

STATE OF NORTH CAROLINA

FILED

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

WAKE COUNTY

NO.: 20 CVS 500110

2020 MAY -1 A 11: 51

Original

NORTH CAROLINA STATE CONFERENCE)
OF THE NAACP, DISABILITY RIGHTS)
NORTH CAROLINA, AMERICAN CIVIL)
LIBERTIES UNION OF NORTH CAROLINA)
LEGAL FOUNDATION, KIM T. CALDWELL,)
JOHN E. STURDIVANT, SANDARA KAY)
DOWELL, and CHRISTINA RHODES,)

Plaintiffs,

v.

**ORDER FOR ADDITIONAL
INFORMATION**

ROY COOPER, Governor of the State of North)
Carolina, ERIK HOOKS in his official capacity as)
Secretary of the North Carolina Department of)
Public Safety, and BILL FOWLER, ERIC)
MONTGOMERY, ANGELA BRYANT, and)
GRAHAM ATKINSON, in their official)
capacities as Post-Release Supervision and)
Parole Commissioners,)

Defendants.

This matter comes before the Undersigned on Plaintiffs' Motion for Temporary Restraining Order and Preliminary Injunction and, in the alternative, Petition for Writ of Mandamus. Notice of the hearing was proper and the hearing was held remotely via WebEx with consent of the parties on April 28, 2020. The Court having considered the submissions of the parties, matters of record, and the arguments of counsel, hereby orders that:

WHEREAS, the COVID-19 pandemic has created a public health crisis in North Carolina; and

WHEREAS, the Governor has declared a state of emergency, and issued a series of orders designed to address the public health crisis; and

WHEREAS, the Center for Disease Control (CDC) has repeatedly stated that social distancing is the “cornerstone” procedure for preventing the spread of COVID-19; and

WHEREAS, The CDC acknowledges that “[a]lthough social distancing is challenging to practice in correctional and detention environments, it is a cornerstone of reducing transmission of respiratory diseases such as COVID-19;” and

WHEREAS, the CDC recommends that plans for preventing the spread of COVID-19 within incarcerated populations should be particularized based on a variety of factors including the presence of known COVID-19 cases, population size, and availability of immediate medical care; and

WHEREAS, exposure of incarcerated individuals to COVID-19 creates a serious and substantial risk of harm, up to and including death; and

WHEREAS, many individuals in North Carolina prisons have already contracted COVID-19, and some have died or suffered serious health crises related to COVID-19; and

WHEREAS, Plaintiffs have provided numerous affidavits of currently or recently incarcerated individuals who appear to be at substantial risk of contracting COVID-19 based on the practices and procedures of their facilities of incarceration; and

WHEREAS, Defendants have provided affidavits from wardens and other Department of Public Safety officials across North Carolina acknowledging their attempts to comply with best practices to prevent COVID-19; and

WHEREAS, Defendants' affidavits appear to be form in nature, and fail to accurately detail differences in preventative measures based on variations in population size, spread of COVID-19, and other relevant factors; and

WHEREAS, due to the form and non-specific nature of Defendants' affidavits, it is impossible for the Court to determine whether specific practices and procedures undertaken at each of North Carolina's incarceration facilities comply with Defendants' statutory and constitutional obligations; and

WHEREAS, Plaintiffs have provided to the court the affidavits of local and non-profit organizations with experience in facilitating the recently released inmates' reentry into society that comply with DPS practices and procedures.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that:

1. Defendants are ordered to produce to the Court and the Plaintiffs, before 5:00 PM Eastern Time on Friday, May 8, 2020, a listing of Defendants' prison or incarceration facilities which provides as to each a verified statement as to whether such facility provides to all incarcerated individuals:
 - A. face masks of the same type and quality as those provided to staff;
 - B. more than one face mask per person;
 - C. unrestricted access to effective sanitation supplies including but not limited to hand soap, laundry soap, and alcohol-based hand sanitizer;

- D. Living conditions designed to reasonably prevent the spread of COVID-19, including but not limited to reassigning bunks to allow for six feet or more between each sleeping occupant, a “head to foot” bunk arrangement, and rearranged scheduling to prevent or eliminate the mixing of individuals between different housing areas;
- E. The opportunity to prevent the spread of COVID-19, in compliance with best practices as presented by the CDC, World Health Organization (WHO), or other learned and respected sources of public health procedure. These practices include, but are not limited to, social distancing, accessing restrooms and washing facilities which have undergone proper sanitation procedures; working in facilities which allow for social distancing; and eating and sleeping in facilities which allow for social distancing procedures;

2. Defendants are further ordered to produce to the Court and the Plaintiffs, before 5:00

PM Eastern Time on Friday, May 8, 2020, a listing of Defendants’ prison or incarceration facilities which provides as to each a verified statement of those facilities’ current ability to suitably prevent the spread of COVID-19 throughout incarcerated populations in concert with Constitutional and statutory requirements. Defendants must also include information for each facility regarding:

- A. The number of positive COVID-19 cases, both as a number and as a percentage of the overall facility population;
- B. Any and all additional steps taken for facilities with any positive cases of COVID-19 in their populations.

3. If facilities are currently unable to suitably prevent the spread of COVID-19 such that incarcerated persons are substantially more likely to contract the disease than the non-incarcerated population, then Defendants are further ordered to provide to the Court and Plaintiffs for each prison or incarceration facility a detailed and specific plan demonstrating specific steps which DPS plans to take within the next thirty days to diminish the spread of COVID-19. This list is also due to the Court by 5:00 PM on Friday, May 8, 2020.
4. Defendants are free to combine the lists in orders 1-3 above into one document.
5. Plaintiffs are ordered to produce to the Court and the Defendants, before 5:00 PM Eastern Time on Friday, May 8, 2020, a proposed listing of local and non-profit organizations which are able to provide reentry to recently released inmates. For each organization, Plaintiffs should include:
 - A. Name and address;
 - B. Proximity to medical care facilities;
 - C. Number and duration of available beds;
 - D. Availability for required public safety officer visitations, along with other procedures required by DPS for typical reentry;
 - E. Whether the facility has previously been cleared by DPS for reentry;
 - F. What specific supervision is available at each facility; and
 - G. Any additional cost associated.
6. Both Plaintiffs and Defendants are ordered to confer and present to the Court a list of three potential special masters for its consideration, if the Court chooses to utilize a

Special Master. This list should be submitted to the Court no later than 5:00 PM on Friday, May 8, 2020, and should include

- A. Name and address;
- B. Relevant degree, specialization, publications, or other representations of relevant knowledge, and;
- C. Willingness to serve.

7. If the parties are not able to agree on a list of special masters, then each party will submit to the Court a list of three potential masters. This list should be submitted to the Court no later than 5:00 PM on Friday, May 8, 2020, and should include

- A. Name and address;
- B. Relevant degree, specialization, publications, or other representations of relevant knowledge, and;
- C. Willingness to serve.

8. The Court will schedule a hearing as soon as feasible upon receipt of all ordered documents on the adequacy of the information and plan produced by Defendants and will make such further orders as necessary at that time.

9. The Undersigned retains jurisdiction of this matter.

SO ORDERED this 1st day of May, 2020.



THE HONORABLE WINSTON ROZIER, JR.
SUPERIOR COURT JUDGE PRESIDING