

No. 21A632

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2021

CARL WAYNE BUNTION,

Petitioner

v.

BOBBY LUMPKIN, ET AL.,

Respondents

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITIONER'S REPLY TO
RESPONDENT'S BRIEF IN OPPOSITION

Petitioner Carl Wayne Buntion filed his Application for Stay of Execution earlier today. Respondents have now filed their Brief in Opposition to his Application ("BIO"). Buntion now files this Reply to Respondent's Brief in Opposition to only issue raised by Defendants that he believes merits a reply.

As they have throughout this proceeding, Defendants now argue in this Court that Buntion failed to exhaust the claim raised in his § 1983 action, and, for that reason, his claim cannot succeed on the merits. BIO at 22-24. Defendants continue

to assert that Buntion should have exhausted his claim by availing himself of their two-step grievance system. What Defendants have yet to explain is whether they believe they have the authority to grant the relief sought by Buntion. Of course, the reason Defendants have not done so is that Defendants have do not have the authority to grant the relief Buntion seeks. In their Offender Orientation Handbook, of which every TDCJ inmate receives a copy, Defendants make clear that inmates, like Buntion, “may not grieve . . . [a]ny matter beyond the control of [TDCJ] to correct.” 22-70004.ROA.166.¹ Defendants made their two-step grievance process unavailable to Buntion. While Defendants do not have the authority to grant the relief Buntion sought, if they did have that authority, his raising his claim in a state habeas application would have given them an opportunity to address his claim before he filed his suit in the federal district court.

¹ A copy of Defendants’ Handbook is found in the Record on Appeal for Cause No. 22-70004 in the Court of Appeals. The provision quoted above is found on page 53 of the Handbook, which is page 166 of the record on appeal.

CONCLUSION

Petitioner Carl Wayne Buntion respectfully requests that the Court stay his execution currently set for April 21, 2022, pending the filing and disposition of his Petition for Writ of Certiorari.

Respectfully submitted,

s/ David R. Dow

David R. Dow*
Texas Bar No. 06064900
Jeffrey R. Newberry
Texas Bar No. 24060966
University of Houston Law Center
4170 Martin Luther King Blvd.
Houston, Texas 77204-6060
713-743-2171
713-743-2131 (f)

* Member, Supreme Court Bar