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Williams' fate in governor's hands

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Gov. Arnold Schwarzenegger, who killed fictional bad guys on the silver screen, then rode that fame into office, will take a real man's life into his hands Thursday.

Stanley "Tookie" Williams, a convicted murderer turned anti-gang activist who faces execution Dec. 13, is both the most notorious and the most lionized Death Row inmate to ask for Schwarzenegger's mercy.

That makes his case one of the most closely watched dramas of Schwarzenegger's political career.

The governor, who refused clemency in two previous cases, brought greater attention to Williams' plea when, for the first time, he set a private clemency hearing. Now he faces a choice that binds together intensely personal and political considerations.

"He's bound to alienate people no matter what he does," said Barbara O'Connor, director of Sacramento State University's Institute for the Study of Politics and Media.

Williams, co-founder of the infamous Crips street gang, was convicted in 1981 of murdering four people two years earlier. He is the state's highest-profile Death Row case since Robert Alton Harris, who in 1992 became the first person California had executed in 25 years.

His plea takes place in an era when fewer clemencies are being granted than at any other time in U.S. history, but also when the rate of executions is dropping.

Death penalty support falls

DNA testing has led to the exoneration of some condemned prisoners. And California polls show support for the death penalty has dropped from the peak of 83 percent it reached in the mid-1980s, though 68 percent of state voters still support it.

Very little regulates a governor's decision to grant or deny clemency.

"They can do it for no reason, good reason, bad reason," said Austin Sarat, a professor of law and politics at Amherst College and author of "Mercy on Trial: What It Means to Stop an Execution," a study of executive clemency.

"There aren't any rules at all. The traditions are invented with each governor," said Sarat, who calls the clemency process "a form of lawful lawlessness."

The state Supreme Court can reverse a governor's decision to grant clemency if the prisoner pleading for clemency has previous felony convictions. But Williams does not, and if Schwarzenegger grants clemency, his decision will be final.

No California governor has granted clemency to a condemned prisoner since 1967, when Ronald Reagan commuted Calvin Thomas' death sentence because Thomas may have been brain damaged.

In 2004, Schwarzenegger reviewed Kevin Cooper's plea but did not order either a private or a public hearing. The courts later stayed Cooper's execution, allowing further appeals.

In January, the governor referred Donald Beardslee's plea to the Board of Parole Hearings but did not attend the hearing and followed its recommendation to reject clemency. Beardslee was executed that month.

The hourlong private hearing on Williams' plea is scheduled for 10 a.m. Thursday in Schwarzenegger's office at the state Capitol, an area called "the horseshoe."

Williams' attorneys and Los Angeles County prosecutors will have 30 minutes apiece to argue their case, and are allowed to reserve part of their allotted time to rebut the other side.

The hearing will involve a constellation of moral arguments that in significant ways set Williams' plea for clemency apart from either Cooper's or Beardslee's, which hung on questions of criminal procedure and evidence, and for Beardslee, about whether he was brain damaged.

Williams, who on Death Row became a prolific children's book author and was nominated for the Nobel Peace Prize, maintains he is innocent of the murders for which he was convicted.

But his clemency plea isn't based on that claim. He and thousands of supporters argue that the good he has done from prison and the purpose he could serve if allowed to live make his life worth sparing.

It is Williams himself - the violence of his past and whether he has changed enough to warrant clemency - who has dominated much of the discussion about what Schwarzenegger might decide.

Focus on governor

But legal experts say the clemency process focuses as much on the governor as on the man asking his mercy.

"It's about the moral views of the governor, it's about the character of the governor," Sarat said. "It's about who Arnold Schwarzenegger is and who he wants to be, and what he wants to say to the citizens of California about the place of mercy, grace and charity in today's society."

Sarat argues that Schwarz-enegger's decision should be shaped principally by considerations of grace, which American jurists from Chief Justice John Marshall in the 1800s to Chief Justice William Rehn-quist in the past century called the basis of clemency.

Argument for grace

The question is whether grace should be extended to people despite the nature of their crime, Sarat said. That, far more than the aim of correcting potential errors in the process of justice, is the proper purpose of clemency, he said.

But Michael Rushford, president of the Criminal Justice Legal Foundation, a law enforcement and crime victims' advocacy group in Sacramento, said, "The standard should be always focused on whether or not the killer did the job, did the killing."

Clemency should apply only in cases of potential innocence or significant procedural error, Rushford said, and if Sch-warzenegger grants clemency, it would mean he had wrongly applied his authority to grant mercy and ignored his responsibility to uphold the law.

"It would be more about how someone feels, how the governor feels about Tookie, than it would be about whether or not the law is correct or the verdict is correct," Rushford said.

Dan Markel, a criminal law professor at Florida State University College of Law, said he believes philosophical objections to the death penalty are sufficient to commute a death sentence. But Markel, who generally opposes the death penalty, also said clemency pleas based simply on the condemned person's having undergone a personal reform can be morally problematic in a system committed to equal justice.

Unless the Legislature expressly "articulates the notion of personal reform as a basis" for clemency for all condemned prisoners, it would be "inappropriate for Schwarzenegger to give special consideration to Williams' appeal on that grounds alone," said Markel, whose essay "Against Mercy" was published last year.

Since the U.S. Supreme Court allowed the death penalty to be reinstated in 1976 - California revived it in 1978 - clemency hearings have largely become "a formality, like a kabuki dance," said Franklin Zimring, a UC Berkeley law professor and death penalty expert.

"I don't think that's the case here," he said of the Thursday hearing. "It may be about something."

There have been 25 death penalty clemencies granted nationwide in the past 10 years. During another 10-year period, from 1954 to 1964, 198 clemencies were granted.

Schwarzenegger has been reviewing the case since Nov. 8 when Williams' attorneys filed his clemency petition, said Schwarzenegger spokeswoman Julie Soderlund.

Williams "has renounced his prior life and gang violence," his attorneys wrote.

They said: "Stanley Williams has become a symbol of hope and purpose to those who most need to believe - the disadvantaged youth of our great nation who live with a sense of hopelessness in circumstances which test the human spirit."

D.A. stresses crimes

Los Angeles County District Attorney Steve Cooley, in his Nov. 16 response to the Williams clemency petition, emphasized the brutal murders of Albert Lewis Owens, Tsai-Shai Yang, Yen-I Yang and Yee-Chen Lin, and said Williams "callously denied them mercy."

He said Williams hasn't taken responsibility for his crimes so "there can be no redemption, there can be no atonement, and there should be no mercy."

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