

**IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT**

DOCKET NO. _____

**COMMONWEALTH OF PENNSYLVANIA
Appellee**

v.

**KELLY ALDA WOLFE
Petitioner**

APPLICATION FOR EXTRAORDINARY RELIEF

Application for Extraordinary Relief Pursuant to Kings Bench Powers from Order dated April 15, 2020, from the COURT OF COMMON PLEAS OF THE 51ST JUDICIAL DISTRICT OF PENNSYLVANIA – ADAMS COUNTY BRANCH denying Petitioner’s request to be released/furloughed from confinement at the State Correctional Institution in Muncy, PA, (SCI – Muncy) [REDACTED] [REDACTED] in light of the current health crisis. Petitioner’s incarceration is pursuant to a sentence imposed on December 9, 2019, by the Adams County Court of Common Pleas, Criminal Division.

**The Honorable, Shawn C. Wagner Presiding
NO. CP-21-CR-0230-2019**

**Scott M. Jocken, Esquire
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Attached as Exhibit "A."

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STATEMENT OF JURISDICTION

The Supreme Court of Pennsylvania has jurisdiction to assume plenary jurisdiction of such matter at any stage thereof and enter a final order or otherwise cause right and justice to be done 42 Pa. C.S.A § 726 (Extraordinary Jurisdiction).

**APPLICATION FOR EXTRAORDINARY RELIEF PURSUANT TO Pa.
R.A.P. 3309**

TO THE HONORABLE JUSTICES OF THE SUPREME COURT:

NOW this 17th day of April, 2020, comes Petitioner, Kelly Alda Wolfe, by and through her attorney, Scott M. Jocken, Esquire, who respectfully requests the Honorable Justices of the Supreme Court of Pennsylvania grant this Application for Extraordinary Relief.

ISSUE PRESENTED FOR REVIEW

Pursuant to 42 Pa. C.S.A. § 726, which empowers the Pennsylvania Supreme Court to assume jurisdiction over matters of immediate public importance, Petitioner seeks review of the April 15, 2020, Order issued by the Adams County Court of Common Pleas, denying Petitioner's request to modify the sentence it imposed on December 9, 2019, to release her from confinement to serve the remainder of her sentence on House Arrest, or in the alternative, to furlough her for the duration of the current health crisis. *See also Commonwealth ex rel. Parrish v. Cliff, 451 Pa. 427 (1973).*

APPLICATION FOR EXTRAORDINARY RELIEF

AND NOW, comes Petitioner, Kelly Alda Wolfe, by and through her attorney, Scott M. Jocken, Esquire, pursuant to Pa. R.A.P. 3309 respectfully submits this Application for Extraordinary Relief and avers the following in support thereof:

1. Petitioner was charged at the above-captioned docket with one (1) count of Aggravated Assault by Vehicle While Driving Under the Influence (F2); one (1) count of Aggravated Assault by Vehicle (F3); one (1) count of DUI: General Impairment – 1st Offense (M); one (1) count of DUI: High Rate of Alcohol – 1st Offense (M); as well as three (3) Summary offenses alleging violations of the Pennsylvania Motor Vehicle Code. These charges stemmed from her involvement in a two-vehicle accident that occurred on November 2, 2018, in Adams County, Commonwealth of Pennsylvania, that ultimately caused serious bodily injury to both the passenger of the opposing vehicle as well as Petitioner. A subsequent forensic examination of Petitioner’s blood indicated that her Blood Alcohol Content (BAC) was .124% within two hours of her operating her vehicle.

2. As a result of the accident, Petitioner was initially [REDACTED]

[REDACTED]

[REDACTED]

3. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Superior Mesenteric Artery (SMA).

[REDACTED]

[REDACTED]

4. [Redacted]

[Redacted]

[Redacted]

[Redacted]

5. [Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

6. [Redacted]

[Redacted]

[Redacted]

[Redacted]

7. [Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[REDACTED]

[REDACTED]

8. On June 10, 2019, Petitioner appeared before the Honorable Shawn C. Wagner, Judge, and entered an open guilty plea to one (1) count of Aggravated Assault by Vehicle While Driving Under the Influence (F2), a violation of Section 3735.1 of the Pennsylvania Motor Vehicle Code.

9. On December 9, 2019, Petitioner appeared before Judge Wagner and was subsequently sentenced to serve a period of incarceration of not less than nine (9) months nor more than sixty (60) months in a State Correctional Institution (SCI). Petitioner was placed on furlough with the understanding that she would be required to appear at a later date to be taken into custody and transported directly to the State Correctional Institution located in Muncy, PA, (SCI – Muncy) where her prison sentence would commence.

10. On January 24, 2020, Judge Wagner issued an Order directing Petitioner to appear at the Adams County Courthouse on February 7, 2020, at 7:45 a.m., to be taken into custody and transported to SCI – Muncy to begin her prison sentence.

11. On February 7, 2020, at 7:45 a.m., Petitioner appeared at the Adams County Courthouse as directed by the Court. Petitioner was taken into custody by

the Adam's County Sheriff's Department and was immediately transported to SCI – Muncy where she has been incarcerated since that date.¹

12. In assessing claims that conditions of confinement are cruel and unusual, courts must bear in mind that their inquiries “spring from constitutional requirements and that their judicial answers to them must reflect that fact rather than court’s idea of how best to operate a detention facility.” *Jackson v. Hendrick*, 509 Pa. 456, 465 (1983), citing *Rhodes v. Chapman*, 452 U.S. 337, 351 (1981), quoting *Bell v. Wolfish*, 441 U.S. 520, 539 (1979).

13. Interpretation of the constitutional limitation upon cruel and unusual punishment has been done in a flexible and dynamic manner and has extended the Amendment’s reach beyond the barbarous physical punishments at issue the Court’s earliest cases. See *Jackson at 466*.

14. The Eighth Amendment prohibits punishments which involve the unnecessary and wanton infliction of pain or are grossly disproportionate to the severity of the crime(s). *Id.*

15. Among "unnecessary and wanton" inflictions of pain are those that are "totally without penological justification." *Id.*

¹ On February 28, 2020, Petitioner’s previous counsel filed a Motion to Correct Sentencing Order requesting that Petitioner’s RRRI eligibility date be included in the previous Sentencing Order. On March 3, 2020, the Court granted this request and amended the previous Sentencing Order from December 9, 2019, to include that Petitioner was RRRI eligible with a RRRI minimum sentence of 6 months and 22 days.

16. In determining whether challenged prison conditions are violative of the Eighth amendment, a totality of the circumstances test is to be used. *Id.* at 469.

17. Under this approach a court must determine whether prison conditions, taken as a whole, either inflict unnecessary or wanton pain or amount to grossly disproportionate punishment for the crime for which the prisoner has been incarcerated. *Id.*

18. In making such an inquiry it is appropriate to consider food, sanitation and medical care, violence, time spent in cell and opportunity for outside activity, and the general state of repair of the facility. *Id.* at 469-470.

19. Petitioner is a 39-year-old adult individual.

20. Aside from the conviction at the above-captioned docket, Petitioner has no prior criminal record.

21. Petitioner had resided in Westminster, Maryland, where she and her husband lived together for the past twelve (12) years previous to the date of her incarceration.

22. Petitioner was most recently employed as a Surgical Coordinator at the Carroll County Eye Surgery Center where she worked for seven (7) years just prior to the underlying incident which resulted in her charges at the above-captioned docket.

23. As is evidenced by the lack of a prior criminal record, Petitioner poses no threat to the community.

24. As a result of the accident [REDACTED], Petitioner is [REDACTED] unable to operate a motor vehicle.

25. Petitioner is not a flight risk as is evidenced by her consistent appearances at all court dates related to the above-captioned matter when directed by the court to be present. This was especially demonstrated when Petitioner voluntarily appeared on February 7, 2020, at which time she was taken into custody to begin her state prison sentence.

26. On March 29, 2020, in accordance with a statewide inmate quarantine, which was issued by the Pennsylvania Department of Corrections in response to the health crisis caused by the highly contagious, rapidly spreading Novel Coronavirus Disease 2019 (COVID-19), SCI – Muncy quarantined all inmates, including Petitioner.

27. Despite the inmate quarantine, Petitioner is still subjected to close contact on a daily basis with various medical staff, doctors, and prison staff [REDACTED] [REDACTED] These individuals also have close contact with inmates other than Petitioner.

28. [REDACTED]
[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

29. Petitioner's [REDACTED]
[REDACTED], increase her susceptibility to succumbing to possible infection of COVID-19 should she contract the virus.

30. SCI – Muncy is barely able to address [REDACTED]
[REDACTED] let alone would be capable to provide proper medical resources and adequate care in the event of Petitioner's exposure to COVID-19.

31. The Department of Health and Human Services - Centers for Disease Control and Prevention (CDC) has stated that individuals who have serious chronic medical conditions, [REDACTED], as well as individuals who suffer from weakened immune systems are at a higher risk to experience severe complications such as multi-organ failure and in some cases death if infected by COVID-19.

32. On April 9, 2020, a Petition for Extraordinary Relief was filed with the Adams County Court of Common Pleas which asserted that the lower court retained jurisdiction per this Honorable Court's Orders dated March 16, 2020, and

April 1, 2020, which vested broad authority to the county President Judges to undertake appropriate measures to safeguard the health and safety of members of the public. As such, Petitioner requested the Adams County Court of Common Pleas to modify the sentence it had imposed on December 9, 2019, allowing her to be released from confinement to serve the remainder of her prison sentence on House Arrest with Electronic Monitoring, or in the alternative, furlough Petitioner for an indefinite period, allowing for the passing of the current health crisis, at which time Petitioner would return to SCI – Muncy to continue serving her prison sentence.

33. On April 15, 2020, Judge, Shawn C. Wagner issued an Order denying Petitioner’s request stating that the Adams County Court of Common Pleas no longer retained jurisdiction over this matter. Rather, the lower court stated that jurisdiction was maintained by the Commonwealth of Pennsylvania, Department of Corrections. (See Petitioner’s Exhibit “A”).

34. At the time of the filing of this Petition, there are 27,735 confirmed COVID-19 cases in the Commonwealth of Pennsylvania including 707 that have resulted in death.

35. At the time of the filing of this Petition, the Department of Corrections has reported that statewide twenty-seven (27) state prison employees and nineteen (19) inmates have tested positive for COVID-19. Furthermore, according to the

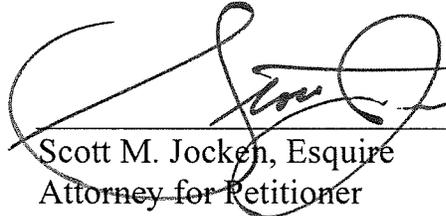
statistics provided by the Department of Corrections, one (1) inmate has died after contracting COVID-19.

36. The continued incarceration of Petitioner under the totality of the circumstances [REDACTED] as they relate to the current health crisis constitutes cruel and unusual punishment under Amendment VIII of the United States Constitution and Article I, § 13 of the Pennsylvania Constitution. Based on the above-mentioned circumstances, Petitioner's confinement rises to the level of an unnecessary and wanton infliction of pain as she may be subjected to the highly-contagious, rapidly spreading COVID-19 which [REDACTED] could result in serious illness and possible death – outcomes that are grossly disproportionate to the severity of the crime of which she has been convicted.

WHEREFORE, pursuant to the jurisdictional powers bestowed upon this Honorable Court under 42 Pa. C.S. § 726, as it relates to matters of immediate public importance, Petitioner respectfully requests this Honorable Court exercise its Kings Bench Powers and grant her Application for Extraordinary Relief by modifying her sentence to release her from confinement at SCI – Muncy and serve the remainder of her sentence on House Arrest with Electronic Monitoring, or in the alternative, to modify sentence to furlough Petitioner for an indefinite period, allowing for the passing of the current health crisis, at which time Petitioner would

return to SCI – Muncy to serve the remainder of her prison sentence. Petitioner’s continued incarceration under the totality of the circumstances would constitute cruel and unusual punishment which could result in serious illness and possible death should she contract the highly contagious, rampantly spreading COVID-19.

Respectfully submitted,
MOONEY LAW

A handwritten signature in black ink, appearing to read "Scott M. Jochen", is written over a horizontal line. The signature is stylized and somewhat cursive.

Scott M. Jochen, Esquire
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IN THE COURT OF COMMON PLEAS OF ADAMS COUNTY, PENNSYLVANIA
CRIMINAL DIVISION

COMMONWEALTH OF PENNSYLVANIA,

NO. CP-01-CR-230-2019

vs.

Kelly Alda Wolfe,

Defendant.

Honorable Shawn C. Wagner

ORDER OF COURT

AND NOW, this 15th day of April, 2020, upon consideration of the within Petition it is ordered that Petitioner's request to modify sentence to furlough Petitioner for an indefinite period, ~~allowing for the passing of the current health crisis, at which time Petitioner would return to SCI - Muncy to serve the remainder of her prison sentence is~~

~~hereby GRANTED.~~ *is hereby denied as this Court does not have jurisdiction in this matter. Petitioner is subject to the jurisdiction of the Commonwealth of Pennsylvania, Department of Corrections.*

BY THE COURT,



Shawn. C. Wagner, J

Distribution List: Scott M. Jocken, 18 E. Middle Street, Gettysburg, PA 17325
Adams County District Attorney's Office
DOC
SCI - Muncy