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## After 24 Years on Death Row, Clemency Is Killer's Final Appeal

By [ADAM LIPTAK](#)

SAN QUENTIN, Calif., Nov. 30 - Stanley Tookie Williams, once a leader of a notorious street gang and now perhaps the nation's most prominent death row inmate, leaned over a small wooden table in a cramped visiting cell here and tried to explain what he used to be and what he has become.

"I have a despicable background," Mr. Williams said. "I was a criminal. I was a co-founder of the Crips. I was a nihilist."

"But people forget," he added, chewing on a turkey sandwich, "that redemption is tailor-made for the wretched."

All that stands between Mr. Williams and his execution, set for Dec. 13, is the possibility that Gov. [Arnold Schwarzenegger](#) will commute his sentence to life in prison after a clemency hearing next week.

Such commutations used to be common in the United States, granted in 20 percent to 25 percent of all death sentences reviewed by governors in the first half of the last century. With the exception of a few cases in which departing governors with misgivings about the death penalty granted wholesale clemency to condemned inmates, commutations have become rare. No condemned prisoner has been spared in California since 1967.

Governors once considered the commutation of a death sentence to be an act of mercy or grace. In recent years, though, they have tended to act only to correct errors in the judicial system and, occasionally, to take account of mental illness or retardation.

When Gov. Mark R. Warner of Virginia spared Robin Lovitt's life on Tuesday, for instance, he said that he was acting "to reaffirm public confidence in our justice system." The execution could not proceed, he said, because potentially exculpatory DNA evidence had been destroyed.

Mr. Williams's basic claim is different. Although he says he is innocent of the four 1979 murders that sent him to death row in 1981, his lawyers base their request for clemency on the good that Mr. Williams has done during his years in prison.

He is an author of children's books, a memoir and the Tookie Peace Protocol, a set of fill-in-the-blanks forms for rival gangs wishing to declare a truce. He gives lectures to youth groups by telephone. His supporters have nominated him for the Nobel Prize, for both literature and peace.

Mr. Schwarzenegger must decide in Mr. Williams's case whether clemency means something more than additional scrutiny of the evidence presented in court or whether it should also take account of the progress of a prisoner's life in the years following a death sentence.

His answer will have a broad impact, as the pace of executions in California is about to quicken. The state, which has the nation's largest death row but seldom executes anyone, faces the possibility of three executions before the end of February.

Mr. Williams, 51, is a large, deliberate black man with more salt than pepper in his beard. He wears his hair in a short ponytail, and his round rimless glasses give him an intellectual air. A proud autodidact, he chooses his words with care, preferring the bigger ones.

Mr. Williams acknowledged that his story, which has attracted the support of rappers and Hollywood celebrities and has been made into a television movie, is a jumble of contradictions that will not be easy for the governor to untangle.

Prosecutors and victims rights groups say Mr. Williams's crimes must outweigh whatever he has done since.

"This is a guy who blew away four people with his shotgun and laughed about it," said Michael Rushford, the president of the Criminal Justice Legal Foundation in Sacramento. "Guys like him were your worst nightmare in L.A. in the 70's. They'd blow you away for your shoes. For nothing. For sport."

Mr. Williams was convicted of four murders, those of Albert Owens, a shop clerk killed during the robbery of a convenience store in February 1979, and of Tsai-Shai Yang, Yen-I Yang and Yee-Chen Lin, killed during the robbery of their family-run motel the next month.

Steve Cooley, the Los Angeles County district attorney, told Mr. Schwarzenegger in a submission this month opposing clemency, that Mr. Williams's failure to "take any responsibility for the brutal, destructive and murderous acts he committed" means that "there can be no redemption, there can be no atonement, and there should be no mercy."

In a long interview here, Mr. Williams countered, "How can a person express contrition if he's not guilty?" He added: "They want me executed. Period. I exemplify something they don't want to see happen - a redemptive transformation."

He said he had a bit of history with the man who would decide his fate, based on a shared passion for bodybuilding. Mr. Williams said he used to work out at the Gold's Gym on the Santa Monica beach in the 1970's.

"I was pretty enormous back then," Mr. Williams said, "and exceptionally strong."

Mr. Schwarzenegger passed Mr. Williams on the Santa Monica boardwalk one day and told a companion, according to Mr. Williams: "Look, that man doesn't have arms. He has legs."

The governor has said he does not recall the incident, and he has declined to say what standards he will use in deciding whether Mr. Williams or any other California inmate should live. "I really don't have any guidelines set for that," Mr. Schwarzenegger told reporters in November. "It's a case-by-case situation."

"This is kind of the toughest thing to do when you're governor," he added. "And so I dread that situation, but it's something that's part of the job, and I have to do it." A spokeswoman declined to

elaborate.

Asked what he would tell the governor were they to meet again, Mr. Williams said: "First and foremost, I would say that I'm innocent. Second, I believe that if I'm allowed to get a clemency or an indefinite stay, it would allow me to continue to proliferate my positive message, including a collaboration with the N.A.A.C.P., to create a violence-prevention message for at-risk youth."

Other governors in recent years have focused on only the type of argument that Mr. Williams makes first, that he is innocent. They have acted as a sort of backstop to the judicial system, driven in part, perhaps, by a fear of seeming soft on crime.

"In every case," [George W. Bush](#), then governor of Texas, wrote in "A Charge to Keep," his 1999 memoir, "I would ask: Is there any doubt about this individual's guilt or innocence? And, have the courts had ample opportunity to review all the legal issues in this case?"

[Bill Clinton](#) said much the same thing as governor of Arkansas, expressing a reluctance to take decisions away from the courts.

Mr. Schwarzenegger, a Republican, has twice denied clemency, to Kevin Cooper, whose execution was stayed by the courts last year, and to Donald Beardslee, who was executed in January.

In the Beardslee case, Mr. Schwarzenegger seemed to discount the possibility that a prisoner's actions in prison should figure in the clemency determination.

"While I commend Beardslee for his prison record and his ability to conform his behavior to meet or exceed expected prison norms," Mr. Schwarzenegger said, "I am not moved to mercy by the fact that Beardslee has been a model prisoner. I expect no less."

Mr. Williams's main lawyers for his clemency application, from the New York law firm of Curtis, Mallet-Prevost, Colt & Mosle, say Mr. Schwarzenegger should think more broadly about his power to be merciful.

"We seek clemency for the man Stanley Williams has become," they wrote in their clemency petition, "for the good work he has done, and for the good work he will continue to do."

The traditional definition of clemency, said Austin Sarat, a professor of jurisprudence and political science at Amherst College and author of "Mercy on Trial," a study of capital clemency, was concerned with neither justice nor redemption, the two arguments Mr. Williams has pressed.

"The idea of clemency was the reduction of a deserved punishment," he said. "It wasn't thought of as justice. You couldn't earn or deserve clemency. It was an act of mercy or an act of grace."

In "Against Mercy," an article in The Minnesota Law Review last year, Dan Markel, a law professor at Florida State University, argued that mercy in that sense was problematic. It not only fails to deliver warranted punishment, Professor Markel wrote, but also flies in the face of a societal commitment to equal justice under the law.

A narrow conception of clemency limited to correcting errors in the judicial system helps explain recent trends. In the last decade, putting aside Gov. [George Ryan's](#) emptying of Illinois's death row in

2003, there have been about two executive clemencies in capital cases each year.

In California, Gov. Edmund G. Brown commuted 23 death sentences from 1959 to 1967, while allowing 36 executions to proceed. In "Public Justice, Private Mercy," a 1989 book about how he made those decisions, Mr. Brown said he acted when there were questions about the inmate's guilt, when new evidence had come to light and when the punishment seemed disproportionate to that received by others.

[Ronald Reagan](#), who succeeded Mr. Brown, granted the last capital commutation in California, in 1967, to a brain-damaged man.

There are almost 650 people on death row here, compared with slightly more than 400 in Texas. But Texas has executed 355 people since the United States Supreme Court reinstated the death penalty in 1976. California has executed 11.

"We don't want to churn them out the way some of the states in the South do," Ronald M. George, the chief justice of the California Supreme Court, said in an interview on Monday. "But it can drag on for 20 years, which does not reflect well on the system."

Mr. Williams stands at the head of a growing line, as California now seems on the verge of a spate of executions. Another one is scheduled for January and a third is likely in February.

Mr. Williams said he had given some thought to his last day should things not work out with the governor.

"They have," he said of prison officials, his voice rising, "the audacity to ask, 'Do I want a last meal?' Absolutely not. 'Do I want anyone present?' Absolutely not. 'Do I want a preacher?' Absolutely not. I want nothing from this institution."

But he did want something, he said later.

"I want to live," he said.