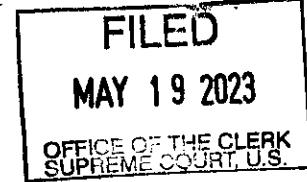


ORIGINAL

Docket Number:

22-7765

IN THE
SUPREME COURT OF THE UNITED STATES



Michael Tanner Lank

Petitioner

vs

The State of Oklahoma

Respondent

ON PETITION FOR A WRIT OF CERTIORARI
To the Oklahoma Court of Criminal Appeals
for the State of Oklahoma

ON PETITION FOR A WRIT OF CERTIORARI

Michael Tanner Lank, (702745)
Oklahoma State Reformatory
P.O. Box 514
Granite, OK 73547
Phone: (*unavailable*)

May 19, 2023
DATE SUBMITTED

QUESTION(s) PRESENTED

1) Mr. Lank respectfully asks:

Is the Oklahoma Court of Criminal Appeals Court, Rule 5.5 in conformity with the **DUE PROCESS OF LAW** standards of the United States Constitution?

2) Mr. Lank Respectfully asks:

Did the Oklahoma Court of Criminal Appeals violate the **Oklahoma State Constitution, Article II, § 6** and/or the **United States Constitution, Amendment XIV**¹ and/or **United States Constitution, Amendment IX**², and/or **United States Constitution, Amendment I**³ when it created, enacted and enforced O.C.C.A. Rule 5.5.

3) Mr. Lank Respectfully asks:

When the Oklahoma Court of Criminal Appeals enforced O.C.C.A. Rule 5.5 was Mr. Lank's **CIVIL RIGHTS VIOLATED**, [42 U.S.C.A. § 1983]?

4) Mr. Lank Respectfully asks:

Did the State of Oklahoma violate **Article III** of the United States Constitution by depriving Mr. Lank of a Constitutionally **mandated** Trial by Jury? ⁴

¹ Amendment XIV § 1: *NO STATE shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States...*

² Amendment IX: *The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.*

³ Amendment I: *... and to petition the government for a redress of grievances.*

⁴ Article III, § 2, cl. 3 *"The trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in the state where the said crimes shall have been committed; but when not committed within any state, the trial shall be at such place or places as the Congress may by law have directed."*

LIST OF PARTIES

- The Petitioner in this case is Michael Tanner Lank, “representing himself” [*and no other(s)*].
- The Respondent in this case is the State of Oklahoma, who may be represented by and through the Oklahoma Attorney General’s Office.
- The proceeding(s) of this matter arise from a “timely filed post-conviction” that has been ruled by the Oklahoma Court of Criminal Appeals.
- As this Certiorari is filed in Direct Collateral Review of his post-conviction, pursuant to 28 U.S.C.A. § 1257 (a).

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OPINIONS BELOW
[STATE COURTS]

Mr. Lank filed POST-CONVICTION before the Tulsa County District Court of Oklahoma, upon case number ***CF-2013-4899***. On the ***31st day of October, 2022***, the Tulsa County District Court denied Mr. Lank's post-conviction in an order that was not complicit with Oklahoma Law, Court Rule(s) and various ruling(s) of O.C.C.A.

An appeal was filed to O.C.C.A., [case number PC-2023-68] – [***unpublished opinion***], that OPINION was issued on ***14th day of March, 2023*** and the opinion AFFIRMED the County District Court's Order without consideration of Mr. Lank's merits.

Mr. Lank filed a Petition for rehearing with O.C.C.A. as their ruling was in derogating of clearly established law as recognized by Untied States Supreme Court. Had he been permitted to file his Petition for rehearing he could have addressed the deficiencies of the O.C.C.A. order.

JURISDICTION

The Oklahoma Court of Criminal Appeals entered its Order denying review on Post Conviction Appeal on or about the 14th day of March, 2023 and Petition for Rehearing on or about the 21th day of March, 2023. This Great and Honorable Court was provided it's jurisdiction by the United States Congress, to hear this ***GREAT WRIT OF CERTIORARI*** upon a final ruling of a State's highest court has had an opportunity to hear the matter, pursuant to 28 U.S.C.A. § 1257 (a).

Oklahoma Title 22, Ch. 18, § V, O.C.C.A. Rule 5.5:

(Final Order; Exhaustion of State Remedies): "Once this Court has rendered its decision on a post-conviction appeal, that decision shall constitute a final order and the petitioner's state remedies will be deemed exhausted on all issues raised in the petition in error, brief and any prior appeals. A petition for a rehearing is not allowed and these issues may not be in any subsequent proceeding in a court of this State. ..."

28 U.S.C.A. § 2403 (b) which provides:

In any action, suit, or proceeding in a court of the United States to which a State or any agency, officer or employee thereof is not a party wherein the constitutionality of any statute of that State affecting the public interest is drawn in question, the court shall certify such fact to the attorney general of the State, and shall permit the State to intervene for presentation of evidence, if evidence is otherwise admissible in the case, and for argument on the question of constitutionality. The State shall, subject to the applicable provisions of law, have all the rights of a party and be subject to all liabilities of a party as to court costs to the extent necessary for a proper presentation of the facts and law relating to the question of constitutionality.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. Appendix C United States Constitution, Amendment I
2. Appendix D United States Constitution, Amendment IX
3. Appendix E United States Constitution, Amendment XIV
4. Appendix F United States Constitution, Article III, § 2, cl. 3
5. Appendix G **CIVIL RIGHTS VIOLATED**, [42 U.S.C.A. § 1983]
6. Appendix H Oklahoma Constitution, Article II, § 6

STATEMENT OF THE CASE

Mr. Lank asserts that the O.C.C.A. Judge(s) violated his CIVIL RIGHTS, [42 U.S.C. §1983], when the court created, enacted and enforced the O.C.C.A. Rule 5.5..

This rule deprived him of the equal protection of the law as 99% or more POST-CONVICTIONS are filed by incarcerated litigations who are destitute. This rule deprived indigent litigants of the same and equal access to the courts as wealthy inmates who can afford counsel. This is even more egregious as Mr. Lank most likely would have prevailed upon his Petition for Rehearing.

1. Michael Tanner Lank, was formally charged by the State of Oklahoma through the filing of information on or about the 8th day of October 2013 with the following count(s): 21 O.S. § 801; 21 O.S. § 798; 21 O.S. § 1303; 21 O.S. § 1431.

Mr. Lank was promised by his counsel that he would be afforded the opportunity to explain the circumstances surrounding his actions, that he would be granted a chance to apologize to his victims, as well as the guarantee of a one-year review for no criminal history as a first-time offender. The evidence of the promise is clearly seen in the plea of guilty summary of facts form that pertains to case number CF-2013-4899. On question 29 it says, *“Have you been forced, abused, mistreated, or promised anything by anyone to have you enter your pleas?”* The yes and no column was circled yes by Mr. Lank’s counsel. In the transcript of proceedings held on July 21, 2014 (page 6), Mr. Lank was also promised the right of allocution when the sentencing judge states, *“I will review the case and I will hear your attorney’s argument and your argument and all that, but we don’t know what’s going to happen, and you’re rolling the dice.”* The only words Mr. Lank was allowed to say during his sentencing was, *“yes sir.”*

Within the sentencing phase, the Judge was mandated to inquire if the defense had read and/or reviewed the *presentencing investigative report, [P.S.I.]*, and if there were any revisions and/or corrections to be made. *[As observed within sentencing transcripts, this never occurred]* Defense Counsel also never reviewed the P.S.I. with Mr. Lank, prior or during the sentencing hearing, either. Defense Counsel was so late to the sentencing hearing, that the court called Mr. Lank to proceed, [three (3) times]. Without counsel the court refused to proceed. Mr. Lank had to tell Judge Barcus that he was in another courtroom representing another client, at which time Judge Barcus was visibly and audibly aggravated by his lack of punctuality. After the proceedings commenced, the Judge took statements from the victims of the case, he read victim impact letters, [that are still missing from the file and never presented to the defense], and Mr. Lank was never afforded any opportunity to speak or provide mitigating evidence that would have had a significant impact upon his sentence.

2. Several weeks after the sentencing Defense Counsel visited Mr. Lank at the county jail and only after his family had called his office numerous times. Once counsel finally arrived, Mr. Lank advised him to withdraw the plea agreement and/or file an appeal. This was on the basis of his sentencing hearing being completely one sided. Mr. Lank was never afforded the opportunity to speak as promised by his counsel and the sentencing judge, which was clearly a breach of contract. Mr. Lank's counsel talked him out of filing an appeal by telling him that he would lose his one-year review if he filed an appeal.

3. Trial Counsel filed a judicial review, [September 17, 2018], (*as per the promises of the prosecution*), and to this date the initial judicial review has never been adjudicated by the court. Years later Mr. Lank filed another judicial review, (pro·se), and that pleading was dismissed. Mr. Lank then filed a second pro·se judicial review, [January 14, 2019], through the district attorney's office, pursuant to Oklahoma Statute. This was denied upon bald allegations that Mr. Lank was never promised anything for his plea.

4. It took Mr. Lank's family six (6) years to save the funds to retain counsel for Post·Conviction. Mr. Lank hired counsel on or about November of 2019 and due to covid restrictions the Post·Conviction was not filed until October 31, 2022. His lawyer challenged various error(s) within his plea and those are:

PROPOSITION ONE

"My defense counsel failed to provide the necessary consultation and advice necessary to satisfy the requirements of the 6th and 14th Amendments to the U.S. Constitution and Article II, § 20 of the Oklahoma Constitution as applied to blind pleas and sentencing. Denied Effective Assistance of Counsel."

PROPOSITION TWO

"Judge MARK Barcus denied proper allocution as provided in 22 O.S. § 970 at sentencing hearing by failing to inquire if Mr. Lank had received a copy of the P.S.I. Report, read it, and whether there were any objections to the contents of the information contained within the report. My lawyer never gave me a copy of the report, nor was Mr. Lank given an opportunity to read it before sentencing on October 30, 2014."

All information is contained within attached post·conviction and transcripts.

The Post-Conviction was subsequently denied as a procedural bar due to time restraints. However, the court failed to fully investigate the entire case at hand. If the court had properly investigated the case, it would have discovered that the case was held in ***ABAYANCE*** since the very first judicial review was filed, by and through counsel.

5. Mr. Lank appealed the post-conviction denial order to the Oklahoma Court of Criminal Appeals and the order AFFIRMED the conviction. This order is in contumacy of the rulings of the Untied States Supreme Court's clearly established law(s) governing ALLOCUATION and breach of contract onset by the Government.

6. Mr. Lank filed a ***PETITION FOR A REHEARING*** however the clerk of the court refused to file the pleading(s) and attached a copy of O.C.C.A. Rule 5.5 then returned the pleading(s) to him. Mr. Lank was deprived of his United States Constitutional Right to petition the Government for redress of a constitutional claim pursuant to the United States Constitution, Amendment I. In such Mr. Lank's due process of law was molested by the Government in violation(s) of the United States Constitution, Amendment IX and XIV.

Mr. Lank further asserts that he has a constitutional right to file a petition for a rehearing, pursuant to the United States Constitution, Amendment IX. {res-nova}

7. Mr. Lank was deprived of his jury trial in which is mandated by the United States Constitution, Article III, § 2 cl 3. It is clearly established that the right to a “*speedy trial*” is an independent right of the defendant and as a right the court has repeatedly held that a criminal defendant may waive that right to properly construct a defense. That right is strictly and solely within the United States Constitution, Amendment VI and the right to a speedy trial is found nowhere else within this living and breathing document.

This court has never addressed Article III, § 2 cl. 3, [as far as Mr. Lank is aware]. Article III is completely different from the Amendment(s) of the Constitution as the Article(s) have always been construed as Government mandate(s) and not right(s) of the people. This is where this court has obtained its clearly established law regarding the separation of powers. Therefore, it is not farfetched to establish Article III as a Government mandated to bring all criminal defendant(s) to a jury trial in which is mandated to the States through the United States Constitution, Amendment XIV.

This mandate was established to protect the citizens from malicious prosecution and interpose the citizens between the prosecution and the defendant. It is this ideology where the imposition that the jury is the fact finders arises.

Without this Government mandate of a jury, we find that the innocent are incarcerated without due process of law. This is the sole reason America incarcerates more people than any other country in the world.

“UNITED STATES OF AMERICAN, THE LAND OF THE FREE ?”

It is quasi-understandable that the court(s) wish not disturb decades of court proceeding(s) to banish the “plea agreement” as it quickly clears the docket and permits for mass incarceration. This repugnant proceeding strips the rights of the citizen who does not know his/her right(s) or the process of the proceeding(s). This court clearly recognized the laymen are not verse in the scientific aspects of law.

“Johnson vs. Zerbst” 304 U.S. 458 (1938)¹

The laymen may have a basic and/or general understanding of their rights, however are ignorant of the proceedings of a trial, emphasized within this court’s ruling of ***“Faretta vs. California” 422 U.S. 806 (1975)***.

This Court has historically protected the rights of the indigent and/or destitute from malicious prosecution. Granting this Certiorari and enforcing the mandate of Article III, is one more critical step that must be taken to enshrine the protections of the Constitution for those who could not afford a proper education. More so, it is not the fault of the citizen for the State Government’s refusal to teach basis law in high school.

¹ *“Left without the aid of counsel he may be put on trial without a proper charge, and convicted upon incompetent evidence, or evidence irrelevant to the issue or otherwise inadmissible. He lacks both the skill and knowledge adequately to prepare his defense, even though he have a perfect one. He requires the guiding hand of counsel at every stop in the proceedings against him. The Sixth Amendment withdraws from federal courts, in all criminal proceeding(s), the power and authority **1023 to deprive an accused of his life or liberty unless he has or waives the assistance of counsel.*

*A court’s jurisdiction at the hearing ... may be lost in the course of the proceedings’ due to failure to complete the court – as the Sixth Amendment requires – by providing counsel for an accused who is unable to obtain counsel, who has not intelligently waived this constitutional guaranty, and whose life or liberty is a stake. If this requirement of the Sixth Amendment is not complied with, the court no longer has jurisdiction *1025 to proceed.”*

CASE HISTORY

Mr. Lank had never been addicted to a substance of any kind, holding himself accountable for his actions. Mr. Lank worked as a “journeymen line-men”² for nearly a decade as his career continued he was burdened with pain in his hip as he climbed power poles to restore electricity. After visiting an orthopedic surgeon, he was told that he needed hip replacement surgery, but needed to wait as long as possible before the operation. Mr. Lank was then referred to Dr. Joshua Livingston, a pain specialist who was an aggressive prescriber of “OPIOIDS.”

Mr. Lank had become quickly addicted to this prescription and the Doctor over prescribed him. This is not a conclusory and self-serving statement as the Doctor’s license was revoked for over prescribing “OPIOIDS” to hundreds of patients.

Mr. Lank attempted to admit himself into inpatient treatment for opioid addiction, due to the fact that he could become a danger to himself and/or others if he did not receive treatment. Because he was not suicidal the hospital refused to admit Mr. Lank into their treatment program. This mitigating evidence could only be acquired through an order of the court and signed by a Judge. The Laureate Psychiatric Hospital refused to provide those records to Mr. Lank’s defense counsel and counsel failed to proceed with a Subpoena Duces Tecum. Mr. Lank repeatedly sought out help with this addition, however as a poverty-stricken citizen, he was left without assistance. The system absolutely failed Mr. Lank and society.

² Mr. Lank worked for the Electric Company and climbed powerline poles establishing Electricity for citizens after storms and maintained the Electric Grid.

Mr. Lank is also a Petitioner in the “*PURDUE PHARMA*” pharmaceutical litigation filed within the United States District Court(s). Mr. Lank’s crime was a direct result of Medical Malpractice, however he still assumes 100% of the responsibility for his actions. This mitigating evidence should have been presented before the sentencing Judge, prior to imposing such a harsh sentence. Mr. Lank has never been convicted of a crime outside of this case.

Mr. Lank was coerced into a plea agreement by his trial counsel through manipulation and false claim(s) and/or promise(s). In review of Mr. Lank’s summary of facts no reasonable JURISIST could ever conclude that Mr. Lank was not promised anything for his plea. [*This clearly speaks to the heart of this Court’s standards of review as the plea agreement was not knowingly, intelligently and willingly entered*] The documents on file with the Tulsa County District Court clearly indicate that Mr. Lank was promised something.

After his sentencing Mr. Lank instantly told his lawyer that he wanted to appeal the sentence as it is not what he was told and the trial judge refused to permit Mr. Lank to allocate to the offense and apologize to the victims of the crime. In review of the transcripts attached to his post conviction this is clearly articulated. (Counsel Violated the United States Constitution, Amendment VI)

In review of the Untied States Constitution, Mr. Lank has since learned that PLEA AGREEMENTS are in contumacy of the United States Constitution Article III, § 2, Cl. 3. It has been clearly established that the Sixth (6th) Amendment is a

“right” of the people, however Article III, § 2, Cl. 3 is a mandate to the government in which can never be waived as it is not a right of the government or the people.

The people may waive certain right(s) for example, whether their trial is speedy and/or delayed to prepare a defense. The Government shall never waive a Constitutionally Mandated provision, for example Congress, the Senate and the President shall never be permitted to waive any provision(s) of *Article I, II, III, IV, V, VI, VII* as the article(s) are clearly mandates to regulate the Untied States.

The founding father(s) of the United States were clearly aware of the King’s Court and secret hearing(s) and/or trials. Through this fundamental understanding the founding fathers enshrined provisions in the United States Constitution to protect the people from the Government and mandates of conduct that the Government shall never be waive.

Most scholars attribute the origins of the *CORPUS DELICTI RULE* to “PERRY’s CASE” 13 How. St. Tr. 1312 (ENG. 1661).

In that case, John Perry along with his mother and brother were executed after Perry’s confession, during official interrogation, implicated all three of them in the murder of his MASTER William Harrison. The Crown presented Perry’s confession as evidence of the murder but was unable to produce any other evidence, and Harrison’s body was NEVER found. A few years after the execution of the Perry family, Harrison reappeared and explained that he had been kidnapped and sold into slavery. The execution of the completely innocent Perry family led some English courts to REQUIRE confessions to be supported by independent evidence corroborating that the crime actually occurred in order for a conviction³.

[continued next page]

³ In Defense of the Corpus Delicti Rule, 64 Ohio St. L.J. 817 (2003)

In the United States, the CORPUS DELICTI RULE was adopted primarily to: (I) avoid wrongful convictions, (II) discourage law enforcement from forcibly extracting false confessions, and (III) ensuring confessions are reliable⁴.

In the same manner, the founders of the Untied States Constitution were clearly cognizable of the *CORPUS DELICTI RULE* and the *"PERRY's CASE"* ¹³ *How. St. Tr. 1312 (ENG. 1661)*. The founders enshrined a governmental mandate to bring all citizens to a jury trial prior stripping them of their life, liberty and property.

When Mr. Lank appealed to the Oklahoma Court of Criminal Appeals the court AFFIRMED the conviction and its order was contrary to the law clearly established by this Great and Honorable Court. Mr. Lank filed a Petition for a Rehearing and the Clerk of the Court refused to file his pleading(s) and only attached a copy of rule 5.5 depriving Mr. Lank of his due process of law and his constitutional right(s) as questioned on page i.

Mr. Lank presented question(s) regarding O.C.C.A. rule 5.5 as he has read case law where inmate(s) filed for a Petitioner for Rehearing and was granting relief. Reference: *"Wonsch v. Crow"* #22-1050 (10th Cir. App. 2023) Clearly a violation of the equal protection clause.

⁴ *"Smith v. United States"* 348 U.S. 147 (1954)

REASONS FOR GRANTING THE GREAT WRIT

"We the people" call upon this Great and Honorable Court for relief as these issue(s) speak to the heart of rule 11, as this issue(s) will affect the entire nation. The government has overreached its authority in criminal prosecution. It is clearly understandable that "we" as a nation must maintain an orderly nation with laws and those who break them must serve their punishment.

However, in strong words the Constitution has mandated rights of the people to protect them from malicious prosecution. As history has shown centuries of prosecution within the King's Court without due process of any law. This was even present in the early colonies through the Salem Witch Trials and many others like it.

The court(s) and the people have long forgotten about the Articles of the United States Constitution in which mandate certain conduct of the State and Federal Government(s). One of those mandate(s) is a jury trial for any and all criminal offense(s). Had this mandate been implemented by the State of Oklahoma, Mr. Lank never would have been exploited because of his ignorance of the scientific elements of the law. The jury would have been interposed between Mr. Lank and the State of Oklahoma to determine guilt and/or punishment.

PRAYER FOR RELIEF

Mr. Lank prays for this Great and Honorable Court grants relief in the following manner:

1. *Reverse and remand the judgment and sentence, to the trial court with a mandate to resentence him with consideration of the mitigating evidence, OR*
2. *GRANT DIRECT RELIEF by reverse the judgment and sentence and vacating the charges with prejudice and/or modifying the sentence to 15 years in the Department of Corrections with 10 years suspended. (as Mr. Lank is sentence to 25 years in the Department of Corrections and 5 years (CF-2013-4900) which is consecutive to CF-2013-3958)*
3. *Or to provide any and all relief this Great and Honorable Court deems in the name of justice.*

DECLARATION UNDER PENALTY OF PERJURY

The undersigned declares, (or certifies, or verifies, or states), under penalty of perjury that he is the Appellant in the above complaint action, that he has read the above complaint and that the information contained therein is true and correct. 28 U.S.C. § 1746 and 18 U.S.C. § 1621.

Executed at the Oklahoma State Reformatory, on the 19 day of
May, 2023.

Respectfully Submitted,

/S/ Michael Tanner Lank
Michael Tanner Lank,
[OK - DOC #702745]

P.O. BOX 514
GRANITE, OK 73547