

[J-82-00]
IN THE SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT

COMMONWEALTH OF PENNSYLVANIA,	:	1 E. D. Appeal Docket 2000
	:	
Appellant	:	Appeal from the order of the Court of
	:	Common Pleas of Philadelphia County,
v.	:	Trial Division, entered on December 21,
	:	1999, at Nos. 409-413, July Term 1982,
	:	staying the execution scheduled for
KELVIN X. MORRIS,	:	January 27, 2000
	:	
Appellee	:	ARGUED: May 9, 2000

CONCURRING OPINION

MR. CHIEF JUSTICE FLAHERTY

DECIDED: April 20, 2001

I join the opinion of the court, but wish to emphasize the inherent power of the court to enter a stay in order to effectuate justice. When the legislature is silent, a court can always enter a stay when it is necessary to avoid injustice.

The opinion of the court briefly acknowledges this power, but understandably emphasizes the exception governing this case. When a convict under sentence of death seeks a stay of execution, he is obligated to follow the statutory procedure, set forth at 42 Pa.C.S. § 9545(c), established to control this precise situation. This in no way abrogates the court's inherent power to grant a stay nor the convict's right to seek a stay: it merely

prescribes the procedure governing exercise of the court's power and the convict's rights. Mr. Justice Cappy's opinion for the court aptly analogizes this situation to the relationship between the PCRA and the right of habeas corpus, whereby a petitioner must seek habeas relief only within the confines of the PCRA or suffer the loss of that right. This being understood, I join the opinion of the court.

As appellant failed to follow the procedure of § 9545(c), I agree that the court lacked the authority to stay the execution.