

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

FILED
SUPREME COURT
STATE OF OKLAHOMA

OCT 18 2021

JOHN D. HADDEN
CLERK

THE STATE OF OKLAHOMA,)
By and through JOHN M. O'CONNOR,)
ATTORNEY GENERAL,)

Petitioner,)

v.)

ADAM LUCK, INDIVIDUALLY AS)
A MEMBER OF THE PARDON AND)
PAROLE BOARD,)

&)

KELLY DOYLE, INDIVIDUALLY)
AS A MEMBER OF THE PARDON)
AND PAROLE BOARD,)

Respondents.)

Case No. _____

#119929

**APPLICATION TO ASSUME ORIGINAL JURISDICTION AND ISSUE A
WRIT OF MANDAMUS AND/OR WRIT OF PROHIBITION DIRECTED TO
OKLAHOMA PARDON AND PAROLE
BOARD MEMBERS ADAM LUCK AND KELLY DOYLE**

COMES NOW Petitioner, and respectfully requests this Honorable Court to assume original jurisdiction and issue a Writ of Mandamus and/or a Writ of Prohibition, directed to Adam Luck and Kelly Doyle, as individual members of the Oklahoma Pardon and Parole Board (hereinafter "Board"), directing each of them to disqualify from participating in or acting in any capacity to matters as it relates to inmate Julius Jones. Pursuant to this Court's Rule 1.17(III), Petitioner requests that this matter be placed on the Fast Track Docket so it may be disposed of before the currently scheduled clemency hearing on October 26, 2021. This Court's exercise of jurisdiction is required

to protect the integrity and appearance of impartiality that is required of the members of the Board.

In support of this request the State would inform the Court that:

RELEVANT FACTS

- 1) Adam Luck is the Chairman of the Board;
- 2) Kelly Doyle is a member of the Board;
- 3) The Oklahoma Pardon and Parole Board is charged with making determinations related to the pardoning of inmates, the parole of inmates, and the commutation of sentences of inmates housed in the Department of Corrections;
- 4) Inmate Julius Jones was convicted of, *inter alia*, Murder in the First Degree, out of Oklahoma County in case number CF-1999-4373, and was sentenced to death as a result thereof;
- 5) Julius Jones has exhausted all of his appeals and an execution date for Mr. Jones is scheduled on November 18, 2021;
- 6) Julius Jones previously asked the Board to recommend that the Governor commute his sentence;
- 7) On September 13, 2021, the Board—with Adam Luck and Kelly Doyle assenting—recommended that Julius Jones’s sentence be commuted to life with the possibility of parole;
- 8) On September 28, 2021, Governor Kevin Stitt denied the Board’s recommendation to commute Julius Jones’s sentence;

- 9) Julius Jones is currently scheduled to appear before the Board again on October 26, 2021 for a clemency hearing;
- 10) The State filed a motion with the Board on October 11, 2021, seeking to disqualify Adam Luck from acting as an individual member in the matter of Julius Jones's sentence of death due to actual bias, implied bias, conflict of interest, and an appearance of impropriety, and this motion has evidence related to the partiality, bias, and conflict of interest of Adam Luck;
- 11) The State incorporates by reference herein, all of the allegations and appendices contained in the State's motion, a copy of which will be provided to this Court in accordance with this Court's Rule 1.191(d);
- 12) The State filed a motion with the Board on October 11, 2021, seeking to disqualify Kelly Doyle from acting as an individual member in the matter of Julius Jones's sentence of death due to actual bias, implied bias, conflict of interest, and an appearance of impropriety and this motion has evidence related to the partiality, bias, and the conflict of interest of Kelly Doyle;
- 13) The State incorporates by reference herein, all of the allegations and appendices contained in the State's motion, a copy of which will be provided to this Court in accordance with this Court's Rule 1.191(d);
- 14) Petitioner sought to have individual members Adam Luck and Kelly Doyle notify the State by October 14, 2021, at noon, of their decision whether or not to disqualify in order to allow Petitioner time to seek relief in the Supreme Court if either or both of them refused to disqualify themselves;

- 15) On October 14, 2021, the Board's General Counsel, Kyle Counts, notified Petitioner via email that Kelly Doyle refused to disqualify, and that Adam Luck deferred to Vice Chairman Larry Morris who declined to require Chairman Luck's disqualification;
- 16) There are, therefore, no further remedies to exhaust in the Board;
- 17) Allowing either Adam Luck or Kelly Doyle to participate in or take any action in matters related to Julius Jones is a violation of the essential meaning of avoiding an appearance of impropriety, or conflict of interest, or actual or implied bias on the part of the decision maker;
- 18) This Court currently has pending before it an application, filed by Oklahoma County District Attorney David Prater, on behalf of the State of Oklahoma, to assume original jurisdiction and issue a writ of prohibition and/or writ of mandamus to prohibit Adam Luck and Kelly Doyle from participating in any matters pertaining to Julius Jones (No. PR-119839);
- 19) District Attorney Prater's application was filed before the Board's September 13, 2021 hearing on Julius Jones's commutation application, and the Board's October 5, 2021 hearing on inmate John Grant's clemency application;
- 20) This application, filed by the Oklahoma Attorney General, contains new evidence of the lack of impartiality of Adam Luck and Kelly Doyle based on the

September 13, 2021 commutation hearing¹ and the October 5, 2021 clemency hearing.²

ORIGINAL JURISDICTION IN THIS COURT IS NECESSARY

Pursuant to the Okla. Const. art. 7, § 4, this Court possesses original jurisdiction over all agencies, commissions, and boards created by law. Further, Title 12 O.S.2021 § 1451 provides that a writ of mandamus may be issued by this Court to any ...board or person, to compel the performance of any act which the law specially enjoins as a duty, resulting from an office, trust or station”

The Oklahoma Pardon and Parole Board is exempt from Article II of the Administrative Procedures Act. 75 O.S.2021 § 250.4(B)(5). Accordingly, Petitioner has no avenue to appeal the denial of its disqualification motions.

To obtain mandamus relief, a petitioner must demonstrate they meet the requirements of the following, five-factor test: (1) the petitioner has no plain and adequate remedy in the ordinary course of the law; (2) the petitioner possesses a clear legal right to the relief sought; (3) the respondent has a plain legal duty regarding the relief sought; (4) the respondent has refused to perform that duty; and (5) the respondent's duty does not involve the exercise of discretion. *Miller Dollarhide, P.C. v. Tal*, 2006 OK 27, ¶ 10, 174 P.3d 559, 564 (footnote omitted)).

¹ Available at <https://oklahomadoc.zoom.us/rec/share/WpcgULioSi0-vL0bjKkbv2fRx4shZZom59hKR-3Fl-iMIUP29kQ95kV3mdnWaihX.JQUkr-XctLq8coOB>

² Available at https://oklahomadoc.zoom.us/rec/share/UQuq0MV4kssPfl0YPhJ75eSVICtU9\IhTDhmdKyjNC98iW_NDvDTibMj9eWc4Uth.bYCn1p7-s-yb6ZKW

A writ of prohibition may be granted when: (1) a person has, or is about to, exercise judicial or quasi-judicial power; (2) the exercise of that power is unauthorized by law; and (3) the exercise of said power will result in injury to the petitioner for which there is no adequate remedy. *Oklahoma State Med. Ass'n v. Corbett*, 2021 OK 30, ¶ 2 n.2, 489 P.3d 1005, 1006 n.2. Quasi-judicial power is defined as “a term applied to administrative boards or officers empowered to investigate facts, weigh evidence, draw conclusions as a basis for official actions, and exercise discretion of [a] judicial nature.” *Id.* (quoting *Umholtz v. City of Tulsa*, 1977 OK 98, ¶ 9, 565 P.2d 15, 18).

Petitioner’s brief will demonstrate that Chairman Luck and Ms. Doyle are not impartial and therefore, their refusal to disqualify satisfies the requirements for a writ of mandamus. Petitioner’s brief will further demonstrate that Chairman Luck and Ms. Doyle are about to exercise quasi-judicial power in a biased manner that is unauthorized by law and will result in injury for which there is no other adequate remedy. For these reasons, original jurisdiction should be assumed by this Court and a writ should be granted.

TIMELINESS

As indicated above, Julius Jones’s clemency hearing is currently scheduled on October 26, 2021. For a number of reasons, the State was unable to file this application by October 12, 2021 as prescribed by this Court’s Rules 1.191(i) and 1.3. The State will explain why the asserted grounds for relief, and all of the evidence in support thereof, could not reasonably have been discovered in time to file this application within the ten day period. The State will also explain why there is a possibility that Mr. Jones’s

clemency hearing will not be held on October 26, 2021, but on a later date. The State's application should be fully considered on its merits.

Mr. Jones has been part of a lawsuit in the United States District Court for the Western District of Oklahoma, challenging the state's method of execution. On August 11, 2021, the Western District entered a final judgment in that lawsuit against Mr. Jones and five other plaintiffs—John Grant, Wade Lay, Donald Grant, Gilbert Postelle, and James Coddington. On August 25, 2021, the State asked the Oklahoma Court of Criminal Appeals to set execution dates for these six inmates, and one other—Bigler Stouffer—who had not been a plaintiff in the federal lawsuit.

On September 13, 2021, the Pardon and Parole Board recommended that Mr. Jones's sentence be commuted. On September 20, 2021, the Oklahoma Court of Criminal Appeals scheduled execution dates for the seven inmates, with Mr. Jones's execution being the second one—to be held on November 18, 2021. Because an execution date was set, the Pardon and Parole Board scheduled a clemency hearing for Mr. Jones on October 26, 2021.

On September 27, 2021, the State became aware that Mr. Jones intended to waive his right to a clemency hearing, with the official waiver to be submitted to the Board on October 1. However, on September 28, 2021, the Governor denied the Board's recommendation that Mr. Jones's sentence be commuted. Although it then appeared likely that Mr. Jones would not waive his clemency hearing, the State did not receive confirmation of that fact until October 4, 2021.

The undersigned participated in the clemency hearing for John Grant on October 5, 2021. The State was notified by the Pardon and Parole Board on September 21, 2021, that Mr. Grant's hearing would be held on October 5. Although the State had grave concerns regarding Chairman Luck and Ms. Doyle's ability to fairly participate in this hearing, there was simply not time to pursue their recusals. Any application for original jurisdiction would have been due in this Court on September 21—the very day the State was notified of the hearing date. And the State first needed to ask Chairman Luck and Ms. Doyle to recuse, and give them a reasonable time in which to respond. Although this Court's Rule 1.191(i) likely would have excused the State's failure to file at least ten days before the hearing, the time-frame was simply too short. Further, because Mr. Grant was—unlike Mr. Jones—well into his thirties when he committed the murder for which he was sentenced to death, the State had some hope that Chairman Luck and Ms. Doyle would be impartial. Chairman Luck and Ms. Doyle provided the only two votes for clemency. And, as detailed in the appendices submitted with this application, this hearing provided further evidence to support the State's request for disqualification in Mr. Jones's case.

The day after this hearing, on October 6, 2021, the undersigned began preparing the recusal requests to submit to the Board. Pursuant to the ten-day rule, an application for original jurisdiction was due in this Court on October 12, 2021. But the requests had to be prepared for the Board, along with the large appendices.³ The Board then had

³ In candor, the documents in the appendices were provided to the undersigned by District Attorney David Prater. Thus, Petitioner did not have to conduct the investigation that led to

to be given a reasonable time to respond, and the application and writ had to be prepared for filing in this Court.

The clemency hearing of John Grant provided the State with previously unavailable evidence for this application. And the uncertainty surrounding whether Mr. Jones was going to have a clemency hearing further explains Petitioner's inability to file this application at least ten days before the hearing.⁴ This application is timely.

Should this Court disagree, Petitioner respectfully requests that this Court not deny this application before October 26, as there is a possibility that the clemency hearing may be postponed. Although a stay of execution is unwarranted, if one is granted, any ten-day-rule issue will become moot.

Mr. John Grant, Mr. Jones, Mr. Lay, Mr. Donald Grant, and Mr. Postelle appealed the Western District's entry of a final judgment to the United States Court of Appeals for the Tenth Circuit.⁵ On Friday, October 15, 2021, the Tenth Circuit agreed with these appellants that the Western District erred in certifying its orders as final, because such would result in piecemeal appeals. Thus, Mr. Jones, Mr. Lay, Mr. Donald

the evidence. The undersigned also borrowed from Mr. Prater's motions, which saved some time. However, it was still necessary to review the appendices, make independent judgments about what to include and how to argue it, and to prepare the requests with the new evidence obtained since Mr. Prater filed his application in this Court.

⁴ Every effort was made to file this application on Friday, October 15, the day after Petitioner was notified that Chairman Luck and Ms. Doyle would not recuse. Petitioner submitted two clemency packets to the Board that day—for Mr. Jones and Mr. Stouffer—and also printed and bound this application, the supporting brief, and the voluminous appendix. Two attorneys arrived at the court building at 4:58 to get the application on file. The security officer called the clerk's office at 4:59. After he got off the phone, he told one of the attorneys, "See you Monday."

⁵ Just last week, Mr. Stouffer filed a challenge in the Western District to the State's execution protocol, and notified that the State that he would file this week a motion to stay his execution.

Grant, and Mr. Postelle cannot appeal the Western District's decision until a judgment is entered as to every plaintiff. A trial on the merits for the remaining plaintiffs is set for February of 2022.

Mr. Jones's counsel has already indicated that Mr. Jones wants his execution date stricken.⁶ A clemency hearing may only be held if there is a pending execution date. Oklahoma Administrative Code § 515:10-1-2 (“**Clemency hearing**” means a hearing before the Board requested by an Offender on death row who has been scheduled for execution by the Court of Criminal Appeals.”). Thus, although a stay of execution is unwarranted, it is possible the clemency hearing may not be held on October 26, 2021. If the clemency hearing is postponed, Petitioner's application will have been filed more than ten days before the hearing.

Should this Court disagree that this application is timely, Petitioner respectfully asks the Court to wait until October 26 before denying the application. Petitioner will keep this Court informed.

RELIEF REQUESTED

The State seeks a Writ of Mandamus and/or a Writ of Prohibition directed individually to Adam Luck and another to Kelly Doyle, directing either or each of them to disqualify himself or herself from participating in or acting in any manner in the matter of inmate Julius Jones. This relief is requested due to and as a result of all of the matters outlined in the States' Motions to Disqualify Adam Luck and Kelly Doyle,

⁶ <https://www.oklahoman.com/story/news/2021/10/15/oklahoma-executions-may-called-off-inmates-including-julius-jones/8477845002/>.

and the appendices thereto, which are being provided to this Court concurrently with the filing of this application.

Respectfully submitted,

JOHN M. O'CONNOR
ATTORNEY GENERAL OF OKLAHOMA



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ATTORNEYS FOR THE STATE

CERTIFICATE OF MAILING

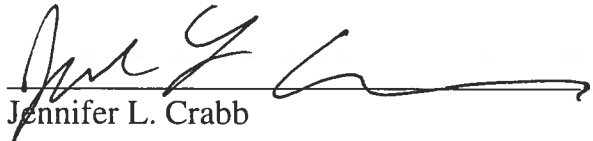
I certify that on the 18th day of October, 2021, that a true and correct copy of the above and foregoing instrument was mailed to, and a courtesy copy was emailed to, the following:

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