

Summary of SC100352, *State of Missouri ex rel. Governor Michael L. Parson v. The Honorable S. Cotton Walker*

Proceeding originating in the Cole County circuit court, Judge S. Cotton Walker
Argued and submitted April 10, 2024; opinion issued June 4, 2024

Attorneys: The governor was represented by Michael J. Spillane, Andrew J. Clarke, Andrew J. Crane and Gregory M. Goodwin of the attorney general’s office in Jefferson City, (573) 751-3321. Marcellus Williams was represented by Charles A. Weiss and Jonathan B. Potts of Bryan Cave Leighton Paisner LLP in St. Louis, (314) 259-2000; and Tricia J. Rojo Bushnell of Midwest Innocence Project in Kansas City, (816) 931-4929.

This summary is not part of the opinion of the Court. It is provided by communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.

Overview: The governor seeks a writ prohibiting a circuit court from taking any action other than to sustain his motion for judgment on the pleadings in a case brought against him by a death row inmate challenging the governor’s authority to rescind the former governor’s executive order staying the inmate’s execution and appointing a statutory board of inquiry. In a unanimous decision written by Judge Zel M. Fischer, the Supreme Court of Missouri makes permanent its preliminary writ of prohibition because the governor is entitled to judgment as a matter of law. The state constitution gives the governor exclusive authority over clemency decisions, and the inmate has no statutory or constitutional due process right to the board of inquiry process.

Facts: Marcellus Williams was convicted of first-degree murder and sentenced to death for the 1998 death of a woman stabbed during a burglary. This Court affirmed both his judgment of conviction and the circuit court’s subsequent judgment denying postconviction relief. After the federal courts denied habeas relief, this Court set an execution date in January 2015. Williams sought habeas relief in this Court, which vacated the execution order, ordered additional DNA testing and habeas proceedings, and appointed a master to ensure complete DNA testing. After receiving the master’s final report, this Court denied habeas relief and set a new execution date in August 2017. On the day of the scheduled execution, the then-governor issued an executive order appointing a board of inquiry pursuant to section 552.070, RSMo, and staying Williams’ execution until the governor “makes a final determination” as to whether Williams should be granted clemency. In 2023, the current governor rescinded his predecessor’s 2017 executive order, dissolving the board of inquiry and the stay and removing “any legal impediments” to Williams’ execution. Williams filed a declaratory judgment action against the governor in the Cole County circuit court. In his petition, Williams alleged the 2023 executive order violated: his state and federal due process rights to a “complete review” of his innocence claims under section 552.070; his federal due process rights under color of state law; and the constitutional separation of powers. He also alleged the governor lacked authority to dissolve the board of inquiry before it provided its report and recommendation to the governor. The governor filed a motion for judgment on the pleadings and to stay discovery. The circuit court overruled the governor’s motion, concluding Williams had a due process right to demonstrate his innocence based on the 2017 executive order and the governor lacked authority to dissolve the board of inquiry. The governor sought relief from this Court, which issued a preliminary writ of prohibition.

PRELIMINARY WRIT MADE PERMANENT.

Court en banc holds: The governor is entitled to judgment on the pleadings as a matter of law with respect to all four of Williams’ allegations.

(1) Since statehood, the Missouri Constitution has granted the governor exclusive authority to grant or withhold clemency. Williams concedes the governor has exclusive power over the final decision whether to grant clemency. As this Court held in 1939, such authority “is beyond the range of judicial or legislative encroachment.” Given the governor’s clemency power under article IV, section 7 of the state constitution, the former governor’s 2017 executive order was merely a reprieve, staying Williams’ execution until the governor made a final determination regarding clemency. A reprieve creates no rights and carries only the necessary expectation the governor can exercise his discretion to rescind it at any time. The fact a former governor issued the reprieve has no bearing on any successive governor’s authority to rescind the reprieve. The constitution vests the supreme executive power over clemency – and to rescind reprieves regarding clemency – in the individual occupying the office of governor.

(2) Williams’ allegation the governor lacked authority to rescind the former governor’s 2017 reprieve fails as a matter of law. Section 552.070 cannot and does not limit the governor’s clemency power. Although article IV, section 7 authorizes the legislature to regulate the manner of applying for pardons, section 552.070 is not such a law. Under section 217.800, RSMo, it is the capital offender who must apply to the governor for clemency. It would be absurd to construe the governor’s discretionary appointment of a board of inquiry – to gather information to assist his exercise of his constitutional clemency power – as a pardon application to himself on behalf of the capital offender. The board’s statutory obligation to provide the governor a report and recommendations does not limit the governor’s constitutional authority to grant or withhold clemency in a death penalty case. The only obligation the statute imposes on the governor, in addition to the board, is to hold any information the board gathers in strict confidence. Section 552.070 imposes no other obligation or limitation on the governor and does not limit the governor’s absolute discretion over clemency relief or to rescind the 2017 executive order and dissolving the board of inquiry.

(3) Williams’ allegation the 2023 executive order violated the constitutional separation of powers also fails as a matter of law. This claim is premised on Williams’ erroneous claim the governor lacked authority to dissolve the board of inquiry and order execution of Williams’ sentence.

(4) The circuit court erroneously declared the law when it concluded Williams alleged a protectible due process interest in demonstrating his innocence pursuant to the 2017 executive order and section 552.070. Neither the 2017 executive order nor section 552.070 provides a state-created right triggering due process protection. As the executive order illustrates, the board of inquiry process is initiated at the governor’s sole discretion. The statute serves as an additional, purely discretionary mechanism to assist the executive clemency decision constitutionally vested in the governor alone. The 2023 executive order dissolving the board and ordering execution of Williams’ sentence in no way denied Williams access to any process to which he legally was entitled.

(5) Williams also has not shown a due process interest in his own life under United States Supreme Court precedent. When the United States Supreme Court decides a case, and no single rationale explaining the result has the assent of five justices, the Supreme Court's holding may be viewed as that position taken by those justices who concurred in the judgments on the narrowest grounds. Applying this straightforward principle, this Court concludes the applicable law is that a capital offender's interest in not being executed in accord with his sentence does not trigger due process protections in the executive exercise of clemency authority, which offers only a "unilateral hope" the clemency process will result in the commutation of a lawfully imposed death sentence. Section 552.070 neither creates nor implies any procedural rights for an offender, and Williams has nothing more than a "unilateral hope" for discretionary clemency relief from his lawfully imposed death sentence. His argument distills to a plea for an act of gubernatorial mercy, not a valid argument for recognizing due process rights in the governor's exercise of discretionary clemency power.