

No. 21-6550
CAPITAL CASE

IN THE
Supreme Court of the United States

WADE LAY, PETITIONER

v.

ABOUTANAA EL HABTI, WARDEN, *et al.*, RESPONDENTS

**On Petition for a Writ of Certiorari
to the Tenth Circuit**

BRIEF IN OPPOSITION

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Oklahoma*

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Counsel for Respondent

QUESTIONS PRESENTED

1. Whether lower courts demonstrated prejudice toward Petitioner due to his pro se status.
2. Whether Petitioner was fairly required to comply with pleading requirements after choosing to proceed pro se.
3. Whether Petitioner was denied due process in the appointment of counsel that deprived him of his pro se status.

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.

Several inmates challenged Oklahoma's method of execution, and Petitioner joined that challenge through counsel on March 12, 2020. He subsequently fired his counsel and proceeded pro se.

Respondents filed their motion for summary judgment on February 19, 2021. Although some plaintiffs pleaded alternative methods of execution, Petitioner was one of several plaintiffs who declined entirely to plead an alternative method of execution. The district court granted summary judgment on August 11, 2021, against the plaintiffs who declined to plead an alternative, including Petitioner. It certified the final rulings against several Plaintiffs as separate judgments under Fed. R. Civ. P. 34(b). On September 20, 2021, the Oklahoma Court of Criminal Appeals set execution dates for Petitioner and other co-plaintiffs. Order Setting Execution Dates, In re Setting of Execution Dates, Nos. D-2000-653 et al. (Okla. Crim. App. Sept. 20, 2021).

Petitioner then appealed pro se the district court's order on summary judgment to the Tenth Circuit, and all of the other plaintiffs urged dismissal of his appeal for lack of jurisdiction. Meanwhile, Respondents argued that the Tenth Circuit should entertain the appeal in part because Petitioner's execution was forthcoming.

Nevertheless, the Tenth Circuit dismissed the appeal, finding that the 54(b) certification was an abuse of discretion.

REASONS FOR DENYING THE PETITION

None of Petitioner's concerns relate to the order on appeal. In that order, Petitioner was denied the right to appeal an adverse summary judgment decision based on the conclusion that it was not properly certified as a final judgment under Fed. R. Civ. P. 54(b). His petition raises issues largely unrelated to that order.

Of course, Respondents supported Petitioner's right to appeal, while his co-plaintiffs advocated dismissal of his appeal. That same counsel for his co-plaintiffs now represent Petitioner after the district court appointed a next friend for Petitioner, who then retained such counsel. Those matters remain pending in lower courts in this case and other cases, and none of those concerns involve the Rule 54 order on appeal.

In addition, Petitioner's complaints about the public defenders have nothing to do with Respondents. The public defenders held meetings with their clients on the dates he references, and he was likely excluded because he dismissed the public defenders as his counsel and chose to proceed pro se. Respondents were not involved in his choice to dismiss counsel, nor were Respondents involved in his subsequent advice from a public defender. Respondents have not denied him access to public defenders, and any complaints he has about those attorneys and their advice or lack thereof is not due to any action of Respondents.

Because his concerns are unrelated to the order on appeal, and often unrelated to actions of Respondents, there is nothing raised in his Petition that is properly considered by this Court.

CONCLUSION

The petition for a writ of certiorari should be denied.

JOHN M. O'CONNOR
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Oklahoma*

Respectfully submitted,

s/ Bryan Cleveland

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January 6, 2022