STATE OF MAINE

SUPREME JUDICIAL COURT
Docket No. SJC-23-2

STATE OF MAINE, *ex rel.* **ANGELINA DUBE PETERSON**; and, **UNKNOWN OR UNCERTAIN PERSONS**,

Petitioners,

v.

PETER A. JOHNSON, Aroostook County Sheriff, in his official capacity; **WILLIAM L. KING**, York County Sheriff, in his official capacity; **HON. SARAH GILBERT,** Judge of the Maine District Court, in her official capacity; **HON. CARRIE LINTHICUM**, Judge of the Maine District Court, in her official capacity; and, **UNKNOWN JUDGES AND JUSTICES OF THE MAINE UNIFIED CRIMINAL DOCKET**, all in their official capacities.

Respondents.

Respondent William L. King's Motion to Dismiss Petition for a Writ of Habeas Corpus As Non-Justiciable

M.R. Civ. P. 12(b)(1), (6)

NOW COMES Respondent, William L. King, York County Sheriff, under M.R. Civ. P. 12(b)(1) and (6), and moves the Court to dismiss the petition as to Sheriff King.

This case is not justiciable. The only known party to this action has been appointed an attorney and was released on bail, so her claim is moot. The habeas petitions of "unknown or uncertain" persons are not properly before the Court and are too vague and speculative to justify any relief against Sheriff King. And finally, none of these claims are appropriately brought by the two attorneys who filed the petition, even under 14 M.R.S. § 5511. With no viable relief to grant, the Court should dismiss at least as to Sheriff King.

Background

On September 20, 2023, two attorneys, Rory McNamara and Robert Ruffner (the "attorneys"), petitioned for a writ of habeas corpus on behalf of Angelina Dube Peterson and "unknown or uncertain persons." The petition does not identify the attorneys as representing Peterson or any of the unknown persons. Instead, it asserts standing under 14 M.R.S. § 5511. Section 5511 provides that, upon application of "any person," the court may issue a writ of habeas corpus favoring "any party alleged to be imprisoned or restrained of his liberty but not convicted and sentenced, who would be entitled to it on his own application, when from any cause he is incapable of making it."

According to the petition, Peterson is incarcerated pending trial in the York County Jail without counsel, unable to post bail. (Pet. ¶ 4.) But since then, Peterson has been appointed counsel and released from jail. (Exhibit 1 (Bail and Release Documents); Exhibit 2 (Order of Appointment on AROCD-CR-22-20116; Exhibit 3 (Order of Appointment on AROCD-CR-23-20234).) She has not appeared here by counsel or otherwise.

The petition describes the unnamed persons as a class including those entitled to counsel under state and federal law in relation to a state-court criminal proceeding "who are currently, or will be in the future, imprisoned or restrained of his liberty but not convicted and sentenced … ." (Pet. ¶ 6 (quoting 14 M.R.S. § 5511).) There are no allegations in the petition identifying who these people are or, as relevant to Sheriff King's response, whether these hypothetical people are even in custody at the York County Jail. Instead, the petition asserts that the attorneys unsuccessfully requested this information from the judicial branch, which cited Administrative Order JB-05-20 (A. 4-21) ("Public Information and Confidentiality).

The petition appears to request the following: (i) discovery to identify "the identities of those unnamed parties entitled to relief" (Pet. ¶ 14; Pet., Prayer for Relief ¶ 1); (ii) an evidentiary hearing to examine the cause of imprisonment and restraint (Pet. ¶ 15; Pet., Prayer for Relief ¶ 2); (iii) a declaration that Chapter 609 of Title 14 unconstitutional to the extent it suspends or limits habeas corpus (Pet. ¶ 16); and, (iv) action on a solemn duty to order the release of all similarly situated Mainers who are in jail without counsel. (Pet. ¶¶ 17-20, Pet, Prayer for Relief ¶ 4.)

Standard of Review

Subject matter jurisdiction can be challenged at any time. *Tomer v. Me. Hum. Rts. Comm'n*, 2008 ME 190, ¶ 8 n.3, 962 A.2d 335. Unlike a motion to dismiss for failure to state a claim, a motion to dismiss for lack of subject matter jurisdiction under M.R. Civ. P. 12(b)(1) does not require a court to draw inferences favorable to the plaintiff. *Id.* ¶ 9. Nor must the court constrain itself to the pleadings. *Gutierrez v. Gutierrez*, 2007 ME 59, ¶ 10, 921 A.2d 153. Instead, a court may consider extrinsic documents offered by the pleader and the movant. *Norris Fam. Assocs., LLC v. Town of Phippsburg*, 2005 ME 102, ¶ 17 n.5, 879 A.2d 1007.

If the arguments here are construed as being more properly considered under Rule 12(b)(6), that standard requires dismissal if a complaint fails to "set forth elements of a cause of action" or fails to "allege facts that would entitle the plaintiff to relief pursuant to some legal theory." *Oceanic Inn, Inc. v. Sloan's Cove, LLC*, 2016 ME 34, ¶ 16, 133 A.3d 1021 (quotation marks omitted). A motion to dismiss under M.R. Civ. P. 12(b)(6) tests the legal sufficiency of the allegations in a complaint, permitting this Court to determine the sufficiency "as a pure question of law." *Burke v. Hamilton Beach Div., Scovill Mfg. Co.*, 424 A.2d 145, 148 (Me. 1981). A court must view the allegations in the complaint "in

the light most favorable to the plaintiff." *Id.* Public documents, documents central to the plaintiff's claim, and documents referred to in the complaint may be considered when the authenticity of such documents is unchallenged. *Moody v. State Liquor & Lottery Comm'n*, 2004 ME 20, ¶ 11, 843 A.2d 43. *See also Cabral v. L'Heureux*, 2017 ME 50, ¶ 10, 157 A.3d 795 ("[c]ourts may take judicial notice of pleadings, dockets, and other court records where the existence or content of such records is germane to an issue in the same or separate proceedings").

"Although this standard is forgiving, the complaint must still 'give fair notice of the cause of action by providing a short and plain statement of the claim showing that the pleader is entitled to relief.'" *Meridian Med. Sys., LLC v. Epix Therapeutics, Inc.*, 2021 ME 24, ¶ 3, 250 A.3d 122 (quoting *Howe v. MMG Ins.,* 2014 ME 78, ¶ 9, 95 A.3d 79). To that end, "[t]he complaint 'must describe the essence of the claim and allege *facts* sufficient to demonstrate that the complaining party has been injured in a way that entitles him or her to relief.'" *Id.* (quoting *Howe*, 2014 ME 78 ¶ 9) (emphasis added). "[M]erely reciting the elements of a claim is not enough[,]" *id* (quoting *America v. Sunspray Condo. Ass'n*, 2013 ME 19, ¶ 13, 61 A.3d 1249), and a court is "not bound to accept the complaint's legal conclusions[,]" *id.* (citing *Seacoast Hangar Condo. II Ass'n v. Martel*, 2001 ME 112, ¶ 16, 775 A.2d 1166).

Argument

This case should be dismissed under M.R. Civ. P. 12(b)(1) because it is not justiciable. "A justiciable controversy is a claim of present and fixed rights, as opposed to hypothetical or future rights, asserted by one party against another who has an interest in contesting the claim." *Flaherty v. Muther*, 2011 ME 32, ¶ 87, 17 A.3d 640 (quoting *Connors v. Int'l Harvester Credit Corp.,* 447 A.2d 822, 824 (Me. 1982)). "A case . . . may

become moot, and hence not justiciable, if the passage of time and the occurrence of events deprive the litigant of an ongoing stake in the controversy although the case raised a justiciable controversy at the time the complaint was filed" *Halfway House v. City of Portland*, 670 A.2d 1377, 1379-80 (Me. 1996). "A decision issued on a non-justiciable controversy is an advisory opinion, which we have no authority to render except on solemn occasions, as provided by the Maine Constitution." *Flaherty v. Muther*, 2011 ME 32, ¶ 87.

I. Peterson's Petition for a Writ of Habeas Corpus Is Moot.

Peterson's petition is case is moot because she is no longer in custody. A case is moot "if the passage of time and the occurrence of events deprive the litigant of an ongoing stake in the controversy although the case raised a justiciable controversy at the time the complaint was filed." *Carroll F. Look Constr. Co. v. Town of Beals*, 2002 ME 128, ¶ 6, 802 A.2d 994 (quoting *Halfway House, Inc. v. City of Portland*, 670 A.2d 1377, 1379-80 (Me. 1996)). To make this assessment, a court will "examine the record to determine if sufficient practical effects can flow from the litigation to justify the use of limited judicial resources." *Id.*

Peterson's petition for a writ of habeas corpus is moot because she is no longer imprisoned or restrained. 14 M.R.S. § 5511 (providing that a court may issue a writ of habeas corpus favoring any party alleged to be "imprisoned ore restrained but not convicted and sentenced"). She has also been appointed counsel. Thus, as to Peterson, there is very little question that any claim brought on her behalf is moot as to Sheriff King. There are no remaining issues to be adjudicated between Peterson and Sheriff King.

None of the exceptions to the mootness doctrine justify keeping Sheriff King as a respondent. A court may consider moot issues that "(1) have sufficient collateral

consequences; (2) are of great public concern; or (3) are capable of repetition but evade review." *Carroll F. Look Constr. Co.*, 2002 ME 128, ¶ 6. First, there are evident collateral consequences resolved by determining whether Peterson's appointment of counsel was unduly delayed, so that exception is inapplicable.

Second, the issue is not capable of repetition but evading review. Federal courts have clarified that this exception applies "only if '(1) the challenged action [is] in its duration too short to be fully litigated [before] its cessation or expiration, *and* (2) there [is] a reasonable expectation that the same complaining party [will] be subjected to the same action again.'" *Calvary Chapel of Bangor v. Mills*, 52 F.4th 40, 47 (1st Cir. 2022) (quoting *Weinstein v. Bradford*, 423 U.S. 147, 149 (1975)). The exception is reserved for "extraordinary situations[,]" and the burden is on the party asserting the exception. *Id.*

Neither element is met. The Sixth Amendment issue can be directly raised at an in-custody defendant's initial appearance or via a petition for review of bail, either pro se or with the assistance of the lawyer of the day. When there is a known shortage of court appointed counsel, as is alleged here, a defendant can (for example) argue to the Unified Criminal Docket that a failure to timely locate counsel will justify a release on personal recognizance bail.[1] Moreover, there has been no showing that there is "reasonable expectation" that Peterson will be subject to the same action again, especially in York County.

Third, even if the Court deems the issue as of great public importance, or finds that either of the other exceptions applies, it should still decline to adjudicate the case as to

[1] There are serious questions about whether Petitioners' Sixth Amendment argument is properly raised in a collateral habeas corpus proceeding, when relief in the underlying criminal actions is available. If necessary, Respondent reserves the right to argue this issue in a subsequent motion under M.R. Civ. P. 12(c) or otherwise.

Sheriff King. Peterson has not appeared. Instead, her petition was filed by two attorneys who do not represent her. And Sheriff King's incentive to litigate the fundamental controversy, that is, whether the untimely appointment of counsel for an incarcerated criminal defendant violates the Sixth Amendment, is limited. Sheriff King's role is as a custodian. He cannot appoint lawyers, nor can he decide on own to release an inmate as a remedy if counsel is not timely appointed. 15 M.R.S. §§ 1021, 1022, 1026, 810; *Beaulieu v. State*, 211 A.2d 290, 293, 161 Me. 248 (Me. 1965) ("[w]hether the rights of the petitioner were violated . . . are questions not for a jailer or prisoner to decide, but for the Court"). Petitioners' fundamental grievance turns on judicial and prosecutorial determinations that Respondent King has limited reason to litigate.

So, at bottom, this case is moot and, even if the Court believes that an exception to the mootness doctrine could apply, Sheriff King is the wrong respondent. In fact, the more appropriate parties to defend petitioner's claims, those responsible for prosecuting Peterson and "unknown" parties, have not been joined. 14 M.R.S. § 5522 (requiring notice to the attorney for the State or Attorney General before discharge of any person held on criminal accusations); M.R. Civ. P. 19(a) (requiring joinder of persons with an interest in the proceeding whose absence may as a practical matter impair or impede the person's ability to protect that interest). By proceeding as to Respondent King, the Court would be issuing an advisory opinion in a matter prosecuted by strangers to the underlying controversy, in the absence of the aggrieved party whose predicament has been remedied, against a respondent with minimal incentive to litigate a significant issue in the case.

II. The Attorneys Lack Standing.

Neither Peterson nor the unknown parties filed this petition; instead, it was filed by two attorneys who, to Respondent's knowledge, have no attorney-client relationship

with any of the allegedly aggrieved parties. The theory that the attorneys have standing under 14 M.R.S. § 5511 is flawed. That section provides, "on application of any person, may issue the writ of habeas corpus to bring before them any party alleged to be imprisoned or restrained of his liberty but not convicted and sentenced, who would be entitled to it on his own application, when from any cause he is incapable of making it." 14 M.R.S. § 5511 (emphasis). Although this statute does authorize a third party to *begin* a proceeding on behalf of imprisoned or restrained party, *id.*, neither Peterson nor the unnamed persons are "incapable" of bringing a petition for a writ of habeas corpus as required by 14 M.R.S. § 5511.

"Incapable" is not defined in Section 5511, so this Court must look to familiar concepts of statutory construction. As always, the Court begins with the "plain language of the statute" as the best indicator of Legislative intent. *Klein v. Univ. of Me. Sys.*, 2022 ME 17, ¶ 7, 271 A.3d 777. "Only if the meaning of a statute is ambiguous will we look beyond the words of the statute to examine other potential indicia of the Legislature's intent, such as the legislative history." *Convery v. Town of Wells*, 2022 ME 35, ¶ 10, 276 A.3d 504 (cleaned up). When a statutory term is undefined, as here, "it is appropriate to turn to dictionary definitions to help uncover its plain meaning." *Id.*

"Incapable" is a term of ordinary usage and is used in everyday conversation. The Oxford English Dictionary, for example, defines "incapable" as "[n]ot having the capacity, power, or fitness for a specified function, action, etc.; unable." *Incapable*, Oxford English Dictionary.[2] In other contexts, the Law Court has interpreted "incapable" as synonymous with "unable." *In re Colby E.*, 669 A.2d 151, 152 (Me. 1995). Elsewhere, courts have

[2] Available at https://www.oed.com/search/dictionary/?scope=Entries&q=Incapable (last accessed Oct 2, 2023).

applied similar dictionary definitions to incapable.[3] These definitions draw a bright line: incapable means that the person *cannot* undertake the specified action. Difficulty, even significant difficulty, is not enough.

This strict standard makes sense in the context of 14 M.R.S. § 5511. On the one hand, because a detained person may be unable or restrained from bringing their own petition, the law provides a mechanism in which a third person can bring the matter to the court's attention. On the other hand, it is a fundamental premise of our system of law that legal proceedings should be commenced and litigated by the real party in interests, rather than strangers to the controversy as here. Thus, for the attorneys to petition for a writ of habeas corpus on behalf of others, they must show that those persons are in fact "incapable" of doing so themselves.

The petition fails to make this necessary allegation. There is no suggestion in the petition that either Peterson or any unknown party are unable to access the courts. This Court should take judicial notice that inmates regularly file documents with the court, such as letters about their attorneys, pro se petitions for post-conviction review, or even pro se lawsuits against their jailers or others. To be sure, it may be easier for a pretrial inmate to file a well-prepared petition for writ of habeas corpus through counsel. But there are no allegations here suggesting that Peterson or the unknown persons cannot do so. For that reason, the attorneys lack standing to bring a petition for a writ of habeas corpus on behalf of Peterson or the unknown persons under 14 M.R.S. § 5511.

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[3] *See, e.g.*, *Watson v. Solis*, 693 F.3d 620, 625 (6th Cir. 2012); *United States v. Earls*, No. CR-21-136-RAW, 2022 U.S. Dist. LEXIS 80743, at *4 (E.D. Okla. May 4, 2022); *State v. Reed*, 339 Or. 239, 244, 118 P.3d 791, 794 (2005); *State v. Hedstrom*, 108 Wis. 2d 532, 536, 322 N.W.2d 513, 516 (Ct. App. 1982); *Butler v. Dep't of Motor Vehicles*, 115 Cal. App. 3d 913, 916, 171 Cal. Rptr. 525, 526 (1981).

III. The Claims of Unknown, Hypothetical Petitioners Are Not Justiciable.

There is nothing in chapter 609 of Title 14 that authorizes class-action style pleading. This is not a class action lawsuit under M.R. Civ. P. 23, with all the attendant requirements such as numerosity, commonality, typicality, and adequate representation. Nor is it a case in which a specific plaintiff seeks to protect their identity with a pseudonym. *See Valle v. Karagounis*, 2020 U.S. Dist. LEXIS 125400, at *3 (D.D.C. July 16, 2020) (distinguishing the bringing claim with the use of a pseudonym from bringing a claim on behalf of an unknown person). Instead, this is a lawsuit in which two non-aggrieved persons bring hypothetical claims on behalf of unknown persons, and wish to invoke the power of the courts to investigate hypothetical claims for relief. No matter how well-meaning the attorneys' intentions may be, the Maine Rules of Civil Procedure do not authorize attorneys to file lawsuits on behalf of unknown people to track down potential claimants.

14 M.R.S. § 5528 does not provide otherwise. That statute reads, "[t]he person restrained shall be designated by his name, if known; if unknown or uncertain, in any other way so as to make known who is intended." (Pet. ¶ 4 (citing 14 M.R.S. § 5528 to justify pleading on behalf of unknown or uncertain persons).) This statute refers to the situation where a restrained person's *name* is not known, not where the existence of a petitioner is unknown. For example, suppose a person with an unknown identity is arrested and unlawfully detained. In that case, Section 5528 allows a petition for a writ of habeas corpus to be filed on that person's behalf, so long as the petition identifies the person with enough specificity so that the court and custodian can identify who the petition is about. And, in turn, the Court can issue the writ (if proper to do so) and the parties can move forward to determining the cause of the restraint. 14 M.R.S. § 5521. This

construction is bolstered by 14 M.R.S. § 5518's requirement that the form of the writ issued by the Court must "substantially" conform to a format including the identity of the restrained person, and 14 M.R.S. § 5515's requirement that the petition state under oath "the place where and the person by whom the restraint is made." In contrast, as presented here on behalf of the unknown parties, the petition does not focus on any specific person, place, or custodian.

To be sure, the attorneys contend that they did not identify the restrained persons because the judicial branch would not provide them with that information. But section 5528 contains no hardship exception to the general rule requiring that a petition designate the restrained person "by his name, if known; if unknown or uncertain, in any other way so as to make known who is intended." And to the extent the attorneys claim the judicial branch was required to provide them with the desired information under some law or rule, the proper venue to litigate that grievance is a separate action in a court of competent jurisdiction.[4] In any event, Sheriff King is a non-party to that dispute and is an improper respondent here.

* * *

A court cannot act without jurisdiction. The petition for a writ of habeas corpus, at least as to Sheriff King, should be dismissed.

Dated: October 11, 2023

/s/ Tyler Smith
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[4] Sheriff King takes no position on whether the judicial branch is required to provide this information.

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NOTICE: Pursuant to Rule 7(c) of the Maine Rules of Civil Procedure, any party opposing this motion shall file a memorandum and any supporting affidavits or other documents in opposition to the motion not later than 21 days after the filing of the motion, unless another time is provided by the Rules or set by the court. Failure to file a timely opposition will be deemed a waiver of all objections to the motion, which may be granted without further notice or hearing.

CERTIFICATE OF SERVICE

I hereby certify that, on the date set forth below, I caused to be served the foregoing pleading via e-mail upon the following counsel or parties:

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Respondents.

Order on Respondent William L. King's Motion to Dismiss Petition for a Writ of Habeas Corpus

M.R. Civ. P. 12(b)(1), (6)

The Court, having considered Respondent King's Motion to Dismiss Petition for a Writ of Habeas Corpus, and all arguments properly raised in opposition thereto, hereby **GRANTS** the motion, and the petition as brought against Respondent King is dismissed with prejudice.

This order may be incorporated on the docket by reference pursuant to M.R. Civ. P. 79(a).

Date: _____

_____
Wayne R. Douglas
Associate Justice