



Supreme Court of Pennsylvania

Eastern District

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December 21, 2015

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RE: Commonwealth, Pet. v. Williams, T.
No. 14 EM 2015
Lower Appellate Court Docket No:
Trial Court Docket No: CP-51-CR-0823621-1984

Dear Attorney Walczak:

Enclosed please find a certified copy of the opinion of the Court entered on December 21, 2015 in the above-captioned matter.

Very truly yours,
Office of the Prothonotary

/paj
Enclosure

[J-52-2015]
IN THE SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT

SAYLOR, C.J., EAKIN, BAER, TODD, STEVENS, JJ.

COMMONWEALTH OF PENNSYLVANIA,	:	No. 14 EM 2015
	:	
Petitioner	:	Emergency Petition for Extraordinary
	:	Relief Under King's Bench Jurisdiction
	:	
v.	:	
	:	
TERRANCE WILLIAMS,	:	
	:	
Respondent	:	ARGUED: September 10, 2015

OPINION

MR. JUSTICE BAER

DECIDED: December 21, 2015

This case presents the issue of whether Governor Tom Wolf exceeded his constitutional authority pursuant to Article IV, Section 9(a) of the Pennsylvania Constitution when he issued a temporary reprieve to death row inmate Terrance Williams pending receipt of the forthcoming report of the Pennsylvania Task Force and Advisory Committee on Capital Punishment (Task Force) and until the concerns raised by the Task Force are addressed. We also examine the jurisdictional basis for review of such inquiry. For the reasons set forth herein, we exercise our King's Bench authority to review the issue presented and we conclude that Governor Wolf acted within his constitutional authority in granting the reprieve.

The record establishes that Respondent Terrance Williams was convicted of first degree murder after he robbed and beat Amos Norwood to death with a tire iron in 1984. He was subsequently sentenced to death. The details relating to Williams'

On January 13, 2015, Governor Tom Corbett signed a death warrant scheduling Williams' execution for March 4, 2015. Shortly after the death warrant was signed, Governor Tom Wolf assumed office and, on February 13, 2015, issued a reprieve of Williams' death sentence. The operative language of the reprieve stated:

NOW THEREFORE, I, Tom Wolf, as Governor of the Commonwealth of Pennsylvania, by virtue of the authority invested in me under the Constitution and 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.

On the same day, Governor Wolf issued a Memorandum, explaining that he granted Williams' reprieve because he believed that "the capital punishment system has significant and widely recognized defects." Governor Wolf's Memorandum dated February 13, 2015, at 1. He indicated that he would "grant a reprieve in each future instance in which an execution is scheduled" until he received and reviewed a report to be drafted by the Task Force, which was established by Senate Resolution 6 of 2011, and until any concerns raised by the Task Force were addressed satisfactorily.² *Id.* In a press release also issued on February 13, 2015, Governor Wolf described his grant of

² Senate Resolution No. 6 of 2011 directed the Joint State Government Commission to establish a bipartisan task force and an advisory committee to conduct a study of capital punishment in this Commonwealth and to report their findings and recommendations. The resolution acknowledged, *inter alia*, that since 1978, 352 people have been sentenced to death in Pennsylvania and only three individuals have been executed. It also identified concerns about Pennsylvania's death penalty system, which were raised by the American Bar Association and the Pennsylvania Supreme Court Committee on Racial and Gender Bias in the Justice System. The resolution enumerated seventeen specific subjects that the Task Force was directed to study, including the costs associated with the death penalty and the quality of counsel provided to indigent capital defendants. The Task Force is co-chaired by Senators Stewart Greenleaf and Daylin Leach.

Wolf was attempting to negate a criminal penalty applicable to an entire class of cases, *i.e.*, first degree murder cases where the death penalty was imposed, based on his personal belief that Pennsylvania's death penalty apparatus is flawed.

The Commonwealth argued that the Pennsylvania Constitution did not permit the Governor to grant the purported reprieve for purposes of establishing a moratorium on the death penalty. It submitted that the reprieve lacked a determinable end date as it was uncertain when the Task Force report would be issued, what its concerns would be, and when the Governor's personal level of satisfaction would be met regarding palliative measures to address those concerns. The Commonwealth emphasized that the reprieve was not issued to allow Williams to pursue an available legal remedy as he had already exhausted his right to direct and collateral review and the Pardon Board had

(...continued)

(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.

(b) The Board of Pardons shall consist of the Lieutenant Governor who shall be chairman, the Attorney General and three members appointed by the Governor with the consent of a majority of the members elected to the Senate for terms of six years. The three members appointed by the Governor shall be residents of Pennsylvania. One shall be a crime victim, one a corrections expert and the third a doctor of medicine, psychiatrist or psychologist. The board shall keep records of its actions, which shall at all times be open for public inspection.

.PA. CONST. art. IV, § 9.

challenge to Governor Wolf's reprieve. Oral argument was conducted on September 10, 2015, and the matter is now ready for disposition.

I. Jurisdiction

We must first determine the basis for our jurisdiction. The Commonwealth begins by positing that to avoid deleterious effects that may result from delays attendant to the ordinary process of law, this Court may exercise King's Bench authority to review issues of public importance that require timely intervention by the court of last resort. Brief of the Commonwealth at 21 (citing In re Bruno, 101 A.3d 635, 670 (Pa. 2014)). It requests that we invoke King's Bench power here to entertain the important question of whether Governor Wolf may issue a reprieve that is unlimited in time and is not based on Williams' individual circumstances, but rather is imposed to further the Governor's policy of declaring a moratorium on the death penalty.

As developed in the merits analysis, the Commonwealth asserts that the Governor's action in this regard intrudes upon judicial authority by effectively reversing final sanctions imposed in all capital cases in Pennsylvania, and raises fundamental constitutional questions regarding the scope of executive and judicial power, all of which will recur as the Governor's moratorium continues. It further alleges that time is of the essence because Governor Wolf should not be afforded the opportunity to delay execution when all avenues of review have been exhausted in Williams' case, including a petition for clemency rejected by the Board of Pardons. The Commonwealth also points out that this Court has invoked its King's Bench jurisdiction previously to review the constitutional validity of a Governor's exercise of power. See Creamer v. Twelve Common Pleas Judges, 281 A.2d 57, 58 (Pa. 1971) (*per curiam*) (exercising King's Bench authority to determine whether the Governor's appointments to the judiciary fell

extraordinary jurisdiction under Section 726 of the Judicial Code, which permits this Court to assume plenary jurisdiction in a matter of immediate public importance that is pending in a lower tribunal.⁸ Recognizing the absence of a pending case in a lower tribunal over which this Court could assume extraordinary jurisdiction, Governor Wolf posits that the instant case could have been brought (or could technically be transferred to) the Commonwealth Court in its original jurisdiction, after which we could invoke our extraordinary jurisdiction under Section 726. Rather than engaging in such technical maneuvering, the Governor suggests that we decide the case before us by exercising extraordinary jurisdiction under Section 726. See Brief of Governor Wolf at 4-5 (*citing Pa. Gaming Control Board v. City Council of Philadelphia*, 928 A.2d 1255, 1272 (Pa. 2007) (J. Baer, concurring) (opining that because this Court could transfer the particular matter to the proper lower tribunal and then invoke our extraordinary jurisdiction under Section 726, we should avoid technical maneuvering, and simply decide the case under Section 726)).

It is well-established that “[a]ll Pennsylvania courts derive power or authority, and the attendant jurisdiction over the subject matter, from the Constitution and the laws of the Commonwealth.” In re Bruno, 101 A.3d at 659 (citing PA. CONST. art. V, § 2; 42 Pa.C.S. § 502). Article V, Section 2 of the Pennsylvania Constitution provides, in

⁸ Section 726, entitled “Extraordinary jurisdiction,” states:

Notwithstanding any other provision of law, the Supreme Court may, on its own motion or upon petition of any party, in any matter pending before any court or magisterial district judge of this Commonwealth involving an issue of immediate public importance, 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. § 726.

ordinary process of law. In re Bruno, 101 A.3d at 670. While such authority is exercised with extreme caution, the availability of the power is essential to a well-functioning judicial system. Id. The exercise of King's Bench authority is not limited by prescribed forms of procedure or to action upon writs of a particular nature; rather, the Court may employ any type of process necessary for the circumstances. In re Franciscus, 369 A.2d 1190, 1193 (Pa. 1977) (citing Petition of Squires & Constables Ass'n of Pa., 275 A.2d 657 (Pa. 1971)). We may even exercise King's Bench powers over a matter where no dispute is pending in a lower court. In re Assignment of Avellino, 690 A.2d 1138, 1140 (Pa. 1997). In exercising King's Bench authority, our "principal obligations are to conscientiously guard the fairness and probity of the judicial process and the dignity, integrity, and authority of the judicial system, all for the protection of the citizens of this Commonwealth." In re Bruno at 675; In re Franciscus, 369 A.2d at 1194.

Consistent with this jurisprudence, we conclude that it is proper to invoke King's Bench jurisdiction under the facts presented. Here, the Commonwealth has sought invocation of King's Bench authority based on the allegation that, under the guise of an exercise of the executive reprieve power, Governor Wolf has encroached upon this Court's final judgment in Williams' case and has attempted to negate unilaterally the proscribed sanction in all cases where this Court has affirmed the death penalty. Regardless of whether we agree with the Commonwealth on the ultimate merits of its contention, neither the Governor nor Williams has offered a persuasive reason why our broad King's Bench authority would not embrace such a forceful challenge to the integrity of the judicial process. Appreciating that King's Bench authority should be exercised with extreme caution, we conclude that the Commonwealth has established

Heeding this warning, we have no hesitation in exercising our King's Bench jurisdiction to review the Commonwealth's allegation that this Court's power to impose a final sentence of death has been usurped by the Governor's unconstitutional issuance of a reprieve to Williams.¹¹

II. Constitutional Challenge to Williams' Reprieve

A. The Parties' Arguments

As referenced above, the Commonwealth's primary argument is that the Governor's reprieve power pursuant to Article IV, Section 9 does not encompass the power to grant Williams a reprieve for an unlimited duration and absent a particular purpose relating to the individual circumstances of the case. Further, the Commonwealth maintains, the Governor has no authority to declare a moratorium on all capital sentences merely by labeling his order a "reprieve." The Commonwealth contends that the chief executive's actions in this regard violate Article IV, Section 9(a) because they amount to a unilateral and categorical commutation of death sentences, without the consent of the Board of Pardons. See PA. CONST. art. IV, § 9(a) (providing that "no pardon shall be granted, nor sentence commuted, except on the recommendation in writing of a majority of the Board of Pardons"). If the practical effect of commutation could be achieved via a reprieve, the Commonwealth asserts, requiring unanimous consent of the Board of Pardons would become an act of futility.

In support of its contention, the Commonwealth relies upon language in the Commonwealth Court's decision in Morganelli v. Casey, 646 A.2d 744 (Pa. Cmwlth. 1994), which describes a reprieve as being issued for a particular reason and for a

¹¹ Having concluded that we possess King's Bench jurisdiction over this matter, we need not examine whether we also possess extraordinary jurisdiction under Section 726 of the Judicial Code.

Moreover, the Commonwealth contends, the Governor is not in a position to remedy any concerns the Task Force may have with the existing death penalty statute. It asserts that even if the General Assembly were to enact subsequent remedial legislation, it would not alter Williams' final death sentence or that of any other death row inmate without violating the separation of powers doctrine. See Brief of Commonwealth at 37-40 (citing Commonwealth v. Sutley, 378 A.2d 780, 784 (Pa. 1977) (holding that "even though the legislature possesses the power to promulgate the substantive law, judicial judgments and decrees entered pursuant to those laws may not be affected by subsequent legislative changes after those judgments and decrees have become final"))).

The Commonwealth further posits that Governor Wolf's attempt to create a moratorium on the death penalty violates Article IV, Section 2 of the Pennsylvania Constitution, which states that "[t]he supreme executive power shall be vested in the Governor, who shall take care that the laws be faithfully executed" PA. CONST. art. IV, § 2. Finally, it maintains, the Governor's actions unlawfully suspend death penalty laws enacted by the General Assembly in violation of Article I, Section 12, which provides that "[n]o power of suspending laws shall be exercised unless by the Legislature or by its authority." PA. CONST. art. I, §12.

In its *amicus* brief in support of the Commonwealth, the Pennsylvania District Attorneys Association (PDAA) joins the arguments that Governor Wolf exceeded his authority under Article IV, Section 9 when he issued Williams' reprieve and described it as the first step in imposing a moratorium on the death penalty. The PDAA offers a historical summary of the constitutional provision and asserts that while the Governor once enjoyed unfettered power to grant reprieves, commutations, and pardons, the

definitive reason specific to the convicted prisoner. It concludes that the term "reprieve" must, therefore, be defined in accordance with these limitations.

Here, the PDAA asserts, there is no finite end to the Governor's reprieve of Williams' sentence as it remains unclear what recommendations the Task Force will make and whether the Governor possesses the authority to implement the recommendations absent further legislation or judicial reform. According to the PDAA, the Task Force recommendations would only be the starting point for prolonged political and legislative debate, adding years to the duration of the reprieve, which the Governor proposes will continue until the Task Force recommendations are satisfactorily addressed. For these reasons, the PDAA requests a declaration that the Governor's alleged suspension of the death penalty by use of the reprieve power is unconstitutional and that the reprieve issued to Williams is void.^{12 13}

¹² The PDAA additionally contends that the Governor's interpretation of Article IV, Section 9 is contrary to the legislative procedure prescribing the Governor's course of action whenever a death warrant is to be issued, which necessarily contemplates that all reprieves will terminate on a specific and contemplated date. Amicus Brief of PDAA at 26 (citing 61 Pa.C.S. § 4302(a)(2) (providing that "[i]f, because of a reprieve or 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.")).

¹³ The Speaker of the Pennsylvania House of Representatives and the President Pro Tempore of the Senate of Pennsylvania have also filed an *amicus* brief in support of the Commonwealth. Relying on comments made during the 1872-73 constitutional debates, the *amici* contend that the reprieve power was intended as a failsafe for the last minute arrival of information based on the facts in a particular case that arose so late in the process that a Board of Pardons could not be convened. They maintain that the reprieve power was not intended as an unrestricted allowance for a Governor to impose his will for an indeterminate period.

actions amount to a pardon or commutation of sentence without the unanimous consent of the Board of Pardons. He suggests that the reprieve does nothing more than postpone his execution and is, thus, a valid exercise of power under the plain language of Article IV, Section 9. Even assuming a reprieve must be limited in duration and purpose, Williams contends that Governor Wolf's reprieve satisfies these requisites as it postpones his execution temporarily until the Task Force report is complete and any recommendations are addressed.

While acknowledging its lack of precedential value, Williams finds persuasive the Oregon Supreme Court's decision in Haugen v. Kitzhaber, 306 P.3d 592 (Ore. 2013), which rejected the argument that a reprieve violated Article V, Section 14 of the Oregon Constitution if it did not have a definitive termination date or a specified purpose relating to the particular facts of the case.¹⁴ In Haugen, as part of a moratorium on executions, Oregon Governor John Kitzhaber granted a convicted prisoner a temporary reprieve "for the duration of [his] service as Governor." Id. at 595. After reviewing the language of the Oregon Constitution and the history of reprieves in England and America, the Haugen court upheld the validity of the reprieve and unanimously concluded there was no requirement of a specific termination date or an express purpose relating to the prisoner's individual circumstances. The court noted that, historically, governors and presidents have granted reprieves for a wide range of reasons, including political, personal or private reasons, and that nothing suggested that a reprieve had to be granted for one particular reason.

¹⁴ Article V, Section 14 of the Oregon Constitution provides that the Governor "shall have power to grant reprieves, commutations and pardons, after conviction, for all offences except treason, subject to such regulations as may be provided by law." ORE. CONST. art. V, § 14.

consent of the Board of Pardons, the Governor's power to grant reprieves in non-impeachment cases is unlimited. Governor Wolf asserts that this broad and unfettered executive power has been reflected in both constitutional text and historical practice since the Commonwealth's earliest days. Thus, the Governor agrees with Williams that because the chief executive may define the reason for and duration of a reprieve as he sees fit, the challenged reprieve at issue is constitutional and should be upheld by this Court.

In this regard, he points out that the term "reprieve" is undefined in the constitution and the facially broad and unrestricted reprieve power is consistent with the King's power to reprieve as it existed under English Common Law and throughout Pennsylvania's constitutional history. He contends that this rich history belies the Commonwealth's contention that a reprieve is only valid if limited in duration and purpose, such as to stay a death warrant pending a clemency proceeding or a resumption of collateral review by a lower court.

According to the Governor, there are three categories of reprieves under English Common Law: (1) those granted by the Majesty himself, known as *es mandato regis*, meaning "of the King's mandate" or "from the mere pleasure of the crown;" (2) those granted by the judiciary upon the discretion of the judge before whom the prisoner was tried based on circumstances of the individual case, known as *ex arbitrio judicis*, meaning "at, in or upon the discretion of the judge;" and (3) those granted by the judiciary by operation of law where the convict was pregnant or insane, which rendered an immediate execution inconsistent with humanity or justice, known as *ex necessitate legis*, meaning "from or by necessity of law." See Brief of Governor Wolf at 17-18 (citing Chitty, Joseph, *A Treatise on the Law of the Prerogatives of the Crown; and the*

In response to the arguments of Williams, Governor Wolf, and their *amici*, the Commonwealth asserts in its reply brief that relevant history provides no other popular understanding of the term "reprieve" other than one that postpones the execution of a sentence for a definite time and a particular purpose related to the circumstances of the convicted prisoner. It clarifies that it is not contending that the Commonwealth Court in Morganelli created the definition of reprieve as limited in time and purpose, but rather that its decision reiterated the commonly accepted definition of the term. The Commonwealth reiterates its position that the plain text of Article IV, Section 9 does not establish an unlimited executive reprieve power because an indefinite reprieve has the legal effect of a commutation of sentence, which cannot be granted absent unanimous consent by the Board of Pardons. Finally, the Commonwealth contends, history does not suggest that governors of constitutional republics, like Pennsylvania, inherited the powers of a medieval king. Instead, it argues, a reprieve was commonly understood as encompassing only a temporary respite.

(...continued)

Alternatives to the Death Penalty, and the Jewish Social Policy Action Network. These *amici* contend that Governor Wolf's reprieve should be upheld because Pennsylvania's capital punishment system fails to provide equal justice under the law. It asserts that the Task Force was created by the Senate because, *inter alia*: post-conviction DNA testing demonstrated wrongful convictions; the 2003 report of the Pennsylvania Supreme Court Committee on Racial and Gender Bias in the Justice System, which was based on a study commenced in 1999, has determined that racial, ethnic and gender biases exist and affect the way parties, litigants, witnesses and jurors are treated; and the American Bar Association has identified several areas in which Pennsylvania's death penalty system falters in guaranteeing each capital defendant fairness and accuracy in all proceedings. The *amici* allege that the primary problems that need to be solved in the capital arena include racial bias in jury selection and constitutionally deficient representation in capital cases, resulting from an underfunded system. These concerns can be remedied, *amici* contend, if we uphold Governor Wolf's reprieve and allow the Task Force to complete its report and have its concerns addressed.

Reduced to its essence, the Commonwealth's position is that the Governor's reprieve power in Article IV, Section 9, which is unaccompanied by direct textual limitation other than an exception for impeachment cases, authorizes only reprieves of a fixed duration that are issued for a particular purpose attendant to the individual circumstances of a case, such as to afford the prisoner the opportunity to seek clemency or collateral review of his judgment of sentence. Otherwise, it contends, the Governor could circumvent the constitutional limitation on commutations of sentence by issuing an indefinite reprieve in a capital case such as this one, thereby effectively commuting the death sentence to life imprisonment without the requisite unanimous written recommendation of the Board of Pardons. The Commonwealth finds support for its constitutional interpretation in the text of Article IV, Section 9, the historical circumstances surrounding its adoption, as well as current day case law. To the contrary, Governor Wolf and Williams proffer that the language in Article IV, Section 9 conferring reprieve power upon the chief executive has always been conspicuously unencumbered and that the historical principles embodied in the text and its subsequent practical application support a broad, rather than narrow grant of executive authority. Upon close examination, we agree with Governor Wolf and Williams.

Although the term "reprieve" is not defined in the Pennsylvania Constitution, it is notable that at the time the reprieve power was adopted in 1790, the framers enacted the Governor's clemency powers with reference to English common law. Smithers & Thorn at 87 (stating that the Governor's clemency power "embraces all those grounds upon which by the English Common Law the courts granted reprieves"). At that time, a reprieve was commonly understood to mean "the suspension, postponement or delay of a sentence" or "a temporary respite." Id. at 67-68. A reprieve was similarly described as follows:

English common law. The existence of limitations attendant to the judicial reprieve power does not establish that the Crown lacked the power to reprieve or that the Crown's authority to reprieve was somehow restricted to the reasons offered by the court when issuing a judicial reprieve.

We conclude that at the time the reprieve power was adopted in the 1790 Constitution, the Governor's authority to issue a reprieve was not understood as being limited to granting reprieves with a specific end date or for a purpose relating only to the prisoner's unique circumstances, but rather encompassed any temporary postponement of sentence. The Oregon Supreme Court in Haugen, *supra*, reached the same conclusion when it relied on English common law to reject a similar argument that a reprieve under that state's constitution had to be issued for a particular reason with a definitive termination date.¹⁶ The Haugen court stated, "[a]lthough . . . several recurring reasons tended to be the reason for granting reprieves [in English common law], nothing suggests that an act of clemency had to be granted for one of those historical reasons to qualify as a reprieve," and "nothing suggests that reprieves were required to carry a stated end date." Haugen, 306 P.3d at 603.

We find that the historical exercise of executive reprieve power in Pennsylvania is also consistent with the common law understanding of the term and suggests no limitations as to fixed duration or particular purpose, but only that the reprieve operate as a temporary suspension of a sentence. While the Commonwealth characterizes executive reprieves unaccompanied by fixed duration or particular purpose as aberrations, both parties acknowledge that Governors, throughout the years, have

¹⁶ As referenced, Article V, Section 14 of the Oregon Constitution provides that the Governor "shall have the power to grant reprieves, commutations, and pardons, after conviction, for all offences except treason, subject to such regulations as may be provided by law." ORE. CONST. art. V, § 14.

death or life imprisonment” by requiring a unanimous recommendation of the Board of Pardons, rather than a mere majority recommendation.¹⁷

Upon review of the various constitutional amendments to the Governor’s clemency powers, we conclude that Article IV, Section 9 provides no textual predicate for the Commonwealth’s assertion that the drafters and ratifying voters intended the amendments to the pardon and commutation provisions to apply to the Governor’s reprieve power. Such intent to constrain the Governor’s constitutionally granted authority must be established, either expressly or implicitly, by the constitutional language itself, which imposes no such restrictions. In fact, Pennsylvania’s broad executive reprieve power in Article IV, Section 9(a) is in stark contrast to other state constitutional provisions that impose express temporal and substantive limitations on a Governor’s exercise of reprieve authority. See e.g. TEX. CONST. art. IV, § 11(b) (conferring upon the Governor the power to grant one thirty-day reprieve in a capital case absent approval for longer reprieves from the Board of Pardons); NEV. CONST. art. V, § 13 (providing that except in cases of impeachment, the Governor shall have the power to grant reprieves for a period not exceeding sixty days from the time of conviction); IOWA CONST. art. IV, § 16 (conferring upon the Governor the power to grant reprieves subject to regulations as provided by law and requiring the Governor to report to the Legislative Assembly at its next meeting each case of reprieve and the reasons for granting the same).

Gleaning from the commonly understood meaning of the term at English common law, the text of Article IV, Section 9, and the historical application of the executive reprieve power, we hold that the term “reprieve” as set forth in Article IV,

¹⁷ The clemency powers of pardon and commutation were also altered by changing the composition and term of gubernatorial appointees to the Board of Pardons.

reason and for a defined time period. The executive cannot reserve an option ultimately to describe years of inaction, retroactively, as a reprieve." *Id.* at 747. The Morganelli court's reference that "presumably" the Governor should reprieve "for an expressed reason and for a defined time period" was not germane to the holding of the case, and, thus, constitutes *dicta* espoused by a lower tribunal, which in no way governs disposition of the constitutional issue presented here.

Applying such law to the facts before us, we conclude that the reprieve issued by Governor Wolf to Williams is constitutionally sound. By its express terms, the executive directive identifies the action as a "temporary reprieve of the execution unto Terrance Williams until [the Governor has] 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." See Governor Wolf's Reprieve to Terrance Williams dated February 13, 2015. Governor Wolf has acknowledged that Williams has been convicted of first degree murder, that his sentence of death has been affirmed by this Court, and that Williams remains on death row under sentence of death. For this reason, we disagree with the Commonwealth's suggestion that the reprieve unconstitutionally altered a final judgment of this Court; rather, the execution of the judgment is merely delayed.

Contrary to the Commonwealth's assertions, the reprieve at issue is not divested of its "temporary" nature and automatically deemed "permanent" merely because it is unclear precisely when it will expire. The instant facts illustrate this point. Here, Governor Wolf issued the reprieve on February 13, 2015, indicating that it will continue until the Task Force's report is issued and any concerns raised therein are addressed. The Commonwealth initiated an action in this Court five days later, seeking to invalidate the reprieve as unconstitutional. At this time, when the Task Force report has yet to be

Governor Wolf's reprieve is better characterized as a valid exercise of constitutional authority.

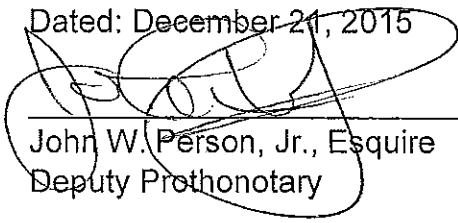
Finally, we emphasize that it is not our task to address the wisdom of Governor Wolf's issuance of Williams' reprieve, but only its constitutional validity. Significantly, we further decline to address the propriety of Governor Wolf's declaration in a press release that the issuance of a reprieve to Williams constitutes the first step in his executive policy of imposing a moratorium on the death penalty in Pennsylvania. While the Commonwealth relies on the Governor's statements in this regard to support its constitutional challenge, it cannot be ignored that the matter before us involves the constitutional validity of the reprieve issued to Williams. Future challenges to reprieves granted by Governor Wolf will have to await independent examination based upon our holdings herein.

It is for these reasons that we deny the Commonwealth's challenge to the validity of the February 13, 2015 reprieve issued to Williams.

Mr. Chief Justice Saylor, Mr. Justice Eakin and Madame Justice Todd join the opinion.

Mr. Justice Stevens files a concurring opinion.

Judgment entered
Dated: December 21, 2015



John W. Person, Jr., Esquire
Deputy Prothonotary

**[J-52-2015] [MO: Baer, J.]
IN THE SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT**

COMMONWEALTH OF PENNSYLVANIA,	:	No. 14 EM 2015
	:	
Petitioner	:	Emergency Petition for Extraordinary
	:	Relief Under King's Bench Jurisdiction
	:	
v.	:	
	:	
TERRANCE WILLIAMS,	:	
	:	
Respondent	:	
	:	ARGUED: September 10, 2015

CONCURRING OPINION

MR. JUSTICE STEVENS

DECIDED: December 21, 2015

On June 11, 1984, Appellant deceived Amos Norwood, who was on his way to church, into giving him a ride. Once at a secluded spot in a cemetery Appellant stole \$20 from Mr. Norwood. While Mr. Norwood begged for his life, Appellant tied his hands together, tied his legs together and stuffed socks in his mouth. Appellant beat Mr. Norwood with a fire iron until Mr. Norwood was dead, hid the body behind two tombstones, covered the body with loose brush and later that evening soaked Mr. Norwood's body in gasoline and set it on fire.

In 1990, the Pennsylvania Supreme Court determined Appellant's due process rights were protected, and after further review through Post Conviction Act appeals, it confirmed this finding, and held that the jury verdict would be carried out. See Majority Opinion at 2 for procedural history.

Any Governor who is elected and personally opposes such law, no matter how distasteful to him or her, violates one of our country's basic principles should that Governor refuse to enforce the law. As John Adams stated during the early days of our country: we are a "government of laws, not of men." John Adams, "Letters of Novanglus No. 7," Boston Gazette (1774). In other words, the Executive Branch cannot unilaterally and arbitrarily nullify a valid, existing statute by refusing to enforce it.

Pennsylvania has enacted a capital punishment law.² While I acknowledge the death penalty is an emotional, controversial issue, Pennsylvania has determined it is the appropriate punishment for certain enumerated offenses, after full due process of law is afforded the defendant. Indeed, juries listen to horrific facts and after due deliberation, such as in this case, make the decision to employ the penalty of death. If the death penalty is to no longer apply in Pennsylvania, that decision should come from the elected members of the Pennsylvania House and Senate and not from nullification by an Executive or by fiat by the Judiciary.

The Majority's conclusion that the Governor has the power to issue reprieves is consistent with a plain language interpretation of the Constitution.³ What is problematic

² Pennsylvania's Death Penalty Statute provides, in part:

§ 9711. Sentencing procedure for murder of the first degree.

(a) Procedure in jury trials.

(1) After a verdict of murder of the first degree is recorded and before the jury is discharged, the court shall conduct a separate sentencing hearing in which the jury shall determine whether the defendant shall be sentenced to death or life imprisonment.

42 Pa.C.S. § 9711(a)(1).

³ Article IV, Section 9 states, in part, "In all criminal cases except impeachment the Governor shall have power to remit fines and forfeitures, to grant reprieves..." PA. CONST. art. IV, § 9.