

IN THE SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT

COMMONWEALTH OF PENNSYLVANIA, :
Petitioner :
 : NO. 14 EM 2015
 :
vs. :
 :
 :
TERRANCE WILLIAMS, :
Respondent :

MOTION FOR LEAVE TO FILE BRIEF *AMICUS CURIAE*

TO THE HONORABLE CHIEF JUSTICE AND JUSTICES OF THE SUPREME COURT:

PENNSYLVANIA DISTRICT ATTORNEYS ASSOCIATION, hereinafter “PDAA,” an interested party, by its President D. PETER JOHNSON, District Attorney of Union County, respectfully requests that this Honorable Court favorably consider this motion for leave to file brief *amicus curiae*, in accordance with Rule of Appellate Procedure 531, in the above-captioned matter and in support thereof avers the following:

1. Terrance Williams, Respondent, was sentenced to death at the conclusion of a trial in the Philadelphia Court of Common Pleas in 1986.
2. March 4, 2015 was the date set for execution of the Respondent.
3. On February 13, 2015 Governor Tom Wolf issued a purported reprieve for Respondent along with declaring a state-wide “moratorium” on the execution of death sentences.
4. On February 18, 2015, Petitioner filed with this Honorable Court an “Emergency Petition for Extraordinary Relief Under King’s Bench Jurisdiction” alleging that the actions of the Governor, in issuing the reprieve, exceeded the authority of the Governor as granted by the Constitution of the Commonwealth of Pennsylvania.

5. On February 20, 2015, Respondent and the Governor each filed an Answer to the emergency petition alleging that the Governor's actions were constitutional.
6. On February 23, 2015, Petitioner filed a petition for leave to respond seeking to rebut the arguments put forth by the Respondent and the Governor.
7. As there is currently no briefing schedule in place, PDAA seeks leave of this Honorable Court to file its brief *amicus curiae* in support of the position of the Petitioner. PDAA submits that the issues before this Honorable Court are of significant interest to district attorneys across the Commonwealth. The brief, attached to this motion, will not delay the ultimate decision in the case and will be of assistance to the Court.

WHEREFORE, the Pennsylvania District Attorneys Association respectfully requests that this Honorable Court grant the leave requested and accept the brief *amicus curiae*.

Respectfully submitted,



PENNSYLVANIA DISTRICT ATTORNEYS ASSOCIATION
By: D. Peter Johnson, Esquire
President
2929 North Front Street
Harrisburg, PA 17110
(717)238-5416
(717)231-3912 FAX
Attorney I.D. No. 41281

Dated: February 25, 2015

CERTIFICATE OF SERVICE

I hereby certify that I am this day serving one copy of the foregoing Motion for leave to file brief *amicus curiae*, with brief attached, upon the person(s) and in the manner indicated below:

*Via the Court's PACFile
electronic case filing system or
U.S. Mail, postage prepaid:*

Hugh J. Burns, Esquire
Philadelphia District Attorney's Office
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Philadelphia, PA 19107
Counsel for Petitioner

Denise J. Smyler, Esquire
Gregory E. Dunlap, Esquire
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AS *AMICUS CURIAE* IN SUPPORT OF EMERGENCY COMMONWEALTH
PETITION OF EXTRAORDINARY RELIEF UNDER KING'S BENCH
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INTEREST OF AMICUS CURIAE

The Pennsylvania District Attorneys Association was established in 1912 to provide uniformity and efficiency in the discharge of duties and functions of Pennsylvania's sixty-seven (67) District Attorneys and their assistants. The Association furthers its purpose through its support of training programs, and by its reporting of legal and legislative developments of importance to Pennsylvania prosecutors and their colleagues within the criminal justice system. The Association operates as a vehicle for the effective exchange of information among its approximately 1,200 members, which primarily include current District Attorneys and their Assistants; former District Attorneys and Assistant District Attorneys; Deputy Attorneys General; Assistant U. S. Attorneys; and Police Chiefs.

The mission of the Pennsylvania District Attorneys Association is to assist the membership in the pursuit of justice and to assist in all matters relating to the execution of their duties, to advocate the position of the Association to the government and citizens of Pennsylvania, to coordinate with other agencies on matters of mutual concern, and to communicate the Association's position to its membership and the public on criminal justice matters. The filing of the within brief is consistent with the Association's mission, and is undertaken to provide a counterpoint to the arguments and opinions set forth by Respondent, the Governor of the Commonwealth of Pennsylvania.

ARGUMENT

THE GOVERNOR HAS EXCEEDED THE AUTHORITY GRANTED TO HIM BY THE CONSTITUTION OF PENNSYLVANIA

Governor Tom Wolf has exceeded the authority granted to him by the Constitution of Pennsylvania. The Governor's authority to grant a reprieve is not an unfettered check on the power of the judiciary nor can it act as an unofficial moratorium.

The Governor's authority to grant reprieves is governed by Article IV, §9 of the Pennsylvania Constitution which provides:

§ 9. Pardoning power; Board of Pardons

(a) In all criminal cases except impeachment the Governor shall have power to remit fines and forfeitures, to grant reprieves, commutation of sentences and pardons; but no pardon shall be granted, nor sentence commuted, except on the recommendation in writing of a majority of the Board of Pardons, and, in the case of a sentence of death or life imprisonment, on the unanimous recommendation in writing of the Board of Pardons, after full hearing in open session, upon due public notice. The recommendation, with the reasons therefor at length, shall be delivered to the Governor and a copy thereof shall be kept on file in the office of the Lieutenant Governor in a docket kept for that purpose.

Unlike pardons and commutations, reprieves do not require a recommendation from the Board of Pardons. Reprieves, however, are not without their own limitations. In

addressing the Governor's authority in this area, the Commonwealth Court of Pennsylvania has stated:

As a matter of law, a "reprieve" is "the postponement of execution of ... a sentence..." It is "ordinarily an act of clemency..." Black's Law Dictionary, 1170 (5th Ed.1979)

Of course, an act of clemency necessarily contemplates an act, not inaction. To exercise the constitutional power of reprieve, which requires no Pardon Board action, the Governor obviously must *grant* the reprieve-normally for a defined purpose or period-rather than adopt the wholly ambiguous posture of doing nothing.

If any governor desires to relieve a defendant from the prospect of execution of sentence, that executive should do so, presumably for an expressed reason and for a defined time period. The executive cannot reserve an option ultimately to describe years of inaction, retroactively, as a reprieve.

Morganelli v. Casey, 646 A.2d 744, 747 (Pa.Cmwlt. 1994)(*en banc*). Thus, any reprieve entered must be for a determinate period of time.

The Governor's reprieve in the Terrance Williams case does not have a determinate period of time. The reprieve states as follows:

NOW THEREFORE, I, Tom Wolf, as Governor of the Commonwealth of Pennsylvania, by virtue of the authority vested in me under the Constitution and the Laws of this Commonwealth, do hereby grant a temporary reprieve of the execution unto Terrance Williams until I have received and reviewed the forthcoming report of the Pennsylvania Task Force and Advisory Committee on Capital Punishment, and any recommendation contained therein are satisfactorily addressed.

(Respondent, Governor Wolf, Exhibit A). The temporary nature of the reprieve is illusory. The Pennsylvania Task Force report was initially due in December of 2013, but was extended to December 14, 2014. The report is still not complete and may not be complete until at least late 2016. (Respondent, Governor Wolf, Exhibit C). This report is hardly “forthcoming.” The report is merely a nonbinding recommendation from an advisory committee, not new legislation. Moreover, the Governor has added the additional condition that recommendations must be “satisfactorily addressed.” This means that if the General Assembly chooses not to act or acts in a manner inconsistent with the Governor’s position, the reprieve would remain, because the recommendations would not be “satisfactorily addressed.” The Constitution does not give the Governor the ability to usurp the General Assembly when he disagrees with their resolution.

In response to the delay issue presented in *Morganelli*, the General Assembly created clearly defined time limitations for the Governor to act on a death warrant. The law provides:

§ 4302. Issuance of warrant

(a) Time.--

(1) After the receipt of the record pursuant to 42 Pa.C.S. § 9711(i) (relating to sentencing procedure for murder of the first degree), unless a pardon or commutation has been issued, the Governor shall, within 90 days, issue a warrant specifying a day for execution which shall be no later than 60 days after the date the warrant is signed.

(2) If, because of a reprieve or a judicial stay of the execution, the date of execution passes without imposition of the death penalty, unless a pardon or commutation has been issued, the Governor shall, within 30 days after receiving notice of the termination of the reprieve or the judicial stay, reissue a warrant specifying a day for execution which shall be no later than 60 days after the date of reissuance of the warrant.

(b) Secretary.--The warrant shall be directed to the secretary commanding that the subject of the warrant be executed on the day named in the warrant and in the manner prescribed by law.

(c) Failure to timely comply.--If the Governor fails to timely comply with the provisions of this section and a pardon or commutation has not been issued, the secretary shall, within 30 days following the Governor's failure to comply, schedule and carry out the execution no later than 60 days from the date by which the Governor was required to sign the warrant under subsection (a).

61 Pa.C.S.A. §4302. Under the current law, the Governor is forced to act with certain time limits, which his current action circumvents.

Thus, it appears the reprieve is a tool by which the Governor will impose a *de facto* moratorium on the death penalty in Pennsylvania. Regardless of the facts of the case, it appears that the Governor intends to impose a reprieve in each case where he is legally required to sign the death warrant as provided by 61 Pa.C.S.A. §4302. The Governor has expressed his belief, in his Memorandum issued alongside the reprieve, that "Pennsylvania's system is riddled with flaws, making it error prone, expensive, and anything but infallible." *Memorandum*, p. 2. Further, the Governor has concluded:

If we are to continue to administer the death penalty, we must take further steps to ensure that defendants have appropriate counsel at every stage of their prosecution, that the sentence is applied fairly and proportionally, and that we eliminate the risk of executing an innocent. Anything less fails to live up to the requirements of our Constitution, and the goal of equal justice for all rewards which we must continually strive.

Memorandum, p. 4. Thus, the Governor has concluded, despite the language contained in the reprieve, that the Pennsylvania system is flawed and will never match the level of his expectations.

The application of a reprieve to Mr. Williams' case pending the Task Force report is also suspect. Mr. Williams has had his case reviewed at every possible level of review. There is no Court, including this one, which has held that Mr. Williams was entitled to relief. Mr. Williams has simply reached the end of the line and the Governor has a duty to see that the will of the people is fulfilled.

The PDAA's only interest in this case is to see that the Governor's Office does not abuse its constitutional authority, in order to seek *de facto* commutation of all death sentences in Pennsylvania. The Governor has expressed his intention to issue a reprieve in each and every death penalty case that comes before him until the justice system attains the status of infallibility. Contrary to the Respondent's assertion, the facts of the case do matter. The grant of a reprieve must be based on the facts of the particular case. The reprieve fails to identify anything that can be accomplished in Mr.

Williams' case by further delaying its conclusion. Former Chief Justice John P.

Flaherty stated:

At some point litigation must come to an end. The purpose of law is not to provide convicted criminals with the means to escape well-deserved sanctions, but to provide a reasonable opportunity for those who have been wrongly convicted to demonstrate the injustice of their conviction. The current PCRA places time limitations on such claims of error, and in so doing, strikes a reasonable balance between society's need for finality in criminal cases and the convicted person's need to demonstrate that there has been an error in the proceedings that resulted in his conviction.

Commonwealth v. Peterkin, 722 A.2d 638, 643 (Pa. 1998). Those words, when addressing the endless post-conviction litigation, are clearly applicable here.

CONCLUSION

For the foregoing reasons, this Court should grant the Emergency Petition for Extraordinary Relief.

Respectfully submitted,

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PRESIDENT,
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ATTORNEYS ASSOCIATION
Attorney I.D. No. 41281

Date: February 25, 2015

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I, the undersigned authority, hereby certify that this 25th day of February, 2015 a true and correct copy of the within Brief For The Pennsylvania District Attorneys Association As *Amicus Curiae* In Support Of Emergency Commonwealth Petition Of Extraordinary Relief Under King's Bench Jurisdiction was served upon persons and in the manner indicated below. The manner of service satisfies the requirements of Pennsylvania Rule of Appellate Procedure 121.



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Respectfully submitted,

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Date: February 25, 2015

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Philadelphia, PA 19106
*Counsel for Respondent Terrance
Williams*

SUPREME COURT OF PENNSYLVANIA

Commonwealth of Pennsylvania, Petitioner : 14 EM 2015
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PROOF OF SERVICE

I hereby certify that this 25th day of February, 2015, I have served the attached document(s) to the persons on the date(s) and in the manner(s) stated below, which service satisfies the requirements of Pa.R.A.P. 121:

Service

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Representing: Respondent Terrance Williams

Served: Gregory Eugene Dunlap
Service Method: eService
Email: gdunlap@pa.gov
Service Date: 2/25/2015
Address: 333 Market Street
17th Floor
Harrisburg, PA 17057
Phone: 717--78-3-6563
Representing: Respondent Tom Wolf

Served: Hugh J. Bums Jr.
Service Method: eService
Email: hugh.bums@phila.gov
Service Date: 2/25/2015
Address: 3 south penn square
philadelphia, PA 19107
Phone: 215-686-5730
Representing: Petitioner Commonwealth of Pennsylvania

SUPREME COURT OF PENNSYLVANIA

/s/ Richard Walter Long

(Signature of Person Serving)

Person Serving: Long, Richard Walter
Attorney Registration No: 079152
Law Firm: Pennsylvania District Attorneys Association
Address: PA District Attorneys Assoc
2929 N Front St
Harrisburg, PA 171101250
Representing: Amicus Curiae Pennsylvania District Attorneys Association