Supreme Court No. 98458-1
(COA No. 79426-4-I)

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

SNOHOMISH COUNTY SHERIFF TY TRENARY,

Respondent,

v.

TIMOTHY GONSALVES AND CHRISTOPHER MCMULLEN,

Petitioners.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR SNOHOMISH COUNTY

PETITION FOR REVIEW

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A. IDENTITY OF PETITIONERS AND DECISION BELOW

Timothy Gonsalves and Christopher McMullen, petitioners here and respondents below, asks this Court to accept review of the published Court of Appeals decision terminating review issued on March 23, 2020, pursuant to RAP 13.3(a)(2)(b) and RAP 13.4(b). A copy is attached as Appendix A.

B. ISSUES PRESENTED FOR REVIEW

1. During court hearings, an accused person has the right to be free from shackles unless the court finds proof the individual poses an imminent danger to safety of the people in the courtroom or likelihood of escape.[1] In Snohomish County, the sheriff's department provides the security personnel for court hearings. The sheriff adopted a policy that any person who is in jail must be shackled during all court hearings. Because this routine blanket policy required all defendants to appear before the judge in chains and start each hearing litigating whether they posed a danger to others, Mr. Gonsalves and Mr. McMullen sought a court order barring the jail from presumptively shackling them during

[1] This Court is presently reviewing the scope of the constitutional right to be free from shackling in court. *State v. Jackson*, 10 Wn. App. 2d 136, 447 P.3d 633 (2019), *rev. granted*, 194 Wn.2d 1016 (2020).

their hearings. The trial court agreed this shackling was unconstitutional but the Court of Appeals reversed. Should this Court grant review of the published Court of Appeals decision that conflicts with the constitutional right of a person to be free from presumptive and unnecessary shackles during court hearings?

2. Unable to curb the jail guards' insistence on shackling all people unable to post bail during court hearings, Mr. Gonsalves and Mr. McMullen sought a writ of mandamus. The court agreed the jail was enforcing an unconstitutional policy of shackling people during court hearings and ruled the defendants had no other plain, speedy and adequate remedy to end this practice. The Court of Appeals reversed, finding the trial court abused its discretion. Should this Court grant review to clarify a pressing constitutional imperative of affording accused persons the right to appear in court without shackles and to determine the trial court's authority to end this practice?

C. STATEMENT OF THE CASE

In Snohomish County superior court, the sheriff's office oversees the county jail and in this role, brings people to court hearings if they are in jail pending the outcome of criminal charges. CP 2. These deputies serve as security personnel for the court hearings. *Id*.; RP 2-3.

The Sheriff adopted a blanket policy that all inmates would remain shackled in "four-point restraints" during court hearings because bail had been set and they were unable to post it. RP 3; CP 29-31, 42-44. These restraints meant their ankles and wrists were chained together and bound to a waist chain. CP 30.

Timothy Gonsalves and Christopher McMullen objected to this mandatory shackling, which required them to appear before the judge in chains and then beg the judge to direct the jail security guards to remove these chains. CP 2, 63, 66-70; RP 2. After efforts such as negotiation with the sheriff's office failed to produce a final agreement, they brought a writ of mandamus. CP 70. The writ asked the court to order the jail to remove these shackles once the men were in court for their hearings, so they would not be visibly restrained during their hearings before the judge. CP 70.

At the hearing on the writ, the sheriff brought both men to court in full restraints. RP 2. Mr. Gonsalves and Mr. McMullen objected to these unnecessary shackles. *Id*. The court asked the sheriff to explain the justification for restraining these men during the hearing. RP 3. The sheriff offered no reason, other than the fact that bail had been set. RP 3.

Rather than immediately order the shackles removed, the court reviewed both men's court files, searching for reason to believe they might pose a risk during their hearings. RP 5-6. The judge recounted their criminal history in detail and found no evidence they posed risk of flight or were likely to be assaultive or disruptive during court proceedings. RP 5-7. The court ordered the sheriff to remove the restraints. RP 6-8.

After hearing argument on the writ, the court ruled there was a constitutional imperative in presenting all people accused of crimes without visible chains and shackles, unless the sheriff had an actual individual need to fear the person presented a risk in the courtroom. CP 2-4. The court ruled the sheriff's insistence on maintaining shackles on people in jail resulted in a constitutional violation. *Id*. It ordered that the jail must refrain from presumptively shackling Mr. Gonsalves and Mr. McMullen during court hearings, and if a need arose specific to either man, it must explain the basis for the restraints before the court hearing. CP 3-4; RP 34-35.

The court granted the writ as a valid procedural vehicle for remedying this on-going violation of the constitutional rights of Mr. Gonsalves and Mr. McMullen. CP 3-4. It found the sheriff was

violating its duty of complying with the constitution in court hearings and there was no other plain, speedy, and adequate remedy available. *Id*.

The Court of Appeals reversed in a published decision. It ruled the sheriff had no duty to bring accused people to court without visible restraints and even if it is better practice to avoid these restraints, the accused people could have sought another remedy, such as an injunction or declaratory relief.

D. ARGUMENT

1. The constitutional imperative of holding court hearings without presumptively shackling all people who are in jail prohibits security officers from adopting and enforcing a blanket rule shackling all in-custody defendants

a. An accused person has the right to appear in court, before the judge, free of shackles.

It is "the ancient rule at common law" that a person charged with a crime is "entitled to appear free of all manner of shackles or bonds" when in court. *State v. Williams*, 18 Wash. 47, 49, 50 P. 580 (1897). This "ancient right . . . to appear in court unfettered," has long prohibited physical restraints when an accused person "was arraigned or appeared at the bar of the court to plead." *Id*. at 49-50. Only evidence

of "impelling necessity" to secure the safety of others or "evident danger" of escape forfeits the right be appear unshackled. *Id*. at 49, 51.

This established rule is part of the constitutional guarantee that "in criminal prosecutions, the accused shall have the right to appear and defend in person." *Id*. at 51; Const. art. I, § 22. This right requires a person's "mental" and "physical faculties [are] unfettered" during court proceedings unless there is a specific necessity. *Williams*, 18 Wash. at 51.

A court may not adopt a blanket policy requiring all people accused of crimes wear physical restraints in court. *State v. Hartzog*, 96 Wn.2d 383, 399, 635 P.2d 694 (1981). In *Hartzog*, this Court rejected a judge's "blanket order shackling procedure." *Id*. at 399. It explained the historical prohibition on restraints applies in all cases and is only overcome by extreme, individual circumstances. *Id*. at 398. The fact a person is incarcerated and serving a prison sentence does not justify courtroom restraints. *Id*. at 399.

Restraints are "disfavored" at all court proceedings because "they may interfere with important constitutional rights." *Jackson*, 10 Wn. App. 2d at 144. Use of "shackles or other restraints" violate constitutional guarantees unless carefully and individually imposed

"regardless of the nature of the court proceeding or whether a jury is present." *State v. Walker*, 185 Wn. App. 790, 797, 344 P.3d 227 (2015). During pretrial hearings, the court may not summarily order any person held in restraints. *State v. Lundstrom*, 6 Wn. App. 2d 388, 395, 429 P.3d 1116 (2018), *rev. denied*, 193 Wn.2d 1007 (2019).

b. The Court of Appeals decision conflicts with precedent by insisting courtroom security officers have no independent duty to comply with the constitutional prohibition on shackling.

The Court of Appeals ruled that while a judge cannot require people to be shackled in court absent an individualized showing of imminent risk, security personnel have no duty to adhere to this constitutional rule. Slip op. at 9-10. The Court of Appeals construed case law to prohibit only a judge from having a policy that accused people appear in court wearing shackles, and the rules do not apply to the security guards in the courtroom unless and until the judge rules that shackles should be removed for the hearing that is set that day. *Id*. This ruling is contrary to this Court's precedent, conflicts with decisions of the Court of Appeals, and encourages a scenario where guards opt to shackle everyone in the first instance, then remove

shackles after litigating, at every hearing, the potential dangerousness of every person accused of a crime.

Security measures such as visible chains and irons are inherently prejudicial. *State v. Finch*, 137 Wn.2d 792, 864, 975 P.2d 967 (1999). Courts "must closely scrutinize" their use and may allow them only if "they further essential state interests." *State v. Gorman-Lykken*, 9 Wn. App. 2d 687, 692, 446 P.3d 694 (2019).

Corrections officers within the courtroom are part of the security measures the judge controls and they are bound by the same constitutional dictates as other visible restraints. *Gorman-Lykken*, 9 Wn. App. 2d at 691-92. In *Gorman-Lykken*, corrections officers positioned themselves near the defendant when he testified. *Id*. at 690. The defense objected but the court allowed the officers to remain where they had positioned themselves. *Id*. The Court of Appeals ruled the court erred by not stopping the corrections officers from positioning themselves in the courtroom in a way that conveyed the defendant was dangerous. *Id*. at 698.

As *Gorman-Lykken* illustrates, the presence of corrections officers in the courtroom are part of the security and they must comply with constitutional mandates. The sheriff and sheriff's deputies have a

mandatory duty to "support the Constitution and Laws of the United States and the Constitution and Laws of the State of Washington." Resp. Brief, App. at 1 (sheriff's oath); RCW 36.16.050; RCW 29A.04.133.

When sheriff's deputies are serving the role of monitoring and enforcing courtroom security, they are not free to disregard the constitutional rules that govern court proceedings. Corrections officers and corrections policies remained obligated to follow the constitutional rules governing court proceedings. *See Lundstrom*, 6 Wn. App. at 393; *State v. Walker*, 185 Wn. App. 790, 797, 344 P.3d 227 (2015). Just as law enforcement officers may not arrest someone without following the constitutional requirements governing an arrest, they are duty-bound to adhere to fundamental courtroom protocols when serving the role of overseeing security within the courtroom.

The Court of Appeals opinion insisting that security personnel are free to create their own in-court policies of using physical restraints for court hearings even though such a blanket policy has been expressly forbidden by the court, and wait until a court later orders their removal, sets up an system where accused persons who are unable to post bail come before the court at a distinct disadvantage. *Hartzog*, 96 Wn.2d at

398-99. Under this process, defendants are required to convince the court they are not dangerous at each hearing, and must do so while wearing the badge of four-point restraints, which underscores the perception of their dangerousness and undercuts the presumption of innocence. *See Jackson*, 10 Wn. App. 2d 136, 154, 447 P.3d 633 (Melnick, J. concurring) ("[J]udges are human, and the sight of a defendant in restraints may unconsciously influence even a judicial factfinder.").

This Court should grant review of the Court of Appeals' holding that corrections officers serving as courtroom guards have no duty to comply with the constitutional requirement that people who are not presently dangerous or disruptive to the courtroom proceedings may not be brought before the judge in ankle, wrist, and belly chains. At 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.

2. This Court should review the Court of Appeals' reversal of the trial court's discretionary determination that a writ of mandamus was a valid vehicle for correcting an entrenched and prejudicial practice of the jail.

When a governmental entity has a "specific, existing duty" that it continues to violate, "mandamus is an appropriate remedy to compel performance." *Walker v. Munro*, 124 Wn.2d 402, 408, 879 P.2d 920 (1994). The trial court ruled the writ filed by Mr. Gonsalves and Mr. McMullen was necessary to compel the Sheriff to cease violating their rights to appear before the court free from unnecessary visible shackles. CP 2-4. The Court of Appeals reasoned that the defendants could have asked for a declaratory judgment or injunction, so the court did not need to grant the writ of mandamus. Slip op. at 13. It also contended that there is no harm when the defendants are forced to start each hearing wearing chains, as they can litigate their potential dangerousness before each hearing, and ask the court to remove these restraints. *Id*.

The trial court's decision to grant the writ is reviewed for abuse of discretion. *Dress v. Washington State Dept. of Corr*., 168 Wn. App. 319, 330, 279 P.3d 875 (2012). It was not manifestly untenable for the court to order the Sherriff to cease this admittedly blanket policy of

fully restraining every in-custody defendant and wait for a judge to weigh each person's risk of danger. *Id*. This Court should grant review because the Court of Appeals opinion is premised on an incorrect interpretation of constitutional law and it presents an issue of substantial public importance. RAP 13.4(b).

E. CONCLUSION

Based on the foregoing, Petitioners Timothy Gonsalves and Christopher McMullen respectfully requests that review be granted pursuant to RAP 13.4(b).

DATED this 22nd day of April 2020.

Respectfully submitted,

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APPENDIX

FILED
3/23/2020
Court of Appeals
Division I
State of Washington

IN THE COURT OF APPEALS FOR THE STATE OF WASHINGTON

SNOHOMISH COUNTY SHERIFF TY TRENARY, Appellant, v. TIMOTHY GONSALVES and CHRISTOPHER MCMULLEN, Respondents.	)	No. 79426-4 DIVISION ONE PUBLISHED OPINION FILED: March 23, 2020

ANDRUS, J. – Snohomish County Superior Court issued a writ of mandamus prohibiting the Snohomish County Sheriff's Office from using restraints on Timothy Gonsalves and Christopher McMullen at any non-jury criminal hearings. 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.

FACTS

On December 12, 2018, Timothy Gonsalves, an in-custody defendant being held in the Snohomish County Jail pending two separate trials, filed a petition for a writ of mandamus against the Snohomish County Sheriff, Ty Trenary, and his

deputy officers (hereinafter "Sheriff") to "[c]ease placing physical restraints on this pretrial detainee or any similar[ly] situated citizen when present in the courthouse for judicial hearings, absent a hearing and judicial order that a particular individual presents specific security risks which requires the use of said physical restraints." That same month, Gonsalves amended the petition to add Christopher McMullen, another in-custody defendant, as an additional petitioner.

Gonsalves and McMullen alleged below that the Sheriff maintains a blanket policy of shackling all in-custody defendants during transport to court hearings, while awaiting court hearings, and during those proceedings without conducting individualized assessments of a particular defendant's dangerousness or flight risk. They alleged that Snohomish County Superior Court conducts omnibus and trial call hearings in Department 304, during which in-custody defendants in the courtroom must remain in restraints unless a court orders them to be removed. They further alleged that "it is the practice in Snohomish County Superior Court" to transport in-custody defendants to criminal motions hearings, plea hearings, trial call hearings, and sentencing hearings in restraints and to leave those restraints in place during these hearings.

Gonsalves and McMullen did not challenge any practice of the Snohomish County Superior Court. Instead, they sought a writ only against the Sheriff, claiming that the Sheriff and those under his command were violating their due process rights and those of all detainees by shackling them "absent a compelling showing following [a] hearing."

The Sheriff objected to the use of the mandamus procedure to address the issues raised by Gonsalves and McMullen. To support this objection, the Sheriff presented declarations from the elected Sheriff, Ty Trenary; Jamie Kane, the Major at the Snohomish County Sheriff's Office Corrections Bureau (Bureau), which operates the Snohomish County Jail; and Anthony Aston, the Chief of the Bureau. They described the following procedures and practices within the jail and the courthouse:

The Sheriff is responsible for a number of duties and functions in the county, including police patrol, criminal and traffic investigations, search and rescue operations, and management and operation of the county jail. The daily population of the jail averages approximately 900 individuals. The Bureau has developed and implemented written policies for the transport and restraint of in-custody defendants to and during court hearings. The policy considers the movement of any in-custody defendant to be a high risk activity. The custodial staff assigned to transport in-custody defendants follow routine practices and procedures for assembling and transporting these individuals to court.

First, in-custody defendants scheduled to appear for a court hearing are assembled in a "transport holding" area within the jail. The area, comprised of multiple occupant and single occupant cells, allows custodial staff to segregate people by gender and security level. If an in-custody defendant is housed in a maximum security area within the jail, they are placed in wrist and waist restraints prior to leaving their housing unit before they reach the transport holding area. All

other in-custody defendants are placed in waist and wrist restraints in the transport holding area before leaving the jail.

Corrections deputies then escort the in-custody defendants through a tunnel from the jail to the courthouse. They walk into the courthouse basement, at which time custody deputies place each in-custody defendant into leg restraints. The corrections deputies then escort the group of restrained defendants into public elevators to holding cells on the second or third floors of the courthouse, or into an unsecure area at the back of Department 304. A corrections deputy then conducts security sweeps of the courtrooms and verifies the location and time of each defendant's hearing. The current courthouse configuration does not provide for secure transport to each courtroom. The deputies navigate public areas and elevators to reach each courtroom.

In the past, deputies escorted defendants from the holding area in the courthouse to their respective courtrooms in full waist, wrist, and leg restraints. For jury trials, the defendants would be handcuffed behind their backs and escorted into the courtroom where the handcuffs were removed before the jury entered. Historically, the deputies escorted defendants to court in waist, wrist, and leg restraints for all non-jury trial court hearings and left the restraints in place during the hearings. If there were multiple defendants with hearings scheduled in the same courtroom, the deputies brought them all to that courtroom at the same time and staged them in the jury box until each one's hearing began.

Before Gonsalves and McMullen filed this lawsuit, the Snohomish County Prosecuting Attorney's Office arranged a meeting with the Snohomish County

Public Defenders Association, judges from superior and district court, and staff from the Bureau to discuss the use of restraints during transport of in-custody defendants from the county jail to courtrooms and during court proceedings. As a result of this meeting, the Sheriff temporarily agreed to change its policy:

> Corrections currently is prepared to present inmates for their court hearings out of restraints. This does not apply to transport of inmates from the Jail to the courthouse or maintaining inmates in the courthouse before and after hearings.

Under this agreement, for criminal hearings in courtrooms other than Department 304, deputies brought defendants into a courtroom one at a time. Unless a court ordered otherwise, the deputies removed the restraints before the judge took the bench. Once the hearing concluded, deputies placed restraints back on the defendant and escorted that defendant back to the holding area. This process repeated until all defendants scheduled to appear for a hearing had completed their court appearance.

For the criminal hearings in Department 304, deputies staged all defendants in the back of the courtroom in waist, wrist, and leg restraints. The deputies removed each defendant's restraints before their appearance and placed them back on after each defendant's hearing concluded.

Although the Sheriff and Bureau representatives agreed to this procedure, they nevertheless believed that it decreased courthouse safety and impacted the deputies' ability to maintain control of defendants. They also testified that it stressed the operational functions of the jail because additional deputies were necessary to monitor defendants during court proceedings. One concern expressed by the jail managers is the fact that the deputies transporting

defendants do not work in the housing units with the defendants and, as a result, do not know each individual's baseline behaviors and personalities. The transport deputies must be vigilant to a defendant who, under stress from the court proceedings, may act out unexpectedly. And the restraints are used as a way to keep the defendants safe from each other, as there may be co-defendants present in the courtroom at the same time. Finally, the Sheriff and Bureau management are concerned about the safety of the courtroom staff who may be unaware of risks presented by the presence of a defendant's friends, family, or enemies in the courtroom audience.

The trial court conducted a hearing on the petition on December 28, 2018. The record indicates that neither Gonsalves nor McMullen presented any evidence before or at the hearing. At the conclusion of this hearing, the court granted the writ of mandamus. The trial court reasoned that under Washington law, "a prisoner is entitled to be brought into the presence of the court free from restraints." It stated 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." Gonsalves and McMullen were "in the presence of the court" when "court is in session," and "[c]ourt is in session when the judge is on the bench and the proceedings are on the record." The trial court also found that Gonsalves and McMullen lacked an adequate legal remedy, making mandamus appropriate.

The trial court, however, declined to prohibit the Sheriff from transporting all defendants from the jail to the courtroom in restraints, and it limited the writ to

Gonsalves and McMullen, rejecting their argument that it should apply to similarly situated individuals. The writ states:

> BY ORDER OF THE SNOHOMISH COUNTY SUPERIOR COURT, the Snohomish County Sheriff shall, acting through his agents and employees, bring Petitioner Gonsalves and Petitioner McMullen into the presence of the court free from restraints. This writ shall not supersede any future Order authorizing restraints that is entered by the Superior Court following an individualized determination that restraints are warranted.

The Sheriff appeals.

ANALYSIS

The Sheriff advances two arguments on appeal. First, he argues that his transport deputies have no mandatory legal duty to remove a defendant's restraints absent a court order to do so. He contends that the deputies exercise discretion when determining to restrain a defendant until the trial court decides whether to order restraints removed. Second, he argues that Gonsalves and McMullen had adequate legal remedies other than the extraordinary writ of mandamus. We agree with both arguments.

A writ of mandamus "may be issued by any court . . . 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. This writ is only appropriate where the official is under a "mandatory ministerial duty to perform an act required by law as part of that official's duties." Freeman v. Gregoire, 171 Wn.2d 316, 323, 256 P.3d 264 (2011). The mandate must define the duty with such particularity as to leave nothing to the exercise of discretion or judgment. Id. at 323. Whether there is a

clear duty to act is a question of law this court reviews de novo. Paxton v. City of Bellingham, 129 Wn. App. 439, 445, 119 P.3d 373 (2005).

Additionally, a writ of mandamus may only be issued in cases "where there is not a plain, speedy and adequate remedy in the ordinary course of law." RCW 7.16.170. The availability of such a remedy "is a question left to the discretion of the court in which the proceeding is instituted." River Park Square, LLC v. Miggins, 143 Wn.2d 68, 76, 17 P.3d 1178 (2001). An appellate court "will not disturb a decision regarding a plain, speedy, and adequate remedy on review unless the superior court's discretion was manifestly unreasonable, or exercised on untenable grounds, or for untenable reasons." Id.

The Sheriff first challenges the trial court's conclusion that transport deputies have a mandatory legal duty to remove a defendant's restraints for non-jury proceedings once a defendant's hearing commences, unless the trial court orders otherwise. He argues that the deputies have the discretion to leave the restraints in place and, under Washington case law, the duty of determining the appropriateness of restraints falls on the court. Gonsalves and McMullen argue just the opposite. They contend that the Sheriff has a mandatory duty to remove the restraints and that the trial court has the discretion to order that they be placed back on if the facts warrant. We conclude that the Sheriff has the better argument here.

First, a defendant has a clear constitutional right to appear in court without restraints in the presence of the jury. See State v. Williams, 18 Wash. 47, 48-49, 50 P. 580 (1897) (trial court's refusal to order removal of defendant's restraints and

restraints on defense witnesses during jury trial violated constitutional guaranty to fair trial); State v. Miller, 78 Wash. 268, 276, 138 P. 896 (1914) (defendant not prejudiced by being led from jail to courtroom in handcuffs because jury not aware of it and because defendant was flight risk); State v. Boggs, 57 Wn.2d 484, 488-89, 358 P.2d 124 (1961) (juror witnessed defendant in jail cell but any prejudice was cured with an instruction); State v. Sawyer, 60 Wn.2d 83, 85, 371 P.2d 932 (1962) (instruction cured any prejudice after jurors witnessed defendants being handcuffed after first day of trial). The Sheriff does not contend otherwise, and the Bureau had no practice of shackling any defendant in front of a jury.

Second, 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. In State v. Hartzog, 96 Wn.2d 383, 635 P.2d 694 (1981), our Supreme Court invalidated a general security order issued by the Walla Walla Superior Court requiring all defendants to remain in restraints during trial. The court held that the trial court must evaluate the use of restraints on any defendant on a case-by-case basis and "must exercise discretion in determining the extent to which courtroom security measures are necessary to maintain order and prevent injury." Id. at 400.

Nearly a decade later in State v. Finch, 137 Wn.2d 792, 975 P.2d 967 (1999), our Supreme Court reiterated that it is an abuse of discretion for the court not to conduct an individualized assessment of the defendant's risk of escaping custody, injuring himself or others, or misbehaving in the courtroom. Id. at 850.

In granting the writ, the trial court relied on State v. Damon, 144 Wn.2d 686, 25 P.3d 418 (2001), in which our Supreme Court held that the trial court failed to exercise its discretion and in doing so, violated the defendant's right to a presumption of innocence when the court deferred to the corrections officer's recommendation to require the defendant to be held in a restraint chair during trial. Id. at 691-92. But the Damon court did not address the precise question presented here—namely, whether transporting deputies have a "mandatory duty" to remove a defendant's restraints during non-jury criminal hearings.

In fact, 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. The Bureau has assessed the layout of the courthouse, the characteristics of each courtroom, the path they take to escort defendants from one area to another, the staff available on any given day for transporting defendants to courtrooms for non-jury proceedings and for jury trials, and unique security issues that may arise in any courtroom based on the number of other defendants in the same courtroom and the presence of court staff and members of the public.

In State v. Walker, 185 Wn. App. 790, 796, 344 P.3d 227 (2015), this court rejected the argument that jail or prison administrators have plenary authority to determine whether an inmate defendant must wear restraints in the courtroom:

> The interests of prison administrators in the security of their institutions and the resulting decision to use restraints are readily distinguishable from the interests of the court. To be sure, on matters of courtroom security, those interests may overlap because of common concerns about preventing injury to those in the courtroom, preventing disorderly conduct in the courtroom, and preventing escape . . . But, unlike in a penal setting, a court is also required to balance the need for a secure courtroom with the defendant's presumption of innocence, the defendant's ability to assist counsel, the right to testify on one's own behalf, and the dignity of the judicial process . . . While prison officials may be well positioned to assist the trial court in deciding matters of courtroom security, they are in no position to weigh and balance the many factors the court must consider when determining whether, and in what manner, a defendant should be restrained during a court proceeding.

Id. at 796-97. We placed the duty of making the individualized assessment—this balancing of an individual's constitutional rights against the need for security in a particular courtroom—on the shoulders of the trial courts. Id.

We thus conclude that the trial court erred in ruling that the Sheriff and his transporting deputies have a mandatory legal duty to remove restraints from an in-custody defendant during all criminal proceedings, even in the absence of a court order to do so.

Additionally, we disagree with the trial court that Gonsalves and McMullen lacked an adequate legal remedy. Mandamus is only proper "where there is not a plain, speedy and adequate remedy in the ordinary course of law." RCW 7.16.170. "A remedy is not inadequate merely because it is attended with delay, expense, annoyance, or even some hardship." City of Kirkland v. Ellis, 82 Wn. App. 819, 827, 920 P.2d 206 (1996). "There 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." City of Olympia v. Thurston County.

Bd. of Comm'rs, 131 Wn. App. 85, 96, 125 P.3d 997 (2005). Whether there is a plain, speedy, and adequate remedy in the ordinary course of the law is reviewed for abuse of discretion. River Park Square LLC, 143 Wn.2d at 76.

The trial court reasoned that the writ was appropriate here because "there is a continuing violation of a duty." It based this decision on Eugster v. City of Spokane, 118 Wn. App. 383, 76 P.3d 741 (2003). But Eugster is distinguishable. In that case, members of the Spokane City Council brought an action to invalidate an ordinance that required the city to loan parking meter revenue to a public development authority (PDA) to cover any shortfalls in the cost of erecting a parking garage. The garage developer, named as a defendant, filed a counterclaim seeking a writ of mandamus compelling the city council to comply with the ordinance. Id. at 397.

After concluding that the ordinance imposed a mandatory duty on the city to offer a loan to the PDA, the Eugster court analyzed whether the developer had any means, other than mandamus, to enforce the duty. 118 Wn. App. at 414. It concluded that the developer had no contractual basis for compelling the city to make the requested loan because no contract existed. Id. at 416. It affirmed the trial court's conclusion that the developer lacked a plain, speedy and adequate remedy in the ordinary course of law.

But the trial court here conducted no analysis of what options, other than mandamus, exist for Gonsalves and McMullen. First, the trial court has the ability and legal duty to protect Gonsalves's and McMullen's constitutional rights to be free of restraints. The record shows that the transport deputies escorted

Gonsalves and McMullen to the mandamus hearing in restraints. The court was able to quickly conduct an assessment of the need for the restraints by asking the deputies whether the Sheriff had any specific concerns and whether either defendant presented a flight risk, a risk of committing harm, or a risk of upsetting the decorum of the proceeding. After hearing from a transport deputy and reviewing the dockets for each of the defendant's criminal cases, the trial court determined that restraints were unnecessary. Gonsalves and McMullen, in essence, obtained an individualized assessment by the court on the spot without having to request it.

Second, Gonsalves and McMullen can simply ask to have their restraints removed in any criminal hearing. As Walker clearly indicates, had they made such a request, the court presiding over their hearing would have been obligated to conduct an assessment of the need for restraints. And Gonsalves and McMullen also could have sought a court order prohibiting the use of restraints at any future criminal hearings, thereby eliminating the need to raise the issue repeatedly. Had the Sheriff failed or refused to comply with such a lawful court order, Gonsalves or McMullen could have requested sanctions for contempt. See State v. Sims, 193 Wn.2d 86, 441 P.3d 262 (2019) (affirming court imposed remedial sanctions against DSHS for non-compliance with court ordered mental health evaluation). Moreover, as demonstrated by the mandamus hearing in this case, the trial court can raise the issue *sua sponte* even if a defendant or counsel does not.

Finally, if Gonsalves, McMullen, or any other defendant deems the Sheriff's "blanket" transport policy to be unconstitutional, they have a legal right to seek a

declaratory judgment and injunctive relief. See Johnson v. Moore, 80 Wn.2d 531, 496 P.2d 334 (1972) (individuals held in city jail without charge could bring suit for declaratory judgment and injunctive relief to challenge practice of holding individuals in city jail on suspicion of crime). There is a statutory mechanism for obtaining emergency temporary injunctive relief when a party can establish a violation of legal rights. See RCW 7.40.020 (grounds for issuance) and 7.40.050 (emergency restraining orders). Gonsalves and McMullen could have brought a declaratory judgment action to challenge the constitutionality of restraining defendants during non-jury criminal proceedings and could have sought an injunction to prevent the Sheriff from following any policy a court deems unconstitutional.

The trial court abused its discretion in concluding that Gonsalves and McMullen lacked an adequate remedy at law. A writ of mandamus was inappropriate under these circumstances.

Reversed.

Andrus, J.

WE CONCUR:

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 document **Petition for Review to the Supreme Court** to which this declaration is affixed/attached, was filed in the **Court of Appeals** under **Case No. 79426-4-I**, 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:

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Washington Appellate Project

WASHINGTON APPELLATE PROJECT

April 22, 2020 - 3:47 PM

Transmittal Information

Filed with Court:	Court of Appeals Division I
Appellate Court Case Number:	79426-4
Appellate Court Case Title:	Ty Trenary, Appellant v. Timothy Gonsalves & Christopher McMullen, Respondents
Superior Court Case Number:	18-2-11163-1

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