

**SUPREME COURT MINUTES
TUESDAY, JULY 28, 2020
SAN FRANCISCO, CALIFORNIA**

S263043**MARSHALL (TAMERA) v.
S.C. (PEOPLE)**

Order filed

Pursuant to this court's order in *Marshall v. Superior Court*, S263043, Supreme Ct. Mins., July 15, 2020 (*Marshall*), petitioners have filed an update letter detailing the proceedings in the superior court since July 15. In their letter, petitioners claim that the briefing and hearing schedule ordered by the superior court is not a sufficiently expeditious response to the pressing health and safety needs of inmates in Sacramento County jail facilities. Petitioners ask this court to "reconsider the prior order and commence its own proceedings through its own original jurisdiction." Construing this request as a motion to reconsider the July 15 denial of petitioners' original writ petition, we deny the motion because the July 15 order was final when filed. (Cal. Rules of Court, rules 8.268(a)(2), 8.532(b)(2)(C).)

Petitioners' status update contains allegations that Sacramento County jail inmates continue to lack personal protective equipment and supplies for basic hygiene. The latest declarations are similar to declarations appended to petitioners' First Amended Consolidated Petition for Writ of Habeas Corpus, filed on May 26 in the superior court, that also alleged lack of personal protective equipment and basic sanitation measures. As of July 22, declarants state that requests for masks remain unheeded and are sometimes met with retaliation. Some declarants assert that they have received "yellow disinfectant balls to mix with water," while others must purchase soap if they want to clean their cells. Other declarants allege that inmates spend much of the day in communal areas that are cleaned "at most once a day, and often not for three or four days." Some declarants state that they are not given disinfectant in these settings. Declarants also allege that correctional staff are not separating COVID-19-positive inmates from cellmates or from the general population. Further, declarants raise concerns about cross-contamination from staff reusing gloves.

These allegations have not yet been subject to adversarial testing. In a July 21 order, the superior court nonetheless indicated that it "is concerned by the allegations regarding the conditions of confinement during the Covid-19 pandemic" and requested an informal response from the County of Sacramento (the County). In a subsequent order on July 24, the superior court set a status conference on August 6 to facilitate discussion of a negotiated resolution, and it tentatively set an order to show cause hearing on August 13. In a third order on July 27, the superior court clarified the information sought from the parties to "further the Court's efforts to expedite this petition and resolve the issues therein."

This court reiterates the “urgency” of the present matter (*Marshall, supra*, S263043, Supreme Ct. Mins., July 15, 2020) and remains concerned about the risks that the conditions of confinement in the Sacramento County jails may pose for inmates and staff. Petitioners’ allegations regarding conditions of confinement comprise the core of their Eighth Amendment and due process claims. Resolving the merits of those claims — as well as the necessity of any near-term measures such as provision of personal protective equipment and supplies for basic hygiene — is distinct from, and may appropriately occur prior to, any evaluation of whether the release of inmates should be part of the remedy for any violation.

Federal authorities have indicated that the risk of COVID-19 contagion can be reduced by isolating infected inmates from the general population, ensuring that inmates and staff make proper use of masks, establishing reasonable distancing guidelines, and employing necessary sanitation and hygiene. (See Centers for Disease Control and Prevention, Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities (July 22, 2020).) Petitioners may request that the superior court resolve the appropriateness of such basic health and safety measures, separate and apart from individualized inquiry into inmate releases, in a more urgent manner than under the current timetable. The superior court could do so by ordering, if practicable, an immediate status conference or hearing focused on petitioners’ May 26 request that the County “provide[] hygiene items” such as “tissues, hand sanitizer containing at least 60% alcohol, disinfecting wipes, soap, disposable latex gloves and face masks”; “clean[] and disinfect[] [petitioners’ cells] every 24 hours”; permit petitioners “to wash their hands regularly and thoroughly with an alcohol-based hand rub or soap and water”; and implement other reasonable distancing or hygiene protocols. To that end:

- The parties may request that the superior court bifurcate the interim health and safety issues from the issues relating to release. (Code Civ. Proc., § 598.) The court may also order a bifurcation on its own motion. (*Ibid.*) As noted, the court may hold an immediate status conference or hearing on these near-term measures, which may include providing inmates with masks, soap, and other cleaning and sanitation products; separating infected inmates from the general population; and establishing reasonable distancing protocols within jail facilities.
- The parties or the superior court on its own motion may shorten time for any filings to further an expedient resolution. (Cal. Rules of Court, rule 4.551(h).)
- Either party or both parties may provide the superior court with an immediate update regarding the inmates’ conditions of confinement, including any relevant health and safety protocols employed by the County. In addition, petitioners may amend the petition to append the latest declarations.
- The parties may, by letter brief, continue to provide this court with status updates. The letter brief may also update the court on the status of near-term health and safety measures. In addition, the letter brief may detail current data, due at the end of this month, on the extent of

COVID-19 infection in Sacramento County jail facilities. (See Lisa Penner, Board of State and Community Corrections, letter to Sheriffs and Chief Probation Officers, July 15, 2020.)

The denial of petitioners' motion to reconsider is without prejudice to the filing of a new petition in this court raising similar claims if circumstances warrant.

**BAR MISC. 4186 IN THE MATTER OF THE APPLICATION OF THE COMMITTEE
OF BAR EXAMINERS OF THE STATE BAR OF CALIFORNIA
FOR ADMISSION OF ATTORNEYS (MOTION NO. 1,479)**

The written motion of the Committee of Bar Examiners that the following named applicants, who have fulfilled the requirements for admission to practice law in the State of California, be admitted to the practice of law in this state is hereby granted, with permission to the applicants to take the oath before a competent officer at another time and place:

(SEE ORIGINAL APPLICATION FOR THE LIST OF NAMES ATTACHED.)