State of Vermont

Superior Court

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| State of Vermont  v.  [YOUR CLIENT] | Unit, Criminal Division  Docket No. [XXX] |

**RULE 35 MOTION TO CORRECT SENTENCE**

NOW COMES [YOUR CLIENT] by and through [YOU] and moves this Honorable Court to correct or reduce [CLIENT]’S sentence pursuant to V.R.Cr.P. Rule 35(a), which allows this Court to correct illegal sentences. In support of this motion, [CLIENT] offers the following:

1. [YOUR CLIENT’S CONVICTION, HELD WHERE, ETC.]
2. [YOUR CLIENT’S INSTITUTIONAL BEHAVIOR] [YOUR CLIENT’S CREDIT] See attached, Exhibit A, [YOUR CLIENT’S SENTENCE COMP].
3. [GOOD FACTS ABOUT YOUR CLIENT]
4. According to [YOUR CLIENT], the Department of Corrections is informally making adjustments, allowing inmates close to their window at the work camp to leave now on furlough. [Ask your client? My guy says they are letting work camp guys go.]
5. However, the structure of [YOUR CLIENT’S] requires action from this Court.
6. If released, it is his intent to [ go give his sick mother assistance, help with child care]
7. Since it was first identified in December 2019 in Wuhan, China, Coronavirus Disease 2019 (“COVID-19”) has spread to 143 countries and territories, resulting in over 150,000 confirmed cases worldwide. World Health Organization (WHO), Coronavirus Disease 2019: Situation Report – 55 (March 19, 2020), <https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200315-sitrep-55-covid-19.pdf?sfvrsn=33daa5cb_6>.
8. As of this writing, there were 15,219 confirmed cases in the United States alone. *Coronavirus 2019 in the U.S.*,Ctrs. for Disease Control & Prevention (CDC), <https://www.cdc.gov/coronavirus/2019-ncov/cases-in-us.html> (last visited March 23, 2020). Fifty-two of these cases are in Vermont, where there are an additional 307 people being monitored for the disease. Two people in Vermont have died. *2019 Novel Coronavirus*,VT Dep’t of Health, <https://www.healthvermont.gov/response/infectious-disease/2019-novel-coronavirus> (last visited March 23, 2020). On March 11, 2020, the World Health Organization (“WHO”) classified COVID-19 as a global pandemic. *See* Tedros Adhanom Ghebreyesus, Director-General, WHO, Opening Remarks at the Media Briefing on COVID-19 (March 11, 2020).
9. On March 13, 2020, Governor Phil Scott declared a state of emergency in Vermont, and instituted measures such as banning all “non-essential mass gatherings” of over 50 people. On Saturday, March 23, Governor Scott closed exercise facilities, hair salons spas and tattoo parlors, and limited non-essential gatherings to no more than ten. See Addendum 4 to Executive Order 01-20, <https://governor.vermont.gov/sites/scott/files/documents/ADDENDUM%204%20TO%20EXECUTIVE%20ORDER%2001-20.pdf>
10. As the Centers for Disease Control and Prevention (“CDC”) have noted, COVID-19 is a virus that spreads easily and sustainably, primarily through person-to-person contact. *How COVID-19 Spreads*, CDC, <https://www.cdc.gov/coronavirus/2019-ncov/about/transmission.html> (last visited March 13, 2020). Because the best way to avoid contracting COVID-19 is to avoid being exposed to it, *Steps to Prevent Illness*, CDC, <https://www.cdc.gov/coronavirus/2019-ncov/about/prevention.html> (last visited March 13, 2020), public health officials have recommended “social distancing” and are discouraging people at higher risk from avoiding crowds altogether, *Mass Gatherings*, CDC, <https://www.cdc.gov/coronavirus/2019-ncov/community/large-events/mass-gatherings-ready-for-covid-19.html>.
11. Unfortunately, “social distancing” is not an option for incarcerated people, who are forced to live, eat, sleep, and work in close quarters. As a result, infectious diseases are known to spread widely and rapidly in prisons. James Hamblin, *Mass Incarceration is Making Infectious Diseases Worse*, The Atlantic (July 18, 2016),https://www.theatlantic.com/health/archive/ 2016/07/incarceration-and-infection/491321/.
12. The facilities in Vermont are no different. SeeExhibit B, Affidavit of Dr. Jaimie Meyer; see also Mike Faher, *Hepatitis C Treatment Lags in Vermont Prisons, Advocate Says*, VT Digger (Jan. 27, 2019),<https://vtdigger.org/2019/01/27/hepatitis-c-treatment-lags-vermont-prisons-advocate-says/> (as of January 2019, nearly 300 Vermont prisoners had hepatitis C);
13. Another main preventive tool is disinfection of surfaces and spaces around oneself. The CDC distinguishes between cleaning and disinfecting and recommends that all surfaces that are touched frequently – doorknobs, light switches, countertops, handles, desks, phones, faucets, keyboards, toilets and sinks – be both cleaned *and* disinfected at least daily. Centers for Disease Control, Steps to Prevent Illness: <https://www.cdc.gov/coronavirus/2019-ncov/about/prevention.html?CDC_AA_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Fabout%2Fprevention-treatment.html>
14. People incarcerated at the [St. Johnsbury work camp] are:
15. Housed in an open dorm, with forty men sleeping in bunkbeds;
16. Near-constantly in communal spaces, such as eating areas, bathrooms, and day rooms, and unable to choose otherwise;

c. Near-constantly in “close contact” with others, nearly all of whom have not been tested for COVID-19, and unable to choose otherwise;

d. Frequently in actual physical contact with others, such as correctional officers, kitchen staff, and medical staff, many of whom have not been tested for COVID-19, and unable to opt out of this contact;

1. It is virtually impossible to engage in basic preventive measures of disinfection and social distancing, as urged by the CDC, when incarcerated at the work camp. Indeed, jails and prisons are generally at grave risk due to their inherent structure and mission, for the transmission of infection. “Prisons and Jails are Vulnerable to COVID-19 Outbreaks,” Nicole Wetsman, *The Verge*, March 7, 2020, available at: <https://www.theverge.com/2020/3/7/21167807/coronavirus-prison-jail-health-outbreak-covid-19-flu-soap>;
2. Isolation, segregation or attempted lockdown, for the above reasons, are largely futile in the face of the COVID-19 pandemic.  The number of people moving in and out every day alone creates a risk for someone who is trapped inside and cannot self-protect elsewhere.  Further, the reality is that some contact with others – in close proximity and actual contact – is inevitable. Kitchen staff, intake staff, officers and medical staff all interact with incarcerated people as a matter of course. See “The Coronavirus Could Spark a Humanitarian Disaster in Jails and Prisons,” Premal Dharia, *Slate*, March 11, 2020, available at: <https://slate.com/news-and-politics/2020/03/coronavirus-civil-rights-jails-and-prisons.html>
3. For all of these reasons, [CLIENT’S] constitutional rights, health and safety, and potential mortality are threatened by his incarceration, and this Court should reduce his sentence and release him from custody.
4. If [CLIENT’S] sentence were shortened, he could return to [WHEREVER AND. . . ]
5. [CLIENT] has accepted responsibility for his actions and understands the need to accept punishment. For him, this sentence is not necessary to incapacitate him or to protect the public from him, nor will it provide rehabilitative services during the next [MONTHS]. Such punishment should not include a risk of illness or death – for him or anyone else.
6. The Eighth Amendment prohibits cruel and unusual punishment, which includes lack of access to adequate medical care. *See Estelle v. Gamble*, 429 U.S. 97 (1976) (finding that “deliberate indifference to prisoner's serious illness or injury constitutes cruel and unusual punishment in violation of Eighth Amendment”). The Eighth Amendment is implicated where an incarcerated person’s health is placed at risk by her conditions of confinement, even where the jail or prison did not intentionally cause the risk of harm. *See*, *e.g.*, *Helling v. McKinney*, 509 U.S. 25 (1993) (holding that a person incarcerated in a prison that allowed smoking had a cause of action under the Eighth Amendment for the potential future harms caused by exposure to secondhand smoke). Incarcerating an individual purely for punishment under conditions that substantially increase his likelihood of contracting a serious infection creates serious Eighth Amendment concerns.
7. Judge Alison Nathan in the Southern District of New York has recognized that “the unprecedented and extraordinarily dangerous nature of the COVID-19 pandemic has become apparent. Although there is not yet a known outbreak among the jail and prison

populations, inmates may be at a heightened risk of contracting COVID-19 should an outbreak develop.” See attached, *United States v. Dante Stephens*, Docket 15-c4-95,

March 19, 2020 (S.D.N.Y.) (quoting Joseph A. Bick, Infection Control in Jails and

Prisons, 45 Clinical Infectious Diseases 1047, 1047 (Oct. 2007), https://doi.org/10.1086/521910 (noting that in jails “[t]he probability of transmission of potentially pathogenic organisms is increased by crowding, delays in medical evaluation and treatment, rationed access to soap, water, and clean laundry, [and] insufficient infection-control expertise”); see also Claudia Lauer & Colleen Long, US Prisons, Jails

On Alert for Spread of Coronavirus, Associated Press (Mar. 7, 2020).

1. Release in this matter will enhance the safety of not only [YOUR CLIENT], but also other people and the community.  It is safer for other people at the work camp, for the staff of the jail, for lawyers and court personnel, and for the community well beyond that, if [CLIENT] is able to exercise self-protective measures in a sanitary, disinfected space, and to maintain the type of social distance that other community members are now engaging in. Release will reduce the risk that he or anyone else transmits or receives the infections.
2. When [YOUR CLIENT] was initially sentenced, circumstances were different; this Court must now consider a very different reality than it did in [WHEN YOUR CLIENT WAS SENTENCED].

WHEREFORE, for the reasons stated above, as well as any other reasons that become apparent to the Court, the counsel respectfully requests that the Court grant this Motion and order that [CLIENT’S] sentence is reduced to [XXX]. With his credit, this would make [CLIENT] eligible for release immediately.

Dated at Montpelier, VT, this [X]day of March, 2020.

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[SIGNATURE BLOCK]