IN THE
SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT

COMMONWEALTH OF PENNSYLVANIA : NO. _____
Petitioner

V. NO. 14 E.D. MISC. DKT. 2015

TERRANCE WILLIAMS

EMERGENCY COMMONWEALTH PETITION FOR EXTRAORDINARY RELIEF UNDER KING'S BENCH JURISDICTION

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

R. SETH WILLIAMS, District Attorney of Philadelphia County, by his Assistants, RONALD EISENBERG, Deputy, Law Division, and HUGH J. BURNS, JR., Chief, Appeals Unit, respectfully invokes this Court's King's Bench jurisdiction to review an alleged reprieve, issued in violation of the Pennsylvania Constitution, where the defendant's execution has been scheduled for March 4, 2014, i.e., 14 days from now.

Introduction

Defendant robbed and beat a man to death with a tire iron on June 11, 1984. As this was his second murder, the jury sentenced him to die in 1986. Since then, this case has been subject to nearly three decades of searching direct and collateral

review, and the sentence has been repeatedly affirmed by this Court and federal courts. Only two months ago, this Court determined that defendant was not entitled to yet another round of collateral review, and reversed an erroneous PCRA order that purported to derive from such ultra vires review, in *Commonwealth v. Williams*, __ A.3d __ (Pa., December 15, 2014).

On February 13, 2015, the Governor issued a purported reprieve in connection with his publicly-announced assumption of a constitutionally-nonexistent power to declare a "moratorium" on death sentences in Pennsylvania.

This lawless act by the Governor, improperly and inaccurately characterized as a reprieve – for the act issued in this case is not, in fact, a reprieve – is not within the constitutional powers of the Governor, usurps judicial review of criminal judgments, and is in direct violation of his duty to faithfully execute Pennsylvania law under Article IV, § 2. It is unconstitutional, illegal, and should be declared null and void by this Court.

Statement of Jurisdiction

The Commonwealth invokes the supreme judicial power vested in this Court by the Pennsylvania Constitution in Article 1 § 2, under this Court's King's Bench

jurisdiction.[1] This Court's authority to undertake judicial review of official acts of the Governor under the Pennsylvania Constitution is indisputable. *E.g., Robinson Twp., Washington Cnty. v. Commonwealth*, 83 A.3d 901, 927 (Pa. 2013) ("[i]t is the province of the Judiciary to determine whether the Constitution or laws of the Commonwealth require or prohibit the performance of certain acts") (citations omitted); *Thornburgh v. Lewis*, 470 A.2d 952, 955 (Pa. 1983) (rejecting argument that petitioner's claim that the Governor was legally obligated to supply him with certain data was a non-justiciable political question; "A decision that the Governor is required, or is not required, to do so would in no way involve the Judiciary in the role ... assigned to the Governor"); *see Jubelirer v. Rendell*, 953 A.2d 514 (2008) (prohibiting Governor from "effectively vetoing portions of the language defining an appropriation without disapproving the funds with which the language is associated").

With regard to King's Bench jurisdiction, the Commonwealth relies on

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[1] This situation does not concern that aspect of the King's Bench power that derives from superintendency over inferior tribunals under Article V, § 10, but rather that which derives from the Court's role as the repository of the supreme judicial power, which includes judicial review of acts of other branches of government, under Article V, § 2. To the extent necessary, however, the Commonwealth respectfully requests that its application be treated as: a notice of appeal to the appropriate inferior tribunal and transferred to this Court (*see* 42 Pa.C.S. 5103); petition for review; leave to file original process; and / or petition for extraordinary jurisdiction under 42 Pa.C.S. § 726.

Commonwealth v. Morris, 771 A.2d 721, 731 (Pa. 2001). As explained in that case, while an extraordinary exercise of jurisdiction should be rare, it is appropriately invoked in a capital case where the scheduled execution is imminent; the Commonwealth can clearly demonstrate its right; ordinary channels of judicial review are inadequate because time is short; the matter is of great public importance; judicial resources will be conserved; the case concerns a separation of powers conflict between the highest iterations of constitutionally separate branches of government; and this Court's guidance is necessary on fundamental constitutional questions that are likely to recur.

This is an extraordinary case in which King's Bench review is highly warranted. Never before has a sitting Governor purported to negate a criminal penalty in an entire class of cases. As shown below, this act depends on the Governor's personal belief that Pennsylvania's judicial system has failed to carry out its constitutional duty to the Governor's personal satisfaction.

Facts and procedural history

During the late afternoon on June 11, 1984, defendant and his close friend Marc Draper, both eighteen years old, were gambling near Mount Pleasant Avenue and Lincoln Drive in Philadelphia and lost their money. Defendant told Draper that he knew a man who lived nearby from whom he could extort money by threatening

to tell his wife he was a homosexual. Leaving Draper nearby, defendant went to the home of fifty-six year-old Amos Norwood, and later returned with ten dollars. This money too was soon gambled away. A short time later, Mr. Norwood drove by in his blue Chrysler LeBaron. Defendant exclaimed, "There goes my uncle," went up to the car, and got in. The car drove off, but returned minutes later. Defendant got out and advised Draper, "Play it like you going home, like you want a ride home," so that they could "take some money" from the victim (N.T. 1/14/86, 68-70; N.T. 1/22/86, 664-72).

Defendant told Mr. Norwood that Draper was his cousin who needed a ride home. The two got in the car and Draper began to provide false directions to his "home." The conspirators directed their victim to a dark secluded area adjacent to Ivy Hill Cemetery. There, they grabbed Mr. Norwood – at the time of his death the victim weighed just 130 pounds (N.T. 1/24/86, 1066) – and ordered him to be quiet. They then led the victim into the cemetery and ordered him to lie facedown near a tombstone. A quick search of the victim's person revealed twenty dollars hidden in his sock. With the victim pleading for his life, defendant and Draper removed his clothing and tied him up with them; his hands were bound behind his back with his shirt, his legs were bound together with his pants, and his socks were jammed into his mouth. Draper said "Let's get out of here," but defendant refused, saying, "We're

getting ready to do something." As defendant went to the car, Draper kept watch over the bound victim and taunted him for "lik[ing] boys" and being a homosexual (N.T. 1/22/86, 672-76; N.T. 1/23/86, 812-15).

Defendant returned with a tire iron and a socket wrench. He gave the wrench to Draper, who protested, but defendant angrily declared, "I'm already in a lot of trouble. I don't need no more trouble." Defendant then repeatedly hit the victim on the head with the tire iron, ordering Draper to strike him as well, because he was "in this." Draper complied. Depositing the body in a pool of blood between two tombstones, the men left in the victim's blue Chrysler LeBaron (N.T. 1/22/86, 676-82).

The assailants put the contents of the LeBaron's glove compartment in a garbage bag and threw it in a supermarket trash bin. Defendant put on a blue jacket he found in the trunk and expressed concern that he may have left fingerprints on the body. Draper then departed for work (N.T. 1/22/86, 682-87).

Defendant went to downtown Philadelphia to meet his friend, Ronald Rucker. Both Rucker and an acquaintance, Mark Livermore, noted that defendant was driving a blue Chrysler LeBaron later identified as that of Mr. Norwood (N.T. 1/14/86, 67-68; N.T. 1/15/86, 368). Defendant seemed nervous or excited to both men. He took Rucker aside and announced that he had just "offed" a guy named Amos. Rucker

noted sprinkles of red on defendant's shoes that defendant explained were bloodstains. Defendant subsequently told Rucker's sister, Renee, that he planned to get some gas from a gas station to return to the scene of the crime and burn the victim's body to render it unidentifiable (N.T. 1/15/86, 357-68; N.T. 1/16/86, 542-54, 570-82; N.T. 1/31/86, 1574).

The next morning, June 12, 1984, at 7:00 a.m., defendant drove the victim's car to meet Draper when he finished work, and said he had "taken care" of the body by returning to the cemetery, soaking it in gasoline, and setting it on fire. Using the victim's car, the two men later returned to the supermarket trash bin and retrieved the contents of the glove compartment. They found a Mastercard and an AT & T telephone card, both in the victim's name. Defendant told Draper that he knew someone, Ronald Rucker, who could tell them how to use the cards. He and Draper then went to see Rucker, who had learned how to verify a credit card from his employment in a restaurant. Defendant gave the Mastercard, bearing the name "Amos Norwood," to Rucker, who confirmed that the card was usable. Defendant then suggested that they all go to Atlantic City. While in Atlantic City, Draper told Rucker, in defendant's presence, that he and defendant had beaten the victim at the cemetery and that Mr. Norwood had begged for his life (N.T. 1/15/86, 370-90; N.T. 1/22/86, 687-91, 702; N.T. 1/31/86, 1556-62). About a week after the murder, Ronald Rucker

told an acquaintance that defendant had confessed to him that he had committed the victim's murder, but that he was afraid to go to the police (N.T. 1/31/86, 1529-32, 1544-45, 1579-80).

Defendant, Draper and Rucker drove to Atlantic City in the victim's Chrysler. There, defendant slipped away from his companions and secured two cash advances on the victim's credit card of $100 each. While at the casinos, Rucker used the AT & T telephone card to make a telephone call. Upon his return to Philadelphia the next day, June 13, 1984, defendant again used the victim's Mastercard to buy two gold chains from a jewelry store on Walnut Street (N.T. 1/14/86, 79-82, 95-96; N.T. 1/15/86, 376-83; N.T. 1/16/86, 597-605; N.T. 1/22/86, 691-705; N.T. 1/23/86, 869-88; N.T. 1/24/86, 931-39).

On June 14, 1984, at approximately 6:30 p.m., a passerby discovered the charred remains of Amos Norwood's body lying between two tombstones. The body was lying on its back; its hands were tied behind its back and an object was protruding from the mouth as if something had been stuffed in it. Despite the burning and advanced decomposition, it was possible to identify the body from dental records. The victim's cause of death was determined to be multiple blunt force injuries to the skull (N.T. 1/14/86, 180-85; N.T. 1/15/86, 238-42, 261-65, 268-70, 288, 294; N.T. 1/24/86, 1060-75).

Tracing the victim's telephone card led the police to Ronald Rucker and his sister, Renee, to whom Rucker had given the card. Before Rucker had a chance to speak to police, however, defendant contacted him and denied involvement with the victim's murder, claiming that the real killers were "Ramos Warmstead" (a name defendant invented) and Marc Draper. Defendant also told Renee Rucker to tell police that she had bought the AT & T credit card off an individual named "Ramos." On July 18 and July 19, 1984, Ronald Rucker gave two statements to police, incriminating defendant and Draper in the victim's murder (N.T. 1/15/86, 391-97; N.T. 1/16/86, 543-46; N.T. 1/24/86, 983-85).

As a result of Rucker's statement police arrested Draper on July 20, 1984 and charged him with homicide. Draper gave a statement detailing his own role and defendant's role in the victim's murder. That same day, police secured warrants to arrest defendant and search his residence, where they recovered a blue jacket, later identified as belonging to the victim, from a box in defendant's bedroom. Defendant had attempted to flee to California, but returned under a false name. Police ultimately arrested him at an attorney's office on Chestnut Street on July 23, 1984 (N.T. 1/15/86, 253-70, 396-408; N.T. 1/16/86, 545-46; N.T. 1/22/86, 706; N.T. 1/24/86, 979-91, 1007-10, 1051-52; 1060-74; N.T. 1/27/86, 1216-17, 1267).

In prison Draper was kept in protective custody and ordered to be held

separately from defendant. Nevertheless, defendant managed to send Draper a series of four letters, urging him to retract his prior statement and instead study and adopt the exclupatory "story" defendant gave in the letters. Draper turned the letters over to the Commonwealth (N.T. 1/22/86, 707-15, 726-55; N.T. 1/23/86, 842-47). On August 16, 1984, Draper entered into an agreement with the Commonwealth stating that if he testified truthfully he would be allowed to plead guilty to second degree murder, robbery and conspiracy in exchange for a life sentence, with additional charges being nolle prossed and a recommendation for a concurrent term of five to ten years for the conspiracy charge.

Commencing on January 14, 1986, defendant was tried by a jury before the Honorable David N. Savitt. Draper testified for the Commonwealth, detailing the manner in which he and defendant had lured the victim to the cemetery, robbed and bound him, and then beat him to death with a tire iron and wrench. Additionally, Draper testified to the events occurring after the murder, including defendant's confession to torching the victim's body, his use of the victim's stolen car and credit cards, and his letters attempting to convince Draper to lie for him at trial. Draper also testified to the terms of his plea agreement (N.T. 1/22/86, 660-63, 777-78). His testimony was corroborated by that of (inter alia) Ronald Rucker and Renee Rucker, that defendant had admitted killing the victim and burning his body. Ronald Rucker

also testified to defendant's blood-splattered shoes, and police testified regarding the recovery of the victim's jacket from defendant's bedroom. Moreover, the four letters that defendant wrote to Draper, as well as the evidence regarding defendant's use of the victim's Mastercard and AT & T phone card, were presented at trial.[2]

Defendant took the stand in his own defense and claimed under oath that Draper and another individual, one Michael Hopkins – a mutual friend who was conveniently dead – committed the murder (N.T. 1/27/86, 1175-1237, 1240-1301). In addition to claiming that he was elsewhere during the murder and had no role in it, defendant insisted that he did not even know Amos Norwood, had never met him before that night, "didn't know him personally," knew nothing about him, and had no reason to be angry with him or to wish him harm (N.T. 1/27/86, 1253; N.T. 1/30/86, 1376). Also during the defense case, defendant introduced a pair of shoes with red spotting, which he identified as ketchup stains, and claimed these were the shoes he had been wearing when he saw Ronald Rucker on June 11, 1984. On rebuttal, Mr. Rucker testified that the shoes defendant offered in evidence were similar, but were

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[2] Defendant's authorship of the letters was confirmed by expert handwriting analysis (N.T. 1/23/86, 769-76, 878-91). His initial "story" proposed blaming the murder on one Kevin Kershaw and Ronald Rucker. After the preliminary hearing defendant learned that Rucker could prove he was at work at the time of the murder, and so his next letter to Draper altered the story accordingly. The tone of the letters became increasingly angry as Draper failed to cooperate (N.T. 1/22/86, 726-39, 749-52).

not the shoes he had worn on June 11, when defendant had told him his shoes were stained with blood. Rucker also drew a diagram of the bloodstains he had seen on June 11, which did not match the stains on defendant's phony exhibit (N.T. 1/27/86, 1190-1191; N.T. 1/31/86, 1550-1555, 1573-1575).

On February 3, 1986, the jury convicted defendant of first degree murder, robbery and criminal conspiracy. In the Penalty Phase the Commonwealth presented two aggravating circumstances, that defendant committed the instant murder while in the perpetration of another felony (robbery), and that he had a significant history of violent felony convictions, specifically, a prior home invasion-robbery, as well as a prior murder. Defendant presented mitigating evidence that portrayed him as a promising young man for whom the instant crime was an aberration. The jury found both aggravating circumstances, and no mitigating circumstances.[3]

This Court affirmed the judgments of sentence on direct appeal on February 8, 1990. *Commonwealth v. Williams*, 570 A.2d 75 (Pa. 1990). Defendant did not seek certiorari. He filed a first PCRA petition on March 24, 1995. The PCRA court denied the petition on October 20, 1998. This Court affirmed that order on December 22,

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[3] The jury in the sentencing phase heard evidence of defendant's January 1984 murder of Herbert Hamilton, as well as his violent home invasion burglary-robbery against Don and Hilda Dorfman on Christmas Eve 1982. Defendant committed the instant murder of Amos Norwood *while on bail awaiting sentencing* for that burglary.

2004. *Commonwealth v. Williams*, 863 A.2d 505 (Pa. 2004). Defendant filed a second, untimely PCRA petition on February 18, 2005, which the court dismissed as untimely on September 27, 2006. This Court affirmed on September 27, 2006. *Commonwealth v. Williams*, 909 A.2d 297 (Pa. 2006).

On December 19, 2005, defendant filed a federal habeas corpus petition. The federal district court denied the petition on May 7, 2007. *Williams v. Beard*, 2007 U.S. Dist. LEXIS 41310 (E.D. Pa., filed May 8, 2007). The Court of Appeals affirmed that ruling on March 9, 2011. *Williams v. Beard*, 637 F.3d 195 (3d Cir. 2011). Defendant filed a certiorari petition that was denied on June 29, 2012.[4]

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[4] Although lengthy, the Third Circuit's account of defendant's chilling prior criminal career, which his recycled plea of sexual abuse was supposed to have counterbalanced, is worthy of recitation:

> The story of Terrance Williams is reminiscent of Dr. Jekyll and Mr. Hyde. As Dr. Jekyll, Williams was a local football star, the quarterback of the Germantown High School team that won the Philadelphia Public League championship in 1982. He was presented with the sportsman of the year award by the Philadelphia Board of Sports Officials, and he was recruited by at least eight different collegiate institutions. Nearly all of Williams' coaches and teachers described him as mild-mannered, law-abiding, and honest. In 1983, Williams graduated from Germantown High and matriculated to Cheney State College in Philadelphia. In the estimation of one of his instructors, Williams was "highly respected and admired by his teacher[s] and all of his classmates." He was "[n]ot only . . . the star of the school's football team, but [was] also . . . a classmate and student who showed respect for others and accepted his popularity with modesty."

But apparently Terrance Williams had a sinister side. In the dead of night on Christmas Eve in 1982, a sixteen-year-old Williams broke into the Philadelphia residence of Don and Hilda Dorfman, aged sixty-nine and sixty-four, respectively. He entered Mrs. Dorfman's bedroom, wakened her by pressing a .22 caliber Winchester rifle to her neck, and then pulled a bedsheet over her face. When Mrs. Dorfman attempted to remove the sheet, Williams ordered her to stop "or her fucking head would be blown off." Williams then fired the rifle three times into the wall to show the victims he was serious. Williams and an accomplice ransacked the home before making off with cash, jewelry, and the Dorfmans' automobile.

It was not long before Williams was apprehended and criminally charged for robbing and terrorizing the Dorfmans. Although his age placed him under the jurisdiction of the juvenile court, the Commonwealth moved to certify Williams as an adult. In an attempt to avoid certification, Williams produced no fewer than eight witnesses who attested to his stable home life, loving parents, and supportive extended family. Every character witness interviewed by the Commonwealth believed Williams to be innocent. Even his own attorney would testify years later, "I didn't feel in my own mind of mind[s] and heart of hearts that [Williams] was involved in the matter." Such was the nature of Williams' dual existence.

In spite of the efforts to avoid it, Williams was certified to stand trial as an adult. He was released pending trial, however, and in January of 1984, he embarked in earnest on a crime spree that would continue for the better part of six months. Williams' next victim was a fifty-one-year-old man named Herbert Hamilton, an individual from whom Williams had been receiving money in exchange for sex. This relationship, like much else in Williams' life, was kept hidden from most who knew him. Hamilton apparently threatened to publicize the secret, so Williams took action.

On January 26, 1984, Williams called on Hamilton at his home. The two eventually retired to the bedroom and, as they proceeded toward

On March 9, 2012, defendant filed an untimely third PCRA petition. The PCRA court, acting without jurisdiction, issued a stay of the then-pending warrant of

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> the bed, Williams withdrew a concealed ten-inch butcher knife and attempted to stab Hamilton. Hamilton fought back, wrestled the knife from Williams, and stabbed Williams in the chest. Hamilton then dropped the knife and ran into the kitchen to telephone for assistance. Meanwhile, Williams retrieved a nearby baseball bat, chased after Hamilton, and beat him with the bat until Hamilton was bloody and severely wounded. Williams then recovered the butcher knife and stabbed Hamilton approximately twenty times—twice in the head, ten times in the back, once in the neck, four times in the chest, and once each in the abdomen, arm, and thumb. Finally, Williams drove the butcher knife through the back of Hamilton's neck until it protruded through the other side. He then doused Hamilton's body with kerosene and unsuccessfully attempted to set fire to it. When police officers later entered the apartment, they found Hamilton's kerosene-soaked body with the knife jammed through his neck; on the bathroom mirror, the phrase "I loved you" was scrawled in toothpaste. Williams was then seventeen.
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> The Hamilton murder remained unsolved at the time that Williams went to trial for the Dorfman robbery in February of 1984. Williams maintained his innocence of the robbery throughout trial. He and his counsel mustered at least nine character witnesses who testified that Williams was a peaceful, law-abiding, and honest young man. The jury was not persuaded. They returned a conviction for two counts of robbery as felonies of the first degree, one count of burglary, one count of simple assault, one count of unauthorized use of an automobile, and one count of conspiracy. Williams was nevertheless released pending sentencing. Tragically, his crime spree continued.

Williams v. Beard, 637 F.3d at 198-200.

execution which was scheduled for October 2013.

The ensuing litigation consumed over a year, during which defendant sought a recommendation of pardon or commutation from the Board of Pardons. The Board denied that petition.

On December 15, 2014, this Court reversed the PCRA ruling, holding that defendant's latest claim was "built on perjury."

On January 13, 2015, Governor Tom Corbett issued a warrant scheduling defendant's execution for March 4, 2015. Governor Tom Wolf was inaugurated on January 20, 2015. Prior to his inauguration, Governor Wolf had publicly and repeatedly indicated his intent to effectuate a "moratorium" on the death penalty, citing "concerns" allegedly raised, but left unaddressed by, this Court.[5]

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[5] E.g.:

"Wolf supports a moratorium on the death penalty and would not sign death warrants until concerns raised by the Pennsylvania Supreme Court and the American Bar Association have been addressed" --

http://www.pennlive.com/politics/index.ssf/2014/11/where_wolf_and_corbett_stand_o.html

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"As for the death penalty, the governor-elect says effective Jan. 20 there will be a moratorium on the death penalty in Pennsylvania until he can establish that it is fair and consistent for everyone." --

On February 13, 2015, Governor Wolf issued a press release in which he announced a "moratorium" on the death penalty and also a reprieve for defendant based on the "moratorium":

> Today, Governor Tom Wolf announced a moratorium on the death penalty in Pennsylvania that will remain in effect until the governor has received and reviewed the forthcoming report of the Pennsylvania Task Force and Advisory Commission on Capital Punishment, established under Senate Resolution 6 of 2011, and there is an opportunity to address all concerns satisfactorily.
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> "Today's action comes after significant consideration and reflection," said Governor Wolf. "This moratorium is in no way an expression of sympathy for the guilty on death row, all of whom have been convicted of committing heinous crimes. This decision is based on a flawed system that has been proven to be an endless cycle of court proceedings as well as ineffective, unjust, and expensive. Since the reinstatement of the death penalty, 150 people have been exonerated from death row nationwide, including six men in Pennsylvania. Recognizing the seriousness of these concerns, the Senate established the bipartisan Pennsylvania Task Force and Advisory Commission to conduct a study of the effectiveness of capital punishment in Pennsylvania. Today's moratorium will remain in effect until this commission has produced its recommendation and all concerns are addressed satisfactorily."
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> "This morning, Gov. Wolf took the first step in placing a moratorium on the death penalty by granting a temporary reprieve to inmate Terrance Williams, who was scheduled to be executed on March 4, 2015. Governor Wolf will grant a reprieve – not a commutation – in each future instance in which an execution for a death row inmate is scheduled, establishing an effective moratorium on the death penalty in Pennsylvania. For death row inmates, the conditions and confinement

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http://pittsburgh.cbslocal.com/2015/01/09/governor-elect-wolf-talks-economic-growth-other-issues-during-pittsburgh-visit/

will not change."

(http://www.wgal.com/news/just-in-gov-wolf-puts-hold-on-death-penalty-in-pennsylvania/31254382).

Shortly after noon on February 13, 2015, the Commonwealth received a fax of the official text of the Governor's reprieve for defendant, the operative portion of which states:

> 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 the 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 recommendations contained therein are satisfactorily addressed.

Argument

The Governor's directive is flagrantly unconstitutional.

The Constitution of Pennsylvania does not permit the Governor to enact a moratorium on death sentences (or any other kinds of sentences), or to grant a supposed "reprieve" that is not, in fact, a reprieve, but an open ended suspension of a death sentence. The Governor's supposed reprieve is flagrantly unconstitutional, and should be declared by this Court to be null, void, and absolutely without legal effect.

The Governor's reprieve power is granted under Article IV, § 9 (a), which

states in pertinent part:

> 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.

In a capital case commutation or pardon requires the written, unanimous assent of the Board of Pardons (and, in non-capital cases, a majority vote). Reprieves do not require action by the pardons board; but unlike commutations and pardons, reprieves are limited in time and purpose. Merely characterizing conduct by the Governor as a reprieve does not make it so. *See Morganelli v. Casey*, 646 A.2d 744, 747 (Pa. Cmwlth. 1994) (en banc) ("The executive cannot reserve an option ultimately to describe years of inaction, retroactively, as a reprieve. Because a reprieve is a stay or postponement it must, like any stay, be articulated, not silent, and there must be a scheduled event which is being postponed"); *Morganelli v. Casey*, 641 A.2d 674, 678 (Pa. Cmwlth. 1994) (en banc) (reprieve "does no more than stay the execution of a sentence for a time ... it exists only to stay a death warrant with reference to a particular proceeding, whether that particular proceeding be in the nature of clemency action, such as pardon or commutation involving the Board of Pardons, or even some

resumption of judicial investigation pursuant to a petition for habeas corpus"); *see also Commonwealth v. Haag*, 809 A.2d 271, 276 (Pa. 2002) (reprieve limited by termination of PCRA proceedings); 61 Pa.C.S. § 4302(a)(2) (requiring Governor to reissue death warrant within 30 days after receiving notice of expiration of reprieve); *Commonwealth v. Zook*, 615 A.2d 1, 19 (Pa. 1992) (recognizing that indiscriminate executive power to bar the death penalty could violate the Eighth Amendment, if such a power existed).

Nor, of course, does the existence of a reprieve power excuse the Governor from the duty to "take care that the laws be faithfully executed" imposed by the constitution under Article IV, § 2.

The scope of the reprieve power is not mysterious or vague, and it is limited. Were this not so, the constitutional limitations on pardons and commutations would be negated. Unlike some states, Pennsylvania does not grant the Governor an unlimited at-will power of clemency, without which it is not even possible to posit an arguable ability to impose a moratorium. *See People v. Morris,* 848 N.E.2d 1000, 1002 (Ill. 2006) (Illinois Governor could impose a moratorium by unilaterally commuting the sentences of all death row inmates, which the Illinois constitution permitted).

In reviewing this, or any, aspect of the constitution, the "ultimate touchstone"

is always "the actual language of the Constitution itself." That language "must be interpreted in its popular sense, as understood by the people when they voted on its adoption." In interpreting such constitutional provisions this Court seeks the "ordinary, natural interpretation the ratifying voter would give" to provisions of the Constitution, and avoids reading them "in a strained or technical manner." Further, the provision of Article IV, § 9 that prohibits at-will Gubernatorial pardons and commutations is in *para materia* with the also-limited reprieve power; the provisions must be read and applied together. *Jubelirer v. Rendell*, 953 A.2d at 528 (citations omitted).

At all times in Pennsylvania history a reprieve has meant one thing and only one thing: a temporary stay of a criminal judgment for a defined period of time, for the purpose of allowing the defendant to pursue an available legal remedy.

The current act of the Governor is not a reprieve. Nor, indeed, could it be. There is no remaining legal remedy available to defendant. He received exhaustive state and federal review. He sought pardon or commutation and it was denied. There is nothing legitimate left to pursue and no remedy to wait for.

The text of the alleged reprieve, moreover, eliminates any possibility that this act conforms with the power actually granted to the Governor by the constitution. First, while the "reprieve" is described as temporary, it has no end. It states no

expiration date, and while it purports to state a terminating event, that event is illusory. The "forthcoming" report, which has no known due date, does not mark the end of the reprieve; on the contrary, the report is merely one small step toward the supposed goal of its "recommendations" being "satisfactorily addressed." What the recommendations might be are unknown, as is who is supposed to "address" them, or how. It is also unstated whose "satisfact[ion]" is required, though that could only refer to the personal satisfaction of the Governor himself.

Thus, the supposed reprieve is not temporary, but permanent, unless or until the Governor decides that his own personal level of satisfaction has been met. The alleged reprieve is not for the purpose of allowing the defendant to pursue some remaining legal remedy (of course none exists), but for the purpose of pursuing an abstract goal of "satisfying" the Governor.

The Governor's personal satisfaction, moreover, is not merely an event with *no definition*: quite to the contrary, that, according to the Governor's own standards, is an event that *can never occur*. When the alleged reprieve was issued, the Governor issued a "memorandum" in which he stated that, for a system of capital punishment to be permissible, it "must be infallible" (reprieve memorandum, p. 2). No human institution is infallible. The supposed end point for the Governor's illegal moratorium is a chimera that can never exist. Calling the instant act a reprieve, therefore, is

simply a fraud.

The alleged reprieve, which is not a reprieve at all, violates the constitutional separation of powers. The constitution requires due process, not the Governor's personal standard of absolute perfection; and the task of assuring that criminal judgments meet that correct standard is assigned to the judiciary, not the executive. Exercise, by another branch, of an extra-constitutional attempt to disturb settled judgments in criminal cases is an impermissible usurpation of the exclusive function of the judiciary. *Commonwealth v. Sutley*, 378 A.2d 780 (Pa. 1977) (legislation to require resentencing in already-final criminal cases based on nonexistent power of "legislative pardon" vacated as unconstitutional undermining of final judgments of the judiciary in violation of separation of powers).[6]

The relevant constitutional strictures on the Governor are perfectly clear. The phrase "take care that the laws be faithfully executed" plainly requires the Governor to execute the law, as enacted by the ordinary legislative process and effectuated by the courts after searching appellate and collateral review. Of course it does not

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[6] Further, if the Governor were permitted to exercise a self-appointed power to bar all capital judgments, there would be nothing preventing him from doing the same in all other categories of criminal judgments. The Governor could decide that all criminal penalties for all cases of drug trafficking, or prostitution, or campaign finance violation, or any other kind of crime, failed to satisfy his personal standards, and subject those crimes to the same usurpation.

authorize just the opposite, by allowing the executive to usurp review of criminal judgments in favor of personal standards his own making.

In law and in reality, therefore, the Governor seeks to nullify valid, final judgments of sentence in usurpation of the judicial function, and seeks to subject the law governing capital sentencing to the test of his personal standard of satisfaction, which in this instance happens to be a test of infallibility that is impossible for mere mortals to satisfy. This is not permissible in a government that is founded on the principle that the people are to be ruled by laws enacted by their representatives in the legislative process, and not the personal whims of a king or dictator. The constitutional role of the Governor is to execute the law, not sabotage it.

In *Sayers v. Commonwealth*, 88 Pa. 291 (1879), this Court reviewed and overturned "An Act to prevent delay in the review of capital cases in the Supreme Court." The Act required that a writ of error in a capital case to be sought within twenty days of the judgment. Sayers, who had sought a writ of error beyond the deadline, argued that the law should be disregarded. This Court disagreed, holding that to rule otherwise would effectively make capital punishment an impossibility:

> If the legislature may fix no limitation whatever upon the issuing of such writs, it is not too much to say that capital punishment cannot be hereafter enforced in Pennsylvania. A writ of error taken out when the prisoner is standing on the trap of the gallows, suspends his execution. Upon the hearing, he may suffer a *non pros*, and then, when a second

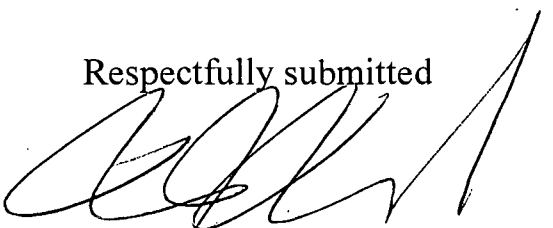
> death-warrant issues, renew his writ of error, and so on to the end of the dreary farce.

88 Pa. at 307; *see Commonwealth v. Peterkin*, 722 A.2d 638, 642 (Pa. 1998) (quoting *Sayers*).

The same reasoning applies here to the equally illegal act of the Governor. To condone the Governor's decision to nullify the law in the guise of a supposed reprieve would be to grant that officer an unconstitutional power to ignore any selected laws at his sole option -- here, to effectively negate a death sentence authorized by the General Assembly, imposed by a jury, and subject to exhaustive judicial review over a period of decades, based on nothing but that official's personal disapproval. Such power belongs only to despotism.

The instant dictate of the Governor is in direct defiance of the constitution. It is for this Court to promptly negate it.

Respectfully submitted



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Chief, Appeals Unit

IN THE
SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT

COMMONWEALTH OF PENNSYLVANIA : NO. ___
Petitioner

V. NO. 14 E.D. MISC. DKT. 2015

TERRANCE WILLIAMS

PROOF OF SERVICE

I hereby certify that I am on this day serving the attached document upon the person(s) below in compliance with the requirements of Pa.R.A.P. 121:

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