

IN THE SUPREME COURT OF THE STATE OF MONTANA

OP 20-0189

DISABILITY RIGHTS MONTANA,

Petitioner,

v.

MONTANA JUDICIAL DISTRICTS 1-22,
MONTANA COURTS OF LIMITED
JURISDICTION, MONTANA DEPARTMENT
OF CORRECTIONS, and THE MONTANA
BOARD OF PARDONS AND PAROLE,

O R D E R

Respondents.

Petitioner Disability Rights Montana (DRM) has filed an Emergency Petition for Extraordinary Writ, Mandamus Relief, and Writ of Supervisory Control seeking to invoke this Court's original jurisdiction to order specific actions to prevent the spread of the novel coronavirus COVID-19 among Montana's incarcerated population, particularly those prisoners with disabilities or conditions that place them at increased risk of severe complications or death from the virus.

DRM alleges that subjecting non-dangerous prisoners with disabilities to an inevitable outbreak of COVID-19 violates the Eighth Amendment of the United States Constitution and Article II, Section 22, of the Montana Constitution; that if correctional and detention facilities do not take immediate measures in light of the COVID-19 pandemic, a serious deprivation resulting in the denial of the "minimal civilized measure of life's necessities" will occur or already is occurring; that failure to take such immediate measures constitutes deliberate indifference to prisoners' health and safety in violation of their constitutional rights; and that continuing customary detention during this crisis violates the due process rights of incarcerated persons who are disabled or at

increased risk of severe COVID-19 complications and death, guaranteed under the Fourteenth Amendment of the United States Constitution and Article II, Section 17, of the Montana Constitution. DRM includes in its Petition a list of specific measures it requests this Court to direct.

Upon review of the Petition and attachments, and given the rapidly evolving circumstances of the COVID-19 situation, the Court deems it advisable to obtain an expedited response.

IT IS THEREFORE ORDERED that the Attorney General, counsel for the Department of Corrections, the named Respondents, or any of them, are GRANTED five days from the date of this Order in which to prepare, file, and serve a written response to the Petition.

The Clerk is directed to provide a copy of this Order to the Attorney General, to counsel for the Department of Corrections, to counsel for the Petitioner, to the Montana Board of Pardons and Parole, and to the Office of Court Administrator for electronic service on the judges and justices of the Respondent courts.

DATED this 1st day of April, 2020.

/S/ MIKE McGRATH
/S/ INGRID GUSTAFSON
/S/ BETH BAKER
/S/ LAURIE McKINNON
/S/ JAMES JEREMIAH SHEA

Dirk M. Sandefur, dissenting.

I respectfully dissent from the Court's order compelling the Attorney General and the Board of Pardons and Parole to respond to the Petitioner's petition for the unique, unprecedented, and sweeping relief sought here. Without in any way underestimating the magnitude of the COVID-19 threat to incarcerated persons, and particularly those most at risk, we cannot and should not disregard adherence to the most basic procedural and substantive rules of law that govern such proceedings and requests for relief.

On its face, for purposes of the requested habeas corpus relief, the petition fails to state a prima facie claim, much less make a prima facie showing, that any of the respondents (whether the Department of Corrections, Board of Pardons and Parole, or any of our lower courts) are in fact proceeding in deliberate disregard of the indisputable COVID-19 risk to our inmate populations. Rather, Petitioner nakedly asserts that the failure of those entities to act in specific accordance with the requested relief itself constitutes deliberate indifference *per se*. Moreover, as to the Department of Corrections and the Board of Pardons and Parole over whom we clearly have no supervisory control, the other asserted claim for relief is mandamus. However, Petitioner has manifestly failed to even allege, must less show, that either of those Executive Branch agencies have failed to perform any specific mandatory legal duty not involving discretionary authority vested in them by applicable constitutional and statutory law. Requiring Executive Branch agencies and officers to respond will not in any way remedy the facial deficiency of this petition.

COVID-19 undoubtedly presents a clear, present, serious, and demonstrably fatal public health danger. However, that danger does not and cannot overcome the manifest facial deficiencies of this petition. Emergency or not, we need to uniformly comply with the law. I dissent.

/S/ DIRK M. SANDEFUR

Justice Jim Rice joins in the Dissent of Justice Dirk M. Sandefur.

/S/ JIM RICE