

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR PIERCE COUNTY

STATE OF WASHINGTON,)	
)	No. [REDACTED]
Plaintiff/Respondent,)	(CoA No. [REDACTED])
)	
v.)	REPLY IN MOTION
)	FOR RELEASE TO STAY
[REDACTED])	SENTENCE PENDING
)	RESOLUTION OF APPEAL
Defendant/Appellant.)	
)	

I. ARGUMENT IN REPLY TO PROSECUTION’S OPPOSITION TO
RELEASE ON BOND OR PERSONAL RECOGNIZANCE AND
STAY OF SENTENCE PENDING APPEAL

[REDACTED] convictions for theft should not be a death sentence. But if he is infected with COVID-19 while incarcerated, that may very well be the result. Due to the nature of the virus and [REDACTED] health, [REDACTED] is at a high risk of serious illness or death from the virus. And while he is incarcerated, his risk of infection is substantial. About a dozen inmates and several staff members at the Monroe Correctional Complex where [REDACTED] is housed have tested positive for the virus.¹ Given these circumstances, and because conditions of release are adequate to ensure the safety of the community, this Court should

¹ <https://www.doc.wa.gov/news/covid-19.htm#status> (last accessed April 20, 2020).

order his sentence stayed while he exercises his state constitutional right to appeal.

The prosecution opposes ██████ request. The prosecution incorrectly contends that ██████ is not at a high risk of death or serious illness from COVID-19. ██████ is in his mid-50s. He suffers from high blood pressure and takes medication for this condition. He is also an African American, and black Americans have suffered disproportionately from COVID-19.² In a letter, the Department of Corrections has acknowledged that ██████ is in the high risk category.³

The prosecution opposes ██████ motion, contending that a preponderance of the evidence shows that ██████ “is likely to flee or to pose a danger to the safety of any other person or the community if the judgment is stayed.” RCW 9.95.062(1)

The evidence does not show this. Any risk of flight is minimal. ██████ has a supportive wife and a place to stay. His ties are in Washington State. That ██████ has a nearly *20-year-old conviction* for

² <https://www.npr.org/sections/health-shots/2020/04/18/835563340/whos-hit-hardest-by-covid-19-why-obesity-stress-and-race-all-matter>.

³ ██████ is sending counsel a copy of this letter. Counsel will file a copy of this letter once he receives it.

escape in the second degree under RCW 9A.76.120 does not establish that he is likely to flee if released.

The prosecution also does not show that ██████████ is such a risk to the community that bond or personal recognizance should be denied. His criminal history is one of non-violent offenses. That ██████████ has convictions for theft and drug possession does not establish he poses a risk of danger to the safety of the community. Any risk is properly mitigated with conditions of release. If ██████████ violates these conditions, his release can be revoked.

The prosecution also contends that the “delay resulting from the stay will unduly diminish the deterrent effect of the punishment.” RCW 9.95.062(1)(b). If a stay is granted and ██████████ is unsuccessful in his appeal, he will have to serve the remainder of his sentence. He has already served a portion of that sentence. This has a deterrent effect. Release pending appeal will not unduly diminish the deterrent effect. Indeed, a conditional release will have a deterrent effect against unlawful behavior because if ██████████ violates the conditions of release, the stay may be revoked. The prosecution has not shown by a preponderance of the evidence that RCW 9.95.062(1)(b) applies.

Further, the statutory criteria cannot be read in a vacuum. As the Massachusetts Supreme Court has reasoned, “[i]n these extraordinary

times, a judge deciding whether to grant a stay should consider not only the risk to others if the defendant were to be released and reoffend, but also the health risk to the defendant if the defendant were to remain in custody.” Christie v. Commonwealth, 484 Mass. 397, ___, 2020 WL 154877 at *3 (2020). “In evaluating this risk, a judge should consider both the general risk associated with preventing COVID-19 transmission and minimizing its spread in correctional institutions to inmates and prison staff and the specific risk to the defendant, in view of his or her age and existing medical conditions, that would heighten the chance of death or serious illness if the defendant were to contract the virus.” Id.

As explained, [REDACTED] is at a substantial risk of serious illness or death from COVID-19. The prosecution complains that [REDACTED] was unable to provide details in his original motion, but communication between appellate counsel and his incarcerated clients have been complicated due to the pandemic. Counsel has been working remotely. There have been quarantines and lockdowns in Department of Corrections’ facilities due to COVID-19, making communication even more difficult. Counsel was only recently able to get in touch again with [REDACTED]

As for the risk of the virus spreading in the Department of Corrections’ facilities, efforts to halt the spread of the virus have already

failed in Monroe, where ██████████ is housed. To be sure, efforts are being taken by the Department of Corrections to mitigate the risk of transmission. But a significant risk remains. Were it otherwise, the Washington Supreme Court would not have ordered the Governor and the Department of Corrections to explain what measures are being taken.⁴ And the governor would not have issued its emergency order that is leading to the release of some individuals in custody.⁵

Misusing statistics, the prosecution implies that the incarcerated are actually safer than the general population from being infected by COVID-19. State's Response at 10. This is misleading given that there has not been adequate testing. Further, the proper inquiry is whether the risk of infection would decrease if ██████████ is at home rather than in custody. At home, ██████████ interaction with other people would be minimal. In prison, social distancing is impossible. While incarcerated, ██████████ must interact with staff and other inmates in confined spaces. And staff members and inmates at the facility where ██████████ is housed have been infected.

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<http://www.courts.wa.gov/content/publicUpload/Supreme%20Court%20Orders/983178%20Public%20Order%20Motion%20041020.pdf>

⁵ https://www.governor.wa.gov/sites/default/files/COVID-19%20-%20Commutation%20Order%204.15.20%20%28tmp%29.pdf?utm_medium=email&utm_source=govdelivery.

For these reasons, a stay is warranted while [REDACTED] litigates his appeal. If successful in his appeal, [REDACTED] will not have unnecessarily served his sentence. Even if unsuccessful, the risk from COVID-19 in prisons will likely be greatly diminished once the appeal is resolved. [REDACTED] could then serve the remainder of his sentence without an undue risk of death or serious illness from COVID-19.

II. CONCLUSION

[REDACTED] asks that this Court stay his sentence and grant his release on personal recognizance or bond with the necessary conditions.

Respectfully submitted this 20th day of April, 2020.



Richard W. Lechich – WSBA #43296
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Attorney for [REDACTED]

DECLARATION OF FILING AND MAILING OR DELIVERY

The undersigned certifies under penalty of perjury under the laws of the State of Washington that on the below date, the original of the document to which this declaration is affixed/attached was filed in the **Pierce County Superior Court Clerk's Office**, and a true copy was mailed with first-class postage prepaid or otherwise caused to be delivered to the following attorney(s) or party/parties of record at their regular office or residence address as listed on ACORDS:

respondent Kristie Barham, Pierce County Prosecuting Attorney
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appellant

other party



MARIA ANA ARRANZA RILEY, Legal Assistant

Date: April 20, 2020