

No. 21-6549
CAPITAL CASE

IN THE
Supreme Court of the United States

WADE GREELY LAY,
Petitioner,

v.

STATE OF OKLAHOMA,
Respondent.

**On Petition for a Writ of Certiorari
to the Oklahoma Court of Criminal Appeals**

BRIEF IN OPPOSITION

JOHN M. O'CONNOR
*Attorney General
of Oklahoma*

MITHUN MANSINGHANI
Solicitor General

BRYAN CLEVELAND
*Asst. Solicitor General
Counsel of Record*

OKLAHOMA OFFICE OF THE
ATTORNEY GENERAL
313 NE Twenty-First St.
Oklahoma City, OK 73105
(405) 521-3921
bryan.cleveland@oag.ok.gov

QUESTIONS PRESENTED

1. Whether Petitioner is entitled to mandamus relief against the State of Oklahoma for grievances regarding the Federal Public Defender's description of the facts in a prior post-conviction application.
2. Whether Petitioner has been denied substantive due process in being denied leave to file a fourth post-conviction application.
3. Whether Petitioner has been denied the right to present a defense of liberty in a criminal case in being denied leave to file a fourth post-conviction application.
4. Whether the Tenth Amendment prevents Oklahoma's criminal jurisdiction from being subjected to federal superintendence.

RELATED PROCEEDINGS

Oklahoma District Court (Tulsa County):

State v. Lay, CF-2004-2320, Oct. 24, 2005

Oklahoma Court of Criminal Appeals:

Lay v. State, D-2005-1081, Feb. 12, 2008

Lay v. State, PCD-2006-1013, Sept. 26, 2008

Lay v. State, PCD-2010-407, Oct. 13, 2010

Lay v. State, PCD-2021-1029, Nov. 12, 2021

U.S. District Court for the Northern District of Oklahoma:

Lay v. Trammell, 4:08CV617, 2015 WL 5838853 (N.D. Okla. Oct. 7, 2015)

U.S. District Court for the Western District of Oklahoma:

Glossip v. Chandler, 14CV665

U.S. Court of Appeals for the Tenth Circuit:

Lay v. Royal, 860 F.3d 1307 (10th Cir. 2017)

U.S. Supreme Court:

Lay v. Royal, 138 S.Ct. 1553 (2018)

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STATEMENT OF THE CASE

Petitioner Wade Lay was convicted of murder in the first degree and attempted robbery with firearms in 2005. He was sentenced to death on the first count and 25 years imprisonment on the second count.

Appointed counsel initiated his direct appeal in 2005, in which the Oklahoma Court of Criminal Appeals (“OCCA”) affirmed his conviction and sentence in February 2008. After multiple post-conviction extension motions filed prior to the conclusion of direct appeal, counsel then filed Petitioner’s first post-conviction application in OCCA in May 2008, which OCCA denied in September 2008. Different counsel then filed Petitioner’s second post-conviction application in OCCA in May 2010, which OCCA denied in October 2010.

Counsel then filed Petitioner’s federal habeas petition in 2009. The Northern District of Oklahoma denied the writ in 2015, the Tenth Circuit affirmed in 2017, and this Court denied certiorari in 2018.

Petitioner filed the mandamus action that is the subject of his petition in June 2021. He alleged that he “was inhibited by actions of state and federal actors outside of his control” from filing a post-conviction application and sought leave to file an application not “controlled and orchestrated by governmental actors” as well as an order for a copy of Oklahoma rules. Resp. App. 2a. He then filed a third application for post-conviction relief in OCCA in September 2021. OCCA denied his third post-conviction application in November 2021 and then denied the mandamus action in December 2021. In denying mandamus, OCCA held that it was unclear on what relief

he wanted from the State and that the record was insufficient to warrant extraordinary relief.

REASONS FOR DENYING THE PETITION

Oklahoma courts correctly denied mandamus for a successive application for post-conviction relief. To start, it is not clear what relief from Respondent would be needed to permit a successive application. The Legal Resource Center where he is incarcerated includes Westlaw access with the full set of Oklahoma statutes and rules, and Respondents are not preventing him from filing anything.

Petitioner's argument about the timing of his initial post-conviction application simply misunderstands the docket. His counsel opened a docket to preserve timeliness for him and then used repeated extension motions to ensure that the post-conviction application did not need to be filed until his direct appeal was decided. Although the docket was opened in 2006, no application was filed until 2008 after his direct appeal was decided.

In addition, the application that Petitioner seeks to file now was reviewed by OCCA and denied on the merits in a different case. *See Lay v. State*, PCD-2021-1029 (Okla. Ct. Crim. App. Nov. 12, 2021). Petitioner is not seeking certiorari on that decision but instead on the decision to deny mandamus on his earlier request for leave to file a pro se petition. Because OCCA already denied Petitioner's application on the merits elsewhere, he is not being denied due process or any other right in the denial of mandamus to file further successive applications.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

s/ Bryan Cleveland

MITHUN MANSINGHANI

Solicitor General

BRYAN CLEVELAND

Asst. Solicitor General

Counsel of Record

OKLAHOMA OFFICE OF THE

ATTORNEY GENERAL

313 NE Twenty-First St.

Oklahoma City, OK 73105

(405) 521-3921

bryan.cleveland@oag.ok.gov

Counsel for Respondent

JOHN M. O'CONNOR
*Attorney General of
Oklahoma*

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