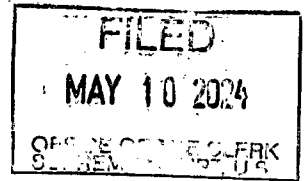


24-5307  
No. \_\_\_\_\_

ORIGINAL



IN THE

SUPREME COURT OF THE UNITED STATES

PHILLIP LEE KELLEY — PETITIONER  
(Your Name)

KEVIN STITT vs. LARRY MORRIS,  
ADAM LUCK, SCOTT WILLIAMS, ALLEN MCCALL,  
— RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS (10TH CIRCUIT)  
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

PHILLIP LEE KELLEY #183039  
(Your Name)

D.C.C.C. 129 CONNERS ROAD  
LABC P.O. BOX 260  
(Address)

Norman, OK. 73045  
~~EXTINGTON, OK 73045~~  
(City, State, Zip Code)

\_\_\_\_\_  
(Phone Number)

### QUESTION(S) PRESENTED

THE APPEALS COURT (10TH) IN AGREEMENT WITH THE DISTRICT COURT STATE THAT THE PETITIONER: "CANNOT USE A § 1983 ACTION TO CHALLENGE THE FACT OR DURATION OF HIS CONFINEMENT." WILKINSON V. DOTSON 544 U.S. 74 78 (2005) HOWEVER THE COURT WENT ON TO STATE IN WILKINSON 125 S. CT. 1242 THAT: "STATE PRISONERS COULD CHALLENGE THE CONSTITUTIONALITY OF STATE PRISON PROCEDURES IN ACTION UNDER § 1983 SEEKING INJUNCTIVE RELIEF THEY WERE NOT REQUIRED TO INSTEAD SEEK RELIEF EXCLUSIVELY UNDER FEDERAL HABEAS STATUTES 28 USCA § 2254 (9)"

★ QUESTION IS THE APPELLATE COURT OR THE ~~STATE~~ PLAINTIFF RIGHT IN CONCERN TO GROUND #1 OR #2? THE PLAINTIFF IS CHALLENGING PROCEDURE AND STATUTORY LAW, NOT CONFINEMENT.

THE DISTRICT COURT STATED THAT DESPITE ITS OWN RULING IN: TRUST CORD V. WRIGHT 868 F. Supp 301 W.D. OR (1993) THAT SAID "REPEAL OF STATE STATUTE DOES NOT LESSEN NOR DOES AWAY WITH RIGHT." THE DISTRICT COURT NOW SAYS PETITIONER HAS NO RIGHT TO BE RESENTENCED UNDER STATUTE, EVEN THOUGH OTHER(S) HAVE. IN REBUTLE THE COURT SAID THAT "THE PETITIONER ~~WAS~~ HAD NOT SHOWN HE WAS SIMILARLY SITUATED TO OTHER(S) RECEIVING RELIEF. THE ONLY CRITERIA THE STATE COURT USED IN FACTORING THE RELEASE OF OTHER PRISONER WAS HIS AGE, TIME SERVED, HEALTH, AND PRISON RECORD.

★ QUESTION WHAT DEFINES "SIMILARLY SITUATED"? AGE, HEALTH AND PRISON RECORD ARE SUBJECTIVE TIME SERVED IS OBJECTIVE AND CAN BE MEASURED. EVERYTHING ELSE IS OPEN TO INTERPRETATION.

## QUESTIONS CONT.

DOES OKLAHOMA'S DISCRETIONARY PAROLE SYSTEM PRECLUDE THE STATE FROM BEING LIABLE FOR DUE PROCESS VIOLATIONS? (CITATIONS SEE PG#5)

IS IT UP TO THE COURTS (FEDERAL) DISCRETION AS TO WHEN OR IF TO COMPEL STATE DEFENDANTS, (AS IN THIS CASE) TO COMPLY WITH RULES OF THE COURT? (I.E. FEDERAL RULES OF CIVIL PROCEDURE.) IN THIS CASE, MAKING AN APPEARANCE WITH OR W/O COUNSEL ALSO RULES 55 & 56.

*One of the biggest challenges all of us have when trying to read and understand the Bible is the challenge to actually hear what the biblical authors are trying to say, and not just bringing my own ideas into the Bible. We don't realize how much our assumptions actually determine what the Bible can and cannot say to us. I have gone through this process with the Bible so many times over.*

*A good example is an assumption we often bring to the Bible that it's somehow like a moral rulebook of God-approved behavior. So when we turn to all of the stories of people in the Bible, what we expect to find are moral examples, like people you should be like to make God happy. But the problem is, when you actually read the stories of the people in the Bible, almost all of them are involved in scandals. They're not people you actually want to be like most of the time. And again, our assumption that the Bible is a moral handbook is driving that, when in fact, the biblical authors put these people in front of us as mirrors for self-learning and self-critique. To help us learn about just how complicated and screwed up and amazing we are.*

*And so that's the biggest risk that all of us have in reading and trying to understand the Bible, is to make sure we're actually hearing what the authors are saying, not just what I want to hear.*

*Being a follower of Jesus and a student of the scriptures is actually about having the habit of open-mindedness: to hear the scriptures say things I've never even thought to think before and to learn new things from the world around me. And to me, that's the most exciting thing about becoming a lifelong learner and student of the scriptures, is that process of discovery of a lifetime, laid before all of us. It's awesome.*

---

Tim said, "Being a follower of Jesus and a student of the Scriptures is actually about having the habit of open-mindedness—to hear the Scriptures say things I've never even thought to think of before and to learn new things from the world around me." What thoughts does this quote, along with the rest of what Tim said, bring up for you? Journal your thoughts below.

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### LIST OF PARTIES

- ☒ All parties appear in the caption of the case on the cover page.
- ☐ All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

### RELATED CASES

TRUST CORP V. WRIGHT 868 F. Supp. 301  
W.D. OKLA, (1993)

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## STATUTES AND RULES

OKLAHOMA STATE CONSTITUTIONAL STATUTE FOUND IN:	
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## FEDERAL RULES OF CIVIL PROCEDURE

RULE # 55	#2 A
RULE # 56	#2 A

## OTHER

IN THE  
SUPREME COURT OF THE UNITED STATES  
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

**OPINIONS BELOW**

☒ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

☒ reported at NO. 23-6200 (ENTERED 5-3-24); or,  
☐ has been designated for publication but is not yet reported; or,  
☐ is unpublished.

The opinion of the United States district court appears at Appendix B to the petition and is

☒ reported at 5:23-CV-00747-R W.D. OKLA.; or,  
☐ has been designated for publication but is not yet reported; or,  
☐ is unpublished.

☐ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix \_\_\_\_\_ to the petition and is

☐ reported at \_\_\_\_\_; or,  
☐ has been designated for publication but is not yet reported; or,  
☐ is unpublished.

The opinion of the \_\_\_\_\_ court appears at Appendix \_\_\_\_\_ to the petition and is

☐ reported at \_\_\_\_\_; or,  
☐ has been designated for publication but is not yet reported; or,  
☐ is unpublished.



## JURISDICTION

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was 5-3-24.

☒ No petition for rehearing was timely filed in my case.

☐ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: \_\_\_\_\_, and a copy of the order denying rehearing appears at Appendix \_\_\_\_\_.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including \_\_\_\_\_ (date) on \_\_\_\_\_ (date) in Application No. A \_\_\_\_\_.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☐ For cases from **state courts**:

The date on which the highest state court decided my case was ~~7/1/23~~ ~~7/1/23~~.  
A copy of that decision appears at Appendix ~~3~~.

☐ A timely petition for rehearing was thereafter denied on the following date: \_\_\_\_\_, and a copy of the order denying rehearing appears at Appendix \_\_\_\_\_.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including \_\_\_\_\_ (date) on \_\_\_\_\_ (date) in Application No. A \_\_\_\_\_.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

IN BOTH GROUNDS THE PLAINTIFF HAS INVOKED  
AND ASKED FOR HIS 14TH AMENDMENT RIGHTS  
TO DUE PROCESS TO BE UPHOLD.

THE STATUTORY PROVISIONS IN THE STATE  
CONSTITUTION PREVIOUSLY RULED ON IN  
TRUST CORP. V. WRIGHT 868 F. SUPP 301 (1993)  
W.D. OKLA. IN ADHERANCE TO DUE PROCESS  
OF LAW, BE ADHERED TO.

FEDERAL RULES OF CIVIL PROCEDURE BEING  
COMPLIED WITH BY BOTH PARTIES

## STATEMENT OF THE CASE

THE PETITIONER STARTED THIS CASE WITH 35 INDIVIDUALS AND INDIVIDUALLY FILED IN OVER 22 COUNTIES SEEKING RELIEF FROM UNJUST INDETERMINATE LIFE SENTENCES AND RETROACTIVE APPLICATION OF PASSED LAW AND NEW REGISTRATION. ALSO CHALLENGING OKLAHOMA'S "DISCRETIONARY" PAROLE SYSTEM. THESE CASES WERE DENIED IN THE DISTRICT COURTS AND STATE APPELLATE COURT.

THE W.D. FEDERAL COURT ALSO DENIED BOTH GROUNDS 1ST STATING THAT PETITIONER COULD NOT CHALLENGE THE STATE USING § 1983 BUT ONLY HABEAS CORPUS.

ALSO THE W.D. COURT STATED THAT PETITIONER HAD NO RIGHT TO BE RESENTENCED UNDER REPEALED LAW EVEN THOUGH THE STATE CONSTITUTION AND THE W.D. COURTS OWN RULING IN 1993 STATED OTHERWISE.

THE COURT ALSO RAISED THE QUESTION AND STATED THE PETITIONER HAD NOT SHOWN HE WAS "SIMILARLY-SITUATED" ~~TO~~ TO THOSE WHO WERE GRANTED RELIEF AND LASTLY THAT PETITIONER HAS NO RIGHTS UNDER OKLAHOMA'S "DISCRETIONARY" PAROLE SYSTEM, EVEN THOUGH THIS COURT HAS REPEATEDLY STATED THAT REGARDLESS OF THE STATUTORY LANGUAGE OF A PARTICULAR STATES PAROLE SYSTEM CERTAIN RULES MUST BE IN PLACE TO AVOID VIOLATION OF DUE PROCESS. ONE OF THOSE RULES WHICH THE PETITIONER COMPLAINED OF WAS NOT BEING TOLD WHY HE WAS DENIED PAROLE. BOTH JUSTICES MARSHALL AND POWELL STATED THAT THAT WAS ONE THING THAT COULD NOT BE OVERLOOKED,

## REASONS FOR GRANTING THE PETITION

THE MAIN REASON THE PLAINTIFF COMES BEFORE THIS COURT ASKING FOR THIS PETITION TO BE GRANTED IS SINCE THE PASSING OF THE A.E.D.P.A. THERE SEEMS TO BE A "HANDS OFF" POLICY CONCERNING THE FEDERAL COURTS RESPONSE TO THE STATES VIOLATIONS OF PRISONERS CONSTITUTIONAL RIGHTS. IT GOES BEYOND ALLOWING THE STATE TO CHOOSE WHETHER OR NOT TO COMPLY WITH COURT RULES OR PROCEDURE, BUT HAS GRANTED THEM A LICENSE TO PROCEDURALLY BAR A STATE PRISONER FROM HAVING HIS CONSTITUTIONAL ISSUES HEARD BY THE FEDERAL COURTS. IT SEEMS AS IF THE COURTS ARE AT BEST RELUCTANT, BUT GENERALLY UNWILLING TO EVEN UPHOLD PREVIOUS DECISIONS CONCERNING CONSTITUTIONAL VIOLATIONS.

THIS COURT, IN GRANTING THIS PETITION, WOULD GO A LONG WAY IN CURBING OKLAHOMAS CONSTANT 14TH AMENDMENT ABUSES. OKLAHOMA IS #1 IN ITS INCARCERATION RATE FOR WOMEN AND MEN IN THE COUNTRY, BUT ONLY RANKS 28TH IN F.B.I. CRIME STATS.

THIS SHOULD BE A SIGN TO THIS COURT THAT OKLAHOMA IS NOT IN FRONT OF THE REST OF THE COUNTRY IN JUDICIAL REFORM, FAR FROM IT. OKLAHOMA COMES UP WITH MORE EXCUSES THAN ANY ONE STATE. JUST LOOK AT YOUR PREVIOUS CASE IN MCGIRT V. OKLAHOMA, 140S. CT. 2052 (2020) WHERE JUSTICE GORSUCH STATES: "ONCE AGAIN - OKLAHOMA WANTS US TO TRADE STORIES FOR STATUTES, ... MAY THIS NEVER BE."

### CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Phillip Lee Kelley

Date: 7-30-24