IN THE SUPREME COURT OF IOWA
Supreme Court No. 25-1463
Polk County No. PCCE090014

CHEYANNE HARRIS,
Applicant-Appellee,

vs.

STATE OF IOWA,
Respondent-Appellant.

APPEAL FROM THE IOWA DISTRICT COURT
IN AND FOR POLK COUNTY
THE HONORABLE JUDGE DAVID NELMARK

RESPONSE TO MOTION FOR QUORUM REVIEW OF DENIAL OF APPLICATION FOR INTERLOCUTORY APPEAL

THOMAS STORY
RITA BETTIS AUSTEN
SHEFALI AURORA
ACLU of Iowa Foundation, Inc.
505 Fifth Ave., Ste. 808
Des Moines, IA 50309–2317
Telephone: (515) 243-3988
Fax: (515) 243-8506
Email: thomas.story@aclu-ia.org
Email: rita.bettis@aclu-ia.org
Email: shefali.aurora@aclu-ia.org

LEAH PATTON
Patton Legal Services, LLC
P.O. Box 8981
Ames, IA 50014
Telephone: (515) 686-6267
Fax: (515) 598-7876
Email: leah@pattonlegalservices.com

ATTORNEYS FOR APPLICANT-APPELLEE

INTRODUCTION

The State seeks interlocutory review of orders applying an established exception to mootness and compelling the State to produce discovery it had agreed to provide and has now actually provided subject to a protective order. As a justice of this Court has already concluded, these are not exceptional circumstances worthy of interlocutory appeal.

And yet Cheyanne's case, challenging a process that imposes discipline even when guilt is less-likely-than-not, *is* exceptionally worthy of review by this Court. The district court's orders ensure that when that review occurs there is a fulsome factual record on appeal. Unfortunately, the State is so reluctant to defend its practices that it has adopted a strategy of granting limited relief to "moot" any case that presents it persuasively. This strategy is flawed, and the State's Motion for Quorum Review, as was its underlying Application for Interlocutory Appeal, is backed by nothing but hyperbole. While Cheyanne looks forward to presenting her case to this Court at the appropriate time, the State's application should be denied.

ARGUMENT

Prior to the State's Application, this matter was set for a half-day, non-jury trial. Discovery requests had been served, received, and a protective order issued governing the sole document over which the State asserted confidentiality protection. No further discovery requests were pending. The parties were working

toward a streamlined presentation of evidence and arguments at trial. The trial was to resolve whether the State's revocation of Cheyanne's earned time under the some evidence burden of proof, based on what it now concedes was a false positive urine drug test and despite her admitted innocence, violated her constitutional right to procedural due process. The trial will allow the factfinder to receive appropriate evidence to make the findings necessary to reach a holding in a procedural due process challenge; including Cheyanne's interest, the risk of erroneous deprivation in the challenged procedure and the value of an alternative burden of proof, and any administrative burden on the State in an alternative burden of proof. *See Mathews v. Eldridge*, 424 U.S. 319, 335 (1976); *see also Carillo v. Fabian*, 701 N.W.2d 763, 776 (Minn. 2005) (applying *Mathews* test and concluding "that the 'some evidence' standard is inappropriate for use by the DOC at the fact-finding level"). In short, contrary to the State's Motion, the trial will not be "advisory," there has been no "fishing expedition," nor an effort to "vindicate the rights of non-parties" or present a "quasi-class action." (Motion for Quorum Review, at 3). The State's rhetorical flourish in inventing these "significant questions of public concern," (*id.*), amounts to nothing but hot air that problematically fails to provide the Court with an accurate summary of what is at issue. This is all in service of the State's ongoing efforts to delay a decision on the merits that is long overdue. *See Dorman v. Credit Reference & Reporting Co.*, 241 N.W. 436, 441 (Iowa 1932) ("It

is not the policy of the law to permit either party to a controversy to prolong litigation or delay the course of justice by prosecuting an appeal from every interlocutory ruling or order of the trial court.").

Objectively, the two interlocutory orders at issue are not extraordinary. The first is an order compelling discovery responses. Quite simply, the motion was granted because discovery responses were past due, and no motion for stay or protective order had been filed. (Order Granting Motion to Compel, at 2 (D0060) [hereinafter, "MTC Order"] ("The Motion notes that the State has provided no discovery responses . . . and that the responses are past due. . . . [T]he State does not refute the assertion that it has not provided discovery responses. . . . The Court finds that the discovery requests were proper and the State has not timely responded.")). *See* Iowa R. Civ. P. 1.517(1)(*b*)(2) (authorizing motion to compel for failure to timely respond to discovery request). At the time the responses were due, the State had not asked for relief from its obligations due to mootness, expanding the administrative record, confidentiality, or any other claim it asks this Court to consider now. To the contrary, it had represented to the Court that it was "currently working on the State's Responses to this discovery and intends to respond to same." (Resistance to Motion to Compel Discovery Responses, at 1 (D0027)). While the drama of the State's will-it/won't-it response narrative is interesting, and its reference to "other inmates' protected medical and substance

abuse information" striking, (Motion for Quorum Review, at 7), it is all background noise that has nothing to do with *why* the motion to compel was granted. (Order Denying Motion to Reconsider, at 1 (D0079) ("The Court simply held that the discovery responses were not timely.")). Neither does it have anything to do with what happened next, as, since the Order Granting the Motion to Compel, the State has, indeed, responded to discovery, including exchanging the *sole* record over which it has asserted confidentiality (which has been done on an attorneys' eyes only basis pursuant to the protective order the State later requested), and not including any protected medical or substance abuse information. There is simply nothing left for this Court to *do* with this Order. *See Banco Mortg. Co. v. Steil*, 351 N.W.2d 784, 787 (Iowa 1984) (emphasizing interlocutory appeal must only be granted in "exceptional situations," usually those involving a "controlling issue of law as to which there is a substantial basis for a difference of opinion" where resolution "will materially advance the progress of the litigation").

The second interlocutory order is the ruling denying summary judgment. The State had expunged the discipline it previously imposed on Cheyanne and moved for summary judgment on mootness grounds. The district court, following numerous cases from this Court on the same or substantially similar facts, denied the motion by applying the public interest exception to mootness. (Ruling on Motion for Summary Judgment, at 5 (D0068) [hereinafter, "MSJ Ruling"]). *See*

Maghee v. State, 773 N.W.2d 228, 235 (Iowa 2009)*; Rhiner v. State*, 703 N.W.2d 174, 177 (Iowa 2005); *In re M.T.*, 625 N.W.2d 702, 705 (Iowa 2001); *Roth v. Reagen*, 722 N.W.2d 464, 466 (Iowa 1988); *Wilson v. Farrier*, 372 N.W.2d 499, 501 (Iowa 1985). Alternatively, the district court noted, this case would likely present the circumstances necessary for application of the voluntary cessation doctrine. (MSJ Ruling at 4, n. 2). *See, e.g.*, *Burns v. PA Dept. of Correction*, 544 F.3d 279, 284 (3d Cir. 2008); *Whitmore v. Hill*, 456 Fed. Appx. 726, 729 (10th Cir. 2012); *Stano v. Pryor*, 372 P.3d 427, 429 (Kan. Ct. App. 2016). Unless this Court were to take up the case to adopt this alternative reasoning—unnecessary given the strength and applicability of its precedent on the public interest exception—once again, there is precious little "helpful guidance" this Court might offer at this stage of the case. *See Mason City Production Credit Ass'n v. Van Duzer*, 376 N.W.2d 882, 887 (Iowa 1985) ("Piecemeal appeals often contribute little more to the judicial process than additional expense and delay.").

Absent interlocutory appeal, the next step is a trial, following which the district court will decide, with all factual findings necessary to do so, whether the State's revocation of Cheyanne's earned time was in violation of state or federal constitutional guarantees of procedural due process. There would then presumably be an appeal which will present this Court with a more complete record in which to review this critically important constitutional issue. The State is not being asked to

"defend an advisory trial on far-ranging constitutional and statutory issues." (Motion for Quorum Review, at 7). It is very well aware of the basic issue in this case and the arguments presented. The path is not "uncharted," (Motion for Quorum Review, at 8); it is controlled by the precedent Cheyanne challenges, and her reasons for doing so are thoroughly laid out in the Amended Application for Postconviction Relief and most recently in her Resistance to Application for Interlocutory Appeal at pages 19 through 25.[1]

Finally, despite it being one of the three "significant questions of public concern," the State never again discusses what it means by the question of whether Cheyanne, as an applicant for postconviction relief, "may vindicate the rights of non-parties" and "turn[] a postconviction relief proceeding into a quasi-class action." (Motion for Quorum Review, at 3). The relief Cheyanne requests is an order on the constitutionality of the injury she sustained; she does not seek an

[1] Perhaps the State's aversion to walking this path has more to do with its fear of the ultimate outcome of Cheyanne's case. But it has nothing to fear from a constitutional prison disciplinary system. Indeed, the federal Bureau of Prisons employs a "greater weight of the evidence" burden of proof instead of the some evidence burden, *see* 28 C.F.R. 541.8(f), and other states have abandoned some evidence. *See Carillo*, 701 N.W.2d at 776; *LaFaso v. Patrissi*, 633 A.2d 695, 697–70 (Vt. 1993). A state prison disciplinary system which uses a more reliable fact-finding process will reduce wrongful imposition of discipline, and thereby serve significant state fiscal interests in allowing people to benefit from the accrual of earned time that the legislature has already made a policy determination is appropriate. And as a matter of law, it is always in the state's interest to follow the constitution. *See D.M. ex rel Bao Xiong v. Minn. State High Sch. League*, 917 F.3d 994, 1004 (8th Cir. 2019) ("The public is served by the preservation of constitutional rights.") (citation omitted).

injunction or declaratory judgment, and while she seeks to introduce relevant evidence of the underlying facts provided by other witnesses and an expert, these individuals are not, "quasi" or otherwise, a party to her case. She pursues the same mechanism for obtaining this Court's review of the some evidence burden of proof as the incarcerated individual whose case resulted in it. *See Backstrom v. Iowa Dist. Ct. for Jones Cty.*, 508 N.W.2d 705, 707 (Iowa 1993). In a way, Cheyanne does seek to "vindicate the rights of non-parties" by obtaining a court opinion on an issue of constitutional concern and setting precedent on which others can then rely, but if this is what the State means, then its objection is not with Cheyanne or the scope of postconviction relief proceedings, but with the basic function of a common law system.

CONCLUSION

All involved want the Iowa Supreme Court to hear this case. The question is when. Rather than taking it up now, on a meritless objection to a discovery order and an appeal of interlocutory ruling on mootness made on unchallenged precedent, the Court should take it when the record is full and a final judgment made. Then, if the State still wants to assert these earlier claims, it may, but Cheyanne's case would not be unduly delayed.

Accordingly, the Applicant respectfully requests this Court, should it review the State's Application for Interlocutory Appeal in quorum, affirm its prior Order

and deny the State's Application for Interlocutory Appeal, granting all such other and further relief as it deems just.

Respectfully submitted,

/s/ Thomas D. Story
Thomas D. Story, AT0013130
Rita Bettis Austen, AT0011558
Shefali Aurora, AT0012874
ACLU of Iowa Foundation, Inc.
505 Fifth Ave., Ste. 808
Des Moines, IA 50309–2317
Telephone: (515) 243-3988
Fax: (515) 243-8506
Email: thomas.story@aclu-ia.org
Email: rita.bettis@aclu-ia.org
Email: shefali.aurora@aclu-ia.org

Leah Patton, AT0006022
Patton Legal Services, LLC
P.O. Box 8981
Ames, IA 50014
Telephone: (515) 686-6267
Fax: (515) 598-7876
Email: leah@pattonlegalservices.com

ATTORNEYS FOR APPLICANT-APPELLEE

CERTIFICATE OF COMPLIANCE

This resistance complies with the typeface and type-volume limitation of Iowa R. App. P. 6.903(1)(*d*) and 6.903(1)(*g*)(1) or (2) because this resistance has been prepared in a proportionally spaced typeface using Times New Roman in size 14.

CERTIFICATE OF FILING AND SERVICE

The undersigned certifies that on October 10, 2025, this resistance was electronically filed with the Clerk of the Supreme Court and served upon counsel of record for all parties to this appeal using EDMS.

/s/ Thomas D. Story
Thomas D. Story