing and social distancing. *Id.* Dr. Hasti further found that the DOC failed to adequately track and identify the most vulnerable of its prison population, and failed to develop an effective process for removing the most vulnerable from harm before an outbreak enters the facility in which they are housed. *Id.* Dr. Hasti determined that the Department was not taking adequate measures to protect the prisoners in its care from COVID-19. *Id.*

Petitioners have adequately alleged that Respondents have failed “to perform a duty clearly imposed by law,” namely to safeguard individuals within its custody. *Demolition Landfall Servs.*, 609 N.W. 2d. at 280.

The Public Wrong Injurious to Petitioners

The Petitioners are all either incarcerated or under the supervision of the Minnesota Department of Corrections. Many have underlying medical conditions that elevate their risk of serious, if not deadly health effects if they were to contract COVID-19, such as their age, HIV positive status, asthma diagnosis, obesity, diabetes or heart conditions. *See* Petition for Writ ¶¶ 27-39; *see also*, Ogawa Decl. Pet. Exhibit A). Counsel for the Petitioners represented at argument that two additional petitioners – for a total of three – have confirmed cases of COVID-19. All of the Petitioners who are currently incarcerated (as opposed to being supervised by the Respondents in the community) have applied for and been denied Conditional Medical Release. These injuries are sufficient to sustain Petitioners’ action for mandamus relief.

The Adequacy of Petitioners’ Legal Remedy

The exponential advance of COVID-19 through the Department of Corrections facilities confirms that no other legal remedy besides mandamus relief would have the potential to resolve

this matter with sufficient speed. Because time is of the essence, because incarcerated individuals in Minnesota have particular vulnerability, and because COVID-19 continues to ravage this community, there is no other adequate legal remedy at law.

ALTERNATIVE WRIT OF MANDAMUS

AND ORDER TO SHOW CAUSE

1. Under Minnesota Statutes 586.03, Respondents are ordered to appear and show cause on January 15, 2021, at 1:30 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 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 January 4, 2021.
3. Petitioners shall have until January 11, 2021, to submit a Reply to Respondents' Return.

Dated: December 10, 2020

BY THE COURT:

Sara Grewing
Judge of District Court