

23-7639
No.:

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES

LOUIS CHARLES BOUIE,

Plaintiff

VS.

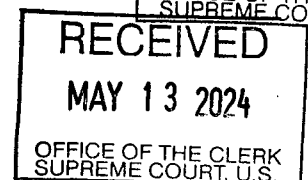
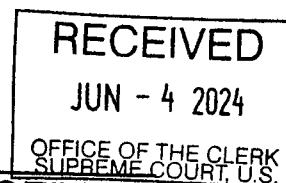
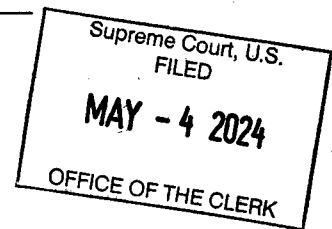
PENNSYLVANIA DEPARTMENT OF
CORRECTIONS,

Defendant

PETITION FOR WRIT OF CERTIORARI

Petition for Writ of Certiorari from the Per Curiam Order Supreme Court of Pennsylvania dated February 21, 2024 affirming the Memorandum Opinion dated July 10, 2023 from the Commonwealth Court of Pennsylvania sustaining the Department of Corrections,' (D.O.C.), Preliminary Objections and dismissing the Petition for Review filed by Mr. Bouie on April 4, 2022.

Louis Charles Bouie, # QF-6982
Pro Se, Plaintiff
State Correctional Institution at Waymart
11 Fairview Drive, P.O. Box 256
Waymart, PA 18472



QUESTIONS PRESENTED FOR REVIEW

I. Did the Pennsylvania High Court unconstitutionally permit the statutory construct at 61 Pa.C.S.A. § 4105 to grant the executive branch *carte blanche* sentencing discretion for the State Drug Treatment Program as the Court misapplied and misconstrued the statute to be constitutional when it removes the sole power of the judiciary to determine eligibility at sentencing for a restorative sanction program /accelerated rehabilitative disposition placing this statute clearly in violation of the separation of powers doctrine based upon the express and plain language of the statute?

(Proposed Answer in the Positive)

II. Did the Pennsylvania High Court unconstitutionally permit the Department of Corrections to implement a modified sentencing statute, 61 Pa.C.S.A. § 4105, that granted unfettered discretion of retroactive application of a statute by improperly splitting what is, or should be, a single statute with connected parts in violation of the mandate against *ex post facto* laws in accordance with the long standing holding in Calder v. Bull, 3 U.S. 386 (1798) and this Court's recent decision in Pennsylvania v. Muniz, 138 S.Ct. 925 (2018)?

(Proposed Answer in the Positive)

III. Did the Pennsylvania High Court unconstitutionally permit Mr. Bouie's unalienable right to challenge actions of the executive branch in violation of the Due Process Clauses of both the Pennsylvania and United States constitution when 37 Pa.Code § 93.9 permits an inmate to pursue available remedies in a State and Federal Court?

(Proposed Answer in the Positive)

IV. Did the Pennsylvania High Court violate the *Stare Decisis Doctrine* when the Court decided Washington v. Pennsylvania Department of Corrections, 2023 Pa. LEXIS 1698 (2023) in a manner identical to the matter at hand, yet failed to apply these clear doctrinal principles to Mr. Bouie, instead denying him relief?

(Proposed Answer in the Positive)

LIST OF PARTIES

The indispensable parties in the matter herein are as follows:

- I. Mr. Bouie is the *Pro Se*, Plaintiff, who is presently incarcerated within the State Correctional Institution at Waymart, located at 11 Fairview Drive, P.O. Box 256, Waymart, PA 18472.
- II. The D.O.C. is the Defendant in the above captioned matter who is represented by Abby N. Trovinger, Esq., whose office is located within D.O.C. headquarters at 1920 Technology Parkway, Mechanicsburg, PA 17050.

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II. Did the Pennsylvania High Court unconstitutionally permit the Department of Corrections to implement a modified sentencing statute, **61 Pa.C.S.A. § 4105**, that granted unfettered discretion of retroactive application of a statute by improperly splitting what is, or should be, a single statute with connected parts in violation of the mandate against *ex post facto* laws in accordance with the long standing holding in **Calder v. Bull, 3 U.S. 386 (1798)** and this Court's recent decision in **Pennsylvania v. Muniz, 138 S.Ct. 925 (2018)**?10

III. Did the Pennsylvania High Court unconstitutionally permit Mr. Bouie's unalienable right to challenge actions of the executive branch in violation of the Due Process Clauses of both the Pennsylvania and United States constitution when **37 Pa.Code § 93.9** permits an inmate to pursue available remedies in a State and Federal Court?15

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CONCISE STATEMENT OF JURISDICTION

This Honorable Court retains jurisdiction under the auspice of **28 U.S.C. §**

1541 which states in relevant part that:

"§ 1257. State courts; certiorari

(a) Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States.

(b) For the purposes of this section, the term "highest court of a State" includes the District of Columbia Court of Appeals.

STANDARD AND SCOPE OF REVIEW

The well settled standard and scope of review of a challenge to the constitutionality of a statute as follows:

"To hold a governmental [a]ct to be unconstitutional is not to announce that we forbid it, but that the Constitution forbids it; and when, as in this case, the constitutionality of a state statute is placed in issue, the question is not whether some decision of ours 'applies' in the way that a law applies; the question is whether the Constitution, as interpreted in that decision, invalidates the statute. Since the Constitution does not change from year to year; since it does not conform to our decisions, but our decisions are supposed to conform to it; the notion that our interpretation of the Constitution in a particular decision could take prospective form does not make sense."¹

¹ **Danforth v. Minnesota, 552 U.S. 264, 286 (2008).**

OPINIONS BELOW

The *Per Curiam* Order Supreme Court of Pennsylvania dated February 21, 2024 is herein reproduced at Appendix A; The *Memorandum Opinion* dated July 10, 2023 of the Commonwealth Court of Pennsylvania is herein reproduced at Appendix B.

STATEMENT OF THE CASE

Mr. Bouie hereby presents the following relevant statement of the case in support of the Petition for *Writ of Certiorari*:

On August 27, 2019, Mr. Bouie was convicted in the Court of Common Pleas of Lehigh County of three (3) counts of possession of a controlled substance with intent to deliver. The Court of Common Pleas of Lehigh County then sentenced Mr. Bouie on October 29, 2019, to an aggregate term of five (5) to ten (10) years in state prison, with credit for time served in presentence detention.

On April 22, 2021, Mr. Bouie sent a letter to Common Pleas, in which he stated that he was trying to overcome his addiction to alcohol and prescription drugs, and asked Common Pleas to help him secure placement in the State Drug Treatment Program, (S.D.T.P.). The Court of Common Pleas of Lehigh County responded on April 28, 2021, and encouraged Mr. Bouie to pursue that goal by following the statutory guidelines governing admission. The Court of Common Pleas of Lehigh County also stated that it had not deemed Bouie ineligible for the SDTP, but cautioned Bouie that his "prior conviction for robbery in 2009 would seemingly disqualify [him] from the [P]rogram."

Mr. Bouie then embarked upon an effort to convince the Department of Corrections, (D.O.C.), to place him in the S.D.T.P., this however, proved unsuccessful. On June 14, 2021, the D.O.C. ran Mr. Bouie through a drug

screening protocol, determined that he would benefit from treatment for substance abuse issues, and informed Bouie that he would be enrolled in an appropriate program once he drew closer to the minimum date on his 2019 sentence. However, at a roughly contemporaneous point, Bouie was informed by the D.O.C. that he was not eligible for the S.D.T.P., because he had been sentenced prior to the Program's creation. Mr. Bouie challenged this conclusion via letters to the D.O.C., inmate requests, and grievances, none of which caused the D.O.C. to change its position regarding his S.D.T.P. eligibility.

On April 4, 2022, Mr. Bouie filed his Petition for Review with the Commonwealth Court of Pennsylvania, in which he argued that the D.O.C.'s position regarding S.D.T.P. eligibility is legally erroneous. The D.O.C. responded to the Petition for Review by submitting its preliminary objections on September 13, 2022, to which Bouie responded in opposition on October 3, 2022. On April 14, 2023, the Commonwealth Court of Pennsylvania sustained the D.O.C.'s Preliminary Objections and Dismissed the action.

Mr. Bouie filed a Notice of Appeal with the Supreme Court of Pennsylvania and immediately filed a **Pa.R.A.P. Rule 910**, jurisdiction statement. Mr. Bouie's Appeal to the Supreme Court was denied on.

REASONS RELIED UPON FOR GRANTING WRIT OF CERTORARI

I. Did the Pennsylvania High Court unconstitutionally permit the statutory construct at **61 Pa.C.S.A. § 4105** to grant the executive branch *carte blanche* sentencing discretion for the State Drug Treatment Program as the Court misapplied and misconstrued the statute to be constitutional when it removes the sole power of the judiciary to determine eligibility at sentencing for a restorative sanction program /accelerated rehabilitative disposition placing this statute clearly in violation of the separation of powers doctrine based upon the express and plain language of the statute?

Under "the basic concept of separation of powers... the 'judicial [p]ower' ... can no more be shared' with another branch than 'the Chief Executive, for example, can share with the Judiciary the veto power, or the Congress share with the Judiciary the power to override a Presidential veto.'"² "A statute or regulation thus violates **Article III** if it "confer[s] the Government's 'judicial [p]ower' on entities outside **Article III**."³

Here, discretion of eligibilty, acceptance, along with the institution of the State Drug Treatment Program, (S.D.T.P.), "is a sentencing function, within the sole province of the judiciary."⁴ Yet, the General Assembly has conferred such power upon the Department of Corrections, (D.O.C.), to solely "sentence" an

² **United States v. Nixon, 418 U.S. 683, 704 (1974)**(quoting **U.S. Const. Art. III, § 1**).

³ **Stern v. Marshall, 564 U.S. 462, 484 (2011)**.

⁴ **Geraghty v. United States Parole Commission, 579 F.2d 238, 259-60 (3rd Cir. 1978)**.

individual to a rehabilitative program instead of incarceration. "This premise allows an executive authority, [to be] motivated by a retribution rationale in reaching its punitive decision, [where] it invad[es] the judicial sphere, thus upsetting the delicate balance of the separation of powers."⁵

Specifically, the statute within 61 Pa.C.S.A. § 4104 states that "[i]f the department in its discretion believes an eligible person would benefit from the State drug treatment program and placement in the program is appropriate, the department shall make the placement and notify the court, the eligible person, the commission and the attorney for the Commonwealth of the placement." While it is true that this statute requires that the Court be notified, it removes the sole power of the judiciary to sentence the individual.

"A fundamental canon of statutory construction is that, unless otherwise defined, words will be interpreted as taking their ordinary, contemporary, common meaning."⁷ "When meaning is not clear from plain text..., *ejusdem generis*,⁸ a

⁵ Block v. Potter, 631 F.2d 233, 239-240 (1980).

⁶ 61 Pa.C.S.A. § 4104(c)(Placement in the State drug treatment program).

⁷ Perrin v. United States, 444 U.S. 37, 42 (1979).

⁸ Latin - Of the same kind or class, the meaning of the general words will ordinarily be presumed to be restricted by the particular designation, and to include only things or persons of the same kind, class or nature as those specifically enumerated, unless there is a clear manifestation of a contrary purpose, (Ballentine's Law Dictionary, 3rd Edition).

canon of statutory construction, serves as 'a useful tool.'"⁹ "Under *ejusdem generis*, when a general term follows a specific one, the general term should be understood as a reference to subjects akin to the one with specific enumeration."¹⁰ The plain language of the statutory construct within **61 Pa.C.S.A. § 4104** grants the D.O.C. unfettered ability to determine those who are eligible for the State Drug Treatment Program and sentence them to it instead of incarceration for a crime. Thus, removing the sentencing ability from the judiciary and placing it firmly and unconstitutionally with an administrative executive agency, the D.O.C.

Typically, "[s]ubdelegation is 'the transfer of authority from an agency endowed with authority pursuant to congressional enactment to entities within or outside of the agency itself.'"¹¹ However, the General Assembly has subdelegated an authority to the D.O.C. that was never theirs to delegate, in-fact, such authority is expressly conferred to the judiciary through the **Art. V § 10** of the Pennsylvania Constitution, and **U.S. Const. Art. III, § 1** of the United States Constitution. This delegation under the plain meaning of the statute found within **61 Pa.C.S.A. § 4104** and **61 Pa.C.S.A. § 4105** unconstitutionally grant discretionary authority to the D.O.C. conferring sentencing power upon the executive branch of the

⁹ **Defoe v. Phillip, 702 F.3d 735, 748 (3rd Cir. 2012)(quoting Waterfront Comm'n v. Elizabeth-Newark Shipping, 164 F.3d 177, 184 (3rd Cir. 1998)).**

¹⁰ **Norfolk & W. Ry. Co. v. Am. Train Dispatchers Ass'n, 499 U.S. 117, 129 (1991).**

¹¹ **La. Forestry Ass'n Inc. v. Sec'y U.S. Dep't of Labor, 745 F.3d 653, 671 (3rd Cir. 2014)**

government circumventing the very structure of our Great Republic.

Based upon the clear plain statutory language, the discretion subdelegated to the D.O.C. through the General Assembly within the provisions of **61 Pa.C.S.A. § 4104** and **61 Pa.C.S.A. § 4105** cannot stand constitutional muster and must be struck down under the auspice of the principle of the sentencing Mr. Bouie and others to S.D.T.P. is a clear judiciary requirement, not that of the executive branch and cannot be conferred or delegated as such.

II. Did the Pennsylvania High Court unconstitutionally permit the Department of Corrections to implement a modified sentencing statute, 61 Pa.C.S.A. § 4105, that granted unfettered discretion of retroactive application of a statute by improperly splitting what is, or should be, a single statute with connected parts in violation of the mandate against *ex post facto* laws in accordance with the long standing holding in Calder v. Bull, 3 U.S. 386 (1798) and this Court's recent decision in Pennsylvania v. Muniz, 138 S.Ct. 925 (2018)?

The Commonwealth of Pennsylvania has had a long-standing practice of failing to resolve statutory and precedential conflicts within jurisprudence, choosing instead to allow such conflicts to exist as abiguities, loop-holes, and methodologies to grant multiple routes of escape for jurists when circumventing issues of a constitutional matter.

In the matter *sub judice*, Pennsylvania again utilized this situation to improperly and illegally split a statute in *pari materia* which on one hand, it holds retroactively when it positively affects the Commonwealth and provides a financial benefit; yet on the other hand, holds non-retroactively when it affects the accused, convicted and incarcerated. This contravenes the requirements of the Pennsylvania Constitution, basic premise of statutory construction that strictly construes all penal statutes,¹² along with long established principles dating to the time of the founders within Calder.

¹² 1 Pa.C.S.A. § 1928(b)(1).

Here, Pennsylvania circumvents its own rule of law, stating "[l]egislation which affects rights will not be construed to be retroactive, unless it is declared so in the act; but, where it concerns merely the mode of procedure, it is applied, as of course, to litigation existing at the time of its passage."¹³

Specifically, the Act of Dec 18, 2019, P.L. 776, No. 115 Cl. 42, (the Act), amends multiple statutory constructs within the Judicial Code, one such area was the requirement within 42 Pa.C.S.A. § 9728, where the General Assembly rewrote § b(5)(i) modifying monetary deductions of at least twenty percent (20%) to twenty-five percent (25%) of all deposits made to inmate wages and personal accounts for the purpose of collecting restitution, and costs, etc. This section under the Act was construed retroactively, however, the modification of the eligible offender statutory construct for the implementation of the S.D.T.P. within 61 Pa.C.S.A. § 4101, et seq., at issue here, was not deemed retroactive as the other portion of the Act involving 42 Pa.C.S.A. § 9728 was. The provision creating eligibility for the S.D.T.P. was held as non-retroactive, effectively disqualifying Mr. Bouie from S.D.T.P. entirely. As both provisions were part of the same act referring to the same matter, each should have been construed

¹³ Lane v. White, 21 A. 437 (1891)(Supported and explained by New York Life Ins. Co. v. Cumins, 24 F.2d 1 (1928)).

retroactive in *pari materia*. As required by Article III § 3 of the Pennsylvania Constitution states that any and all bills written "shall be passed containing more than one subject, which shall be clearly expressed in its title," with this express prohibition in multiplicitious bills, it stands to reason that the entirety of the bill must be deemed retroactive or non-retroactive, not just in part or partial.

Calder, within its legal requirements specifies that a law is violative of the prohibition of *ex post facto* and Bill of Attainder laws when that law "inflicts a greater punishment than the law annexed to the crime when committed."¹⁴ Here, the Act when made retroactive in part and non-retroactive in part, raised the punishment for Mr. Bouie as he was required to complete the Therapeutic Community Program instead of lessening his sentence through S.D.T.P. Mr. Bouie would have been eligible for a significantly lower sentence had he been sentenced to S.D.T.P., however, Mr. Bouie was compelled through D.O.C. sentencing to complete an additional program, and undergo further scrutiny for release. Thus, it is not the law itself, then that becomes *ex post facto*, but the principle of the language and application of that law making it violative of the constitutional mandate prohibiting such action.

¹⁴ Calder, 3 U.S. at 386.

If, in-fact, this statutory provision had been applied properly, it could have provided a way for individuals, such as Mr. Bouie, sentenced prior to the imposition of the law, to gain entry into the program without being sentenced initially to S.D.T.P., granting them a significant reduction in their sentence. As the S.D.T.P. provisions were not held retroactive, as the financial provisions had been, it has created an unlawful dichotomy and a further means for an extreme and ambiguous interpretation of the statutory construct.

This ambiguous interpretation unlawfully raises the penalty for a drug crime that now gains the benefit of the S.D.T.P., simply due to the Commonwealth splitting the statutory construct to their benefit. This action violated "[t]he central concern in incorporating *ex post facto* clauses in both federal and state constitutions 'assur[ing] that federal and state legislatures were restrained from enacting arbitrary or vindictive legislation,'"¹⁵ along with the mandate that "individuals are entitled to "fair warning" about what constitutes criminal conduct, and what the punishments for that conduct entail"¹⁶ Here, the Commonwealth was neither constrained from enacting arbitrary and vindictive legislation, nor gave any "fair warning" as to the increase of Mr. Bouie's punishment when denying him

¹⁵ Pennsylvania v. Muniz, 138 S.Ct. 925 (2018)(quoting Commonwealth v. Muniz, 164 A.3d 1189, 1195 (2018)).

¹⁶ Id. at 1195,

access to the S.D.T.P. These actions cannot withstand constitutional muster and therefore must be struck down as they are blatantly violative of the basic principles prohibiting *ex post facto* and Bill of Attainder laws. It must be under the will of both the Pennsylvania and United States Constitutions that this Honorable Court fulfill its duty and require the Act be applied retroactive in accordance with *pari materia* principles, along with the prohibition of *ex post facto* laws as to not increase the punishment that Mr. Bouie must endure.

III. Did the Pennsylvania High Court unconstitutionally permit Mr. Bouie's unalienable right to challenge actions of the executive branch in violation of the Due Process Clauses of both the Pennsylvania and United States constitution when 37 Pa.Code § 93.9 permits an inmate to pursue available remedies in a State and Federal Court?

It is well understood that [w]hen [a] Commonwealth [Agency] is permitted to circumvent each of those rights and interests by introducing [hurdles and roadblocks] and nothing more, [that application of statute] falls well below the line that due process draws."¹⁷ Further, the Pennsylvania High Court's interpretation of the statutory construct of S.D.T.P. falls well below "the community's sense of fair play and decency."¹⁸ "[T]he essential requisites [of Due Process] are notice and meaningful opportunity... a [proceeding which excludes consideration of an element essential to the [relevant] decision' does not comport with due process."¹⁹

Within the Pennsylvania Administrative Code, the General Assembly creates an avenue for an "inmate" to pursue remedies against the D.O.C. for problems during confinement through a grievance process then further those claims in State and Federal Court.²⁰ Instantly, when the Pennsylvania High Court

¹⁷ Commonwealth v. McClelland, 233 A.3d 717, 738 (2018).

¹⁸ United States v. Lovasco, 431 U.S. 783, 790 (1977).

¹⁹ In the Interest of J.B., 107 A.3d 1, 14 (2014)(quoting Bell v. Burson, 402 U.S. 535, 542 (1971))(Accord also Matthew v. Eldridge, 424 U.S. 319, 333 (1976)).

²⁰ 37 Pa.Code § 93.9 states: "§ 93.9. Inmate complaints. (a) The Department will maintain an inmate grievance system which will permit any inmate to seek review of problems which the

affirmed the Commonwealth Court's sustainment of the Department of Corrections Preliminary Objections, they procedurally barred Mr. Bouie from raising the underlying merits in the matter. and essentially deemed any challenge to such, other than the Constitutionality brought herein as frivolous.

The Accardi Doctrine requires that "[a]n agency of the government must scrupulously observe rules, regulations, or procedures which it has established."²¹ Applying the Accardi Doctrine, the D.O.C. retained the duty to authorize Mr. Bouie an opportunity to challenge any decision of the D.O.C. along with pursue remedies in the Courts. Additionally, within the ancient ruling in Marbury, the Court determined "that every right, when withheld, must have a remedy, and every injury, its proper redress."²²

Within the matter at bar, Mr. Bouie has been denied his "constitutional right

inmate experiences during the course of confinement. The system will provide for review and resolution of inmate grievances at the most decentralized level possible. It will also provide for review of the initial decision making and for possible appeal to the Central Office of the Department. An inmate will not be disciplined for the good faith use of the grievance systems. However, an inmate who submits a grievance for review which is false, frivolous or malicious may be subject to appropriate disciplinary procedures. A frivolous grievance is one in which the allegations or the relief sought lack any arguable basis in fact as set forth in DC-ADM 804 — Inmate Grievance System, which is disseminated to inmates; (b) Inmates may also pursue available remedies in State and Federal court.

²¹ United States ex Rel. Accardi v. Shaughnessy, 347 U.S. 260 (1954).

²² Marbury v. Madison, 1 Cranch 137, 147 (1803).

of access to courts [which must be] adequate, effective and meaningful."²³ This right was denied upon the sustainment of the Preliminary Objections which dismissed the matter which was misapprehended by the Commonwealth Court to be a discretionary limitation available to the D.O.C. when placing an individual into the S.D.T.P. Additionally, "[t]he language of [the code] makes no reference to a decrease in [] the court's jurisdiction and such diminution may not be implied."²⁴

Within the matter at bar, Mr. Bouie has been denied his "constitutional right of access to the courts [which must be] adequate, effective and meaningful."²⁵ This right was denied upon the sustainment of the Preliminary Objections which dismissed the matter which was misapprehended by the Pennsylvania High Court to be a discretionary limitation available to the D.O.C., when this principle has clearly been shown as a Separation of Powers matter.²⁶ Here, instead of a simple implicate Sustantive Due Process as they have interferred with a constitutional right. "[F]or substantive due process rights to attach there must first be the deprivation of a property right or other interest that is constitutionally protected."²⁷

²³ Armstrong School District v. Armstrong Education Assoication, 595 A.2d 1139, 1144 (Pa. 1991).

²⁴ Armstrong, 595 A.2d at 1144.

²⁵ Lewis v. Casey, 518 U.S. 343, 346 (1996).

²⁶ *Accord* Argument I.

²⁷ Khan v. State Bd. of Auctioneer Examiners, 842 A.2d 936, 946 (Pa. 2004).

With Mr. Bouie's right to access the courts at issue and the principle of the overall remedies removed from him, has the effect of being stockaded before the founding fathers dangling the guarantees of the constitution in front of him. Due Process is a fundamental right which individuals gave their "last full measure of devotion to secure,"²⁸ and thus it must be protected at all costs; Mr. Bouie is requesting nothing less than what is guaranteed to him within the constitution.

²⁸ Gettysburg Address, Abraham Lincoln, Nov. 19, 1863.

IV. Did the Pennsylvania High Court violate the *Stare Decisis Doctrine* when the Court decided Washington v. Pennsylvania Department of Corrections, 2023 Pa. LEXIS 1698 (2023) in a manner identical to the matter at hand, yet failed to apply these clear doctrinal principles to Mr. Bouie, instead denying him relief?

"Under the doctrine of *stare decisis*, a conclusion reached in one matter should be applied to future substantially similar matters."²⁹ "The basic legal principle of *stare decisis* generally commands judicial respect for prior decisions of this Court and the legal rules contained in those decisions."³⁰ "The law of the case doctrine sets forth various rules that embody the concept that a court involved in the later phases of a litigated matter should not reopen questions decided by another judge of that same court or by a higher court in the earlier phases of the matter."³¹

Here, both principles are implicated. When the decision within Washington was decided, it was looking at the principle of the very same act, and the retroactive application thereof, yet within Mr. Bouie's challenge, when raising the matters in a similar yet more statutory construction basis, the Court declined to adjudicate the matter in accordance with Washington. Specifically, the Pennsylvania High Court held that:

²⁹ Ario v. Reliance Ins. Co., 980 A.2d 588, 597 (2009).

³⁰ Stilp v. Commonwealth, 905 A.2d 918, 954 (Pa. 2006).

³¹ Commonwealth v. Starr, 541 Pa. 564, 664 A.2d 1326, 1331 (Pa. 1995).

"a court has the power to provide relief from the deprivation in line with constitutional commands... 'our Court possesses broad authority to craft meaningful remedies when required.' 'Courts do not merely have the power to craft appropriate remedies for due process violations... but the obligation to do so. 'this Court has an obligation to vindicate the rights of its citizens where the circumstances require it and in accordance with the plain language of the Constitution'... '[The] General Assembly is presumed to know the state of the law as set forth in the decisions of this Court...' 'The right to procedural due process is absolute. It 'does not depend upon the merits of a claimant's substantive assertions, and because of the importance to organized society that procedural due process be observed... "Commonwealth agencies have no inherent power to make law or otherwise bind the public or regulated entities. Rather, an administrative agency may do so only in the fashion authorized by the General Assembly."³²

The decision in Washington was clear, yet showed that the deference that has been afforded to Government Agencies is too great, and it "creates a risk that agencies will promulgate vague and open-ended regulations that they can later interpret as they see fit, thereby 'frustrat[ing] the notice and predictability purposes of rulemaking.'"³³ The legislative interpretation that the General Assembly has afforded to the D.O.C. in the matter *sub judice* grants the unfettered discretion to sentence an individual to the S.D.T.P., however, if the premise of the Washington decision and other cases decided prior had been utilized in the requirements of *stare decisis*, Mr. Bouie would have been afforded similar relief to Mr.

³² Washington, Slip Op at 12, 26, 33(internal citations omitted)

³³ Christopher v. SmithKline Beecham Corp., 132 S. Ct. 2156, 2168 (2012)(quoting Talk Am., Inc. v. Mich. Bell Tel. Co., 131 S. Ct. 2254, 2266 (2011)).

Washington. Thus, it stands to reason that the application of the Doctrine of *Stare Decisis* is required.

"[T]he application of *stare decisis* today [] has its pedigree in the unwritten common law of England. '[T]he common law included '[e]stablished customs' and '[e]stablished rules and maxims' that were discerned and articulated by judges. In the common-law system, *stare decisis* played an important role because 'judicial decisions [were] the principal and most authoritative evidence, that [could] be given, of the existence of such a custom as shall form a part of the common law.' Accordingly, 'precedents and rules must be followed, unless flatly absurd or unjust,' because a judge must issue judgments 'according to the known laws and customs of the land' and not 'according to his private sentiments' or 'own private judgment.' In other words, judges were expected to adhere to precedents because they embodied the very law the judges were bound to apply. '[C]ommon law doctrines, as articulated by judges, were seen as principles that had been discovered rather than new laws that were being made.' 'It was the application of the dictates of natural justice, and of cultivated reason, to particular cases.'"³⁴

The Pennsylvania High Court refuses to apply this clear federal mandate to

³⁴ Gamble v. United States, 204 L Ed 2d 322, 347-48 (2019).

cases that it has adjudicated, instead allowing for many fractured decisions and unsettled matters. Pennsylvania "[w]hen presented with a case that hinges upon [their] interpretation and application of prior case law, the validity of that case law always is subject to consideration, and we follow the exercise of our interpretive function wherever it leads."³⁵ Pennsylvania seemingly believes that "[w]hile the doctrine of *stare decisis* is important, it does not demand unseeing allegiance to things past...' 'It is ... revolting if the grounds upon which [a rule of law] was laid down have vanished long since, and the rule simply persists from blind imitation of the past."³⁶ "[Pennsylvania Courts] have long recognized that the doctrine of *stare decisis* is not a vehicle for perpetuating error, but a legal concept which responds to the demands of justice, and thus, permits the orderly growth processes of the law to flourish."³⁷ "[T]he courts should not perpetrate error solely for the reason that a previous decision although erroneous, has been rendered on a given question."

Pennsylvania's interpretation of *stare decisis* reads *arguendo* not as a common law decisional principle, yet another rule in the nuances of the *Harmless*

³⁵ Commonwealth v. Doughty, 126 A.3d 951, 955 (Pa. 2015).

³⁶ O.W. Holmes, The Path of the Law, 10 Harv. L. Rev. 457, 469 (1897).

³⁷ Tincher v. Omega Flex, Inc., 104 A.3d 328, 352 (Pa. 2014).

³⁸ Olin Mathieson Chem. Corp. v. White Cross Stores, Inc., No. 6, 199 A.2d 266, 268 (Pa. 1964)

Error Doctrine, and therefore cannot be permitted by this Honorable Court to stand.

As shown *supra*, Mr. Bouie should be afforded the federal principle of the Doctrine of *Stare Decisis* where the Washington decision applies wholly to his challenge of the statutory split of the S.D.T.P. and the Act itself. Thus rendering Mr. Bouie eligible under the auspice of the statutory construct found at 61 Pa.C.S.A. § 4101, et seq.

CONCLUSION

It is clear that the Pennsylvania High Court unconstitutionally permitted the statutory construct at 61 Pa.C.S.A. § 4105 to grant the executive branch *carte blanche* sentencing discretion for the State Drug Treatment Program. Mr. Bouie has shown the Court clearly misapplied and misconstrued the statute to be constitutional when it removes the sole power of the judiciary to determine eligibility at sentencing for a restorative sanction program /accelerated rehabilitative disposition violating of the separation of powers doctrine based upon the express and plain language of the statute.

Mr. Bouie has shown that the Pennsylvania High Court unconstitutionally permitted the Department of Corrections to implement a modified sentencing statute, 61 Pa.C.S.A. § 4105, that granted unfettered discretion of retroactive application of a statute by improperly splitting what is, or should be, a single statute with connected parts in violation of the mandate against *ex post facto* laws.

The Pennsylvania High Court unconstitutionally removed Mr. Bouie's unalienable right to challenge actions of the executive branch in violation of the Due Process Clauses of both the Pennsylvania and United States constitution when he is statutorily permitted through 37 Pa.Code § 93.9 to pursue available remedies

in a State and Federal Court.

The Pennsylvania High Court avoided, misapprehended and ignored the principles of the *Stare Decisis Doctrine* when the Court decided Washington in a manner identical to the matter at hand, yet failed to apply these clear doctrinal principles to Mr. Bouie's matter.

WHEREFORE, for the foregoing reasons, Mr. Louis Charles Bouie, Pro Se, Plaintiff in the above captioned matter respectfully request that this Honorable Court initiate **UNIVERSAL VACATUR** upon both the Pennsylvania High Court and the Commonwealth Court of Pennsylvania to **COMPEL** the Department of Corrections to abandon its application of 61 Pa.C.S.A. § 4101, et seq. and deem the statutory construct under such as **FACIALLY UNCONSTITUTIONAL** permitting Mr. Bouie and those similarly situated access to the State Drug Treatment Program in accordance with proper discretion of the Sentencing Court; **ORDER** Mr. Bouie's release in accordance with the arguments presented herein; and/or any other applicable remedy this Honorable Court deems prudently appropriate.

Respectfully Submitted,

Date: May 25, 2024

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