

IN THE SUPREME COURT OF PENNSYLVANIA

COMMONWEALTH OF	:	
PENNSYLVANIA,	:	
	:	
Petitioner	:	
	:	
v.	:	No. 78 EM 2015
	:	
HUBERT MICHAEL,	:	
	:	
Respondent	:	

**RESPONSE OF THE GOVERNOR
TO PETITION FOR EXTRAORDINARY RELIEF
PURSUANT TO KING’S BENCH JURISDICTION**

The Honorable Tom Wolf, the Governor of the Commonwealth of Pennsylvania, by and through undersigned counsel, respectfully requests this Court to deny the Pennsylvania Attorney General’s Petition for Extraordinary Relief Pursuant to King’s Bench Jurisdiction (“Petition”). The petition presents the same questions that are raised in *Commonwealth v. Williams*, 14 EM 2015, which is currently pending before the Court, and judicial economy would be frustrated by requiring the parties to submit redundant briefing each time a prosecutor

challenges a gubernatorial reprieve. Alternatively, should the Court choose not to deny the Petition, the Governor respectfully requests that the case be held in abeyance pending this Court's resolution of *Williams*, which will govern the disposition of this matter.

INTRODUCTION

The Governor, on June 3, 2015, exercised his exclusive authority under Article IV, § 9(a), of the Constitution of Pennsylvania to issue for Respondent Hubert L. Michael, Jr. ("Michael") a temporary reprieve from execution by lethal injection, which was scheduled to be carried out on June 5, 2015.¹ As the Governor stated expressly in the reprieve, he has determined that the execution of Michael will be stayed until the Governor has "received and reviewed the forthcoming report of the Pennsylvania Task Force and Advisory Committee on Capital Punishment" ("Task Force"), which is studying the Commonwealth's system of capital punishment as commanded by a resolution of the Senate of Pennsylvania, *see* Senate Resolution 6 of 2011, "and any recommendations contained therein are satisfactorily addressed."

Prior to issuing the reprieve to Michael, on February 13, 2015, the Governor exercised his exclusive authority under Article IV, § 9(a), of the Constitution of

¹ A true and correct copy of the reprieve issued by the Governor pursuant to Article IV, § 9(a), of the Constitution is attached as Exhibit A.

Pennsylvania and issued “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.”

Five days after the Governor exercised his constitutional authority to grant Terrance Williams a reprieve, the District Attorney of Philadelphia County (“District Attorney”) filed an Emergency Petition for Extraordinary Relief, asking this Court to exercise its King’s Bench jurisdiction to declare the reprieve “null and void.” *Williams*, 14 EM 2015, Emergency Commw. Pet., (Feb. 18, 2015) at 2 (“District Attorney’s Petition”). On March 3, 2015, this Honorable Court granted further review of the District Attorney’s Petition, ordered that the Governor be joined as a party, and directed the Prothonotary “to establish a briefing schedule and to list the matter for oral argument in the normal course so that the parties may brief the issue of the propriety of this Court’s exercise of King’s Bench review as well as the merits of the issues raised in the petition.”

Thereafter, the District Attorney filed his brief, contending that the Governor’s reprieve was not actually a “reprieve” but rather “an effective commutation” that “negates a class of criminal judgments without authority.” *Williams*, District Attorney’s Brief at 3, 38, 39 n.16 (Apr. 13, 2015). The District Attorney asserted that a reprieve may not be granted for an indefinite period and

may only be granted for a few limited purposes. *Id.* at 19, 28. Based on those assertions, the District Attorney concluded that the Governor’s action “suspends laws enacted by the General Assembly” and “contradicts the Governor’s duty to faithfully execute the law.” *Id.* at 26, 39.

Respondent Williams and the Governor filed responsive briefs on June 17, 2015, including an appendix with extensive supporting historical evidence. The District Attorney’s reply brief in *Williams* is due on July 22, 2015, and the Court has scheduled oral argument for September 10, 2015.

Following the reprieve granted to Michael, the Attorney General, on July 6, 2015, filed the instant Petition, likewise requesting this Court to exercise its King’s Bench jurisdiction to declare the reprieve of Michael “null and void.” Petition, at 3. The Attorney General makes the same arguments that are already before the Court in *Williams*. She contends that the Governor’s reprieves are “faux” reprieves that usurp the judicial function by “nullif[ing] valid, final judgments of sentence.” *Id.* at 23-24. Like the District Attorney in *Williams*, the Attorney General asserts that a gubernatorial order is not a “reprieve” if it is “indefinite in time and purpose,” and concludes that the Governor’s action violates his duty to “faithfully execute[.]” the law. *Id.* at 3, 19. On July 7, 2015, the Attorney General served a copy of the petition on counsel for the Governor.

In accordance with the Court's direction, the Governor, through his attorneys, submits this response to the Attorney General's Petition. The Governor respectfully requests that the Court deny the petition for the reasons stated herein. In the alternative, the Governor requests that the Court hold the matter in abeyance pending the resolution of *Williams*.

ARGUMENT

- A. This Court should deny the Attorney General's Petition for the Exercise of King's Bench Jurisdiction because this Court has already granted review of a petition raising the same issues as those advanced in the Attorney General's Petition.**

The Attorney General contends that this Court should exercise King's Bench jurisdiction, or extraordinary jurisdiction, to review the Governor's exercise of his constitutional power to grant a reprieve to Michael. Petition, at 3-6. The Governor disagrees.

This Court has explained that King's Bench jurisdiction may be appropriate in certain instances where "delays incident to [the] ordinary processes of law" would have a "deleterious effect upon the public interest." *In re Bruno*, 101 A.3d 635, 670-71 (Pa. 2014). Furthermore, in the sole case relied upon by the Attorney General for the invocation of this Court's King's Bench jurisdiction, this Court explained that its "exercise of extraordinary jurisdiction should be used sparingly," and may be appropriate "in order to conserve judicial resources, expedite the

proceedings and provide guidance to the lower courts on a question that is likely to recur.” *Commonwealth v. Morris*, 771 A.2d 721, 731 (Pa. 2001) (citations omitted) (negative subsequent history on other grounds). In *Morris*, this Court further explained that “the presence of an issue of immediate public importance is not alone sufficient to justify extraordinary relief.... We will not invoke extraordinary jurisdiction unless the record clearly demonstrates petitioner’s rights.” *Id.* (citation and internal quotation marks omitted).

In this matter, the legal issue raised by and the arguments advanced in the Attorney General’s Petition are fundamentally indistinguishable from those presented in *Williams*. *Williams* is presently pending before the Court, almost fully briefed, and scheduled for oral argument in less than two months. Duplicative briefing and argument in this matter, and any subsequent cases brought in response to possible future reprieves, would likely delay resolution of the questions presented in *Williams* and thus would have the “deleterious effect” that the exercise of King’s Bench jurisdiction is meant to avoid. Additionally, such redundancy is directly contrary to the principles underlying the sparingly-used exercise of extraordinary jurisdiction—namely, the conservation of judicial resources, expediting proceedings, and the provision of guidance on questions that are likely to reoccur. *See Morris*, 771 A.2d at 731. Here, through the disposition of *Williams*, this Court will be providing guidance that will control the disposition

of the present Petition. Furthermore, granting the instant Petition, and requiring additional briefing of issues that were already addressed in the briefs filed in *Williams*, will only serve to *consume* judicial resources and *hinder* the pace of the proceedings in *Williams*.

B. Alternatively, the Court should hold the Petition in abeyance pending the resolution of *Williams*.

Should this Court choose not to deny the Attorney General’s Petition outright, this Court should hold the Petition in abeyance pending resolution of *Williams* to avoid duplicative litigation and to advance the interest of judicial economy. In Pennsylvania, courts have “the inherent power to stay a second proceeding during the pendency of the first.” Standard Pennsylvania Practice § 12:22. For example, in *Commonwealth v. Abrue*, 971 A.2d 490 (Pa. 2009), this Court issued a *per curiam* order directing that “the Petition for Allowance of Appeal [be] placed on hold pending resolution of [a case presenting the same question].” *See also Commonwealth v. Selby*, 688 A.2d 698, 699-700 (Pa. 1997) (explaining that the Court had earlier held disposition of the case pending the outcome of a case presenting the same question).

Pursuant to these abeyance principles, the Court should hold the Attorney General’s Petition pending the disposition of *Williams*. At that time, the Court will be able to resolve this Petition, and any other related petitions, consistent with *Williams*—for example by granting the request of the Attorney General to

invalidate the reprieve or by granting the request of the Governor to deny the petition with prejudice.

C. In granting a temporary reprieve to Hubert Michael, the Governor has exercised a power granted to him expressly and exclusively by the Constitution.

As already fully articulated in the Governor's brief filed in *Williams*, Article IV, § 9(a), of the Constitution of Pennsylvania expressly grants to the Governor—and to the Governor alone—the executive power to grant reprieves in all criminal cases except impeachment. By contrast to the greater clemency powers of pardon and commutation, as to which the Governor's executive power is delimited by the requirement that such clemency be granted only upon the recommendation of the constitutionally-established Board of Pardons, the Governor's power to grant reprieves is entirely unlimited (except in cases of impeachment under Article VI of the Constitution). This broad and unfettered executive power has been reflected in both constitutional text and historical practice since the Commonwealth's earliest days in the 17th Century.

Because the Governor's power of reprieve is not otherwise limited by the Pennsylvania Constitution, this Court has no cause to intervene to restrict the Governor's exercise of this purely executive power in this case or any other. In addition, the Attorney General's claim that what the Governor has done does not constitute a reprieve, like the identical claim advanced by the District Attorney, is

without support. Therefore, this Court should deny the Attorney General's Petition.

As discussed above, since the legal issues raised by and the arguments advanced in the Attorney General's Petition are virtually indistinguishable from those presented in *Williams*, if the Court were to require further briefing in this matter, the Governor's brief would essentially mirror the brief that he already submitted in *Williams*. The legal and factual authority for the constitutionality of the Governor's actions in granting reprieves to Terrance Williams and Hubert Michael is fully articulated in the *Williams*' filings. To require further briefing of the same issues would be a futile exercise that would run counter to the principles underlying a grant of King's Bench or extraordinary jurisdiction.

CONCLUSION

For the foregoing reasons, this Court should deny the Attorney General's Petition. In the alternative, the Petition should be held in abeyance pending the resolution of *Williams*.

Respectfully submitted,

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DATE: July 21, 2015

CERTIFICATE OF SERVICE

I, H. Geoffrey Moulton, Jr., hereby certify that on this 21st day of July, 2015, the foregoing *Response of the Governor to Petition for Extraordinary Relief Pursuant to King's Bench Jurisdiction* has been served upon counsel in the manner indicated below, which service satisfies the requirements of Pennsylvania Rule of Appellate Procedure 121:

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Exhibit A

Commonwealth of Pennsylvania



Governor's Office

EXECUTIVE ORDER

REPRIEVE

To John E. Wetzel, Secretary of Corrections, or your successor in office,

WHEREAS, on the eleventh day of October, A.D. one thousand nine hundred and ninety-four, at a Court of Common Pleas held at York, in and for the County of York as to information number 3699 of the Criminal Division in the year A.D. one thousand nine hundred and ninety-three, a certain Hubert L. Michael, Jr., pled guilty to Murder of the First Degree on said information, and on the twentieth day of March, A.D. one thousand nine hundred and ninety-five, the Court fixed the penalty at death, and was thereupon, to wit, on the twentieth day of March, A.D. one thousand nine hundred and ninety-five, sentenced by the Court to suffer death; and

WHEREAS, the Supreme Court of this Commonwealth of Pennsylvania has reviewed the matter and upheld the constitutionality of the death penalty as well as affirmed its imposition upon said Hubert L. Michael, Jr., and has thus transmitted to the Governor a full and complete record of the trial, sentencing hearing, imposition of sentence and review by the Supreme Court pursuant to an Act of the General Assembly of this Commonwealth entitled the "JARA Continuation Act of 1980," approved the fifth day of October, A.D. one thousand nine hundred and eighty; and

WHEREAS, the Secretary of Corrections for the Pennsylvania Department of Corrections issued a Notice of Execution on the twenty-first day of April, in the year of our Lord two thousand and fifteen, for Hubert L. Michael, Jr. pursuant to the thirty-third Act of the General Assembly of the year two thousand and nine, A.D., approved on the eleventh day of August, A.D., two thousand and nine; and

WHEREAS, Article IV, Section 9 of the Pennsylvania Constitution provides that "[i]n all criminal cases except impeachment, the Governor shall have the power to ... grant reprieves ...";

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 Hubert L. Michael, Jr. 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.

GIVEN under my hand and the Great Seal of the State, at the City of Harrisburg, this third day of June, in the year of our Lord two thousand and fifteen, and of the Commonwealth the two hundred and thirty-ninth.

BY THE GOVERNOR:

ATTEST:

Executive Deputy Secretary of the Commonwealth