

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TENNESSEE**

Favian Busby and Michael Edgington, *on
their own behalf and on behalf of those
similarly situated*;

Petitioners-Plaintiffs,

v.

Floyd Bonner, Jr., *in his official capacity*,
Shelby County Sheriff, and the Shelby
County Sheriff's Office,

Respondents-Defendants.

Case No. _____

**DECLARATION OF ANN L. SCHILLER IN SUPPORT OF
PETITIONERS-PLAINTIFFS' MOTION
FOR A TEMPORARY RESTRAINING ORDER**

I, Ann. L. Schiller, certify under penalty of perjury that the following statement is true and correct pursuant to 28 U.S.C. § 1746:

1. My name is Ann L. Schiller. I am over the age of 18 and I am competent to make this Declaration.

2. I am an attorney practicing criminal defense in the Shelby County courts. I am Board Certified in Criminal Law. I represent clients at all stages of their criminal prosecution and am familiar with the relevant appellate practices that accompany such representation.

3. I have been practicing law for thirteen (13) years, all of them in Shelby County.

4. I am a graduate of the University of Memphis Cecil C. Humphreys School of Law.

5. I represent clients who are currently incarcerated in the Shelby County Jail at 201 Poplar. I have visited clients in the Shelby County Jail dozens of times in the past three (3) years.

6. I make this Declaration based on my personal knowledge.

7. I respectfully submit this Declaration in support of Plaintiffs' Motion for a Temporary Restraining Order. The purpose of this Declaration is to provide facts that I have learned about the health and safety conditions at the Shelby County Jail, as well as to share information about the local court system, including the difficulties Plaintiffs and proposed class members in this action would have seeking the relief requested in their Motion in the local courts.

I. COVID-19 Concerns at the Shelby County Jail

8. My clients report that the Shelby County Jail is failing to follow well-known public health protocols to protect them from becoming infected with COVID-19.

9. For example, detainees are housed in a way that renders social distancing of six feet or more at all times impossible. My clients share that they are kept in close proximity to other inmates when they want to use certain facilities, including bathrooms, phones, and kiosks.

10. Further, the Jail does not test individuals for COVID-19 when they are booked into custody. The Jail also does not test the staff who routinely enter and exit the Jail.

11. I have had clients describe people in their unit who exhibit symptoms of COVID-19, such as coughing, fever, and general malaise, but who are not able to be seen by medical professionals.

12. The Jail has not provided my clients with reliable access to hand soap so that they can wash their hands. According to my clients, they are required to purchase any soap through the commissary. Otherwise, if they cannot afford it, it is provided only once a week.

13. The Jail has not provided my clients with hand sanitizer.

14. The Jail has not provided my clients with disinfecting supplies or other cleaning supplies.

II. Local Court Practice

15. In my experience, it takes two weeks for a request for a bond reduction to be heard by the court. To request a reduction in a client's bond or alternate conditions of pretrial release, I would have to file a written motion for bond review, wait for the State to respond, and wait for the Court to set the motion for a hearing. If the Court decided to issue a written ruling on the bond request, I estimate the process would take approximately one month to six weeks in the local courts given the current court's schedule.

16. An appeal of a request for a bond reduction goes to the Tennessee Court of Criminal Appeals. This process takes several weeks, and again involves an opportunity for the State to respond, a hearing with argument, and eventually an order from the Court of Criminal Appeals. Under pre-COVID-19 routine circumstances, this process generally took a month to six weeks.

17. For clients held at the Jail pretrial, the aforementioned is the primary way for them to seek release. State court habeas writs are available only where a petitioner raises: (1) a claim of a void judgment that was facially invalid because the convicting court was without jurisdiction or authority to sentence the defendant; or (2) a claim the defendant's sentence has expired. *Benson v. State*, 2019 WL 1388195 (Tenn. Ct. Cr. App. 2019) (citing *Stephenson v. Carlton*, 28 S.W.3d 910, 911 (Tenn. 2000)) (discussing T.C.A. §§ 29-21-101, -130). Based on both statute and settled caselaw, a habeas petition is premature prior to a conviction.

18. Tennessee courts, including those in Shelby County, have issued emergency closures and slowed their operations in response to the COVID-19 pandemic. Court cancellations can be common and vary by judge.

19. Further, even where a client gets a court date, it is unclear whether they will be transported to court as scheduled.

20. I am not aware of any vehicle in the state courts through which a class of pretrial detainees could seek relief regarding the constitutionality of their confinement in the Shelby County Jail.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 18th day of May, 2020.

Signed:



Ann L. Schiller

Attorney at Law