

24-5447
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 2024

Wilbert Lee Nubine,

Petitioner

v.

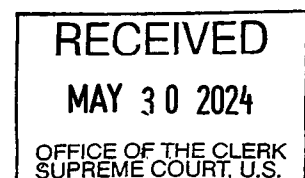
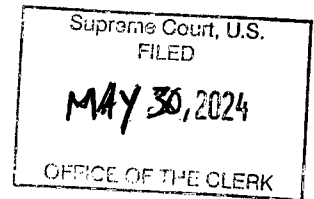
The Oklahoma Pardon
And Parole Board.

Respondent

On Petition for Writ of Certiorari to The
Court of Criminal Appeals.

PETITION FOR WRIT OF CERTIORARI

Wilbert Lee Nubine
G.P. C.C.
P.O. Box 700
Hinton, Oklahoma 73047



QUESTIONS PRESENTED

Come now, Wilbert Lee Nubine, request petition for writ of certiorari to The Court of Criminal Appeals. Petitioner is under Oklahoma's Mandated Statutory Laws that govern a one (1) stage parole review hearing system; which survive the legislative Repeal laws that created an Ex Post Facto Clause violation, by being in direct conflict with "Well Establish United States Supreme Court Laws" Oklahoma Abolish the 1 stage parole review system, brought in the two stage parole hearing process, uses their defer to eliminate most violent convicted prisoners from ever getting to the second stage of the 2 stage parole process. See (App1-A) The second stage hearing is where prisoner's female and male with a violent crime conviction stand a chance to get a majority favorable vote for parole by the parole board members (The Board). It is forbidding by Oklahoma Repeal law to allow prisoners with violent crimes conviction to appear before the board at the first stage hearing of the 2-stage parole process. Petitioner has a legitimate expectation for Oklahoma 1 stage parole hearing system and has an entitlement of protection under the United States Constitution. This court must intervene and demand a declaratory Judgment against the respondent declaring that the retroactive application of 57 §§ 332.7 (D) (1 and 2) and 355 (supp 1997) and the pardon and parole board policy and procedures. 004.I.B.1.a. et seg (2000) to petitioner violates the United States Constitution's prohibition against the passing of Ex Post Facto law. (1) Whether a public interest is at stake with Petitioner's *Ex Post Facto* Clause violation issue of Oklahoma by Repeal law forbid female and male prisoners with violent crime convictions to have their Oklahoma One (1) stage parole Review hearing, because their law abolishes the 1 stage parole review system. As well as, forbid by law violent convicted crimes who came in on or after July 1, 1998 to appear duly at the first stage hearing of the two-stage parole hearing process

in conflict with well establish United States Supreme Court law in Greenholtz v. Nebraska penal and Correctional Complex, 442 U.S. 1 99 S.Ct. 2100, 2108, 60 L.Ed. 2d 668 M.R. v. Moore, 610 P.2d 811,814 and Ex Parte Custer 200 P.2d 781 their action should be declared Unconstitutional.

(2) Whether a public interest is at stake, by Petitioner showing the mandated statutory law of the forgotten man act 57 O.S. § 332.7 (1971) and The Oklahoma one stage parole viewing system survives the Repeal Amended legislative law of 57 O.S. § 332.7 (1998) and the two-stage parole hearing process, which has caused an Ex Post Facto Clause violation under Article 2. O.S. §15 of Oklahoma Constitution and Article 1§10 of The United States Constitution construed under Garner v. Jones, 529 U.S. 244, 120 S.Ct 1362, 146 L.Ed. 2d 236. Durant v. United States, 410 F.2d 689 Kelly v. The Oklahoma Pardon and Parole Board 637 P. 2d 858 M.R. v. Moore, 610 P. 2d 811, 814.

(3) Whether a public interest is at stake by petitioner showing that the District Court of Oklahoma county abuse its discretion of not providing a corrective process for petitioner post-conviction without given a requested fact finding and conclusion of the law based on the merits of the petitioner's *Ex Post Facto* violation as construed in Richardson v. Miller, 716 F. Supp. 1246, Hammon v. State, 504 P.3d 486 Stevens v. State, 232 P.2d 949, 959 and Wilson v. State, 552 P.2d 1402.

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A. Petitioner, Wilbert Lee Nubine, and late Co-Defendant James Norville Johnson, crime was committed October 3, 1984. The Petitioner and the late Co-Defendant Mr. Johnson had separate trials. The Petitioner was tried by jury for the crime of First-Degree Murder in Case No. CRF-86-3299 in the District Court of Oklahoma County, before the late Honorable Judge William S. Myers Jr., and was sentenced to life with the possibility to make parole plus 3 years suspended sentence was revoked and order to be a consecutive sentence. See (App 2- B) and (App.22-V)

B. Oklahoma Legislature has pass repeal laws that demands a declaratory judgment against respondent declaring that retroactive application of 57 §§ 332.7 (D) (1 and 2) and 355 (Supp. 1997), and The Pardon and Parole Board, policy and procedures, 004.1.B. 1. A (2000) to him violates the United States Constitution's prohibition against the passing of *Ex- Post- Facto* laws.

C. The Petitioner was recommended for parole on the 3-year (yr) sentence and rebuild to the Life sentence in 1988 through Oklahoma's 1 stage parole review hearing was provided by the mandated statutory laws of the Forgotten man Act of (1971) Tit 57 O.S. § 332.7 and annual re-docketed

personal appearance parole hearing system, which was pardon and parole board, policy and procedures, 004.1. B. 1 a ET Seg (1981) both were abolished by the repeal law.

D. The more onerous two stage parole hearing place Petitioner at a disadvantage by changing the timing of eligibility for parole. And it abolished Oklahoma 1 stage parole system. The system that Petitioner is under.

E. The aforementioned Repeal law challenge The Supreme Court and the Court of Criminal Appeal to intervene and declare what Oklahoma Pardon and parole has been doing for over 25 years is in violation of the United States Constitution against the passing of *Ex- post-facto* laws, such as stopping Oklahoma's violent crime convicted prisoner's from ever having Oklahoma one stage parole hearing system and by law forbid a review hearing for those place under the two stage parole hearing for violent crime convicted female and male prisoner's. Wrongfully!

F. Under former President Clinton administrative prison reform Bill 42 U.S.C. § 13701 et seg (violent offender incarceration and Truth in Sentence incentive grant Programs, requiring that in order for states to be eligible for grants under these programs, state must"... implement correctional policies and programs, including Truth in Sentencing Laws that ensure that violent offenders serve a substantial portion of the sentences imposed that are designed to provide sufficiently severe punishment for violent sentence convictions. Of course, former President Clinton got on National T.V. and apologize for promoting the Bill.

G. Former Governor Keating in 1997/1998 had Oklahoma Legislature repeal the Oklahoma's Forgotten Man Act and Amened parole eligibility statue, which authorized the board to defer re-docketing date. There are some prisoners that has been incarcerated over 30 years base on the

Board deferred and they supposed to come up for parole in 15 years, if denied parole, we had re-docketing annually. Durant v. United States, 410 F. 2d 689, 691, states:

“A repeal of parole eligibility hearing previously available to prison offender would clearly

Present the serious question under the *Ex Post Facto* clause.

H. Title 57 O.S. 2011§ 332.7(F) On paper appeared to have brought forth a liberty interest under “an Act” enroll house Bill No. 1722 signed into law by former Governor Mary Fallin on the 23rd day of April 2013 at 3:57 P.M. and signed by the secretary of State on the 23rd April 2013 at 4:17 P.M. yet the Board and Courts has selectively use it for a privilege few and the benefits denied to others, we went from parole consideration to sentence determination under the applicable matrix. See (Appendix # C)

I. The Order Denying Post-Conviction as time barred pursuant to the provisions of 22 O.S. § 1080 (1) is the law that came in over 30 years later, it's more onerous system of law and it place petitioner at a disadvantage thereby creates another *Ex Post Facto* clause violation, by making harder for release through the court system by not providing a corrective process. Hammon v. State, 540 P.3d 486, shows prisoners had a year to file petitioner's post-Conviction was already in the court.

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STATEMENT OF THE CASE

This case presents this court with the opportunity to resolve a conflict between the D.O.C. and the Pardon and Parole board members not implementing to prisoners what the legislatures assigned them to do, which is to promulgate procedures to modify the sentence for those prisoner's sentence before July 1, 1998. (1) Under Former President Clinton Administrative prison reform bill 42 U.S.C. § 13701 et seq (Violent Offenders Incarceration and the Truth in Sentence Incentive Grant Programs,). The bill was supported by now President Biden and the bill created a Liberty Interest for prisoners already in prison, because their sentences were to be modified.

Kansas accepted the Incentive Grant programs, release a lot of their prisoners that had been in prison for over 20 years.

(2) Under Former Governor Keating he accepted the Incentive Grant programs money for the state of Oklahoma. The Prison Reform bill was for the whole and not just for the privilege few that were charged prior to July 1, 1998. The former Governor Golden Calve were Private Prisons, the 2-stage parole process with the defer system that has been use to never allow violent convicted prisoners to get before the board for a personal appearance. The late Former United States Attorney General Janet Reno appeared on national T.V. C.N.N. and told than former Governor Keating that he is going to bring in the "Violent Offender" incarceration and Truth in Sentence incentive programs. Like the United States Justice Department wanted it or Oklahoma would have to pay back all them millions of dollars given Oklahoma and they are not going to pay it back out of Oklahoma raining day funds. The republicans won the President and swept the pressure on Keating under the rug, thus came Oklahoma private prison era. In 1988 the Parole Board Members (The Board) granted Parole at the one (1) stage personal appearance hearing on the (3) years Assault and Battery Violent offence sentence. Petitioner rebuild to the Life Sentence and got scheduled for

a 2002 pre-parole review (App 9-I) and a 2003 one stage violent offense personal appearance parole review hearing.(App 10-J) The 20th of August petitioner will be 72 years old and is establish under Oklahoma (1) stage parole review hearing, which was mandated Statutory Law of The Forgotten Man Act (1971) held:

“Every inmate must be considered for parole on or before the expiration of his maximum Sentence in addition, any inmate serving 45 years or more including a Life Sentence shall be considered for parole or clemency after serving 15 years.”

Under The Pardon and Parole Policy and Procedure, 004, 1.B.1.a et seg (1981) Provided annual parole hearing. To this date no re-docket been awarded to Petitioner in over 11 years. The laws, rules, policy and procedures petitioner are under required at least 20 straight personal appearance parole hearing with the following achievement petitioner has to present to The Board. See Akins v. Snow, 922 F.2d 1558, the Court held:

“Offenders were coming up annually for parole and the law change from coming up every year to every 8 years the Court stated that changes the timing of their eligibility for parole consideration review hearing and place them at a disadvantage because chances are had they came up for every 8 straight years as the law was in effect at the time of arrest, they would have a better chance to win a yes vote. Their action violated the *Ex-Post Facto* clause.

Petitioner (App 11-K) I received 100 days meritorious credit for saving a life of Captain Johnson who was being attack by mentally challenge inmate. I have 58 credits towards an Associate

Degree. See (App 12-L), I have Affidavit from the deceased brother asking to grant me some relief, see (App 13-M). I completed incarceration plan, such as; Victims Impact, Computer, Vo-Tech, Cognitive Behavior, Substance Abused, Relation Behavior Course, Cage Your Rage, a graduate Council in teaching and saving kids (T.A.S.K.) under pastor Manning. Completed Acholic Anonymous attend al-Aron, legal research, Cook, Baker, Electrician helper, Barber, Auto Body and Repair, speak out participate to kids and debate team member perhaps 20 straight years a majority parole vote is in order. More importantly is Petitioner is being under a law that came in while he was already in prison. It been a more onerous system and place him at disadvantage because the United States Supreme Court opinion in Greenholtz v.

Inmates of The Nebraska penal and Correctional Complex, 442 U.S. 1 99 S.Ct. 2100, 2108, 60 L.Ed. 2d 668 at 2018 is being denied him, which is a major *Ex-Post Facto* violation Lewisbure v. Morrero, 417, U.S. 653, 94 S.Ct. 2532, **2538** it states: it may be legislative grace for congress to provide for parole, but when it expressly remanded all hope of parole upon conviction and sentence for certain offense... This is in nature of on additional penalty.” **Id** at **2538**. Petitioner’s Oklahoma one stage parole review hearing for violent convicted prisoners abolish by the repeal aforementioned law remove all hope of parole under the one stage review parole system. The annual review re-docketing has not been given at all due to their use of defer.(App 14-N) The affidavits of prisoner stating the use of their deferred hasn’t let them get before the Board one time since being in prison over 34 years and 29 years (App 1-A) in Rodriguez v. United State Parole Commission, 544 F.2d 170, (1979) it implies; “Without the opportunity for parole hearing an inmate is not in any realistic meaning of term eligible for parole. “The Board saying, they only defer for 3 years is just a play with words”, for those prisoners never got before the Board duly and no re-docketing personal appearance that was sentence before July1, 1998 laws state, in

Lewisbure v. Morrero, 417 U.S. 653, 94 S.Ct. 2532, 2538 it states;

“It maybe legislatives grace for Congress to provide for parole, but

When it expressly remanded all hope of parole upon conviction and

Sentence for certain offense... This is in Nature of an additional

Penalty Id.at 2538.

Love v. Filzharris, 460, F.2d 382, 385 9th Cir 1992) Vacated 409 U.S. 1100,

93 S.Ct. 896. 34 L.Ed. 2d 682 (1993) States.

“A state Parole Authority’s change in the interpretation of the parole eligibility provision is subject to *Ex Post Facto* constraint because the agency’s interpretation had effect of laws.

REASON FOR GRANTING THE WRIT

In The Order issued by the Honorable Judge Virgil C. Black he informed: The public, and prisoners the following;

A. “The Court Finds That “The act does not Authority the District Court to modify the sentence, but instead direct the Department of Correction and the Pardon and Parole Board to develop procedures for modifying the sentence given to inmates prior to July1, 1998. This being the case, the failure of D.O.C and the Pardon and Parole Board to administer “The Act” is an issue to be resolved by The Oklahoma Supreme Court.” Petitioner (App 4-D).

B. Petitioner is under Oklahoma Mandated Statutory laws that governed “A One Stage Parole review system and annual review re-docketing if denied a favorable recommendation both survives. The Legislation Repeal laws that created an *Ex-Post Facto* Clause Violation. By not

In March 2024 my parole was defer until 2027, (App 14- N) No re-docketing is going on 15 years. This Court must intervene and declare the use of the defer at the first stage of the 2-stage parole hearing is un-constitutional.

(App 17-Q) it's a punishment to prisoners when you tell them D.O.C. by policy forbid giving dentures.

Petitioner has been wrongfully placing under the more onerous 2-stage parole process that place Petitioner at a disadvantage by; abolishing Oklahoma first stage parole review hearing system, and not afford him the mandate law. Requiring prisoners charge before July 1, 1998, the liberty interest of determining their new sentence under the applicable matrix. The case of Loyd Kennedy there was not fact finding and conclusion of law the Oklahoma court of Criminal Appeal (OCCA), Reverse and remand the District Court Order, ultimately the court discharged him with time served off the life sentence, for health reason, his age, and how much he served. (App 18-R) Aaron Cosar time was modified from a life to 55 years. Under Hicks v. Oklahoma, 100 S.Ct. 2227, under the equal protection clause of the Fourteenth Amendment of the United States Constitution petitioner could be granted the same relief under similar situation. Oklahoma's Legislature passed an *Ex Post facto* violation law, using a repeal law against well establish United States Supreme Court law that is stare decisis supported. The possible liberty interest of determining his sentence under the applicable matrix. See; Ex Parte Custer Id. The loss Subject Matter Jurisdiction if the Board has gone pass the 1/3 parole hearing if the case was modified overcome procedural time barred. The Honorable Judge Virgil C. Black, mention in his order (App 4-D) and affidavits stated in fact that under this 2-stage system they haven't been afforded one time to get before the Board duly to answer questions object to false unrelated information that's not true. (App 1-A)

Showing that the parole investigator sending to the Parole Board information that's not true, violent convicted prisoners not allow to be there to object. (App 19-S) O.S.B.I. Criminal profile on petitioner at first stage paper review hearing, which has false information, such as O.S.B.I. has me down committing a crime in the summer of 1977. The facts are petitioner was in Oklahoma City County Jail all summer without a bond the State seek Death Penalty and I was acquitted by jury.

(App 20- T page 4 of 7) In September 1977 Also, the State had me committing a crime while during time at McAlester. (App 21-U) False information from my file having me down doing a life sentence without parole. When it come to the Board misplace understanding of law in Love v. Fitzharris, 460 F.2d 382, 385 (9th Cir 1992) vacated 409 U.S. 1100, 93 S. Ct 896 34 L. Ed 2d 682 (1993) states: "A State Parole authority's change in the interpretation of the eligibility provision is subject to *Ex Post Facto* constraint because the agency's interpretation had effect of law". Petitioner due to know fault of his own there's no re-docketing review hearing before the Board in over 11 years and should be incorporated as a continuation of the Ex Post Facto clause violation issue.

In Weaver. Graham, 450 U.S. 24, 101 S.Ct. 960 67 L. Ed. 2d 17 it states: "the effect not the form of the laws determines whether *Ex Post Facto* violation". The framers of the *Ex Post Facto* law viewed the prohibition on *Ex Post Facto* Legislation as one of the fundamental protections against arbitrary and oppressive Government. "Where the State deprive a person of opportunity to take advantage of the provision for the person parole personal appearance hearing it is to the substantial disadvantage of the prisoner. The *Ex Post Facto* clause protect against the danger of such vindictive legislative.

Taken from the Bobby Battle's law suit before the Islamic community objected there was no part of their order in the Courts conclusion on religious aspect of the law. At any rate here are some of

the numbers from the law suit it stated and shows that Oklahoma only had 6 prisons in 1978, A 25.7 million budgets, and prison population of 4,250 people. Later as a part of the problem was came private prison. Now the budget annually is over 500 million dollars that's over half billion and this abolish of one stage hearing in Oklahoma. The public is paying the taxes on this half billion dollars, they must immediately declare their action being unconstitutional.

Whether a public interest is at state by petitioner showing the mandate statutory of law the forgotten man act **57 O.S. § 332.7 (1971)** and Oklahoma one stage parole review hearing system survived the repeal amended legislative law of **57 O.S. § 332.7 (1998)** and the two-stage parole hearing process, which has caused an *Ex Post Facto* clause violation under Article 1 § 10 of the United States Constitution as construed under, *Kelly v. The Oklahoma Pardon and Parole Board*, 637 P.2d 858. *M.R. v. Moore*, 610 P.2d 811,814. *Durant v. United State*, 410 F.2d 689 and *Garner v. Jones*, 529 U.S. 244, 120 S. Ct 362,148 L.Ed.2d 236.

Under the Pardon and parole policy and procedure, 004, I.B.I. a at seg (1981) provided annual hearing. To this date no re-docketing been awarded to petitioner. As well as, mandated statutory law of the Forgotten Man Act (1971) held: **“Every inmate must be considered for parole on or before the expiration of his maximum sentence in addition any inmate serving 45 years or more including a life sentence shall be considered for parole or clemency after serving 15 years.”**

The Oklahoma Supreme Court ruled that shall is usually given its common meaning of “must and is interpreted as given a “Command”. The Court found that shall is word of “command” which is given compulsory meaning and impose a mandatory duty.” It's clear that United States Supreme

Court has cited extensive precedent that held: There was no right under the constitution to given a parole; However, the majority acknowledge the forgotten man act creates a constitutional protected liberty interest, if inmates appear on the monthly parole docket through the channels of statutory laws the majority admits he is entitling to some procedural safe guard. When scheduled for 2003 parole hearing give a legitimate expectation to be afforded it. In M.R. v. Moore, 610 P.2d 811, 814, (Okl.CR. 1980). **The Court held: "An offender is entitled to the application of law which was in effect at the time they committed the crime.**

The aforementioned abolishment of the Forgotten Man Act (1971) should be ruled unconstitutional. In Durant v. United States, 410 F.2d 689, it states: "A repeal of parole eligibility hearing previously available to imprison offenders would clearly present the serious question under the *Ex Post Facto* clause of article 1 § q c1.3, the constitution".

There are not many prisoners still living that were paroled from one sentence to rebuild to the other C.S. case under Oklahoma one- stage parole review hearing. In Garner v. Jones, 529, U.S. 244, 250, 120 S.Ct. 1362 146 L.Ed. 2d 236. The Supreme Court held; "A retroactive change in the laws governing parole of prisoners, in some instance maybe violative of the *Ex Post Facto* clause.

Whether a public interest is at stake by petitioner's showing the District Court abuse it discretion of not providing a corrective process and issue an order denying petitioner's due to no fault of his own out of Time Post -Conviction Relief application without given a request fact finding and conclusion of law on the merit of petitioner's *Ex Post Facto* clause violation as construed in Stevens v. State, 94, Okl. Crim 216. 232 P.2d 949, 959 and Richardson v. Miller, 716 F. Supp 1246 and Hammon v. State, 540 P.3d 486.

Stinton v. United States, 508 U.S. 36 (1993), and to fall within the *Ex Post Facto* prohibition a law must apply to events occurring before the enactment and it must disadvantage prisoners affected by it altering the definition of criminal conduct or increasing the punishment. The D.O.C. forbid by policies to give false teeth especially to a senior citizen, policies such action is a punishment. The insurmountable power of the demoralize problems of the past use of private prison and the repeal of the Forgotten Man Act (1971) has cause irreparable harm to prisoners and their families call for prison reform, that need not be over looked, and has to be respected.

Petitioner reiterant, Oklahoma went from having six prisons, population of 4,250 prisoner and annual budget of only 25.7 million after placing Oklahoma under serious scrutiny this were their numbers in their findings in 1978. Later came former Governor Keating's "Golden Calve" of private prison which help to milk the citizen for over a five hundred million dollars, a half of a billion annual dollars. The Keating's invest 40% percent in private prison shares and the former Governor stated its nothing wrong with making a good investment in America. He is no longer the governor yet his policies and laws has controlled the prison system for over 20 years. The Court must intervene and declare the parole forbidding violent convicted prisoners female and male from having their first stage appearance parole hearing must be ruled un-constitutional.

To allow **22 O.S. § 1080 (1)** law to stand creates a law similar to an "Attainer Bill" both give birth to placing "the public interest to be at state" in that family members love one's female and male convicted in the 60's, 70's, 80's, and part of the 90's with meritorious constitutional issues will never be heard in any District Court in Oklahoma unless it's a lack of subject matter jurisdiction.

An Attainer Bill exist when "there is nothing those affected by law violation could ever do to change the result." The **22 O.S. § 1080 (1)** procedure time barred order against petitioner should be revisit and reverse, because it's an *Ex Post Facto* violation in making it harder to be heard in

the Court of Law, which place petitioner at another disadvantage. We cannot change the results of having a valid constitutional violation heard, Hammon v. State, 540 P.3d 486 Nov. 28, 2023, 2023 Ok CR 19.

CONCLUSION

Wherefore, petitioner demands a declaratory judgment against the respondent declaring that the retroactive application of **Okl. Stat. Ann. Tit 57, § 332.7 Repeal (1998)** law and pardon board, policy and procedures, **004 I.B.I.a. (2000)** against "The Forgotten Man Act of (1971) and Oklahoma one stage parole review hearing as well as the pardon and parole board, policy and procedure 004 I.B. 1a (1981) to him violates the United States Constitution's prohibition against the passing of *Ex Post Facto* law; and injunctive relief for an immediate release or parole hearing in accordance with statutory laws and administrative rules in place when petitioner allegedly committed his crime; a new parole hearing under constitutionally proper procedure an injunctive ordering the respondent to comply with constitutional due process and *Ex Post Facto* requirement in the future. Thereby reversing District Court Order and remand with instruction to give a fact finding and conclusion of law on the merits of petitioner *Ex Post Facto* violation issue. And to determine what petitioner sentence would be under the applicable matrix that apply to him. And compel Oklahoma Parole Board to allow violent convicted prisoner to appear at the first and second stage hearing as the Supreme Court held. "Yet Oklahoma forbids it by law".

It's So Prayed...

/s/ Mr. Wilbert Lee Nubire