

now ripe for disposition. For the reasons discussed below, this Court concludes that the Defendant is not entitled to the requested relief.

In his Motion to Dismiss Aggravating Circumstances, the Defendant argues that the Pennsylvania death penalty is unconstitutional for two (2) reasons. First, Pennsylvania Governor Tom Wolf issued a memorandum granting a temporary reprieve of a death sentence to a death row inmate, Terrence Williams on February 13, 2015. Second, various organizations including the Pennsylvania Supreme Court's Committee on Racial and Gender Bias in the Justice System and the American Bar Assessment Team have reportedly made statements finding that the death penalty in Pennsylvania has not been administered in an "evenhanded manner" and is in substantial noncompliance with American Bar Association guidelines.

In addressing the reprieve granted by Governor Wolf in the Williams matter, we note that the Governor of Pennsylvania has the right to grant a temporary reprieve of the imposition of a sentence of death pursuant to Article IV, Section 9 of the Pennsylvania Constitution. The right of the Executive branch to grant such temporary reprieve was confirmed by our Supreme Court in *Commonwealth v. Williams*, 129 A. 3d 1199 (Pa. 2015). The Supreme Court therein upheld Governor Wolf's issuance of a reprieve of the death warrant as a "temporary suspension of Williams' sentence of death". *Williams*, 129 A. 3d at 1218.

Governor Wolf issued his temporary reprieve in *Williams* to allow additional time for the Pennsylvania Task Force and Advisory Committee on Capital Punishment to

complete a report on its findings on the death penalty in Pennsylvania and submit the report to the Executive branch for its review and consideration. The temporary reprieve did not state a particular time frame for its duration. The Supreme Court nevertheless determined that Governor Wolf's reprieve was temporary even though the triggering event, the Task Force report, had not yet been completed. The Supreme Court also stated that it declined 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." *Williams*, 129 A. 3d at 1218.

The Pennsylvania Supreme Court's decision in *Williams* was thus limited to the question of whether Governor Wolf had the constitutional authority to issue a temporary reprieve of a death warrant. As indicated, the Court determined that the Governor has such authority. The *Williams* Court did not, however, issue a moratorium on the death penalty in Pennsylvania or rule that the Pennsylvania death penalty statute is unconstitutional. On the contrary, the *Williams* decision acknowledged the continued viability of the Pennsylvania death penalty. Further, our Supreme Court did, on the same date as its *Williams* decision, acknowledge the constitutionality of the Pennsylvania death penalty provisions of 42 Pa. C. S. A. §9711. *Commonwealth v. Smith*, 131 A. 3d 467 (Pa. 2015).

In light of the foregoing discussion, the fact that Governor Wolf granted a temporary reprieve in the *Williams* matter, which was then affirmed by the Pennsylvania Supreme Court, does not have application to the present case or the

constitutionality of the death penalty in our Commonwealth. As is addressed in greater detail in our Order entered contemporaneously herewith regarding Defendant's Motion Regarding Death Penalty Issues, the death penalty in Pennsylvania remains the law of our Commonwealth in all capital cases upon a finding of guilt and the required proof by the Commonwealth as to the penalty phase. 42 Pa. C. S. A. §9711. In either event, absent the issuance of a pardon or commutation by the Governor, this case must proceed to a trial on the issue of guilt and a trial on the penalty of death or life in prison prior to the Executive branch's potential involvement in the issuance of a death warrant in this particular matter. As such, Governor Wolf's issuance of a temporary reprieve in the Williams case is not dispositive of the Commonwealth's pursuit of the death penalty herein.

We likewise find no merit to the Defendant's assertion that the Pennsylvania death penalty is unconstitutional because various law-related agencies have made comments which call into question the prudence of the death penalty in our Commonwealth. The comments made by various groups, including the American Bar Assessment Team and the Pennsylvania Supreme Court's Committee on Racial and Gender Bias in the Justice System, are only advisory on the subject matter. As discussed above, our Supreme Court has recognized the continued application of the death penalty in appropriate capital cases. *Commonwealth v. Smith*, supra.

For the reasons discussed more fully in our contemporaneous Order referenced above, we are thus unpersuaded as to the Defendant's arguments of the alleged unconstitutionality of the Pennsylvania death penalty. In addition, this Court notes that

our Supreme Court has already determined the death penalty to be constitutional and, as such, should be the proper judicial body to make any change in the law regarding the same. We further note that there is a strong presumption in the law of the constitutionality of legislative enactments. *Commonwealth v. Mikulan*, 504 Pa. 244, 247, 470 A. 2d 1339, 1340 (1983). Accordingly, the Defendant's Motion to Dismiss Aggravating Circumstances and to Proceed with *Comm. v. Frein* as a Non-Capital Case is DENIED.

BY THE COURT:


HON. GREGORY H. CHELAK, J.

c- Pike County District Attorney
Michael E. Weinstein, Esquire
William Ruzzo, Esquire
Court Administrator

OFFICE OF
PROTHONOTARY
CLERK OF COURTS
2016 JUN 17 PM 3:17
ENTERED FOR RECORD
PIKE COUNTY, PA