

STATE OF WISCONSIN
SUPREME COURT

Case No. 2020AP1252

STATE OF WISCONSIN,
Plaintiff-Respondent-Respondent,

V.

GARLAND DEAN BARNES,
Defendant-Appellant-Petitioner.

APPENDIX FOR THE
PETITION FOR REVIEW

GARLAND DEAN BARNES (#635630)
Pro Se Litigant
With Assistant of:

TYRONE DAVIS SMITH (#297130)
Paralegal/Jailhouse Lawyer

New Lisbon Correctional Institution
2000 Progress Road
P.O. Box 2000
New Lisbon, Wisconsin 53950

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review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition, and we affirm. *See* WIS. STAT. RULE 809.21 (2019-20).¹

Barnes was convicted in 2015 of delivery of methamphetamine and sentenced to a total of thirty years' incarceration, consisting of fifteen years' initial confinement and fifteen years' extended supervision. On June 23, 2020, he filed a motion titled, "§809.14, WIS. STAT. MOTION FOR COMPASSIONATE RELEASE/SENTENCE MODIFICATION." The motion alleged that the SARS-CoV-2 pandemic ("COVID-19") constituted a new factor warranting sentence modification; that Barnes was entitled to compassionate release because of the health risks to him presented by COVID-19; and that, in the alternative, he should be released pending the direct appeal of his conviction.² The circuit court denied the motion by a letter order, and Barnes now appeals.

As an initial matter, Barnes argues the risk of potential bias required the circuit court judge to disqualify himself from ruling on Barnes' motion. Barnes' allegation of bias is predicated on his belief that recusal was required because he previously filed an ethics complaint

¹ All references to the Wisconsin Statutes are to the 2019-20 version unless otherwise noted.

² The motion for release pending appeal has been effectively rendered moot by our decision denying Barnes' direct appeal, also released on the same date as this decision and order. In any event, his motion for release pending appeal fails on its merits. The circuit court considered the proper factors under WIS. STAT. RULE 809.31(3) and specifically found that Barnes' substantial criminal record, the nature of his offenses, the fact that he had previously failed to appear for hearings, and the lengthy sentence he was given made him a poor candidate for release. Because the court applied the correct legal standards to the relevant facts and reached a reasonable conclusion, we conclude it appropriately exercised its discretion. *See State v. Salmon*, 163 Wis. 2d 369, 373, 471 N.W.2d 286 (Ct. App. 1991).

Barnes suggests the circuit court additionally should have considered his likelihood of success on appeal when determining whether he should be released. He also contends, for various reasons, that he has been a model prisoner. Neither argument is sufficient to demonstrate that the court erroneously exercised its discretion when it denied his motion for release pending appeal, as neither is a statutory factor under WIS. STAT. RULE 809.31(3).

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against the judge, in which Barnes asserted that the transcripts of his jury trial and sentencing were edited. Barnes argues his submission of a complaint against the judge creates an objective appearance of bias under *State v. Goodson*, 2009 WI App 107, 320 Wis. 2d 166, 771 N.W.2d 385. “Whether a circuit court’s partiality can be questioned is a matter of law that we review independently.” *Id.*, ¶7.

We reject Barnes’ assertions of bias. “[T]he mere fact that a party files a complaint against a judge is not sufficient to establish judicial bias.” *State v. McBride*, 187 Wis. 2d 409, 418, 523 N.W.2d 106 (Ct. App. 1994). Barnes offers no other basis to conclude the circuit court was objectively biased. In any event, we agree with the State that Barnes’ sparse and conclusory assertions regarding bias do not warrant relief.

Barnes next argues that COVID-19 constitutes a new factor justifying sentence modification. To prevail on a motion for sentence modification, the defendant must show two things. First, “[t]he defendant has the burden to demonstrate by clear and convincing evidence the existence of a new factor.” *State v. Harbor*, 2011 WI 28, ¶36, 333 Wis. 2d 53, 797 N.W.2d 828. A new factor is a fact or set of facts that is highly relevant to the imposition of the sentence, but that was not known to the circuit court at the time of the original sentencing, either because it was not then in existence or because it was unknowingly overlooked by the parties. *Id.*, ¶40. Whether the defendant has presented a new factor is a question of law. *Id.*, ¶36. Second, the defendant must show that the new factor warrants sentence modification. *Id.*, ¶37. The circuit court exercises its discretion when making that determination. *Id.*

Barnes summarily argues that there is “no question the coronavirus is a new factor that did not exist” at the time of his sentencing. Barnes does not explain how COVID-19 constitutes

No. 2020AP1252-CR

a fact that was highly relevant to the imposition of his sentence. At sentencing, the circuit court emphasized what it perceived as Barnes' arrogant behavior and statements, the significant quantity of methamphetamine Barnes was delivering, Barnes' lengthy criminal record, and the high likelihood that Barnes would commit additional criminal offenses.³ The likelihood of a global pandemic or the health risks associated with one were obviously not at the forefront of the court's sentencing decision.

In any event, in arguing that sentence modification was warranted, Barnes primarily focuses on the health risks associated with COVID-19, as well as the prison conditions that can exacerbate viral spread, including overcrowding in his prison facility. We agree with the State that Barnes primarily challenges the conditions of his confinement, which challenges are to be made by the appropriate writs and not by a motion seeking sentence modification. *See State v. Krieger*, 163 Wis. 2d 241, 259-60, 471 N.W.2d 599 (Ct. App. 1991). Barnes' motion for sentence modification is not the proper vehicle for his assertions that the prison conditions violate his Eighth Amendment rights.

Finally, Barnes argues he is entitled to compassionate release under WIS. STAT. § 302.113(9g). Barnes asserts COVID-19 poses a particular risk to him as a fifty-five-year-old African American who suffers from diabetes and hypertension. Even so, for an individual of Barnes' age, compassionate release under subsec. (9g) is available only if the inmate demonstrates he or she has an "extraordinary health condition." Sec. 302.113(9g)(b). An

³ Certain portions of Barnes' appellate brief appear directed at the notion that the circuit court miscalculated Barnes' risk of reoffending. To the extent Barnes suggests his aging or rehabilitation constitute new factors, this argument is foreclosed by *State v. McDermott*, 2012 WI App 14, ¶15, 339 Wis. 2d 316, 810 N.W.2d 237.

“extraordinary health condition” requires the inmate to demonstrate he or she has a condition that warrants release or a need for medical treatment or services that are not available within a correctional institution. Sec. 302.113(9g)(a)1.

Barnes has not demonstrated that he suffers from an extraordinary medical condition, in part because he did not follow the proper statutory procedure for establishing such a condition.⁴ A petition for release under WIS. STAT. § 302.113(9g)(b)3. must be submitted to the program review committee at the correctional institution in which the inmate is confined. Sec. 302.113(9g)(c). The petition must be accompanied by affidavits from two physicians diagnosing the inmate with an extraordinary health condition. *Id.* The review committee must then determine whether to deny the petition or refer the matter to the sentencing court. Sec. 302.113(9g)(cm). Nothing in § 302.113(9g) provides a circuit court with the initial authority to consider a petition for compassionate release.

Moreover, nothing Barnes has presented establishes his need for sentence modification under WIS. STAT. § 302.113(9g). His medical conditions—diabetes and hypertension—are common conditions that apparently have been adequately treated in prison. Rather, his argument appears to be that these conditions would exacerbate the effects of COVID-19, should he become infected with the virus that causes that disease. Yet the only affidavit attached to Barnes’ petition was his own; he did not submit any medical opinions regarding his individualized risk

⁴ No reported case law establishes the standard of review governing a compassionate release determination under WIS. STAT. § 302.113(9g). Nonetheless, even applying the least deferential standard of review, we conclude Barnes is not entitled to relief.

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profile for COVID-19.⁵ Accordingly, even assuming this court or the circuit court could grant Barnes' petition for compassionate release as an initial matter, Barnes has failed to provide a basis upon which to do so.

Therefore,

IT IS ORDERED that the order is summarily affirmed pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Sheila T. Reiff
Clerk of Court of Appeals

⁵ The only medical substantiation Barnes submitted was a general declaration regarding the risks of COVID-19 to confined persons and correctional staff issued by three health professionals through the Joseph J. Zilber School of Public Health at the University of Wisconsin—Milwaukee. This general declaration clearly does not satisfy the requirement that an inmate's petition for compassionate release be supported by affidavits from two physicians.



OFFICE OF THE CLERK
WISCONSIN COURT OF APPEALS

110 EAST MAIN STREET, SUITE 215
P.O. Box 1688
MADISON, WISCONSIN 53701-1688

Telephone (608) 266-1880
TTY: (800) 947-3529
Facsimile (608) 267-0640
Web Site: www.wicourts.gov

DISTRICT III

FILED
04-14-2021
CLERK OF WISCONSIN
COURT OF APPEALS

April 14, 2021

To:

Hon. Kelly J. Thimm
Circuit Court Judge, Br. 1
Douglas County Courthouse
1313 Belknap St.
Superior, WI 54880

Aaron R. O'Neil
Wisconsin Department of Justice
17 West Main Street,
P.O. Box 7857
Madison, WI 53707-7857

Michele Wick
Clerk of Circuit Court
Douglas County Courthouse
1313 Belknap Street, Ste. 309
Superior, WI 54880

Garland Dean Barnes 635360
New Lisbon Correctional Inst.
P.O. Box 4000
New Lisbon, WI 53950-4000

Mark A. Fruehauf
District Attorney
1313 Belknap St., Room 201
Superior, WI 54880-2769

You are hereby notified that the Court has entered the following order:

2020AP1252-CR State of Wisconsin v. Garland Dean Barnes (L.C. # 2013CF118)

Before Stark, P.J., Hruz and Seidl, JJ.

Appellant Garland Barnes, pro se, moves for reconsideration of the decision issued by this court on March 16, 2021. Nothing in the motion alters the court's view of the case.

Therefore,

IT IS ORDERED that the motion for reconsideration is denied.

Sheila T. Reiff
Clerk of Court of Appeals

FILED
06-23-2020
Clerk of Court
Douglas County, WI
2013CF000118

BY THE COURT:

DATE SIGNED: June 23, 2020

Electronically signed by Kelly J. Thimm
Circuit Court Judge

DOUGLAS COUNTY CIRCUIT COURT BRANCH I
JUDGE KELLY J. THIMM

Douglas County Courthouse
1313 Belknap Street Room 303
Superior, WI 54880
715-395-1471

Tracy Bennett
Court Reporter

Mary Martin
Judicial Assistant

June 22, 2020

Garland Barnes #635360
New Lisbon Correctional Institution
P.O. Box 4000
New Lisbon, WI 53950

Re: State of Wisconsin v. Garland D. Barnes, Case#2013CF118

Dear Mr. Barnes:

This is in response to your motion for sentence modification and request that the court disqualify itself from your case. Both of your requests have been reviewed. Your reasoning for this court to disqualify itself is that you filed a judicial complaint. Until you wrote your June 18, 2020 letter addressed to the court, I was unaware you made a complaint. The court cannot just disqualify itself because a litigant files a complaint with the judicial commission. The litigant needs to show more than just alleging that they have filed a complaint against the judge before a judge removes them self from a case. This court is in the best position to rule on any motions due to its involvement with the case since its inception. Unless you can cite to any authority that requires a judge to remove them self from a case because a complaint is filed against them, I will remain on the case. The court believes and the record supports the fact that it has and can continue to be fair and impartial. I understand that you may not like the court's decisions in the past, but it is not a reason for the court to disqualify itself.

Regarding the motion you filed, I would like a written response from the state by July 24, 2020. Once the court receives a response from the state, it will decide whether to set the matter for a hearing or just make a decision based upon the submissions.

Thank you for your attention in this matter.

cc: Douglas County District Attorney's Office
Court File

FILED
06-26-2020
Clerk of Court
Douglas County, WI
2013CF000118

BY THE COURT:

DATE SIGNED: June 26, 2020

Electronically signed by Kelly J. Thimm
Circuit Court Judge

DOUGLAS COUNTY CIRCUIT COURT BRANCH I
JUDGE KELLY J. THIMM

Douglas County Courthouse
1313 Belknap Street Room 303
Superior, WI 54880
715-395-1471

Tracy Bennett
Court Reporter

Mary Martin
Judicial Assistant

June 26, 2020

Garland Barnes #635360
New Lisbon Correctional Institution
P.O. Box 4000
New Lisbon, WI 53950

Re: State of Wisconsin v. Garland D. Barnes, Case#2013CF118

Dear Mr. Barnes:

This is in response to your motion for sentence modification and the state's response to your motion. I have had a chance to review both your motion, the state's response and the file. As far as your request for relief pending appeal pursuant to sec. 969.01(2)(c), Stats., the court has the authority to grant bond pending appeal in its discretion. According to sec. 809.31(3), Stats., in exercising discretion to grant bond pending appeal the court would need to find that you would not fail to appear, would not commit a serious crime, would not intimidate witnesses or would not otherwise interfere with the administration of justice, would promptly prosecute your appeal, and the appeal is not taken for purposes of delay. According to sec. 809.31(4), Stats., the court is also required to consider the nature of your crime, the length of your sentence and other factors used to decide pretrial release. Based upon the record before it, the court cannot find that you will not commit a serious crime. Your record is substantial and you have consistently committed serious offenses. Your prior record includes aggravated robbery and multiple burglaries and drug offenses. In my opinion when you are released there is a high likelihood that you will commit another serious offense. There are also concerns as you have missed court multiple times in this case and cannot be trusted to make your court appearances if you are released on bail. Further, with the lengthy prison sentence you received, you are at high risk to abscond. Therefore your motion for release pending appeal is denied.

Regarding your request for sentence modification, this court has decided to not have a hearing on the matter and decide the case based upon the information you and the

state have provided. The court is not convinced that Covid-19 combined with your medical conditions is a new factor. Had you been sentenced knowing that the information presented in your motion the court would not have altered its sentence. Your risk to the community by being released outweighs any potential health risks you may encounter in prison because of Covid-19. However, the court will assume that you have raised a new factor because of Covid-19 and your medical conditions. The court is still not convinced that your risk of Covid-19 having a significant medical impact on you outweighs the societal risk you present by being released. As stated at sentencing the court believes that significant imprisonment is necessary to protect the community from your criminal behavior. In addition the court has concerns that you are procedurally barred from both pursuing a sentence modification and a direct appeal and for that reason alone your motion for sentence modification may be denied (see sec. 973.19(5), Stats.) unless you are waiving your right to a direct appeal.

Thank you for your attention in this matter.

cc: Douglas County District Attorney's Office
Court File



DOUGLAS COUNTY DISTRICT ATTORNEY'S OFFICE

Mark Fruehauf, District Attorney
 Anne Terrien, Assistant District Attorney
 Angela M. Wilson, Assistant District Attorney
 Chad La Lor, Assistant District Attorney
 Peter Kruger, Assistant District Attorney

1313 Belknap Street, Room 201
 Superior, WI 54880
 (715) 395-1218
 Fax (715) 395-1481

June 23, 2020

The Honorable Kelly Thimm
 VIA EFILING ONLY

Re: State of Wisconsin v. Garland Dean Barnes, 2013CF000118

Dear Judge Thimm,

Per your letter, I write to respond to the defendant's motion seeking early release, or in the alternative, release pending appeal. The State opposes the motions.

The first issue raised by the defendant is that he is entitled to sentence modification due to the existence of a new factor. In order for a new factor to justify sentence modification, a two-step test is employed. First, a new factor must exist. Second, the new factor must justify modification of sentence. *State v. Harbor*, 2011 WI 28, ¶ 38, 333 Wis.2d 53, 73 (citation omitted). The defendant has the burden to demonstrate the existence of a new factor by clear and convincing evidence. *Id.* at ¶ 36. The existence of a new factor does not automatically entitle a defendant to modification. *Id.* at ¶ 37. The requirements for sentence modification are meant to promote the policy of finality of judgments while correcting unjust sentences. *Id.* at ¶ 51.

The new factor that the defendant raises is the COVID-19 pandemic. While this writer is not aware of any published cases from Wisconsin courts that have addressed this issue, case law is clear that conditions of confinement have no bearing on the issue of sentence modification. *See, e.g., State v. Klubertanz*, 2006 WI App 71, ¶¶ 41-42, 291 Wis.2d 751, 775-76 (suggesting that conditions of confinement such as sexual assault in prison were not highly relevant to the circuit court's sentencing decision, and that "remedy would be a change in conditions of his confinement, and not a modification of his sentence"); *State v. Krieger*, 163 Wis.2d 241, 257-59 (Ct. App. 1991) (holding that sentence modification is not the proper remedy for sex offenders who are subject to higher risks of physical, sexual, and psychological abuse in the prison system, but rather corrective measures directed to changing the conditions of confinement are).

Here, the defendant presents this Court with no information as to any administrative remedies he has sought prior to requesting this modification. He provides no evidence that there are any confirmed COVID cases at his current institution. He provides no evidence that suggests the institution is somehow unequipped to appropriately quarantine him or provide him appropriate medical attention should that change.

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The defendant also fails to show that COVID-19 is a factor "highly relevant" to the Court's imposition of his original sentence. At his sentencing, the Court rejected the idea of placement in

the community for this defendant, noting that he has a significant criminal history (*Sentencing Transcript*, p. 28-29), that he presented as narcissistic, arrogant, and believing he was above the law (30), that he has no regard for the community or the criminal justice system (31), and that “significant” confinement was necessary to protect the community from him (32). There is nothing to suggest that those facts have changed in the short amount of time that has followed.

Because the defendant fails to establish by clear and convincing evidence the existence of a new factor that justifies modification of any unjust sentence, his motion should be denied.

The second issue the defendant raises is that he should be released on bond pending his appeal. In appellate case 18AP2005-CR, which is not yet decided, the record shows that briefing of the defendant’s appeal was completed by the parties on November 7, 2019. The matter has been submitted on briefs to the court since March of this year. It would appear that the parties will not need to wait much longer for a decision. There is no reason for this Court at this point to enter an order releasing the defendant on bond pending the forthcoming decision; no motion for release was filed before undertaking the appeal, and it appears the only reason one is being filed now is again because of the COVID-19 pandemic. It is also worth noting that the defendant is not likely to prevail on the merits on his appeal; the decision of this Court appears to be sound and based on well-established law.

Under § 809.31(4), a person may be released on bond pending appeal if the court finds all of the following:

- There is no substantial risk that the appellant will not appear to answer the judgment following conclusion of postconviction proceedings
- The defendant is not likely to commit a serious crime, intimidate witnesses, or otherwise interfere with the administration of justice
- The defendant will promptly prosecute postconviction proceedings, and the proceedings are not taken for purposes of delay

The defendant fails both of the first two prongs of this analysis. This defendant poses a substantial risk of failing to appear if the Court of Appeals affirms the decision of this Court (something that is likely); it is difficult to imagine this defendant, after being released, being told of an adverse decision and calmly and orderly reporting back to prison to finish out the remaining years on his sentence.

This defendant also poses a substantial risk to commit additional serious crimes and otherwise interfere with the administration of justice, a fact supported by the nature of his most recent conviction and his criminal record, which dates back to 1983 and consists of numerous serious felonies and prison terms.

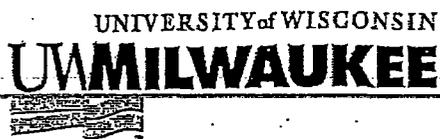
Both of the defendant’s motions should be denied without a hearing.

Sincerely,
/electronically signed by Mark Fruehauf/
Mark A. Fruehauf, District Attorney

cc: Garland Barnes

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116 2



Joseph J. Zilber
School of Public Health

Declaration to Protect Incarcerated Persons, Correctional Staff, and Wisconsin Communities from COVID-19

Amanda M. Simanek, PhD, MPH
Associate Professor of Epidemiology
Joseph J. Zilber School of Public Health
University of Wisconsin-Milwaukee

Lorraine Halinka Malcoe, PhD, MPH
Associate Professor of Epidemiology
Joseph J. Zilber School of Public Health
University of Wisconsin-Milwaukee

Alan G. Nyitrai, PhD
Associate Professor of Epidemiology
Medical College of Wisconsin

We declare as follows:

1. Amanda M. Simanek, MPH, PhD, is an Associate Professor of Epidemiology in the Joseph J. Zilber School of Public Health at University of Wisconsin-Milwaukee, where she regularly teaches courses in principles of epidemiology, social epidemiology and epidemiologic links between infectious disease and chronic disease. She is a member of the American Public Health Association and member of, as well as a designated COVID-19 expert, for the Interdisciplinary Association of Population Health Sciences. Dr. Simanek has been active in infectious disease epidemiology research since she was a graduate student in the University of Michigan School of Public Health where she completed a Master of Public Health in International Health Epidemiology and PhD in Epidemiologic Science. Her research focuses on understanding social patterning of disease, etiologic links between infectious and chronic diseases such as cardiovascular disease and depression, and novel immunologic pathways by which social conditions contribute to the development of chronic diseases across the lifecourse and across generations. She is currently funded by the National Institute for Minority Health and Health Disparities to study the association between maternal socioeconomic disadvantage, adverse birth outcomes and inflammatory response in children at birth. Dr. Simanek was also previously part of a research team that carried out a Centers for Disease Control-funded study of voluntary isolation on transmission of influenza and other respiratory illnesses among university students. She has been volunteering as an outside expert for the Wisconsin Army National Guard team planning response for the coronavirus pandemic since March 19th, 2020.

outcomes from respiratory infections. (2) Among laboratory-confirmed cases, those with an underlying condition had four times the rate of hospitalization without ICU admission than those with no underlying condition (27.3-29.8% vs 7.2-7.8%, respectively). Likewise, cases with an underlying condition had nearly six times the rate of ICU admission than those with no underlying condition (13.3-14.5% vs 2.2-2.4%, respectively). (2) Among cases 65 years and older with one or more underlying health conditions or risk factors, the rates of hospitalization without ICU (41.7-44.5%) and ICU admissions (20.8-22.2%) are much higher. (2)

7. The first case of COVID-19 was detected in Wisconsin on February 5th, and as of April 2nd, 2020 there have been 1,771 cases diagnosed, of which 26.6% have been hospitalized and 31 have died, with sustained community spread of the virus in numerous Wisconsin counties.
8. On March 12th, 2020, Governor Evers declared a public health emergency in the State of Wisconsin. As of March 18th, 2020, all schools in Wisconsin were closed and over the next two weeks, the Governor continued to implement other social distancing measures to limit the spread of COVID-19, such as increasingly tighter restrictions on the size of public and private gatherings, closure of restaurants and bars, and the eventual issue of a "Safer at Home" order on March 24th, 2020. This "Safer at Home" order applies to the entire state and mandates that all Wisconsinites stay at home as much as possible and that non-essential businesses cease operations, with limited exceptions for minimum basic operations and working from home. All public and private gatherings of any number of people that are not part of a single household or living unit are prohibited, with limited exceptions. (3)
9. Under the "Safer at Home" order, social distancing requirements include: 1. Maintaining social distancing of six feet between people; 2. Washing hands with soap and water for at least 20 seconds as frequently as possible or using hand sanitizer; 3. Covering coughs or sneezes (into the sleeve or elbow, not hands); 4. Regularly cleaning high-touch surfaces; 5. Not shaking hands; and 6. Following all other public health recommendations issued by the Wisconsin Department of Health Services and the Centers for Disease Control and Prevention (CDC). The CDC is also expected to soon release recommendations that individuals who leave home to obtain essential services, groceries, medications, etc.; wear a cloth mask while out in public to further help prevent the spread of SARS-nCoV-2 infection. (3)
10. A primary reason for the safer-at-home order is that many of our state's approximately 11,000 hospital beds and likely all of our state's 2,500 ICU beds and 620 ventilators (Wisconsin Hospital Association) will likely be operating at or beyond full capacity for months, even with these social distancing measures in effect. Even with efforts to increase capacity, it is essential during this time when our healthcare system is saturated, that every effort be made to reduce outbreaks that would only further stress our ability to care for both COVID-19 patients and all other patients who need hospital care.
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11. SARS-nCoV-2 infections are transmitted through inhalation of aerosolized droplets expelled when individuals cough or sneeze, or when individuals touch surfaces that may become contaminated when droplets land on them after someone coughs or sneezes. Individuals who are infected with SARS-nCoV-2 can take between 2-14

no fever and without the aid of fever reducing medication, and other symptoms have improved *and* at least seven days have passed since symptoms first appeared). (15)

15. Incarcerated persons in jails and prisons are not only at increased risk of COVID-19 because of the nature of the prison environment, they also have increased risk of adverse complications resulting from COVID-19 due to a higher prevalence (43.9% vs 31.0% in the general population) of underlying chronic conditions, including high blood pressure/hypertension (30.2%), tuberculosis (6%), asthma (14.9%), diabetes (9%), cardiovascular disease (11.6%), renal disease (6.1%), hepatitis B or C (10.9%), and HIV/AIDS (1.3%). (16) As well over 19% of the WDOC prison population is 50 years or older, further compounding their increased risk of hospitalization and ICU admission once infected. (17)
16. Governor Evers pledged during his campaign for office to close the Milwaukee Secure Detention Facility (MSDF), where re-incarceration for crimeless revocations is common, and to institute reforms that would reduce Wisconsin's incarcerated population by half. The need for the Evers administration and the Courts to act on these promises is now urgent. From a public health perspective, *safe and rapid decarceration is among the most effective preventative measures that can be taken to reduce the spread of COVID-19 within jails and prisons* and reduce hospitalizations and deaths from jail- and prison-acquired COVID-19 infections. Decarceration reduces population density and allows for increased social distancing.
17. Revocations account for 40% of new admissions to Wisconsin's state prisons. Directly impacted persons and other advocates have long identified Wisconsin's supervision and revocation processes as a tool for cycling Wisconsin residents in and out of jails and prisons. MSDF was erected in 2001 to imprison people on parole/probation violations. Its mission was further expanded to detaining persons in alternatives to revocation programs, persons with "temporary lock-up" status, and incarcerated persons slated to be released within one year. Operating capacities at this facility, designed to detain under 500 people, have averaged over 1,000. Lack of access to direct sunlight, air conditioning, and outdoor recreation, 20-23 hour lockdowns and extreme heat further exacerbate MSDF's conditions of overcrowding, which force incarcerated persons into triple-bunked cells, making the risk of a COVID-19 outbreak practically imminent. Communicable disease and chronic health conditions have plagued MSDF since its opening. A total of 17 people have died while confined in MSDF, a statistic made even more alarming in the context of the COVID-19 pandemic. As stated, there are already three confirmed cases among MSDF staff. *MSDF in particular must be depopulated well below the 500 capacity for which it was designed assuming no COVID-19 pandemic.*
18. The release of detainees, especially those with increased health-related vulnerability, also protects health care surge capacity by reducing the number of people who will become ill enough to require hospitalization, which in turn reduces the health and economic burden to the local community at large.
19. There are also compelling ethical and legal obligations to decarcerate correctional institutions. Incarcerated persons have inalienable human rights conferred upon

Pursuant to 28 U.S.C. 1746, we declare under penalty of perjury that the foregoing is true and correct. Executed this 3rd day, April, 2020.

Amanda M Simanek

Amanda M. Simanek, PhD; MPH
Associate Professor of Epidemiology

Lorraine Halinka Malcoe

Lorraine Halinka Malcoe, MPH, PhD
Associate Professor of Epidemiology

Alan G. Nyitray

Alan G. Nyitray, PhD
Associate Professor of Epidemiology

References

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