No. 98458-1

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

SNOHOMISH COUNTY SHERIFF TY TRENARY,

Respondent,

vs.

TIMOTHY GONSALVES and CHRISTOPHER MCMULLEN,

Petitioners.

Appeal from The State of Washington Court of Appeals, Division 1 79426-4-1
Superior Court of the State of Washington for Snohomish County 18-2-11163-31

RESPONDENT'S ANSWER TO PETITION FOR REVIEW

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I. IDENTITY OF RESPONDENT

The Respondent is the former Snohomish County Sheriff.[1] The Answer to Petition for Review is filed by Snohomish County Deputy Prosecuting Attorney Sean Reay.

II. COURT OF APPEALS DECISION

Petitioners seek review of the March 23, 2020, Court of Appeals, Division I, published decision in *Trenary v. Gonzalves*, 460 P. 3d 219 (2020), COA No. 79426-4-I. There, the Court of Appeals correctly reversed the trial court and ruled in favor of the Sheriff. Petitioners fail to demonstrate that the criteria of RAP 13.4(b) are met under the circumstances of this case. Accordingly, Respondent respectfully requests that this Court deny review of the issues raised by Petitioner.

III. COUNTER-STATEMENT OF ISSUES

A. Whether criteria set forth in RAP 13.4(b) are met, where the Court of Appeals held that the Snohomish County Sheriff does not have a mandatory legal duty to present all jail inmates for their non-jury court hearings out of physical restraints?

B. Whether criteria set forth in RAP 13.4(b) are met, where the Court of Appeals held that the inmate petitioners had some plain, speedy, and adequate legal remedy other than a writ of mandamus?

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[1] The Petitioner filed this action in December 2018, against Ty Trenary, the Snohomish County Sheriff at that time. On January 1, 2020, as a result of a contested election in November 2019, Adam Fortney became and is currently the Snohomish County Sheriff.

IV. COUNTER-STATEMENT OF THE CASE

Respondent, the Snohomish County Sheriff, is responsible for the operation of the Snohomish County Corrections Bureau ("Corrections"), which operates the Snohomish County Jail ("Jail"). *Trenary v. Gonzalves*, 460 P. 3d at 220-21; CP 28-35, 42-44. Corrections brings Jail inmates to court proceedings in Snohomish County Superior Court ("Superior Court"). *Id.* This case arises from the demands of two Jail inmates to appear out of physical custodial restraints at non-jury pre-trial criminal case proceedings.

For purposes of safety and security, Corrections has adopted numerous policies, procedures, and practices regarding the physical restraint of inmates for safe transport to and presentation at court hearings. *Id.* In sum, Jail custody deputies first gather inmates in a holding area of the Jail, place inmates in waist and wrist restraints, and escort them through an underground tunnel from the Jail to the basement of the Snohomish County Courthouse, where the Superior Court is located. *Id.* Once all inmates safely arrive at the Courthouse basement, custody deputies place leg restraints upon each inmate before escorting the inmate (individually or within a group, depending on courtroom locations, calendars, *etc.*) from the courthouse basement upstairs to a Superior Court courtroom. *Id.* Due to the configuration of the courthouse, custody deputies typically must navigate public areas and elevators to get inmates to and from court. *Id.* Regardless

of route, custody deputies maintain wrist, waist, and leg restraints on inmates while escorting the inmates from the basement to a staging area near or in the courtroom where their hearing will take place, where they wait until the hearing. *Id.*

Notwithstanding an agreed (albeit temporary, pending litigation) change to their practice shortly before the filing of the underlying Petition for a writ of mandamus in this case—whereby Corrections agreed to present inmates at court hearings out of restraints—Jail policy provides that custody deputies escort inmates into open court before the judge in physical restraints, as described above, for all non-jury hearings. *Gonzalves*, 460 P. 3d at 221-22; CP 10, 23-24, 28-35, 42-44. Jail policy further provides that custody deputies keep the inmates in restraints before, during, and after the court proceedings. *Id.* (For a jury trial, custody deputies typically arrange with the court the prior removal of restraints before jurors enter. *Id.*) In other words, according to Jail policy, custody deputies keep inmates in restraints from the time of their departure from the Jail until their return to the Jail after court (absent some specific court order to the contrary in an individual case, or per the agreement, in effect when the underlying Petition was filed, to release inmates from restraints for their pre-trial hearings).

In December of 2018, Respondents filed a Petition in the Superior Court, CP 66-74, seeking:

> . . . a Writ of Mandamus to order the Snohomish County Sheriff, Ty Trenary, to refrain from shackling the petitioner[s] and other similarly situated pretrial detainees absent a compelling showing following hearing that the pretrial detainee is a danger or a flight risk.
>
> CP 70.

The Superior Court held a hearing on the petition on December 28, 2018. *Gonzalves*, 460 P. 3d at 222; *see* CP 1-5. Neither Gonsalves nor McMullen presented any evidence before or at the hearing. The Superior Court granted the writ of mandamus, reasoning that, under Washington law, "a prisoner is entitled to be brought into the presence of the court free from restraints." *Id.* The Superior Court determined that the Sheriff had a legal duty not to violate this right, and that it was a violation of this duty not to remove restraints when a defendant was in "the presence of the court." *Id.* According to the Superior Court, an inmate is "in the presence of the court" when "court is in session," *i.e.*, when "when the judge is on the bench and the proceedings are on the record." *Id.* The Superior Court also found that the inmates lacked any other adequate legal remedy, making mandamus appropriate. *Id.* Accordingly, the Superior Court ordered the Sheriff to present the Respondents out of restraints for their future proceedings. *Id.*

In a published opinion issued March 23, 2020, the Court of Appeals reversed on both assignments of error asserted by the Sheriff:

> The Sheriff appeals, arguing that mandamus was inappropriate because corrections transport deputies do not have a mandatory legal duty to remove a defendant's

> restraints absent a court order and because Gonsalves and McMullen had adequate legal remedies outside of mandamus. We agree and reverse the trial court's writ of mandamus.
>
> *Gonzalves*, 460 P. 3d at 220.

Petitioners seek this Court's review under RAP 13.4(b).[2] Petitioners maintain the arguments they made before the Court of Appeals, and also suggest that "[a]t a minimum, this Court should stay this case pending the outcome of *Jackson*, which will also analyze the rights of accused people to appear in court free from restraints." *Petition for Review*, p. 10.

V. ARGUMENT

A. This Court Should Not Accept Review Because Petitioners Have Failed To Demonstrate That This Case Meets the Criteria Under RAP 13.4(b).

Petitioners fail to demonstrate that the RAP 13.4(b) criteria apply here. First, the Court of Appeals decision is not in conflict with a decision of the Supreme Court or Court of Appeals. Rather, the decision is consistent

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[2] RAP 13.4(b) provides:

> A petition for review will be accepted by the Supreme Court only: (1) If the decision of the Court of Appeals is in conflict with a decision of the Supreme Court; or (2) If the decision of the Court of Appeals is in conflict with a published decision of the Court of Appeals; or (3) If a significant question of law under the Constitution of the State of Washington or of the United States is involved; or (4) If the petition involves an issue of substantial public interest that should be determined by the Supreme Court.

with well-settled precedent, which never has recognized a duty of a custodial official to present an inmate at a court hearing out of restraints. Second, it is also well-settled that a writ of mandamus cannot issue where a petitioner has other legal remedies available, as in this case. Finally, Petitioners cannot establish that other RAP 13.4(b) criteria are met, because, in light of the well-settled precedent and limited scope of issues, the Petition for Review does not concern a "significant question of law" or "substantial public interest."

1. **Washington Law Provides for Issuance of a Writ of Mandamus as an Extreme Remedy Available Only in Limited Circumstances.**

The Court of Appeals reversed the Superior Court's issuance of an extraordinary remedy available only to "compel the performance of an act which the law especially enjoins as a duty resulting from an office, trust or station." *RCW 7.16.160.* A party seeking a writ of mandamus must prove that: (1) the party subject to the writ has a clear duty to act; (2) the petitioner has no plain, speedy, and adequate remedy in the ordinary course of law; and (3) the petitioner is beneficially interested. *RCW 7.16.160; RCW 7.16.170*; *see Mower v. King Co.*, 130 Wn. App. 707, 125 P.3d 148 (2005).

Mandamus may not be used to compel performance of acts or duties which involve discretion on the part of a public official. *Kanekoa v. Dep't of Soc. & Health Servs.*, 95 Wn. 2d 445, 450, 626 P.2d 6 (1981). A writ of

mandamus therefore should not be issued to direct a general course of official conduct. *Walker v. Munro,* 124 Wn.2d 402, 879 P.2d 920 (1994).

Accordingly, in order to demonstrate the criteria under RAP 13.4(b), the Petition must establish that the Court of Appeals misinterpreted or misapplied the elements of the writ. As explained below, Petitioners cannot show the criteria are met with respect to either element at issue: (1) mandatory official duty; or (2) availability of other remedy. (The third element is not at issue.)

2. **The Reversal by the Court of Appeals of the Superior Court's Issuance of a Writ of Mandamus Does Not Conflict With a Decision of the Supreme Court or Published Decision of the Court of Appeals.**

In its decision, the Court of Appeals stated, "our case law has repeatedly indicated that it is the court's obligation—not that of the jail administration—to determine if restraints are warranted in any individual case." *Gonsalves*, 460 P.3d at 223. Further, the Court of Appeals pointed out that:

> ...no Washington court has held that a law enforcement officer has a "mandatory ministerial" legal duty to remove a defendant's restraints before the trial court conducts an individualized assessment of that defendant's case. Each of the cases on which Gonsalves and McMullen rely addresses the trial court's duty, not the duty of the transporting deputies. And the record here amply supports why the decision to leave or remove restraints is a discretionary, not a mandatory, one.
>
> *Id.*, 460 P.3d at 223.

Petitioners argue that the Court of Appeals decision in this case conflicts with precedent regarding the use of restraints in the courtroom. Petitioners are wrong. The Court of Appeals applied applicable precedent and authority regarding the use of restraints in the courtroom to find that the Sheriff does not have a duty to present Jail inmates at pre-trial hearings without restraints. Rather, the manner in which the Sheriff presents inmates to the court is within the Sheriff's discretion as correctional custodian.

i. The decision does not conflict with Supreme Court precedent regarding the duty of a custodian.

This Court's precedent is clear that a criminal defendant has a right to appear in court free of visible restraints in a proceeding before a jury. However, this Court has never identified such a right in connection with a non-jury proceeding. Further, regardless of when the right to appear out of restraints, the Court has never found that the duty to ensure the legality of a restraint of an inmate in court resides within the correctional authority.

The Court's consideration of restraints in court dates to the 19th century. In *State v. Williams*, 18 Wn. 47, 50 P. 580 (1897), a jury convicted the defendant after the trial court allowed the defendant to appear in restraints in front of the jury during trial and during a visit to the crime scene. *Id.*, 18 Wn. at 48–49. This Court reversed the conviction, ruling, "there is no doubt that the ancient right of one accused of crime under an indictment or information to appear in court unfettered is still preserved in

all its original vigor in this state." *Id.*, 18 Wn. at 50. "The right here declared is to appear with the use of not only his mental but his physical faculties unfettered, and unless some impelling necessity demands the restraint of a prisoner to secure the safety of others and his own custody, the binding of the prisoner in irons is a plain violation of the constitutional guaranty." *Id.*, 18 Wn. at 51. The Court did not suggest this right to be free from restraints in a jury proceeding imposed a duty on the custodial authority.

Throughout the 20th Century, the Court continued to apply the *Williams* rationale regarding restraint of defendants in criminal jury proceedings, focusing particularly on prejudice to the defendant. *See, e.g., State v. Miller*, 78 Wn. 268, 138 P. 896 (1914) (no constittional violation where the defendant was led to and from the courtroom in handcuffs on the first day of the trial, because the jury was unaware of it and the defendant therefore was not prejudiced.); *State v. Boggs*, 57 Wn. 2d 484, 358 P.2d 124 (1961) (criminal defendant's right to the presumption of innocence was not violated where a juror saw him in jail during the trial due to "common knowledge that a person charged with an offense is detained in jail during the pendency of a trial," so jurors "would not relate detention in jail with guilt or innocence."); *State v. Sawyer*, 60 Wn. 2d 83, 85-86, 371 P.2d 932 (1962) (internal citation omitted) (defendant's rights were not violated where some jurors may have seen the defendant being handcuffed in the

courtroom on the first day of his trial, because court instructed jury to disregard seeing the defendant in cuffs and he suffered no prejudice.). Nowhere in these cases did the Court find a duty of the custodial authority.

In *State v. Hartzog*, 96 Wn.2d 383, 386-88, 635 P.2d 694 (1981), the defendant refused to submit to the trial court's order subjecting all inmates appearing in court to various security measures, including restraints. The judge did not allow him in court for his jury trial. *Id.*, 96 Wn.2d at 389-90. The jury found him guilty. *Id.* This Court stated its disapproval of such court policies (providing for restraints at trial), because such a practice could "abridge important constitutional rights, including the presumption of innocence, privilege of testifying in one's own behalf, and right to consult with counsel during trial." *Id.*, 96 Wn.2d at 398. Reversing the conviction, the Court ruled that the trial court abused its "inherent power and discretion" when it ordered all inmates to be restrained rather than determining—based on the factual record pertaining to the individual inmate on a case-by-case basis—what courtroom "security measures, including physical restraints," if any, were necessary. *Id.*, 96 Wn.2d at 399-400. The Court did not identify a duty of the custodian in this regard. A few years later, the Court likewise reversed a conviction and death sentence but found no duty of a custodial authority in *State v. Finch*, 137 Wn.2d 792, 975 P.2d 967 (1999) (restraints of defendant ordered by court throughout the

jury trial, during a special capital jury sentencing proceeding, and during witness testimony could cause "destruction in the minds of the jury of the presumption of innocence.").

This Court recently has continued to instruct trial courts on the dangers of restraints in jury proceedings, but has not found an associated duty of a custodian. In *State v. Clark*, 143 Wn.2d 731, 24 P.3d 1006 (2001), a jury convicted and sentenced the defendant to death after the trial court erred by failing to conduct an individualized assessment of the need for restraints before allowing the defendant to appear in restraints in front of the jury. *Id.*, 143 Wn.2d at 772. (Consistent with the Court's historical focus, the Court did not reverse the conviction, finding the error harmless due to lack of prejudice to the defendant. *Id.*) In *State v. Damon*, 144 Wn. 2d 686, 25 P.3d 418, *as amended* (July 6, 2001), *as modified on denial of reh'g*, 33 P.3d 735 (2001), the Court reversed a conviction based on a violation of the presumption of innocence where the trial court ordered the defendant restrained in a chair throughout his jury trial without conducting a hearing on whether the chair was necessary. *Id.*, 144 Wn. 2d at 692. Also problematic was the fact the trial court relied solely on concerns of a corrections officer as the basis for using the restraint chair—notably, however, the Court did not suggest the officer had, or violated any, duty. *See also, In re Davis*, 152 Wn. 2d 647, 101 P.3d 1 (2004) (attorney's failure

to object to petitioner being shackled at jury trial required remand for new penalty phase but not guilt phase); *In re Woods*, 154 Wn. 2d 400, 114 P.3d 607 (2005) (no violation where there was nothing in the record to support a conclusion the jury saw the petitioner in restraints).

In sum, the Court's jurisprudence does not recognize a duty custodial authority to present inmates at court hearings out of restraints. The Court of Appeals decision does not conflict with this Court's precedent in this regard.

ii. The decision does not conflict with Court of Appeals precedent regarding the duty of a custodian.

The Court of Appeals has generally followed and reiterated the Supreme Court's fundamental holding of *Williams* and its progeny—also primarily in cases concerning jury proceedings, and also without finding a duty of a custodial authority to present an inmate in court out of restraints. *See e.g., State v. Flieger*, 91 Wn. App. 236, 955 P.2d 872 (1998) (trial court abused its discretion by failing to conduct a hearing on necessity of using "shock box" to restrain defendant during jury trial); *State v. Breedlove*, 79 Wn. App. 101, 900 P.2d 586 (1995) (not abuse of discretion when trial court ordered defendant's wrist restraints but not leg restraints removed during jury trial due to specific reasons to believe leg restraints were necessary precaution); *State v. Bonner*, 21 Wn. App. 783, 587 P.2d 580 (1978) (defendant who was handcuffed in front of jury pool in hallway outside

courtroom was not prejudiced absent evidence that jurors saw defendant handcuffed, and an instruction to the jury would have cured any prejudice); *State v. Agtuca*, 12 Wn. App. 402, 529 P.2d 1159 (1974) (reversal not warranted where defendant appeared in restraints for jury verdict but had not been in restraints during trial).[3]

Recent Court of Appeals cases have also considered the use of restraints on inmate defendants during non-jury proceedings, but have not found a duty of a correctional official to present inmates in court out of restraints. In the Division I case of *State v. Walker*, 185 Wn. App. 790, 344 P.3d 227, *review denied*, 183 Wn.2d 1025 (2015), the defendant brought a motion (based on California rather than Washington legal authority) to appear for his non-jury sentencing without restraints. *Id.*, 185 Wn. App. at 792. After a hearing where it considered a declaration of corrections officials setting out various security concerns specific to the defendant, the trial court denied the motion. On appeal, the Court of Appeals ruled that, assuming the rationale of *Williams* and its progeny applied to the

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[3] Federal cases concerning restraint of defendants in court likewise generally have arisen in the context of jury proceedings, and have taken an approach similar to Washington's (while occasionally implying the right to appear out of restraints might encompass some non-jury proceedings). They also have not identified a related duty of a custodian. *See, e.g., United States v. Howard*, 480 F.3d 1005, 1012 (9th Cir. 2007) (citation omitted) (extending the general prohibition on the use of shackles during a jury trial to the penalty phase of a jury trial).

defendant's sentencing, the trial court did not abuse its discretion. In *State v. Lundstrom*, 6 Wn. App. 2d 388, 429 P.3d 1116 (2018), the trial court disregarded the defendant's objection to being restraints during a preliminary appearance pursuant to a policy of the correctional authority that all inmates were kept in restraints for pre-trial hearings, and deferred to the corrections policy without further analysis. *Id.*, 6 Wn. App. 2d at 391. Reversing, Division II of the Court of Appeals held that the court abused its discretion and committed error "by failing to make an individualized inquiry into the necessity for pretrial restraints when [the inmate] took exception to the use of pretrial restraints." *Id.*, 6 Wn. App. 2d at 395. Finally, in the recent case of *State v. Jackson*, 10 Wn. App. 2d 136, 447, P.3d 633 (2019), *rev. granted*, 194 Wn. 2d 1016 (2020), Division II again considered the issue of restraints, reversing in favor of the defendant due to the trial court's failure to conduct an individualized inquiry regarding the appropriateness of the use of restraints by the correctional authority. None of these cases found a duty of the correctional authority to present inmates in court out of restraints.

In sum, while these later cases considered restraints in a non-jury proceeding, they did not purport to change or over one hundred years of Washington precedent, nor did they identify a duty of a custodial authority

to produce an inmate in court out of restraints. The Court of Appeals decision does not conflict with Court of Appeals precedent.[4]

iii. The decision does not conflict with this Supreme Court or Court of Appeals precedent regarding the availability of some other suitable remedy.

Nor does the Court of Appeals decision conflict with this Court's precedent or other precedent of the Court of Appeals with respect to the availability of a remedy other than mandamus. In finding the Superior Court abused its discretion, the Court of Appeals stated, "the trial court here conducted no analysis of what options, other than mandamus, exist for Gonsalves and McMullen." *Gonsalves*, 460 P.3d at 224. And the Court of Appeals noted that the trial court was able to "quickly" make an "individualized assessment on the spot" for each inmate regarding the

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[4] Notably, while the case law does not establish a duty of a correctional authority to present inmates to the court out of restraints, this Court and the Court of Appeals have explicitly identified duties of custodians in various other situations. *See, e.g., Gregoire v. City of Oak Harbor*, 170 Wn. 2d 628, 244 P.3d 924 (2010) (jailer has a special duty to ensure health, welfare, and safety of inmates); *Tufte v. City of Tacoma*, 71 Wn. 2d 866, 431 P.2d 183 (1967) (jailer had a clear duty to release a detainee once it knew confinement of the detainee had no lawful basis); *Dress v. Washington State Dep't of Corr.*, 168 Wn. App. 319, 279 P.3d 875 (2012) (DOC had a mandatory duty to release prisoner based on a facially-valid judgment and sentence order rather than discretion to hold prisoner based on perceived error in order). *See also, Estelle v. Gamble*, 429 U.S. 97, 103, 97 S. Ct. 285, 290 (1976) (prison authorities have a duty under the Eighth Amendment to provide for health needs of prisoners).Thus, courts appear ready to identify such duties where, unlike here, there is a sound legal basis to do so.

propriety of restraints. *Id.* The Court of appeals also noted that an inmate can make a request for restraints to be removed at any hearing or could seek a court order regarding future hearings. *Id.* In short, the Court of Appeals deemed the remedies available to the Petitioners in their criminal cases to be ample, such that resort to a writ of mandamus was not necessary. The Court of Appeals also pointed to the potential availability of civil injunctive or declaratory relief. *Id.*, at 225.

Petitioners argue the Superior Court's ruling in this respect was not "manifestly untenable," and the Court of Appeals was wrong to reverse on this basis. *Writ of Review*, p. 10. To the contrary, it is well-settled that a court "will not grant a writ of mandamus if there is a plain, speedy, and adequate remedy at law." *Council of County & City Employees v. Hahn*, 151 Wn.2d 163, 167, 86 P.3d 774 (2004). The existence of an adequate remedy merely requires that there be a process by which a plaintiff may seek redress for the allegedly unlawful action. *Id.*, 151 Wn.2d at 170 (denying mandamus where union had remedy under Public Employees Collective Bargaining Act).

Further, "[a] remedy may be adequate even if attended with delay, expense, annoyance, or some hardship." *City of Olympia v. Thurston Cty. Bd. of Commissioners,* 131 Wn. App. 85, 96, 125 P.3d 997 (2005). For a remedy to be inadequate, "[t]here must be something in the nature of the

action that makes it apparent that the rights of the litigants will not be protected or full redress afforded without issuance of the writ." *Id.*, 131 Wn. App. at 96. For example, in *Eugster v. City of Spokane*, 118 Wn. App. 383, 76 P.3d 741 (2003), city council members who opposed a project to develop a parking garage sought to have a city ordinance that provided funding for the development declared void. *Id.*, 118 Wn. App. at 389-90. The garage developer sought a writ of mandamus. The Court of Appeals held that mandamus relief was appropriate: the developer had no other possible remedy at law, because the ordinance that provided for the funding was not a contract he could enforce by traditional contract remedies (or in some other manner). *Id.*, 118 Wn. App. at 419-20. In other words, unlike in this case, mandamus was the only possible way the petitioner could obtain relief. *See also, Dress v. Washington State Dep't of Corr.*, 168 Wn. App. 319, 279 P.3d 875 (not abuse of discretion to issue a writ of mandamus, because pursuing Personal Restraint Petition over the course of six months was not a speedy remedy for prison inmate being detained longer than ordered).

Here, as the Court of Appeals recognized, the extraordinary relief of mandamus would be improper because Petitioners had other plain, speedy, and adequate remedies in the ordinary course of law. An inmate who does not believe he or she should be restrained in court may file a motion or bring an objection in their criminal case (including in advance of a hearing),

whereupon a court could consider the *Hartzog* factors and the need for restraints or other security measures. Indeed, this is precisely the mechanism utilized by the defendants in *Lundstrom*, *Walker*, *Finch*, *Hartzog*, *Damon*, *Williams*, and so on. Further, the Sheriff had already agreed to produce inmates for Superior Court hearings out of restraints, at least on a temporary basis. *Gonsalvez*, 460 P. 3d at 22; CP 10; 23-24; 31-32. Accordingly, to the extent *Eugster* or similar precedent might supports issuance of mandamus in the context of an emergency or continuing violation of a duty, it is not applicable.

The Court of Appeals decision regarding a remedy other than mandamus does not conflict with precedent.[5]

3. This Case Does Not Present A Significant Question of Law or Issue of Substantial Public Interest.

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[5] While the cases do not establish a duty of a correctional authority in this situation, this Court and the Court of Appeals have explicitly identified duties of custodians in various other situations. *See, e.g., Gregoire v. City of Oak Harbor*, 170 Wn. 2d 628, 244 P.3d 924 (2010) (jailer has a special duty to ensure health, welfare, and safety of inmates); *Tufte v. City of Tacoma*, 71 Wn. 2d 866, 431 P.2d 183 (1967) (jailer had a clear duty to release a detainee once it knew confinement of the detainee had no lawful basis); *Dress v. Washington State Dep't of Corr.*, 168 Wn. App. 319, 279 P.3d 875 (2012) (DOC had a mandatory duty to release prisoner based on a facially-valid judgment and sentence order rather than discretion to hold prisoner based on error in order). *See also, Estelle v. Gamble*, 429 U.S. 97, 103, 97 S. Ct. 285, 290 (1976) (prison authorities have a duty under the Eighth Amendment to provide for the health needs of incarcerated persons).Thus, courts long have identified such duties where, unlike here, there is a sound legal basis to do so.

Finally, the Petition for Review does not present a significant question of law or issue of substantial public interest that should be addressed by this Court. As discussed above, Washington precedent regarding the requirements for a writ of mandamus are clear and well-settled. Neither this Court nor any Washington Court of Appeals has identified the duty of a custodian to present an inmate in court out of restraints without some prior consideration by a trial court of relevant circumstances. Nor have these courts allowed issuance of a writ of mandamus where a petitioner has other viable remedies. In these circumstances, the criteria of RAP 13.4(b)(3)-(4), concerning significant question of law or issue of substantial public interest, also are not met.

Incidentally, Petitioners suggest that the Court should stay this case pending decision in the case of *State v. Jackson* (discussed *supra*, at p. 10), where this Court has already accepted review. 194 Wn. 2d at 1016. That case, like many criminal cases before it, concerns the propriety of the use of restraints in criminal hearings. That case may or may not concern a significant question of law or issue of substantial public interest, but it does not involve a writ of mandamus, the duty of a custodian, or the existence of alternative remedies. The Court need not stay this case while deciding that one. Indeed, this case is unlike other cases the Court may choose to examine (or stay) due to the potential collateral impacts. *See, e.g., Matter of Arnold*,

189 Wn. 2d 1023, 408 P.3d 1091, 1092 (2017) (accepting review under RAP 13.4(b)(4) and noting the potential affect on "public safety" of issues on appeal).

The Petition for Review does not present a significant question of law or issue of substantial public interest. The criteria of RAP 13.4(b)(3)-(4) are not met.

VI. CONCLUSION

The criteria of RAP 13.4(b) are not met. The Respondent respectfully requests that the Court deny the Petition for Review.

RESPECTFULLY SUBMITTED this 22nd day of May, 2020.

ADAM CORNELL
Snohomish County Prosecuting Attorney

By: _____
SEAN D. REAY, WSBA #33622
Deputy Prosecuting Attorney
Snohomish County Prosecutor's Office
Attorney for Respondent

DECLARATION OF SERVICE

I, Ashley Lamp, hereby certify that on the 22 day of May, 2020, I caused to be delivered and served a true and correct copy of the foregoing pleadings upon the entity and persons listed herein by the following means:

Washington State Supreme Court
415 12th Avenue SW
Olympia, WA 98501-2314

[X] ***E-Filing:*** *Supreme@courts.wa.gov*

Nancy P. Collins
Washington Appellate Project
1511 Third Avenue, Suite 610
Seattle, Washington 98101

[X] ***E-Filing:***

I declare under the penalty of perjury of the laws of the State of Washington that the foregoing is true and correct to the best of my knowledge.

SIGNED at Everett, Washington, this 22 day of May, 2020.

Ashley Lamp

SNOHOMISH COUNTY PROSECUTING ATTORNEY - MUNI

May 22, 2020 - 2:31 PM

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