

IN THE SUPREME COURT OF PENNSYLVANIA

NO. 81 MM 2020

COMMONWEALTH OF PENNSYLVANIA,
Respondent

v.

KELLY ALDA WOLFE,
Petitioner

COMMONWEALTH'S ANSWER TO PETITIONER'S APPLICATION
FOR EXTRAORDINARY RELIEF

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DATE: April 21, 2020

I. INTRODUCTION

Petitioner, Kelly Alda Wolfe, asks this Honorable Court to exercise jurisdiction in this matter under King's Bench powers in order to grant her Extraordinary Relief. The requested form of relief is a modification of sentence allowing her to complete her sentence on house arrest, or in the alternative, an indefinite furlough. The requested relief is based upon a claim of a violation of her rights under the Eighth Amendment to United States Constitution, which precludes cruel and unusual punishment. Petitioner claims that the current public health crisis posed by COVID-19, in combination with her incarcerated status in SCI-Muncy and her personal health issues, constitutes cruel and unusual punishment sufficient to warrant relief. Petitioner has previously raised this claim in front of the trial court, where relief was denied on April 15, 2020. The Commonwealth opposed relief in the Court of Common Pleas, and remains opposed instantly. For the reasons that follow, Petitioner's claim is insufficient for relief under an Eighth Amendment analysis.

II. PETITIONER'S CLAIM AS TO VIOLATIONS OF EIGHTH AMENDMENT RIGHTS MUST FAIL AS THE CLAIM IS INSUFFICIENT TO WARRANT RELIEF

Petitioner requests that this Honorable Court exercise extraordinary jurisdiction in this matter and modify her sentence from total confinement at SCI-Muncy to a period of house arrest, or, in the alternative, grant an indefinite furlough until the COVID-19 threat has subsided. In support of this request, petitioner suggests that the Eighth Amendment to the Constitution of the United States protects her from a potential outbreak of COVID-19 within SCI-Muncy. For the reasons that follow, petitioner's argument does not meet the Constitutional standard for relief under the Eighth Amendment, and Extraordinary Relief should not be granted on that basis.

The requirements for a successful claim under the Eighth Amendment to the Constitution of the United States requires petitioner to plead and prove both objective and subjective elements. *Helling v. McKinney*, 509 U.S. 25 (1993). The objective factor, as described by the *Helling* Court, requires petitioner to show that she, herself, is being exposed to an unreasonable condition. *Id.* at 35. This determination “requires more than a scientific and statistical inquiry into the

seriousness of the potential harm and the likelihood that such an injury to health will actually be caused by exposure to [COVID-19]" *Id.* at 36. The Court continues: "[i]t also requires a court to assess whether society considers the risk that the prisoner complains of to be so grave that it violates contemporary standards of decency to expose *anyone* unwillingly to such a risk." *Id.* (emphasis in original).

Certainly, petitioner does not allege that conditions of confinement are so seriously dangerous that *all* inmates should be released in response to the current health concerns. Societal standards of decency do not require that the most serious offenders be released in response to the current health concerns. Petitioner does not allege that her conditions of confinement would demand relief for anyone in her position. Indeed, her Petition suggests otherwise in noting that the relief is appropriate here due to the potential health concerns being "grossly disproportionate to the severity of [her] crime." Petition, at 11. Petitioner therefore cannot satisfy the objective part of a cognizable Eighth Amendment claim.

Likewise, petitioner cannot satisfy the subjective portion of a cognizable Eighth Amendment claim. The *Helling* Court described the

subjective portion to be an assessment of “deliberate indifference” on the part of prison officials to address health concerns that “should be determined in light of prison authorities’ current attitude and conduct” in addressing that concern. *Helling*, 509 U.S. at 36.

Instantly, petitioner has acknowledged steps taken by SCI-Muncy to mitigate the risk posed by COVID-19. In her Petition, petitioner acknowledges that inmates have been quarantined in response to the current health concerns. Petition, at 8. Other steps may have been taken to protect petitioner. However, any such steps are unknown to your undersigned at this time. Regardless, petitioner has been removed from interaction with other inmates in response to health concerns. Although she has contact with medical staff and prison staff, such interaction is typical with interaction with medical staff within or without a state correctional institution. Such actions demonstrates anything but “deliberate indifference.” In light of that action, petitioner cannot satisfy the deliberate indifference standard set forth by *Helling*.

Pennsylvania Appellate Courts have reiterated Eighth Amendment standards. In *Tindell v. Dep’t. of Corrections*, citing *Helling*, the Commonwealth Court required that a petitioner must

allege a “condition of confinement that is sure to or very likely to pose an unreasonable risk of serious damage to future health.” *Tindell v. Dep’t. of Corrections*, 87 A.3d 1029, at 1039 (Pa. Cmwlth 2014). The *Tindell* court further explained that in order to establish that risk “where the claim is based upon harm to future health, an inmate must allege both that the inmate has been exposed to an unreasonable risk of serious damage to future health and that it would violate contemporary standards of decency to expose *anyone* unwillingly to such a risk.” *Id.* (emphasis added). Petitioner does not allege that exposing the most serious offenders would amount to an unreasonable risk. The Eighth Amendment analysis requires that exposing anyone to the claimed unreasonable risk would violate standards of decency. Again, petitioner cannot satisfy the objective portion of the test.

The *Tindell* court also requires a successful Eighth Amendment claim include “acts or omissions that evidence deliberate indifference on the part of prison officials.” *Id.* The *Tindell* court explained further that a successful showing of deliberate indifference required a state of mind in prison officials akin to “criminal recklessness.” *Id.*, citing *Farmer v. Brennan*, 511 U.S. 825, at 837 (1994). The *TIndell* court further

explained that “prison officials who respond reasonably to the alleged risk cannot be found liable under the Eighth Amendment, even where the measures taken by prison officials failed to abate the substantial risk.” *Id.* Instantly, petitioner has acknowledged quarantine actions taken by SCI-Muncy to mitigate her risk. This action does not rise to the level of factual scenarios where successful Eighth Amendment claims have been found.¹ Petitioner therefore cannot satisfy the subjective factor analysis of an Eighth Amendment claim.

Regardless of the failure of petitioner to satisfy the prongs of the Eighth Amendment analysis, the conditions under which petitioner is currently being held during this public health concern are not entirely different from those she would experience if she were released.

Petitioner is being separated from contact with outside individuals to the extent possible. If she was released to her home, she would come into contact with family members who may have since been exposed to COVID-19. She may even have lesser access to private health care than

¹ The *Tindell* court cited numerous examples of official behavior which resulted in successful Eighth Amendment claims, including where a prison official: (i) knows of a prisoner’s need for medical treatment but intentionally refuses to provide it; (ii) delays necessary medical treatment based on a non-medical reason; (iii) prevents a prisoner from receiving needed or recommended medical treatment; or (iv) persists in a particular course of treatment in the face of resultant pain and risk of permanent injury. *Tindell v. Dep’t. of Corrections*, 87 A.3d 1029, 1039 (Pa. Cmwlth 2014).

she is able to receive at SCI-Muncy. It is respectfully requested that this Honorable Court not utilize extraordinary jurisdiction to grant relief on the basis of petitioner's Eighth Amendment claim.

Respectfully submitted,

/s/ Daniel S. Topper

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April 21, 2020

CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

Respectfully submitted,

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