

July 9th, 2020

Governor Ralph Northam
P.O. Box 1475
Richmond, VA 23218

The Hon. Kelly Thomasson
Secretary of the Commonwealth
1111 East Broad Street, 4th Floor Richmond, Virginia 23219

Sent via email

Re: Request for Relief for Matthew Rushin

Dear Governor Northam and Secretary Thomasson:

The Autistic Self Advocacy Network and the Autistic Women & Nonbinary Network write to express our concern regarding the case of Matthew Rushin, a Black autistic man who is incarcerated following a serious driving collision in 2018. As the leading national organizations fighting for the civil rights of autistic and other disabled people, we are all too familiar with the racism and ableism faced by disabled people of color in the criminal legal system. We believe that, like many autistic people of color who have interacted with the criminal legal system, Mr. Rushin may not have received the supports he needed during the process to ensure that he understood the impact of his plea. We also are concerned about Mr. Rushin's safety and ability to access needed medical care while in prison - a problem faced by many autistic people in prison. Although we recognize that the collision caused very serious injuries to others, we believe that access to appropriate supports and any necessary medical treatment is critical to every person who interacts with the criminal legal system, including people whose actions have caused harm. We believe that a transformative justice process could ensure justice for the people harmed as well as for Mr. Rushin. We urge Governor Northam and other elected officials to take a close look at Mr. Rushin's situation, as well as to pursue broad criminal legal reforms to ensure that people with disabilities in Virginia have equal access to justice.

In 2018, Matthew Rushin was driving on a rainy night. He collided with another car and then drove away, before attempting to turn around and return to the site of the initial collision. At that

point, he made a u-turn and drove into oncoming traffic, where he collided with three other cars. Following the accident, Mr. Rushin stated that he wished he was dead. While police who responded to the scene claimed that Mr. Rushin had stated he was trying to attempt suicide, Mr. Rushin denies this and claims that the collision was unintentional.

Nevertheless, the Commonwealth's Attorney charged Mr. Rushin with aggravated malicious wounding - a charge that requires intent to harm others - and offered a plea bargain that reduced the charge only to simple malicious wounding, which still requires such intent. After accepting the plea bargain, Mr. Rushin has continued to state that the collision was unintentional. At the sentencing hearing, even Mr. Rushin's attorney continued to dispute the prosecution's claim that the collision was intentional. Mr. Rushin was sentenced to fifty years, in excess of the sentencing guidelines for the charges to which he pled, with forty of those years suspended. The result is that he will spend up to ten years in prison, followed by near lifelong supervision by the criminal legal system. Although we have not had access to the evidence the prosecution intended to present, we know that structural bias in the criminal legal system leads to significant disparities in both charging and sentencing with respect to autistic people of color and we believe that racism and ableism influenced both the severity of charges against Mr. Rushin and the severity of his sentence.

Additionally, autistic defendants in criminal cases, including defendants who've been deemed competent to stand trial, still often need additional support in order to understand and participate in the process - including support to understand the impact of a guilty plea. Autistic defendants may also need additional support in order to help their attorney identify relevant exculpatory evidence. This could include information about communication impairments common in autism, which could help a jury understand apparent contradictions between a defendant's statement to police and later statements. Based on our evaluation of the records that we have seen, we are concerned that Mr. Rushin did not have access to adequate supports. In the absence of those supports, the validity of his conviction is suspect.

Moreover, our community's experience with prolonged incarceration and out-of-court supervision has revealed significant disparities. Prisons are ill equipped to accommodate autistic people's mental health and co-occurring medical needs, and place autistic people at high risk for violence. Our understanding is that Mr. Rushin has struggled to access needed medical care in prison and has experienced a dramatic exacerbation of his mental health needs. We have also seen numerous cases in which autistic people on probation or parole were reincarcerated not because they were a danger to others but rather due to their disability-related inability to understand or follow the expectations of officers. We recognize that prisons cause harm to people with and without disabilities, especially disabled people of color, who are overrepresented

in prisons. While we recognize that these issues are systemic, we believe that the Governor has an opportunity to review this specific case and effect a more just outcome.

We also recognize that several people were seriously harmed in the 2018 traffic collision, and in particular that one man, George Cusick, acquired a traumatic brain injury and other disabilities and that he now has significant cognitive disabilities and requires 24/7 care. He has been confined to a nursing home. Mr. Cusick is now also a person with a significant disability and we view confinement in a nursing home as another form of incarceration, carried out by a disability services system that prioritizes institutional care over community-based care. We do not, however, see a conflict between our concerns about the criminal legal system's fairness to Black autistic defendants in criminal cases and our recognition of the harm that Mr. Rushin has caused. Matthew Rushin and George Cusick both deserve to be home with their families in the community, receiving services and supports that recognize their autonomy, support their right to self-determination, and affirm their human dignity.

Therefore, based on the information we have reviewed, we urge the Governor to review Mr. Rushin's case critically and pursue options to provide a resolution grounded in transformative justice rather than incarceration. Furthermore, many of the issues in this case are systemic. We urge Governor Northam and other elected officials in Virginia to include disability concerns in all policy discussions regarding policing, prison, and the criminal legal system, including: ensuring adequate resources and training for public defenders assigned to represent people with disabilities, greater education of judges and prosecutors on diversion options for people with disabilities, investment in and exploration of alternatives to imprisonment, and ending mass incarceration in Virginia, with particular attention to the impact of incarceration on people of color with disabilities. We urge policymakers to work with impacted communities to ensure that diversion options and alternatives to incarceration are consistent with transformative justice and do not merely replicate carceral and institutional models.

We appreciate your close attention to this matter. For more information, please do not hesitate to contact either Sam Crane, ASAN's Legal Director, at scrane@autisticadvocacy.org or Lydia Brown, AWN's Director of Policy, Advocacy, & External Affairs, at lbrown@awnnetwork.org.

Sincerely,

Sam Crane, Esq.

Lydia X. Z. Brown, Esq.