No. 19-2-11908-0 SEA

IN THE KING COUNTY SUPERIOR COURT

VICTOR JONES,
Petitioner

v.

THE HONORABLE ADAM EISENBERG; SEATTLE MUNICIPAL COURT; CITY OF SEATTLE
Respondents

AMICI CURIAE BRIEF IN SUPPORT OF WRIT OF HABEAS CORPUS

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I. IDENTITY AND INTEREST OF *AMICI CURIAE*

The identity and interest of *Amici* are set forth in *Amici*'s Motion for Leave to File *Amici Curiae* Brief, filed herewith.

II. INTRODUCTION

Over the last several years, the local and national conversation surrounding criminal justice reform has become more robust and calls for reform have become louder.[1] Underlying this conversation is an increasingly mainstream understanding that the United States is facing a carceral crisis and that the current state of mass incarceration must be addressed.[2] In the context of this realization, experts, systems players, justice involved individuals, and organizations across the political spectrum have attempted to dissect the factors that contribute to mass incarceration, and the factors that result in better or worse criminal justice outcomes for individuals at every stage of the process.[3] It is also

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[1] Fwd.us, *Criminal Justice Reform: Unlocking our Potential*, https://www.fwd.us/criminal-justice/; Southern Poverty Law Center, *Criminal Justice Reform*, https://www.splcenter.org/issues/mass-incarceration; The Marshall Project, *Criminal Justice Reform: A Curated Collection of Links* (updated April 25, 2019).
[2] Marie Gottschalk, *American Needs a Third Reconstruction: The Problem of Mass Incarceration is a Problem of High Inequality*, The Atlantic (Sep. 18, 2015) https://www.theatlantic.com/politics/archive/2015/09/americas-need-for-a-third-reconstruction/405799/; Michelle Alexander, The New Jim Crow: Mass Incarceration in the Age of Colorblindness (2010).
[3] *Id.*

uncontroverted that the criminal justice system produces, at every level, racial disproportionalities among those impacted by the system.[4]

One area that has been targeted for reform efforts is the pretrial phase of the criminal justice system.[5] Unsurprisingly, the pretrial experiences of individuals who have been accused of crimes can have massive ramifications for their case outcomes.[6] Reform efforts have focused on addressing systems of bail that hold people in custody in tandem with pretrial services and conditions imposed on people who are released pretrial.[7] It is of critical importance to long term reform that criminal justice system stakeholders not only be aware of the breadth and depth of the national and state policy conversations around pretrial reform, but also be keenly aware of whether those reform conversations are being applied at the granular level, to individual cases like that of Mr. Jones.

Amici urge this court to consider Mr. Jones's case in light of recent reforms and in light of the presumptions of innocence that should be accorded him at this stage of the proceedings. The imposition of a 1,000

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[4] Ashley Nellis, *The Color of Justice: Racial and Ethnic Disparity in State Prisons* (June 14, 2016) https://www.sentencingproject.org/publications/color-of-justice-racial-and-ethnic-disparity-in-state-prisons/; *State v. Gregory*, 192 Wn.2d 1, 427 P.3d 621 (2018).
[5] *See, e.g.*, *Pretrial Justice Institute*, https://www.pretrial.org/.
[6] Michelle Alexander, Go to Trial: Crash the Justice System, Opinion article, The New York Times, 2012. Accessed at http://nytimes.com/2012/03/11/opinion/sunday/go-to-trial-crash-the-justice-system.html.
[7] Colin Doyle, Chiraag Bains & Brook Hopkins, *Bail Reform: A Guide for State and Local Policymakers*, February 2019, Criminal Justice Policy Program, Harvard Law School.

foot no contact order by the trial court that fundamentally means that Mr. Jones can no longer live in his own home is an onerous pretrial restraint and contradictory to best practices. Further, it is critical that individuals involved in the criminal justice system are able to maintain housing stability, and the trial court's decision challenged by Mr. Jones, strips Mr. Jones of his ability to live in a home he has owned for thirty years.

III. STATEMENT OF THE CASE

Amici Curiae adopt the Statement of the Case as outlined by Mr. Jones in his Writ of Habeas Corpus filed in the King County Superior Court.

IV. ARGUMENT

A. The Pretrial Reform Movement Must Inform Courts' Decisions to Impose Pretrial Conditions and Mandates that Courts Impose the Least Restrictive Conditions

The proliferation of opinions, ideas and expertise in the area of pretrial reform cannot be understated. However, reform at the policy level must penetrate the layers of the criminal justice system to reach individuals like Mr. Jones. The no contact order imposed in Mr. Jones's case, which has the drastic effect of rendering Mr. Jones homeless, is a product of a pretrial system that is not currently applying the edicts of the pretrial reform movement.

1. Courts must be guided by evidence-based factors in setting pretrial conditions.

In the pretrial context, courts must focus not only on releasing individuals from detention, but also on the merits of imposing pretrial conditions and restraints on individuals like Mr. Jones. In devising pretrial conditions, courts must grapple with, and achieve, a delicate balance between several compelling factors. These factors include both the individual's interests in liberty, safety, property, and the presumption of innocence, and the broader public safety. Further, courts must consider the impact of pretrial decisions on the individual as well as the ripple effect of those decisions on case outcomes.[8]

> As jurisdictions strive to release more people pending trial, they should adopt pretrial interventions that work and reject interventions that overburden defendants without significant benefits to public safety or court appearance rates. Conditions of release that infringe on someone's liberty should be narrowly tailored and relate to specific, individualized concerns. . . . Pretrial services agencies should refer people to mental health and substance abuse treatment, but some empirical research indicates that making this treatment mandatory increases the risk of future arrest and missed court dates. Pretrial services should be fully funded by the government – people should not be forced to pay a "user fee" to fun pretrial services or monitoring.[9]

[8] Several studies have found that pretrial detention results in much worse outcomes for individuals. *See,* Paul Heaton, Sandra Mayson & Megan Stevenson, *The Downstream Consequences of Misdemeanor Pretrial Detention*, 69 Stan. L. Rev. 711 (2017). However, less attention has been paid to the impact of other instability factors such as homelessness on case outcomes. It is likely however, that homelessness creates instability that acts as a barrier to fully participating in one's case and creates pressures to plead guilty in order to conclude the court process.

[9] Colin Doyle, Chiraag Bains & Brook Hopkins, *Bail Reform: A Guide for State and Local Policymakers*, at 4 (Feb. 2019).

Underlying the above directive is the concept that interventions should be evidence based and courts must craft solutions that achieve the stated goal in a manner that eliminates, to the extent possible, any harm to the parties involved, including the accused.

This balancing act in which courts are encouraged to engage in is by no means unfamiliar to Washington courts. Under CrRLJ 3.2(b), for example, courts of limited jurisdiction are directed to craft the least restrictive conditions of release that may be imposed in order to ensure the individual will appear in court in the future. CrRLJ 3.2(b). And, CrRLJ 3.2(c) contains a non-exhaustive list of factors that the courts must weigh and analyze in determining which conditions of release are the most suitable. CrRLJ 3.2(c).

Additionally, interpretations of CrRLJ 3.2 by appellate courts have been clear that there are outer limits to pretrial conditions and that such conditions cannot be overly onerous even where the court detects a risk to public safety. *Butler v. Kato*, 137 Wash.App 515, 154 P.3d 259 (2007) (stating that "CrRLJ 3.2(d)(10) is not without limits. The court may not impose onerous or unconstitutional provisions where lesser conditions are available to ensure the public is protected under potential violent acts. To do so is an abuse of judicial discretion"). *Butler* recognizes that pretrial conditions are rooted in a specific purpose and must be driven by that

purpose. And, *Butler* together with CrRLJ 3.2, demonstrates that courts can consider a broad range of factors in order to arrive at creative solutions to pretrial concerns that do not result in harm to any of the parties involved.

This approach is not limited by Seattle Municipal Code 12A.06.035, the authorizing statute for a stalking no contact order. In Mr. Jones's case, to the extent that the trial court was convinced that additional pretrial interventions were necessary, the court should have availed itself of the considerable discretion allowed to it and attempted to craft a pretrial condition that did not result in Mr. Jones being barred from his own home.

And, in other settings, the Supreme Court has not shied away from requiring courts to consider, in depth and detail, the circumstances of an individual before imposing other conditions. For example, the Court has directed courts to engage in this analysis before imposing LFOs as financial conditions of a sentence. *See State v. Ramirez*, 191 Wn.2d 732, 426 P.3d 714 (2018). In *Ramirez* the court issued a detailed holding that "in determining a defendant's indigency status, the financial statement section of the motion for indigency asks the defendant to answer questions relating to five broad categories: (1) employment history, (2) income, (3) assets and other financial resources, (4) monthly living expenses, and (5) other debts." *Ramirez*, 191 Wn. 2d at 744. Ramirez directs courts to

painstakingly consider the individual's circumstances and weigh those factors in determining whether the individual should be ordered to pay LFOs. Mr. Jones's case deserves a similar, careful weighing of factors. Further, Mr. Jones's fundamental property interest in his home and presumption of innocence should not lightly be discarded in the face of other factors. In light of the above, *Amici* urge this court to reverse the trial court's decision to impose a 1,000 foot no contact order.

2. The imposition of a thousand foot no contact order that constructively evicts Mr. Jones from his home is not crafted in the least restrictive manner necessary to achieve the court's goals.

The trial court's expansion of the no contact order from a 50 foot to a 1,000 foot no contact order in a case involving his neighbors undisputedly leaves Mr. Jones without a place to live. Mr. Jones's attorney also made that abundantly clear, stating not only that the court's order renders Mr. Jones homeless, but also asking directly where the trial court now expects Mr. Jones to live, if not in his own home. The trial court responded that Mr. Jones could avail himself of the services of a social worker. Mr. Jones's attorney, in an attempt to avoid the drastic consequences for his client, made a suggestion that was dismissed by the trial court. That suggestion, reflecting an attempt to craft a condition that would achieve a balance between the neighbors' claims and potential harm to Mr. Jones,

was to impose a condition barring any *hostile* contact with the neighbors. Although the trial court was not inclined to adopt this particular suggestion, it was nevertheless incumbent upon the trial court to engage in the exercise that the defense was encouraging and attempt to fashion a condition that was not so onerous as to leave Mr. Jones without a place to live.

The necessity of a less onerous condition is supported by the CrRLJ 3.2 factors. Mr. Jones is a man approaching his sixties without any criminal history. He has lived in his neighborhood for approximately thirty years. Mr. Jones owns his own home and is retired after decades of gainful employment. Mr. Jones's attorney was able to present the court with letters of support by members of Mr. Jones's community, all of which attest to his character and reputation. Mr. Jones is the very image of a man who does not pose a risk to his friends, family and neighbors. This conclusion is supported by a jury's decision to acquit of Mr. Jones of charges related to the very same case as the one at hand. Further, Mr. Jones has demonstrated that he follows court orders: he complied with the superior court's 1,000 foot no contact order for the year preceding his trial. In light of this evidence, there is no reason to believe that Mr. Jones would not comply with a less burdensome condition of his no contact order.

The trial court's approach here is comparable to zero tolerance probation, with mere allegations resulting in disproportionately punitive outcomes. This is despite the fact that Mr. Jones's actions display a desire to comply with the order. The record reflects that Mr. Jones parked 47 feet away from the protected party's home, a clear signal that Mr. Jones was attempting to abide by the 50 foot restriction. The other allegations, that Mr. Jones was power washing his driveway and playing loud music are simply reflections of Mr. Jones living his life. Among the allegations against Mr. Jones by his neighbors were ones of which he was acquitted by jury. The trial court should not have imposed a 1,000 foot no contact on the basis of allegations that were fully considered by a jury and of which Mr. Jones was found not guilty. Further, the 1,000 foot no contact order and its attendant consequences are inconsistent with Mr. Jones's presumption of innocence at this stage in the process. *Stack v. Boyle,* 342 U.S. 1, 4 (1951) (stating that, "[t]his traditional right to freedom before conviction permits the unhampered preparation of a defense, and serves to prevent the infliction of punishment prior to conviction . . . Unless this right to bail before trial is preserved, the presumption of innocence, secured only after centuries of struggle, would lose its meaning").

In light of the above, *Amici* strongly urge the court to reverse the trial court's decision to impose a 1,000 foot no contact order.

B. Housing is a Critical Stability Factor and Maintaining Housing Stability Results in Better Criminal Justice Outcomes

Stable housing appears to be important at every stage of the criminal process.[10] Several studies have demonstrated the importance of obtaining stable housing post-incarceration.[11] The availability of housing is often offered as a mitigating factor during sentencing hearings and the "length of the accused's residence in the community" is a factor courts consider under CrRLJ when determining conditions of pretrial release. CrRLJ(c)(5). Further, housing stability is a key factor in reducing the impact of the criminal justice system on family members, and for maintaining connections to communities.[12] It therefore stands to reason that stripping a person of their housing is extremely destabilizing, and is contrary to overwhelming evidence linking housing to better overall

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[10] Jeremy Travis, Bruce Western, and Steve Redburn, *The Growth of Incarceration in the United States: Exploring Causes and Consequences* (2014), Committee on Causes and Consequences of High Rates of Incarceration, National Research Council of the National Academies.

[11] *See, e.g.*, Ctr. For Health & Justice at TASC, Post-Prison Housing and Wraparound Services Linked to Reduced Recidivism (2014), http://www2.centerforhealthandjustice.org/sites/www2.centerforhealthandjustice.org/files/publications/FOJ%2006-14_Issue2.pdf; Christopher Moraff, *"Housing First" Helps Keep Ex-Inmates off the Streets (and out of Prison)*, Next City (July 23, 2014), https://nextcity.org/daily/entry/housing-first-former-prisoners-homelessness; Doug Ryan, *To Reduce Recidivism Rates, Turn to Housing Policy*, Shelterforce (June 15, 2016), https://shelterforce.org/2016/06/15/to-reduce-recidivism-rates-turn-to-housing-policy/.

[12] *See Housing for the Justice-Involved: The Case for County Action*, Prisoner Reentry Institute, https://www.naco.org/sites/default/files/documents/Reentry-Housing-FINAL.PDF (stating that "[r]eentry housing servesa basic human need and furthers the American value of redemption, affording the justice-involved a home that gives them the footing they need to find jobs, connect with family, complete community supervision, build a supporting social network, receive necessary services and pursue education.")

outcomes. Unfortunately, the trial court's imposition of a 1,000 foot no contact order has resulted in housing instability for Mr. Jones, such that he has nowhere to live as a result of the no contact order. Because the trial court erred in imposing this severe no contact order condition, *Amici* urge this court to reverse that decision.

Were this court to consider Mr. Jones's housing stability as a key factor of the pretrial decision-making process, it would not be alone. Indeed, it is not unusual for Washington courts to consider the collateral consequences of the criminal justice system on individuals' lives as part of their decision making criteria. In *State v. Blazina*, 182 Wn.2d 827 (2015), the Supreme Court considered the impact of legal financial obligations (LFOs) on the lives of reentering individuals and pointed out that the "court's long term involvement in defendants' lives inhibits reentry: legal or background checks will show an active record in superior court for individuals who have not fully paid off their LFOs. This active record can have serious negative consequences on employment, on housing, and on finances. LFO debt also impacts credit ratings, making it more difficult to secure housing." Not only does the court here weave in broader policy reasons to support their ultimate legal decision that courts must consider an individual's ability to pay prior to the imposition of LFOs, but the court specifically and repeatedly cites the inability to access housing as a

problem associated with lingering and unpayable LFO amounts. One can only speculate that this is because the Court recognized the importance of housing stability in the lives of those who are justice involved. The importance of maintaining housing is equally important in the pretrial setting, and should be considered as a critical factor in the pretrial decision made about Mr. Jones and others appearing before the trial court.

The critical nature of this factor takes on even greater significance when individuals appearing before the trail court are noncitizens. Nearly 25% of King County residents are foreign-born, many of whom live in Seattle.[13] It is well-established that criminal justice system involvement puts noncitizens at significantly higher risk of deportation.[14] Such disproportionate consequences befall noncitizens not only when a conviction results. Already faced with limitations on accessing government-funded resources, destabilizing consequences such as being rendered homeless exacerbate the possibility of deeper justice system involvement. Both of these consequences heighten exposure to apprehension and deportation by federal immigration authorities.

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[13] See https://www.seattletimes.com/seattle-news/data/new-milestone-in-king-county-immigrant-population-tops-500000/

[14] *Criminal Justice In An Era of Mass Deportation,* Ingrid V. Eagly, *New Criminal Law Review: In International and Interdisciplinary Journal*, Vol. 20 No. 1, Winter 2017; (pp. 12-38).

As stated above, pretrial policy reform dictates that pretrial services should exist to provide individuals with the services and the resources that they need, and they should be government funded.[15] However, there are currently no services in place that would be able to immediately ameliorate Mr. Jones's homelessness. Further, it is infamously difficult to find affordable housing in Seattle.[16] The impact of the court's order is to strain Mr. Jones's resources, as well as potentially those of his family and friends. The outcome here is particularly troubling given that Mr. Jones does own a home, and has owned his home for the past thirty years. The trial court's order and its harsh consequences should be reexamined in light of evidence-based practices that encourage the criminal justice system to keep people in housing, and not to displace them from existing housing.

V. CONCLUSION

The trial court erred in imposing a 1,000 foot no contact on Mr. Jones, which resulted in his constructive eviction from his home. The trial court did not, but should have, considered various factors before imposing such an onerous condition on Mr. Jones. The trial court should have taken

[15] Colin Doyle, Chiraag Bains & Brook Hopkins, *Bail Reform: A Guide for State and Local Policymakers*, at 4 (Feb. 2019).
[16] *Generation Priced Out Investigates Seattle's Housing Crisis and How to Solve it,* https://www.seattletimes.com/entertainment/books/generation-priced-out-investigates-seattles-housing-crisis-and-how-to-solve-it/

into account the length of time Mr. Jones had lived at his residence, that he was retired after working for his lifetime, that he had no criminal history, and that he had considerable community support. Finally, the trial court erred in imposing a no contact order that stripped Mr. Jones of his ability to access his own home in light of the presumption of innocence afforded Mr. Jones under both constitutional and statutory law. The importance of securing stable housing at any stage of the criminal system cannot be understated, and the trial court erred in removing Mr. Jones from a home that he has owned for thirty years.

RESPECTFULLY SUBMITTED this 30 day of April, 2019

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