



Redemption-Based Clemency for Stanley "Tookie" Williams: The Right Action for the Wrong Reason  
By DAN MARKEL

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On Tuesday, December 13, Stanley "Tookie" Williams is scheduled to die. Gov. Arnold Schwarzenegger of California might still decide whether to extend clemency to Williams by commuting his sentence to one of life imprisonment.

Why would Schwarzenegger consider clemency for Williams? Convicted of four robbery-murders 25 years ago, Williams also founded the Crips, a gang whose members have left streets and prisons terrorized and blood-soaked across the nation.

According to his supporters, Williams warrants clemency on account of his exemplary behavior over the last dozen years he's spent on death row. Upon emerging from solitary confinement for six years, Williams turned over a new leaf, becoming a model prisoner. He's authored children's books and performed outreach (by telephone) to mediate or reduce inter-gang violence and disputes. And, as a result of his apparent transformation, he has since garnered the support of 30,000 people who have signed a petition advocating clemency, including many celebrities.

Because of the [redemption-based arguments](#) made by his advocates, or the frenzy of celebrity support in favor of Williams, there's a risk that Gov. Schwarzenegger will do the right thing (extending clemency) for the wrong reason (Williams's personal redemption). Here's why.

**Governors Should Not Be Judging Who Has Been Reformed the Most**

Governors (or presidents) committed to the rule of law should resist using their clemency power to single out someone like Williams for special treatment, simply on the basis of his personal reform. That's because to extend clemency on that basis alone extends a sentencing discount to Williams that is not practically available to other similarly-situated offenders who may also have exhibited genuine reform and contrition--but were not lucky enough to catch the Governor's attention. That disparity violates our embedded commitment to equal justice under law.

Moreover, even if Governor Schwarzenegger promised to consider the redemption arguments of all future clemency seekers, that policy would still be problematic--though, granted, it would be an improvement upon simply bestowing leniency to Williams alone. The problem there is that in a well-working democracy with separation of powers, it's not the executive's role to make the law. That task is for the legislature to perform. The governor's job, instead, is to ensure faithful administration of the law.

Thus, a governor who suddenly announces that all offenders who exhibit personal reform are eligible for sentencing discounts - without any prior authorization to do so from the legislature - is creating a policy better left to the legislature to contemplate. Democratic authorization helps ensure - though it does not guarantee - that the reason chosen for extending a sentencing discount is not an arbitrary one (such as, the crime occurred on Tuesday) or a biased one (such as, the offender was also a bodybuilder).

To be sure, Schwarzenegger does, through his office, have wide discretion regarding the grant of clemency. But that discretion shouldn't be abused. Instead, the power of clemency should be used to ensure fidelity to bedrock principles

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## **Williams Should Be Spared - Along With All Death Row Prisoners**

Extending clemency to Williams is the right thing to do, in my view, but not because Williams reformed himself. Rather, it's because Schwarzenegger, as a state official, has a co-equal responsibility to implement the Constitution, and constitutional values are ruptured through the continued use of the death penalty. In other words, Tookie should be spared from death row simply because death row should be shut down.

As Governor Ryan in Illinois observed when he announced his blanket commutation of death row, the administration of the death penalty is infested with the pestilence of error and arbitrariness. Last month, [the Houston Chronicle reported](#) compelling evidence that, just twelve years ago, Texas executed an innocent man named Ruben Cantu. And other, similar cases like that are popping up increasingly, most recently [in Texas](#) and [in Missouri](#).

Overall, [over 120 death row inmates](#) have been exonerated since 1976--even after being convicted "beyond a reasonable doubt" under the extra procedures the Supreme Court has insisted upon for capital cases. A proper concern with accurately sorting the innocent from the guilty [requires the state to punish with sobriety, restraint, and also modesty](#). When other means are available to advance the goals of expressing social condemnation for the apparent perpetrator's acts, and protecting society from a person found to be dangerous to its members, the state should refuse to impose a punishment that prevents it from later acknowledging--and making amends for--its own wrongful acts to its own unintended victims. In sum, it's becoming clear that if executions persist, so will mistaken executions.

An additional reason for intervention, here, is the unfairness that characterizes the use of the death penalty. Statistically, the death penalty is more often meted out on the morally arbitrary basis of the race of the victim, or the geographic location of the crime, than on factors such as the crime's seriousness. In this respect, imposition of the death penalty violates the Eighth Amendment's ban on cruel and unusual punishments -- historically understood as barring arbitrary and discriminatory punishments. Knowing what we know about our society, it's hard to maintain the assumption that the death penalty can be both fairly and accurately inflicted.

## **Procedural Injustices Are More Than Sufficient For a Clemency Grant to Williams**

Williams's case, in particular, presents cause for concern. He was tried during a period when his mental competence was questionable. He has long denied responsibility for the crimes with which he was charged--even though he accepted responsibility and apologized for his role as founder of the Crips. He presented alibi evidence that the jury apparently discounted or ignored. He was convicted largely on the basis of testimony of government informants who had a strong motive to lie in their testimony: reductions in their own sentences. Additionally, the prosecutor in Williams's case, who had been publicly admonished by the California Supreme Court for a pattern of improper jury challenges based on race, had removed [all](#) blacks from Williams's jury. Finally, and more recently, [Williams has alleged](#) that the government suppressed exculpatory evidence.

These reasons do not necessarily mean that Williams was innocent of the heinous crimes of which he was convicted. But, together, they suffice to stay the hand of the executioner - for they show that Williams's trial raises a reasonable possibility that he may be innocent, or at least, unfairly convicted.

## **Schwarzenegger Should Act Justly, and Broadly**

The broken system that Governor Ryan condemned, when he commuted the sentences of those on Illinois' death row, was not unique to Illinois. Error infests the criminal justice system in California, as much as it does in Illinois or Texas.

Schwarzenegger, like Ryan, should be brave enough to say that a broken system - one that leads to the imposition of the death penalty on morally arbitrary or discriminatory grounds -- offends constitutional values. So it is a time for action.

Some have suggested that Williams should receive clemency to demonstrate Schwarzenegger's courage or capacity to be merciful. As I've [elaborated elsewhere](#) at greater length, I disagree. Mercy is the proper prerogative of God and punishing mothers--not the state. Instead, Schwarzenegger should simply be modest and just.

Not by sparing Williams alone, but by commuting the sentences of all those on California's death row. And not in the name of mercy, but in the name of justice.

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