

State of Vermont)
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Frank Sanville)

DEFENDANT’S MOTION FOR RELEASE ON HIS OWN RECOGNIZANCES
OR TO SET AFFORDABLE BAIL

NOW COMES the Defendant, Frank Sanville, by and through undersigned counsel, and hereby moves this Court to release him on his own recognizances or to set an affordable bail. Mr. Sanville submits this motion in light of the recent Covid-19 pandemic. He attaches the form motion that has been circulated throughout the state and incorporates its arguments as if included herein. He also notes the following facts in support of his motion:

1. Mr. Sanville is seventy-three (73) years old, making him more vulnerable to serious complications if he were to become infected, possibly even death. There have already been recorded cases of corrections employees with Covid-19 and, upon information and belief, there are individuals within the facility who are being watched for fear of having the disease. The new DOC guidelines cannot accommodate the need for social distancing, i.e. that inmates remain six feet apart; rather, the most DOC can do is “lessen the number of persons in those areas at any one time.” March 23, 2020, Order, *State v. Lowery et al*, 697-12-18 Cacr etc., at 7. In effect, Mr. Sanville is a sitting duck for infection, and there is strong doubt that a ventilator could be made available to him if needed. Due to a pre-existing medical condition, his life is at risk, and notwithstanding the seriousness of the charges against him, he should be released immediately.

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MAR 25 2020
Vermont Superior Court
Windsor Unit

2. Mr. Sanville is set for trial in mid-May, after the date that Vermont Courts are currently set to resume. However, Governor Phil Scot announced yesterday that he intends to enforce more restrictions in the coming days and that he thinks that this situation will most likely last a matter of months, not weeks. In other words, a May trial may not be feasible, pushing the case back even further and making the possibility of extreme medical complications even more likely if he is not released in the interim.

WHEREFORE Mr. Sanville requests that the Court reconsider his bail and release him or set a reasonable/affordable bail.

DATED in Burlington, Vermont, this 24th day of March, 2020.

 /s/ Rob Sussman
Robert Sussman, Esq.
Counsel for Mr. Sanville

c: David Cahill, Esq.
Ward Goodenough, Esq.
Frank Sanville

FILED
MAR 25 2020
Vermont Superior Court
Windsor Unit

AFFIDAVIT OF JAIMIE MEYER

I, Jaimie Meyer, being duly sworn, hereby depose, and state the following:

1. I am currently employed as an Assistant Professor of Medicine at Yale School of Medicine and Assistant Clinical Professor of Nursing at Yale School of Nursing.
2. I am a physician who is board certified in Internal Medicine, Infectious Diseases, and Addiction Medicine. I completed residency in Internal Medicine at NY Presbyterian in New York, a fellowship in clinical Infectious Diseases at Yale University, and a fellowship in Interdisciplinary HIV Prevention at the Center for Interdisciplinary Research on AIDS at Yale School of Public Health. I also hold a Master of Science in Biostatistics and Epidemiology from Yale School of Public Health. My clinical work and research centers on infectious diseases among people involved in criminal justice systems in closed settings (prisons, jails) and community settings (probation, parole) and I have been continuously funded for this research from the NIH, industry, and foundations for over a decade.
3. I have been asked by Attorney Annie Manhardt from the Prisoners' Rights Office to review the Vermont Department of Corrections' ("DOC") response to the Coronavirus 2019 ("COVID-19") pandemic.
4. To conduct this review, I was provided with an internal email dated March 12, 2020, from Commissioner Jim Baker and an email exchange dated March 10–12, 2020, between Attorney Emily Tredeau and DOC Director of Nursing Heidi Fox.
5. Based on the information contained in these emails and my knowledge and experience in the field of prison healthcare, it is my professional opinion that the DOC's response to the COVID-19 pandemic is entirely inadequate to protect people in prison and jail in

FILED
MAR 25 2020
Vermont Superior Court
Windsor Unit

Vermont from being exposed to and infected with COVID-19 and insufficient to prevent a widespread COVID-19 outbreak in DOC's facilities. Without additional steps, it is likely that people in DOC custody who are infected with COVID-19 will experience high rates of serious illness, including death.

6. Specifically, the DOC's response to COVID-19 is insufficient to address the epidemic in the following ways:

- a. **Screening protocols.** COVID-19 is a virus that spreads easily, primarily from person-to-person through respiratory droplets. It is therefore imperative that people entering closed confinement settings like prisons are properly screened to ensure that they do not bring the virus into the facility. DOC's current screening protocol consists of asking visitors to self-report their travel history and current symptoms. Visitors are not screened until they are already inside of the facility, and the screening is conducted face-to-face with a staff member who will presumably be entering and exiting the facility throughout the day. People who are ill with COVID-19 and experiencing symptoms are most likely to transmit the virus to others. The virus can be transmitted very efficiently from person to person within 3-6 feet, putting staff and inmates at risk of becoming infected. While the DOC emails suggest a plan for visitors, there is no indication that staff, vendors, or contractors are being adequately screened. There is no indication that new admissions to the prison are being screened on intake into facilities. Moreover, there is no apparent plan in place to isolate or quarantine individuals who screen positive or to manage staffing shortages resulting from correctional officer absenteeism as workers are affected by community spread.
- b. **Lack of adequate prevention techniques.** DOC does not have the appropriate equipment or protocols to prevent the spread of COVID-19. In addition to universal screening, prevention of COVID-19 requires that people have access to soap, private sinks, and clean water for handwashing or alcohol-based hand sanitizers. Sinks are often shared, and sanitizers are unavailable in the DOC because they contain alcohol. Because the virus can survive on inanimate objects, high-touch surfaces (including doorknobs, light switches, countertops) should be regularly disinfected with bleach. DOC does not have sufficient supplies or cleaning staff to meet these public health recommendations. When containment strategies become overwhelmed, mitigation strategies suggest people need to practice social distancing. Crowded and communal conditions in DOC make social distancing impossible. People in prison have very little personal space and are forced to eat, sleep, live, and work in incredibly close quarters. These general characteristics make prisons susceptible to contagion, as evidenced by the high rates of infectious diseases within carceral settings.

c. Lack of treatment capacity. Prisons are built to contain people, not diseases. Once someone in the facility becomes ill with COVID-19, the facility is ill-prepared to manage them. Even mild disease requires close monitoring and caregivers and/or healthcare personnel require personal protective equipment (PPE), including gloves, gowns, eye shields, and masks, that are not available in the DOC. Of specific concern regarding COVID-19, DOC's facilities do not have Airborne Infection Isolation Rooms, or even the capacity to simply isolate infected prisoners in a therapeutic setting. Airborne isolation rooms are specially equipped with negative pressure to allow air flow from outside the room to inside. In contrast, DOC spaces are often poorly ventilated and air flows from inside the room to outside, allowing the virus to spread easily throughout a facility. People who are moderately or severely ill with COVID-19 require hospitalization and management with intravenous fluids, intravenous antibiotics, supplemental oxygen, and in some cases ventilators. DOC is not equipped to identify people who need more intensive medical care or to safely transfer people with COVID-19 to area hospitals, especially as these hospitals are likely to become overwhelmed with patients.

d. Limited treatment capacity for people with other chronic health conditions in the setting of a COVID-19 pandemic. A COVID-19 outbreak poses particular risk to people with underlying chronic health conditions, including heart disease, lung disease, liver disease, pregnancy, diabetes, and suppressed immune systems. They have higher risk of becoming infected with COVID-19 if exposed and higher risk of complications and death if infected. People also need continuous access to treatment for their other underlying health conditions, which are at risk during a COVID-19 pandemic in the context of healthcare understaffing and reduced access to medications (if supply chains are interrupted).

7. The above examples illustrate that DOC is wholly unprepared to address the current COVID-19 pandemic.
8. This lack of preparedness is especially concerning for higher risk individuals, such as older adults and people with chronic illnesses such as diabetes, heart disease, and lung disease. People with these particular characteristics are most susceptible to becoming seriously ill or even dying should they become infected with COVID-19.
9. There is true urgency to act on these facts now. Data from the US during other infectious disease outbreaks (e.g. influenza) and data from other countries during COVID-19 show that when prison systems are unprepared for pandemics, people in

prison experience high rates of morbidity and mortality and there is increased safety risk within facilities and to communities as a whole. There is no current approved vaccine or antiviral medication treatment for COVID-19 so public health preparedness is the only tool we have.

The facts recited herein are based on my personal knowledge and, so far as I can rely on that knowledge, I believe them to be true.

Dated at Wilton, CT on March 15, 2020.



Jaimie Meyer



Annie Manhardt
Notary Public

Commission Expires: *Exempt as a law enforcement-related employee*

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MAR 25 2020
Vermont Superior Court
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STATE OF VERMONT

SUPERIOR COURT
COUNTY UNIT

CRIMINAL DIVISION
DOCKET #####-##-## Xxcr

STATE OF VERMONT

V.

FIRSTAND LASTNAME

MOTION TO REVIEW BAIL

NOW COMES Firstand Lastname, by and through counsel, and hereby moves to review bail in light of the COVID-19 pandemic that is likely to strike Vermont's prisons very soon. Vermont's bail statutes were written with the many problems of a money-bail system in mind. Among the many problems of pre-trial incarceration is the risk that a defendant will be confined to a prison under circumstances that present a risk to his or her health, in violation of the Eighth Amendment to the United States Constitution. To meet those problems, the Legislature has provided the courts with several non-bail options and required the courts to choose the least restrictive option to mitigate the risk a defendant will make flight from prosecution.

The COVID-19 pandemic will swiftly strike Vermont prisons. Counsel has no confidence that the Department of Corrections is prepared to respond to an outbreak or has the capacity to treat inmates suffering from the common breathing symptoms of COVID-19. Exposing Firstand Lastname to this risk would violate the Vermont bail statutes and the Eighth Amendment to the United States Constitution. Firstand Lastname respectfully requests this Honorable Court strike bail and release him/her/they on conditions of release.

I. The Department of Corrections is "wholly unprepared" for the COVID-19 epidemic, and the Court should act with urgency to strike bail in this case.

FILED
MAR 25 2020
Vermont Superior Court
Windsor Unit

Dr. Jaimie Meyer is an assistant professor of medicine at the Yale School of Medicine, and she is board certified in internal medicine, infectious diseases, and addiction medicine. See Affidavit of Jaimie Meyer at ¶¶ 1-2 (attached). Her clinical work and research focuses on infectious diseases among people involved with the criminal justice system, both in prison and in the community. Id. ¶ 2. Dr. Meyer has reviewed email correspondence between Corrections Commissioner Baker and concluded based upon her experience in prison healthcare that the Department’s “response to the COVID-19 pandemic is entirely inadequate to protect people in prison and jail in Vermont from being exposed to and infected with COVID-19 and insufficient to prevent a widespread COVID-19 outbreak in [Corrections’] facilities.” Id. ¶ 5. Without additional steps, it is likely that people incarcerated in Corrections’ facilities “will experience high rates of serious illness, including death.” Id.

Dr. Meyer has highlighted four areas in which the Department of Corrections’ response has been inadequate:

- 1) inadequate screening of visitors and new admissions to the prisons, to include the lack of a quarantine plan for people who screen positive, and the lack of a plan to address correctional officer absenteeism;
- 2) a lack of prevention techniques, including the inability for inmates to practice social distancing, lack of private sinks, a lack of sanitizers because they contain alcohol, and insufficient cleaning supplies to meet CDC recommendations;
- 3) a lack of treatment capacity, to include the lack of personal protective equipment (such as masks and gloves), a total absence of Airborne Infection Isolation Rooms in correctional facilities, and the lack of a plan to safely transfer people with COVID-19 to area hospitals; and
- 4) limited treatment capacity for people with other chronic health conditions in the setting of a COVID-19 pandemic, which is concerning because that population is at higher risk of complications and death if infected.

Affidavit of Jaimie Meyer at ¶ 6. These facts demonstrate that the Department is “wholly unprepared” for the outbreak. Id. ¶ 7.

Dr. Meyer explains that there is a “true urgency” to act on these facts now because when “prison systems are unprepared for pandemics, people in prison experience high rates of morbidity and mortality and there is increased safety risk within facilities and to communities as a whole.” Affidavit of Jaimie Meyer at ¶ 9.

II. The bail statute requires imposition of the least physically restrictive bail and conditions of release because it is meant to mitigate the problems caused by a money-bail system.

Vermont’s bail system is meant to strike the right balance between a defendant’s liberty interests and society’s interests in making sure the defendant is present at trial. State v. Hance, 2006 VT 97, ¶ 16, 180 Vt. 357, 910 A.2d 874. The bail statute, 13 V.S.A. § 7554, is the means by which the courts strike that balance. The language of the bail statute and the early decisions of the Vermont Supreme Court interpreting it show that the statute was meant to mitigate the harmful effects of a money-bail system, including detrimental effects on a defendant’s health. The Court should consider the Department of Corrections’ inability to protect a defendant’s health against the COVID-19 pandemic when deciding whether to impose bail.

The bail statute has an express preference for release on recognizance or upon execution of an unsecured appearance bond, meaning most defendants should be released without putting up any money or securities. 13 V.S.A. § 7554(a)(1). Even when release on recognizance or an unsecured appearance bond “will not reasonably mitigate the risk of flight from prosecution[,]” the statute provides:

the officer shall, either in lieu of or in addition to the methods of release in this section, *impose the least restrictive of the following conditions or the least restrictive combination of the following conditions* that will reasonably mitigate the risk of flight of the defendant as required[.]

Id. The list which follows allows a court to order such things as a remand of custody over the defendant to a designated person, execute security bonds, execute surety bonds, or conditions of release calculated to mitigate the risk of flight. Id. § 7554(a)(1)(A)-(G). Notably, most of the

options to mitigate the risk of flight from prosecution do not require a defendant to spend money to secure release.

The Legislature purposely created several non-monetary options to ensure a defendant's pretrial release. In State v. Webb, the Vermont Supreme Court held that the Legislature had wisely included the non-monetary options to money bail in order to avoid the problems created by a money-bail system. 132 Vt. 418, 420, 320 A.2d 626, 628 (1974). The Court noted that imprisoning a person before trial significantly undercuts the presumption of innocence and hampers the preparation of the accused's defense. Id.

But the Court's discussion of the harms of pretrial detention was not limited to presumption of innocence or defense preparation concerns. The Court also cited to State v. Toomey, 126 Vt. 123, 125, 223 A.2d 473, 475 (1966). 132 Vt. at 422, 320 A.2d at 629. In Toomey, the Court discussed the factors Vermont courts considered in setting bail before the enactment of the current bail statutes. Among those factors was the health of the defendant. A court considering imposition of bail, therefore, must consider the effect of pretrial incarceration on a defendant's health. This is consistent with the broad swath of factors a trial court must consider (but is not limited to considering) when imposing bail, 13 V.S.A. § 7554(a)(1), (b), and the broad discretion the Legislature has given to the courts in imposing bail. State v. Henault, 2017 VT 19, ¶ 4, 204 Vt. 628, 167 A.3d 892.

III. The dangers of pretrial detention to criminal defendants are thoroughly documented.

Pretrial incarceration "has profound consequences both within and beyond the criminal justice system." Paul Heaton, Sandra Mayson, & Megan Stevenson, *The Downstream Consequences of Misdemeanor Pretrial Detention*, 69 Stan. L. Rev. 711, 713 (2017). People detained even briefly may lose jobs, housing, or custody of a child. Id. at 714. A detained person's

ability to prepare a defense is hindered by the inability to gather evidence or speak with witnesses, increasing the likelihood of conviction after trial or by plea. *Id.* Pretrial incarceration may also increase the severity of any sanctions imposed. *Id.* It can prevent an accused person “from engaging in commendable behavior that might mitigate her sentence or increase the likelihood of acquittal, dismissal, or diversion.” *Id.* at 722.

Accused persons who are incarcerated pending trial are likely to suffer because, in general, “incarceration in jail negatively impacts the mental and physical health, employment, and family and community interactions of those incarcerated.” Laura I. Appleman, *Justice in the Shadowlands: Pretrial Detention, Punishment, & the Sixth Amendment*, 69 Wash. & Lee L. Rev. 1297, 1318 (2012). Jails rarely have adequate resources to treat people with physical or mental problems, and the prison buildings themselves can make people unhealthy. See *id.* (noting “old and decaying” prison buildings can have dangers such as mold and lead pipes, and are vectors for contagious diseases).

Vermont prisons are no exception, as Dr. Meyer’s affidavit and a recent article about how cost-cutting by the Department of Corrections and the Department of Buildings and General Services lead to guards at the Northeast Regional Correctional Complex getting sick illustrates. Justin Trombley, *‘They’ve been gassing you’: Prison wanted to save energy, instead guards got sick*, Vtdigger.org, Feb. 3, 2020, <https://vtdigger.org/2020/02/03/theyve-been-gassing-you-prison-wanted-to-save-energy-instead-guards-got-sick/> [<https://perma.cc/S7E4-HN4Q>]. The emotional effects of the criminal process itself can induce “feelings of hopelessness, powerlessness, or despair when faced with the power of the state” John L. Barkai, *Accuracy Inquiries for All Felony and Misdemeanor Pleas: Voluntary Pleas but Innocent Defendants?*, 126 U. Penn. L. Rev. 88, 96 (1977).

FILED
MAR 25 2020
Vermont Superior Court
Windsor Unit

IV. The Eighth Amendment to the United States Constitution protects inmates against unjustifiable risks to the health created by unhealthy prison conditions.

The Eighth Amendment to the United States constitution protects incarcerated people against unjustifiable risks to their health created by prison conditions. grave risk to [CLIENT'S] health created by the Department's inadequate response to the current pandemic. This prohibition extends to the states through the Fourteenth Amendment, State v. Venman, Vt. 561, 571, 564 A.2d 574, 581 (1989), and "proscribes more than physically barbarous punishments." Estelle v. Gamble, 429 U.S. 97, 102, 97 S. Ct. 285, 290, 50 L. Ed. 2d 251 (1976). Most relevant to [CLIENT'S] current situation, the Eighth Amendment protects incarcerated people from prison officials' "deliberate indifference" to their medical needs and personal safety. Id. at 104, 97 S. Ct. at 291.

The United States Supreme Court has applied the deliberate indifference standard to prison officials' failure to protect incarcerated persons from environmental factors that create an unreasonable risk of future harm to inmates' health. In Helling v. McKinney, 509 U.S. 25, 113 S. Ct. 2475, 125 L. Ed. 2d 22 (1993), the Court explicitly held that a showing of current symptoms was not required to establish deliberate indifference in this context. Rather, the Eighth Amendment's mandate that prisoners be furnished with basic needs, including "personal safety," necessarily embodies a protection against future harm. Id. at 33, 113 S. Ct. at 2480. In so holding, the Court approvingly cited Gates v. Collier, 501 F.2d 1291 (5th Cir. 1974), for the proposition that one such threat to personal safety includes "the mingling of inmates with serious contagious diseases with other prison inmates." Helling, 509 U.S. at 34, 113 S. Ct. at 2481.

V. The COVID-19 pandemic puts incarcerated persons at enormous unjustifiable risks and requires striking bail.

The Vermont Department of Corrections is not prepared for this pandemic. It does not have a plan to prevent infections, and it does not have the resources or capacity to put a plan into

place. It does not have the medical facilities to treat people infected with this virus. This itself runs afoul of the Department's obligations under the Eighth Amendment and requires a reexamination of bail in this case.

The potential human cost of the Department's unpreparedness is staggering. Inmates may die from preventable infections, or they may die from inadequate and inferior treatment. Inmates who survive the pandemic will suffer needlessly.

Inmates who are not infected will not necessarily be spared. They will be removed physically from ailing family members. They will not be able to comfort parents and grandparents who contract COVID-19 and who face the life-threatening consequences of the disease. They will not be present to care for loved ones whose lives are not threatened by the disease, but who nonetheless become very ill. They will not be able to care for their sick children.

They will not be able to work, and they may be fired from their jobs. Without work, they will lose their health insurance and other benefits that are necessary to fight this disease. They may lose their homes, subjecting loved ones to homelessness during this period of pandemic. An eager juvenile justice system may take their children from them.

IV. [Discuss your client's situation and any other helpful facts that will convince the judge to grant bail].