

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF SULLIVAN

THE PEOPLE OF THE STATE OF NEW YORK Ex  
Rel. Philip Desgranges, Esq., on behalf of JOHN  
PACE, EARL COLEMAN, TONI DILAURO,  
JOSHUA WHIDBEE, AND ALL OTHERS  
SIMILARLY SITUATED,

Petitioners,

v.

MICHAEL SCHIFF, Sullivan County Sheriff; and  
ANTHONY ANNUCCI, Acting Commissioner, New  
York State Department of Corrections and Community  
Supervision,

Respondents.

**AFFIDAVIT OF JOSHUA  
WHIDBEE IN SUPPORT OF  
VERIFIED CLASS HABEAS  
PETITION**

STATE OF NEW YORK        )  
COUNTY OF SULLIVAN    ) ss:

I, JOSHUA WHIDBEE, being duly sworn, depose and say:

1. My full name is Joshua Whidbee and my date of birth is April 22, 1977. I'm from Monticello, NY. I am incarcerated at the Sullivan County Jail in Monticello, NY, in the "E-Block" single-cell unit on the third floor of the jail. I have been in this jail since March 9, 2020. Prior to being put in a cell on "E-Block," I was incarcerated in the "C-Block" dorm unit, and the "G-Block" dorm unit before that. I have tested positive for COVID-19.
2. I am willing to serve as a class representative in this case and have no foreseeable conflicts of interest with other class members.

**Why I'm In Jail**

3. I am in the Sullivan County Jail for alleged technical parole violations. I am accused of failing a drug test administered by my parole officer, failing to report to the parole officer, failure to report a change of address, and a failure to enroll in a drug treatment program after the dirty urine accusation.
4. The underlying conviction that caused me to be on parole is a third-degree robbery.

### **My Medical Conditions**

5. I am at high risk from the COVID-19 outbreak at the Sullivan County Jail. I am 43-years-old and suffer from chronic high blood pressure. I take Lisinopril and Hydrochlorothiazide daily in order to control my blood pressure. My blood pressure is supposed to be checked biweekly, but the jail's medical staff have stopped checking my blood pressure ever since the jail-imposed quarantine.
6. I am also at risk from COVID-19 due to the fact that I have smoked cigarettes for 30 years. Another risk factor for me is that I have one weak kidney, and a family history of needing kidney dialysis. I also suffer from anxiety and depression and have been taking Prozac since 2008.
7. The jail staff has not taken any special precautions to protect me from serious illness or death from COVID-19.
8. On or around May 9, 2020, my lips began to swell to twice their normal size and I felt as if my throat was closing up. I requested medical attention and was given Benadryl for the swelling and told that it was probably a result of my blood pressure medication. I was sent away and told I should request more Benadryl if the swelling continued.
9. The next day, I began to experience many more symptoms of COVID-19. Some of my symptoms included dizziness, loss of appetite, chronic fatigue in spite of an active

lifestyle, extremely swollen lips, difficulty falling and staying asleep, tightness in my throat, constant migraine headaches, difficulty thinking and focusing, a “barking” congested cough, muscle aches and back pain, and tightness in my chest particularly when speaking. I once again requested medical attention. They gave me more Benadryl, and said they were going to switch my blood pressure medication. I am still feeling dizzy today.

10. No one has taken any special precautions to protect me from serious illness or death from COVID-19 given my medical vulnerabilities.
11. Due to the COVID-19 outbreak, the lack of medical attention, and the horrible conditions in which we are living, I fear that I will suffer from the coronavirus for an extensive and excessive period of time, at a much higher risk of death than I would have outside of this jail. I am scared for my life to even be here.

#### **COVID-19 at the Sullivan County Jail**

12. I was tested for the coronavirus on May 14, 2020. I received a letter on May 16 indicating that I had tested positive for the coronavirus. I opened the letter in front of a Correctional Officer (CO), and upon learning of my positive diagnosis, I was moved along with five others from the C-Block dorm where I was located, into the E-Block single-cell unit for “quarantine.” This quarantine is supposed to last 14 days and end on May 30. Everyone in E-Block has been infected with the coronavirus.
13. I was first permitted to call my family to tell them about my positive COVID diagnosis on May 18th. Another person with whom I was transported to E-Block was threatened to be sprayed in the face with mace because he insisted that he immediately be allowed to call his family to tell them about his diagnosis.

14. Another time, COs attempted to spray the same man because he didn't want to go into his cell because it was so dirty, since other people had been in the cell and we didn't get a chance to clean.
15. I estimate that there are about 70 people in the Sullivan County Jail, and that about 31 of them have tested positive for the coronavirus. About 13 total people received letters on May 16 indicating that they tested positive for the coronavirus, and an additional 17 people had received such letters the previous week.
16. I know this because I was located in the G-Block dorm unit prior to being moved to the C-Block dorm unit. Letters with coronavirus test diagnoses were handed out in the C-Block on May 16<sup>th</sup>, and people who were positive for the virus were removed from that block. But in G-Block, nearly everyone was infected with the virus. 18 out of 20 people on G-Block were infected, with the two others being removed to another part of the jail.
17. I was moved from G-Block to C-Block just a few days before test results came in. I believe that I had caught the virus in G-Block, and that the jail had spread the virus from G-Block to C-Block by moving me between them.
18. I believe I first caught the virus in G-Block because my bed was located right next to Roy Leach. Roy Leach was likely the first incarcerated person to catch the coronavirus. He had been taken to the hospital for coronavirus symptoms on or around May 9 or 10, where he tested positive for coronavirus. The jail began implementing widespread coronavirus testing after that.
19. Even after Roy Leach tested positive, they did not immediately impose any isolation, cleaning, or quarantine measures. The only reason I had been moved between blocks was because I had gotten into an altercation.

20. I was working in the kitchen up until the jail closed it to trustees (incarcerated workers). I and many others in the kitchen could have been spreading the virus all throughout the jail via the food and plates we were preparing. A correctional officer told me that, out of 11 trustees that were tested, 10 of them had tested positive for coronavirus, including kitchen staff like myself. The kitchen also had three civilian staff members.
21. I believe that Officer Nash was the first to bring the virus to the jail. Another officer told me that Nash was working double shifts in a small 5-7 inmate modular area and the kitchen, where many people became infected. I didn't see Officer Nash wearing a mask prior to May 16.

#### **Conditions in the Sullivan County Jail**

22. The conditions I am living in disgusting. There is a lack of cleaning supplies, most parts of the jail are molded and rusted out, and the bars of the cells are extremely dirty. It is impossible to wipe down the bars of my cell because they are caked in years of dirt that were covered with several layers of paint rather than being properly cleaned.
23. I am currently locked 23 hours a day in a cell that is, by my estimate, about 6 feet wide by 9 feet deep. There is caked-up dirt that comes into the cell from the air vent, rust behind the sink and toilet, and mold everywhere in the cell and the unit. The shower is full of black mold, and the boiler is broken and covered in layers of thick dirt. The ceiling of the E-Block where I am located is completely covered in mold.
24. I am breathing in mold on a daily basis. I have counted roughly twenty mold spots in my cell alone. The shower area of the E-Block is so molded and rusted that I can easily push my fingertips through the rust in the metal door frames.

25. People on my block live in constant fear of catching fungal infections from the showers due to the mold and poor drainage in the pipes. I need to wear slippers to shower and have to carefully control the amount of water that I let out of the shower head, so that the water on the floor does not overflow the drain and pool over my feet. Someone in G-Block was hospitalized in March for a severe staphylococcus infection (MRSA) that he caught in this jail.
26. Some of the lights on E-Block are too dirty to provide sufficient lighting. It is impossible for guards to conduct nighttime observation in my unit without either turning on all of the lights or using a flashlight. I am concerned that it would be difficult for a nighttime guard to notice me if I were to begin asphyxiating due to COVID-19.
27. The ventilation is nearly nonexistent. The air ducts are all caked in dirt, and every tier of in E-Block has nothing but a single standing fan to provide temperature control. There is no air conditioning. On warm days, the cell block becomes unbearably hot.
28. I believe it is impossible to properly practice social distancing on the E-Block, even in spite of the single cells. The front of my cell is comprised of an open-air metal bar door. Because the cell is so small and packed in, and the front of it is open, it is not possible to keep six feet from adjacent people and avoid breathing the same air as others.
29. E-Block is not cleaned regularly. There is no work shift assigned to the areas that I use. The porter on this floor usually cleans things that COs touch, such as door handles, control stations, and buttons. The phones, showers, tables, and cells are not cleaned. The porter is not working during the lock down.

30. To my knowledge, E-Block has been condemned and deemed unusable by the Commission of Corrections. Prior to the outbreak of COVID-19, this section of the jail was not in use.
31. E-Block is not the only portion of the jail with these issues. I previously resided in G-Block, a dorm setting with about 46 bunks. Because the beds are spaced about 3 feet apart in rows that are 2 feet apart from each other, it is impossible to social distance in there as well. When I was there about two weeks ago, 23 people were in that dorm. A CO told me that everyone in that dorm has COVID-19 now.
32. G-Block has about 6 urinals that are all molded and rusted, 8 rusted metal tables, 3 rusted shower heads, 1 slop sink that is molded and stinks badly of mildew, 12 windows that are sealed shut and so coated in dirt that they cannot be seen through, and about 7-8 windows that can be only slightly opened.
33. There is only one porter that covers the entirety of the C-Block dorm area. He is expected to clean the entire floor consisting of dozens of bunks and has neither the time nor cleaning materials available to do full cleanings of every surface that we touch. He is not working during the lockdown.

#### **Medical System at the Sullivan County Jail**

34. The jail's medical care currently operates on a system of daily rounds, and sick call slips. Prescribed medications and Tylenol are delivered once daily in the morning, and beginning on March 17, the medical staff began conducting temperature checks during their morning rounds.
35. For emergent medical needs, we are expected to fill out a sick call slip, which is picked up during the twice-daily rounds. If the sick call is approved by the medical staff, the sick

caller is supposed to receive a visit from them within 24 to 48 hours. It is unclear what is supposed to be done during a medical emergency.

36. COs have told me that there is no overnight medical staff available at this jail. They leave at 10PM every night and return at 8AM the next morning. I once had a severe migraine headache during after hours and was unable to receive even Tylenol for it. The CO on duty said they are not permitted to administer painkillers and that I had to “fight it out through the night.
37. I have heard if there is a medical issue requiring hospitalization, we are supposed to be taken to Community General Hospital, which I estimate is about ten miles away from this jail. I have never seen a ventilator in the medical unit and I have never heard of or witnessed anyone in the jail being intubated. If I began to asphyxiate due to COVID-19, I would probably run out of time before my life could be saved.
38. Another man in my unit once began to experience severe chest pains and was worried that he might have been experiencing the onset of death caused by COVID-19, due to his positive coronavirus test. He told a CO about the chest pains but did not receive any medical attention for about twenty minutes.

#### **Sullivan County Sheriff's Response to Coronavirus**

39. Once the outbreak of coronavirus was confirmed on May 16<sup>th</sup>, the jail staff started wearing gloves and double facemasks, and keeping a distance from us like we were the ones who brought it into the jail. Some of them are wearing gowns. But I did not see any precautions like this until they learned of our coronavirus-positive diagnoses May 16.
40. The jail is currently on a 23-hour lockdown. I am permitted 30 minutes in the morning and 30 minutes in the evening for phone calls, cleaning, showering, and anything else



that needs to be done outside of my cell. One CO told me that “the state has locked the jail down and you are not permitted out of your cell.”

41. The medical personnel does not check on me between the morning and evening medicine times. They don't check symptoms other than your temperature. If you don't take medicine at night time they don't stop to ask anything.
42. No serious cleaning has been done in here ever since the COVID-19 outbreak. There's not one area of this jail that has been shut down for a serious cleaning, to my knowledge. The jail has no policy in place for the regular cleaning of inmate-occupied areas. All cleaning of these areas is done by the people incarcerated here themselves and is optional.
43. When COVID broke out, we were constantly requesting bleach and wiping down everything around. At least one CO angrily told me that we were “using too much bleach.” I believe that they began to water down the bleach they give us, because the bleach I use does not smell nearly as strong as it used to.
44. I have tried to wipe down the bars of my cell with bleach, but they are too thickly coated in dirt and chipped paint for any cleaning to feel effective.
45. The jail is just is telling us to wash our hands and practice social distancing. But you can't practice social distancing in here. They told me this when I was in a dorm setting, where your bed is within 3 feet of the next person's bed. There is also not enough soap available to wash your hands regularly.
46. The jail just gives people Tylenol for coronavirus, based on what I've seen. Temperature checks have been done every day since around late March, but the screening does not include any other measures, like even asking us about our symptoms. Everyone with

COVID-19 is being treated in their cells or dorms; nobody is being taken to the medical unit to my knowledge. The medical staff were not wearing gloves while conducting checks and giving out medications. They just started wearing them. Others complain that their requests for transportation to the hospital are being denied.

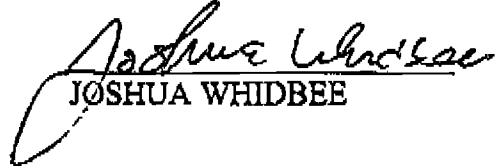
47. I and others in my dorm unit at the time were given paper-thin masks in April and told it was optional to wear them. In my experience, the mask only lasts for about 20 minutes of wear. These masks were given out only once a week. Around May 1, COs began inconsistently requiring us to wear masks. After the May 16 positive diagnoses, knitted masks were distributed.
48. Alongside the first mask, we received a letter from Lieutenant Bini stating that the mask is not intended to last for a long time, and that it needs to be taken care of. The letter also told us that the mask should not be worn 24/7 as this would cause unnecessary wear on the mask, and that masks were in short supply and would only be distributed once per week. Finally, the letter said that we should practice social distancing at 6 feet, which was impossible given the size of the dorm and spacing of the beds.
49. I saw that the jail staff were given masks in April, which I heard were KN95 masks. They wore these sometimes. However, they did not start wearing masks or gloves consistently until May 16.
50. One officer told us he had COVID. He was out for only a week.
51. Most of what we knew about the coronavirus was learned through TV news. We did not receive much if any information about it until May 16.
52. On May 20, people who tested positive for the coronavirus, including myself, were given a survey in which we were told to record symptoms of COVID-19 and the times at which

we experienced them. However, this survey was not collected or followed up on. Neither I nor anyone else I have spoken to about it was asked to turn the survey in.

I certify under penalty of perjury that the foregoing has been read to me in its entirety and is true and correct.

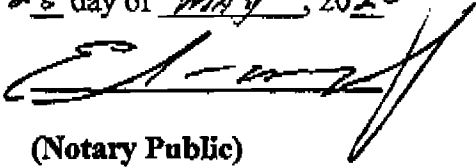
Dated: May 28 2020

Monticello, N.Y.

  
JOSHUA WHIDBEE

Sworn to before me this

28 day of MAY, 2020



(Notary Public)

ELWIN M. WOOD  
Notary Public, State of New York  
Sullivan County Clerk's # 2623  
Commission Expires July 21, 2023