

THE STATE OF NEW HAMPSHIRE

HILLSBOROUGH, SS.
SOUTHERN DISTRICT

SUPERIOR COURT
No. 2020-CR-00204
No. 2020-CR-00358

State of New Hampshire

v.

William James

ORDER ON DEFENDANT'S REQUEST FOR BAIL

The defendant filed emergency motions for a bail hearing in these cases on December 23, 2020. An emergency bail hearing was held on December 30, 2020. Attorney Friedman appeared for the defendant and Attorney Smith appeared for the State. In addition to hearing offers of proof and argument from counsel, the State also called two witnesses at the hearing, Superintendent Scurry and Health Services Administrator Hartley, both of whom are employees of the Hillsborough County House of Corrections ("HCHOC"). After considering the offers of proof, the arguments of counsel, the exhibits, and the testimony, the defendant's request for bail is GRANTED.

Due to the emergency nature of this proceeding, the Court does not have the luxury of time to engage in an extensive analysis of the evidence and the applicable law. The sole focus of this order relates to the defendant's high-risk medical condition as identified in the CDC high-risk categories. (See Ex. G at Bates 161 and 171.) The CDC guidance and the weight of authority from courts throughout the country establish that COVID-19 poses an objectively serious health risk for detainees with high-risk conditions. See Gomes v. U.S. Dep't. of Homeland Sec., 460 F. Supp. 3d 132, 149 (D.N.H. 2020). In fact, prisons and jails are particularly susceptible to the introduction

and spread of the virus. Id. at 138 (citation omitted). Medical professionals have warned of the “tinderbox scenario” at detention centers. Id. Here, the evidence conclusively shows that the defendant is potentially at high risk for serious illness from COVID-19. (Ex. G at Bates 161, 171.) Unfortunately, he tested positive for the virus as revealed by a PCR test on December 24, 2020. (Id. at 184.)

Obviously, not every inmate suffering from an illness should be granted bail. Jails and prisons generally have medical wards that can attend to the basic health care needs of their inmates. In this case, however, the Court is deeply-troubled by the cavalier attitude that HCHOC has shown towards its inmates during the COVID-19 pandemic. First, like the federal court in Gomes, the Court notes HCHOC’s abject failure in identifying and appropriately isolating high-risk inmates. See Gomes 460 F. Supp. 3d at 150. Indeed, it is abundantly clear from the testimony of Superintendent Scurry and Health Administrator Hartley that HCHOC has acted in a manner that exhibits deliberate indifference to the health of its inmates by disregarding the substantial risk of COVID-19 to high-risk inmates like the defendant. Id. Second, COVID-19 testing at HCHOC has been virtually non-existent. Although the pandemic has been ongoing for nearly nine months, as of the date of the hearing, only eleven inmates had ever been tested for the virus. Nine of these tests were administered pursuant to court orders to transfer inmates to the New Hampshire State Hospital or the Secure Psychiatric Unit at the State Prison. Of those eleven tests, two have come back positive (one of which was the defendant’s), resulting in a positivity rate of 18%. The testing for staff has not been much better. According to Superintendent Scurry, there have been 99 staff members tested for the virus, with 37 positive results. This

constitutes a positive rate of over 37%. Third, Superintendent Scurry acknowledged on multiple occasions during his testimony that he is unaware of the pertinent guidance from the CDC and NHDHHS. The Court will not review the other examples of deliberate indifference related to mask wearing, the quarantine process (cohorting), and testing. Suffice it to say that the deliberate indifference at this facility to the COVID-19 pandemic, particularly as it relates to high-risk inmates, is troubling at best.

Moreover, the present circumstances of the defendant's incarceration violate the existing CDC and New Hampshire DHHS guidelines for correctional facilities. (Ex. F at Bates 99–143.) That is, at the present time, the defendant is not isolated in a separate environment as required under the guidelines. Rather, the defendant is now detained in Unit 2A in a cell with another inmate who has tested positive for COVID-19. There is only one ventilation system for this unit and the air flows out of the cells from a space under each door. More alarmingly, HCHOC staff rotates in and out of this unit to other units in the facility. The staff is not subject to any COVID-19 screening process. In addition, Unit 2A is the classification unit that accepts new inmates on a daily basis. Thus, there is a real risk that the defendant could transmit COVID-19 to new inmates or staff and then those individuals could be transferred to other parts of the facility without ever being tested.

In short, given HCHOC's obvious failure to implement and execute the correctional facility guidance from the CDC and New Hampshire DHHS or to deal with the COVID-19 pandemic in any meaningful fashion, the Court has no confidence that the defendant will receive appropriate treatment for the potential severe complications that could arise from his COVID-19 infection while incarcerated at HCHOC. As a result,

the Court is issuing an amended bail order today for the defendant's release on personal recognizance with associated conditions of home confinement at his mother's home and no contact with the alleged victim. The Court does not issue this order without reservation based on its prior orders for preventative detention in these cases. However, the Court concludes that the defendant's medical condition, which places him at a high risk for severe illness from COVID-19, coupled with the lack of care at HCHOC, demands an immediate release based on his meritorious due process deliberate indifference claim. Id. at 151.

So ordered.

Date: December 31, 2020

A handwritten signature in blue ink, appearing to read 'C. Temple', is written over a horizontal line.

Hon. Charles S. Temple,
Presiding Justice