

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

FILED
SUPREME COURT
STATE OF OKLAHOMA

APR 21 2014

MICHAEL S. RICHIE
CLERK OF
THE APPELLATE COURTS

CLAYTON LOCKETT and CHARLES
WARNER,

Appellants/Plaintiffs,

v.

Case No. SD- 112741

Case No. SD-112764

District Court No. CV-2014-330

EDWARDS EVANS, in his Official
Capacity as the Interim Director of THE
OKLAHOMA DEPARTMENT OF
CORRECTIONS,

Appellees/Defendants.

**RENEWED EMERGENCY APPLICATION FOR STAY OF
EXECUTION PENDING OUTCOME OF APPEAL/PETITION FOR WRIT OF CERT**

Death Penalty Case – Executions Scheduled for April 22, 2014 and April 29, 2014.

COMES NOW, Appellants/Plaintiffs Clayton Lockett and Charles Warner and ask this Court once again to grant a stay of execution to prevent a miscarriage of justice.

I. IN DEFIANCE OF THIS COURT’S APRIL 17 ORDER, THE OKLAHOMA COURT OF CRIMINAL APPEALS HAS ONCE AGAIN RULED THAT IT HAS NO JURISDICTION TO STAY THE APPELLANTS’ IMMINENT EXECUTIONS.

On April 17, 2004, this Court issued a published order (Exhibit 1) retaining jurisdiction over the substantive issues on appeal in this case but transferring Appellants’ Emergency Application for Stay of Execution to the Oklahoma Court of Criminal Appeals (OCCA). Noting this Court’s exclusive and final constitutional authority to determine which court has jurisdiction over this cause, this Court held that “the courts having authority to issue [stays of execution] are

limited to the district courts and the Oklahoma Court of Criminal Appeals.” This Court further held that the OCCA, in holding that it had no power to enter a stay in this case, had ignored the statutory provisions that grant it that authority. And in transferring the case to the OCCA, this Court urged the OCCA “to be cognizant of the time restraints associated with the submission of the appeal(s) to this Court along with the gravity of the first impression constitutional issues this Court will be charged with in addressing the civil appeal, or appeals.”¹

On April 18, 2014, the OCCA issued a 3-2 decision denying a stay of execution. (Exhibit 2). As before, and in contravention of this Court’s April 17 order, the basis of the OCCA’s ruling is that it lacks jurisdiction to grant a stay in this case. Nowhere does the OCCA mention this Court’s exclusive constitutional authority to determine questions of jurisdiction. Instead, it states only that it disagrees with this Court’s jurisdictional views. In the OCCA’s view, “While the Oklahoma Supreme Court has authority to deem an issue civil and so within its jurisdiction, it does not have the power to supersede a statute and manufacture jurisdiction in [the OCCA] for Appellants’ stay request by merely transferring it here.”

Two judges dissented from the OCCA’s denial of a stay. Judges Smith and (Charles) Johnson would have granted a stay “to avoid irreparable harm as the appellants face imminent execution. They would have done so “in consideration of the appellants’ rights, to avoid the possibility of a miscarriage of justice, and in comity with the Supreme Court’s request for time to resolve the issues pending before it.”

Clayton Lockett is scheduled for execution at 6:00 p.m. tomorrow, April 22, 2014. Charles Warner is scheduled for execution just one week later, on April 29.

¹ At the time this Court entered its order, the State had not yet filed its appeal from Judge Parrish’s ruling on 22 O.S. § 1015(B), the execution-secrecy statute. It has now done so.

II. THIS COURT CAN AND SHOULD EXERCISE ITS AUTHORITY TO STAY THE APPELLANTS' EXECUTIONS IN ORDER TO PRESERVE ITS JURISDICTION OVER THE PARTIES' APPEALS AND PREVENT A MISCARRIAGE OF JUSTICE.

Given these extraordinary circumstances, Appellants have no choice but to return once again to this Court to request a stay of execution. Appellants acknowledge that this Court stated in its April 17 order that the authority to enter stays of execution is limited to the district courts and the OCCA. But as this Court also acknowledged, 22 O.S. 2011 § 1001.1(D) through (F) “all contemplate that stays may be issued by any state or federal court.” Moreover, this Court has long held that civil courts have the inherent and equitable power “to give parties temporary relief from the enforcement of challenged rules, ordinances, and statutes, so that rights are protected during litigation.” *Southwestern Bell Tel. Co. v. Oklahoma Corp. Com’n*, 1994 OK 142, 897 P.2d 1116, 1119.

As Appellants have argued to this Court in their two Emergency Applications for Stay of Execution, they have met all the requirements for a stay of execution. Indeed, they have obtained a decision on the merits in their favor, and the irreparable harm that would result from their executions cannot be overstated. Further, while the State and the OCCA have faulted Appellants for not pursuing remedies in other forums, such as a federal action pursuant to 28 U.S.C. § 1983, Judge Parrish’s ruling recognized that the shroud of secrecy behind which § 1015(B) places all information about the source of the State’s execution drugs makes it impossible for Appellants to develop such a claim, and therefore unconstitutionally denies them access to the courts.

Thus, unless this Court enters a stay of execution, Appellants will be executed in a matter of days – or, in Clayton Lockett’s case, hours. This will strip this Court of its ability to adjudicate the serious constitutional issues that are properly before it in the parties’ appeals. Appellants’

executions also will enable the State to evade compliance with Judge Parrish's ruling in their favor. The result would be a grave miscarriage of justice.

Appellants still have no information about the source of the drugs that will be used to execute them, beyond the State's bare assertions that they are "manufactured" and "FDA-approved." To date, Appellants have received no certifications, testing data, medical opinions, or other evidence to support the State's insistence that these drugs are safe, or to prove that they were acquired legally. And, in fact, after Appellants themselves brought to the State's attention a potential dosage error in the new, March 21, 2014 execution protocol, the State changed the protocol yet again, on April 14. This Court can and should enter a stay of execution.

III. ALTERNATIVELY, THIS COURT SHOULD GRANT APPELLANTS A WRIT OF CERTIORARI AND OVERTURN THE COURT OF CRIMINAL APPEALS' DECISION.

In the alternative, this Court should treat this submission as a petition for a writ of certiorari from the OCCA's denial of a stay. This Court is the Supreme Court of Oklahoma, and it may review decisions of the OCCA regarding the scope of its own jurisdiction. Under art. 7, sec. 2, of the Oklahoma Constitution, "the Supreme Court is given superintending control of the Criminal Court of Appeals, and may issue any remedial writ named in said section 2, to keep the said court within the jurisdiction granted it by law." *Dancy v. Owens*, 1927 OK 203, 258 P. 879, 886.

To this end, this Court has held unequivocally:

This Court is authorized by art. 7, sec. 4, of the Oklahoma Constitution, to issue writs of certiorari and we have held that where no appeal or proceeding in error lies, the Supreme Court may issue writs of certiorari to review the record of the lower tribunal as to jurisdictional errors involving either the want of, or excessive exercise of, jurisdiction where the error cannot otherwise be corrected.

Carder v. Court of Criminal Appeals, 1978 OK 130, 595 P.2d 416, 420 (Okla. 1978). “The purpose of the writ is to prevent injustice.” *Id.* This mechanism provides this Court with a means to directly review the OCCA's decision and as such gives this Court authority to overrule the OCCA's denial of a stay. *See id.*

IV. IF THIS COURT IS WITHOUT AUTHORITY TO STAY THE APPELLANTS' EXECUTIONS, THEN THE COURTS OF THIS STATE ARE CLOSED TO THEM, IN VIOLATION OF THE OKLAHOMA CONSTITUTION.

Finally, under art. 2, sec. 6 of the Oklahoma Constitution, a court of this State must be able to stay the Appellants' executions. That section provides:

The courts of justice of the State shall be open to every person, and speedy and certain remedy afforded for every wrong and for every injury to person, property, or reputation; and right and justice shall be administered without sale, denial, delay, or prejudice.

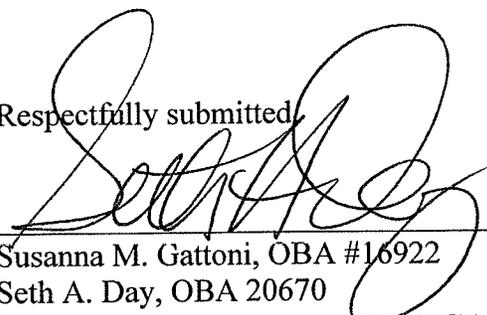
Again, Judge Parrish has ruled that the execution-secrecy statute is unconstitutional because it restricts Appellants' constitutional right to access the courts. In her view, the question is not even close. The State refuses to comply with Judge Parrish's ruling, and that is its right since it has filed an appeal. But in the face of a court's ruling that concealing the source of the execution drugs is clearly unconstitutional, Appellants' executions should not be allowed to proceed, not until this Court has the chance to fully consider the merits of that claim and the other serious claims that Appellants have raised.

The Oklahoma Court of Criminal Appeals has repeatedly disavowed any authority to stay Appellants' executions, even in the face of this Court's direct ruling to the contrary. It simply cannot be that no court in this State has the power to enter a stay of execution in this case. Such a result would close the courts of justice to Appellants, in violation of the Oklahoma Constitution.

WHEREFORE, Appellants respectfully ask this Court to grant them a stay of execution, either by exercising its constitutional, statutory and equitable power to do so, or by granting a

writ of certiorari and overturning the Oklahoma Court of Criminal Appeals' denial of their stay application.

Respectfully submitted,



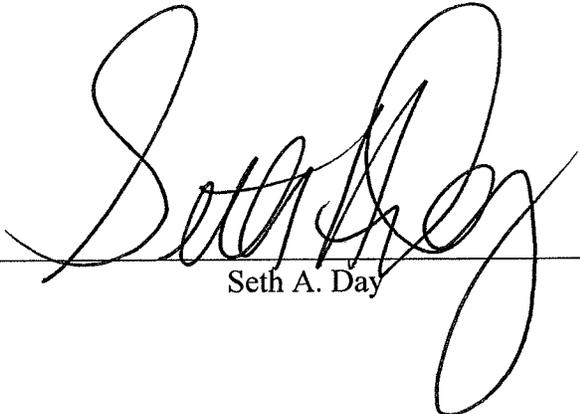
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**ATTORNEYS
FOR APPELLANTS/PLAINTIFFS,
CLAYTON LOCKETT AND CHARLES
WARNER**

CERTIFICATE OF MAILING

I, the undersigned, do hereby certify that on this 21th day of April, 2014, a true and correct copy of the above and foregoing RENEWED EMERGENCY APPLICATION FOR STAY OF EXECUTION PENDING OUTCOME OF APPEAL/PETITION FOR WRIT OF CERT was sent by U.S. Mail, with proper postage thereon fully paid, to:

John D. Hadden
Aaron J. Stewart
Oklahoma Attorney General's Office
313 NE 21st Street
Oklahoma City, OK 73105



Seth A. Day

2014 OK 28
IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

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CLAYTON LOCKETT and)
CHARLES WARNER,)

Appellants/Plaintiffs,)

v.)

EDWARD EVANS, in his Official)
Capacity as the Interim Director of)
THE OKLAHOMA DEPARTMENT)
OF CORRECTIONS, and)
THE OKLAHOMA DEPARTMENT)
OF CORRECTIONS,)

Appellees/Defendants.)

No. 112,741

FOR OFFICIAL
PUBLICATION

Per curiam opinion:

¶1 On March 13, 2014, this Court refused to issue a Stay of Execution pending the outcome of a civil proceeding in district court. At that time, we remanded the civil cause to the district court for determination and transferred “only Plaintiffs’ Emergency Application for Stay of Execution” to the Oklahoma Court of Criminal Appeals. Relying on a single subsection of 22 O.S. 2001 §1001.1, the criminal appellate court determined it had no authority to issue a stay.

¶2 This matter arises out of the civil proceeding remanded by our March 13th order. Here, we are again presented with an Application for Stay of Execution pending resolution of the appeal which involves both procedural matters related to

the criminal conviction and the need to address substantive constitutional claims.

¶3 We consider, in light of prior related orders issued both by this Court and by the Court of Criminal Appeals, the Emergency Application for Stay of Execution Pending Outcome of the Appeal along with the supplement thereto.

WE DETERMINE THAT:

- 1) Under the facts presented, the Okla. Const. art. 7, §4 vests in this Court the sole power to determine whether this cause lies within the jurisdiction of this Court or of the Court of Criminal Appeals and **“such determination shall be final.”** [Emphasis provided.]
- 2) In limiting its authority to considerations of stays only under 22 O.S. 2011 §1001.1(C), the Court of Criminal Appeals has ignored the clear language of remaining portions of the statute which expressly provide for stays to be issued in other circumstances than those relating solely to the possibility that a conviction may be overturned or a sentence vacated. Subsections (D) through (F), all contemplate that stays may be issued by “any state or federal court.” In Oklahoma, we determine the courts having authority to issue such stays in criminal matters are limited to the district courts and the Oklahoma Court of Criminal Appeals. Okla. Const. art. 7, §4. See also, Oklahoma Public Employees Ass’n v. State ex rel. Oklahoma Office of Personnel Mgt., 2011 OK 68, 267 P.3d 838 [Relevant provisions of a statutory enactment are considered together in light of the whole act. Here, the statute appears within title 22 which is devoted entirely to criminal procedure. Furthermore, there is nothing within the statutory provision which indicates that the Supreme Court would have any jurisdiction to participate in these criminal proceedings.].
- 3) We reiterate here, as we did in our order of March 13th, that the Application for Emergency Stay “only” is transferred to the Court of Criminal Appeals. We emphasize that in ruling on the application,

the criminal appellate court should remain cognizant that the civil portion of the related proceeding remains before this Court and that we fully expect that the State may file an additional appeal related to the district court's ruling. The State has until, on or about, May 1, 2014 to perfect its appeal. The procedural aspects of the plaintiffs/appellants' appeals make it impossible for our Court to commence consideration of the merits prior to the existing dates of execution set for both plaintiffs/appellants herein. Furthermore, both appeals present first impression constitutional claims which, if resolved in the prisoners' favor, might well support alterations in the execution process.

¶4 In exercising our constitutional power to determine jurisdiction, we transfer "only" the Application for Emergency Stay to the Court of Criminal Appeals. In so doing, we urge the appellate criminal court to be cognizant of the time restraints associated with the submission of the appeal(s) to this Court along with the gravity of the first impression constitutional issues this Court will be charged with in addressing the civil appeal, or appeals.

**Substantive Issues Retained;
Stay Provisions Transferred to Court of Criminal Appeals.**

COLBERT, C.J., REIF, V.C.J., KAUGER, WATT, EDMONDSON, COMBS, JJ. concur.

GURICH, J. concurs in result.

WINCHESTER, TAYLOR, JJ. dissent.

TAYLOR, J., with whom WINCHESTER, J. joins, dissenting:

For the third time in this case, I dissent and urge that this Court transfer **all** the issues to the Court of Criminal Appeals. In the first and final analysis, all of the Appellant's claims are criminal in nature. This is a challenge to the method and protocol used in the execution of the death penalty. As I wrote in my second dissent, all these issues are "inextricably intertwined" with criminal procedure and

criminal law. This is simply an Eighth Amendment cruel and unusual punishment challenge to the death penalty. There is nothing new about that.

This case has traveled a very long and complete journey through full due process of law. I warned in a previous dissent that this Court was crossing the Rubicon in its refusal to transfer this case to the proper court and now it is clear that the Appellants are taking full advantage of our being on the wrong side of that proverbial river. This diversion at the end of that journey is ignoring long-standing precedent and recent law. *Maynard v. Layden*, 1992 OK CR 31, 830 P.2d 581. See *Sells v. Livingston*, ___ F.3d ___, 2014 WL 1357039 (5th Cir. 2014); *Sells v. Livingston*, ___ Fed.App'x. ___, 2014 WL 1316339 (5th Cir. 2014) *cert. denied* ___ S.Ct. ___, 2014 WL 1325278 (2014); *Clemons v. Crawford*, 585 F.3d 1119 (8th Cir. 2009) *cert. denied*, 130 S.Ct. 3507 (2010).

I disagree with the Order entered by the majority in this case wherein it speaks of the “gravity of the first impression constitutional issues” before this Court. I find absolutely no “gravity” in the Appellant’s claims.

2014 OK CR 3
IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

APR 18 2014

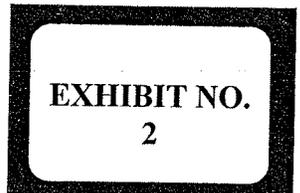
MICHAEL S. RICHIE
CLERK

CLAYTON LOCKETT and)	
CHARLES WARNER,)	
)	
Appellants,)	FOR PUBLICATION
)	
v.)	No. D-2000-1330 and
)	D-2003-829
STATE OF OKLAHOMA,)	
)	Cross Reference with
)	Oklahoma Supreme Court
Appellee.)	Case No. 112,741

ORDER DENYING STAYS OF EXECUTION

¶1 The Oklahoma Supreme Court has again transferred to this Court a joint request for stay of execution filed in connection with a civil appeal involving Appellants currently pending before that Court. *Lockett, et al. v. Evans, et al.*, Case No. 112,741 (April 11, 2014). The recent procedural history of this case is lengthy and requires repeating for clarity. This Court set execution dates in January 2014 for Lockett and Warner after both death row inmates had exhausted their state and federal appeals.¹ Both sought and were denied executive clemency from the Oklahoma Pardon and Parole Board. On February 26, 2014, Lockett and Warner filed a civil declaratory judgment action in the District Court of Oklahoma County against the Oklahoma Department of Corrections (ODOC). *Lockett, et al. v. Evans, et al.*, Case No. CV-2014-330. That lawsuit challenged, among other things, the constitutionality of

¹ Lockett's original execution date was set for March 20, 2014 and Warner's original execution date was set for March 27, 2014.



the confidentiality provision in 22 O.S.2011, § 1015(B).² The complaint was accompanied by a motion for injunctive relief seeking a stay of their respective executions. Because the complaint challenged § 1015(B) on both state and federal grounds, ODOC removed the case to federal court. Appellants amended their complaint, deleting all federal constitutional claims, and the federal district court declined jurisdiction and remanded the case back to state court. Appellants filed an amended complaint along with their motion for stay of execution. The Honorable Patricia G. Parrish of the District Court of Oklahoma County held a hearing on March 10, 2014, and denied Appellants' request for stay of execution, finding that "jurisdiction for such matters properly lies with the Oklahoma Court of Criminal Appeals." Judge Parrish did not otherwise rule on the declaratory judgment action.

¶2 On March 11, 2014, Appellants filed with the Oklahoma Supreme Court a petition in error and designation of record to initiate an appeal of Judge Parrish's ruling denying the requested stay of execution. *See Lockett, et al. v. Evans, et al.*, Case No. 112,639. Appellants also filed with the Oklahoma Supreme Court an "Emergency Application for Stay of Execution Pending Outcome of Appeal." The next day ODOC filed a response in opposition to Appellants' motion for stay of execution. On March 13, 2014, the Oklahoma Supreme Court ruled that Judge Parrish had jurisdiction to hear the merits of Appellants' declaratory judgment action. That Court declined, however, to grant

² The confidentiality provision of § 1015 (B) states: "The identity of all persons who participate in or administer the execution process and persons who supply the drugs, medical supplies or medical equipment for the execution shall be confidential and shall not be subject to discovery in any civil or criminal proceedings."

a stay of execution, citing *Maynard v. Layden*, 1992 OK CR 31, 830 P.2d 581,³ and transferred to this Court Plaintiffs' Emergency Application for Stay of Execution Pending Outcome of Appeal. That same day, this Court directed briefs from the parties addressing the applicability of *Malicoat v. State*⁴ and 22 O.S.2011, § 1001.1 to the application for stay. In the supplemental briefing, the State announced its inability to procure the necessary execution drugs for the impending executions. Based on the State's revelation that it lacked execution drugs and could not obtain them, this Court on March 18, 2014 vacated Lockett's and Warner's execution dates and reset them.⁵ On March 26, 2014, Judge Parrish ruled from the bench that the portion of § 1015(B) making confidential the identity of execution participants and those who supply the execution drugs violated Appellants' state constitutional right to access to the courts.⁶ A written order memorializing Judge Parrish's ruling was entered on April 1, 2014. Appellants filed in this Court an application for stay of execution on April 7, 2014, but did not file an action challenging their convictions, death sentences or the constitutionality of the execution protocol. The State filed a response that same day, attesting that ODOC had the

³ In *Layden*, this Court referenced an Oklahoma Supreme Court order that denied a death row inmate's application to assume original jurisdiction and petitions for writs of prohibition and mandamus because "the punishment, and the amount thereof, is an essential part of the judgment in a criminal case and that the carrying out, prohibiting, or staying such a judgment is within the exclusive appellate jurisdiction of [the Court of Criminal Appeals]." *Layden*, at ¶ 3, 830 P.2d at 582. *Layden* dealt with statutes (22 O.S.1991, §§ 1012 & 1013) that have been repealed but the rule enunciated above remains valid.

⁴ 2006 OK CR 25, 137 P.3d 1234.

⁵ Lockett's execution date is set for April 22, 2014 and Warner's execution date is set for April 29, 2014.

⁶ Judge Parrish denied the balance of Appellants' claims in the amended petition.

necessary drugs to lawfully carry out Appellants' scheduled executions and had advised Appellants of ODOC's newly adopted execution protocol. This Court denied Appellants' request for stay of execution on April 9, 2014, on the basis that we had no authority to enter a stay under 22 O.S.2011, § 1001.1(C) because there was no pending case in this Court. With their executions approaching and their request for stay of execution denied by this Court, Appellants filed on April 11, 2014, an application for stay of execution in the Oklahoma Supreme Court in connection with their appeal of Judge Parrish's adverse ruling of March 26, 2014.⁷ The State filed a response. The Oklahoma Supreme Court transferred the application for stay of execution to this Court on April 17, 2014 to decide whether a stay of execution should be issued pending the resolution of Appellants' civil appeal before the Supreme Court.⁸ The Supreme Court retained jurisdiction of Appellants' appeal of Judge Parrish's adverse ruling.

¶3 The Court of Criminal Appeals has exclusive appellate jurisdiction in criminal cases and may exercise such other and further jurisdiction as may be

⁷ Appellants appeal Judge Parrish's rulings that (1) Section 1014 of Title 22 is not an unconstitutional delegation of legislative authority; and (2) the Oklahoma Administrative Procedures Act was not violated by ODOC when it enacted its new execution protocol. The State filed its petition in error appealing Judge Parrish's ruling finding 22 O.S.2011, § 1015(B) unconstitutional on April 18, 2014.

⁸ The Supreme Court's opinion urges us "to be cognizant of the time restraints associated with the submission of the appeal(s) to this Court along with the gravity of the first impression constitutional issues this Court will be charged with in addressing the civil appeal, or appeals." *Lockett et al. v. Evans et al.*, 2014 OK 28, ¶ 4. ODOC has furnished Appellants with the names, dosages and expiration dates of the three drugs it will use for execution. Armed with this information, Appellants have failed to challenge the new protocol on Eighth Amendment grounds and insist only that the identities of the drug suppliers and manufacturers *may lead* to a basis to challenge their death sentences.

conferred by statute. Okla. Const. art. 7, § 4; 20 O.S.2011, § 40. Our authority to grant a stay of execution is limited by 22 O.S.2011, § 1001.1(C).⁹ The language of § 1001.1(C) is clear. This Court may grant a stay of execution only when: (1) there is an action pending in this Court; (2) the action challenges the death row inmate's conviction or death sentence; and (3) the death row inmate makes the requisite showings of likely success and irreparable harm. The Supreme Court's opinion transferring Appellants' application for stay of execution finds that this Court "ignored" subsections (D),¹⁰ (E),¹¹ and (F)¹² of § 1001.1 in denying Appellants' April 7th application for

⁹ Section 1001.1(C) states:

When an action challenging the conviction or sentence of death is pending before it, the Court of Criminal Appeals may stay an execution date, or issue any order which effectively stays an execution date only upon a showing by the defendant that there exists a significant possibility of reversal of the defendant's conviction, or vacation of the defendant's sentence, and that irreparable harm will result if no stay is issued.

¹⁰Section D provides:

Should a stay of execution be issued by any state or federal court, a new execution date shall be set by operation of law sixty (60) days after the dissolution of the stay of execution. The new execution date shall be set by the Court of Criminal Appeals without necessity of application by the state, but the Attorney General, on behalf of the state, shall bring to the attention of the Court of Criminal Appeals the fact of the dissolution of a stay of execution and suggest the appropriateness of the setting of a new execution date.

¹¹Section E provides:

After an execution date has been set pursuant to the provisions of this section, should a stay of execution be issued by any state or federal court, a new execution date shall be set by operation of law thirty (30) days after the dissolution of the stay of execution. The new execution date shall be set by the Court of Criminal Appeals without necessity of application by the state, but the Attorney General, on behalf of the state, shall bring to the attention of the Court of Criminal Appeals the fact of the dissolution of a stay of execution and suggest the appropriateness of setting a new execution date.

¹² Section F provides:

After an execution date has been set pursuant to the provisions of this section, should a stay of execution be issued by any state or federal court and then vacated by such court, the sentence of death shall be carried out as ordered prior to the issuance of such vacated stay of execution. If the prior execution

stay of execution filed in this Court. We respectfully disagree based on rules of statutory construction. The primary task in construing a statute is to ascertain and give effect to the intent of the Legislature. *Johnson v. State*, 2013 OK CR 12, ¶ 10, 308 P.3d 1053, 1055; *Starkey v. Oklahoma Dept. of Corrections*, 2013 OK 43, ¶ 34, 305 P.3d 1004, 1017. To discern that intent, we look first to the language of the statute itself, giving the statutory terms their commonly accepted and understood meaning. *Johnson*, 2013 OK CR 12, ¶ 10, 308 P.3d at 1055; *W.R. Allison Enterprises, Inc. v. CompSource Oklahoma*, 2013 OK 24, ¶ 15, 301 P.3d 407, 411-412 (citing *State ex rel. Oklahoma State Dept. of Health v. Robinson*, 2006 OK 99, ¶ 6, 152 P.3d 875, 877-78). In construing statutory provisions, specific provisions govern over general ones. See *State v. Hall*, 2008 OK CR 15, ¶ 29, 185 P.3d 397, 404 (citing *Lozoya v. State*, 1996 OK CR 55, ¶¶ 17-18, 932 P.2d 22, 28-29); *Jones v. State ex rel. Office of Juvenile Affairs*, 2011 OK 105, ¶ 14, 268 P.3d 72, 76.

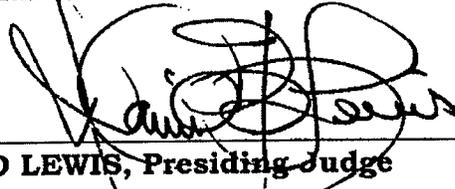
¶4 It is evident from the plain language of § 1001.1 that the Legislature prescribed this Court's authority to grant stays of execution in Subsection (C). Although Subsections (D), (E), and (F) refer to stays of execution issued by "any state or federal court," these subsections do not specify the conditions under which "any state or federal court" may grant a stay, nor do they specifically

date has expired prior to the vacation of the stay of execution, a new execution date shall be set by operation of law thirty (30) days after the vacation of the stay of execution. The new execution date shall be set by the Court of Criminal Appeals without necessity of application by the state, but the Attorney General, on behalf of the state, shall bring to the attention of the Court of Criminal Appeals the fact of a vacation of the stay of execution and suggest the appropriateness of the setting of a new execution date.

vest authority to do so. These subsections identify this Court by name and task us with setting execution dates upon the dissolution or vacation of stays issued by other state or federal courts. Subsection (C) vests authority in this Court to grant stays of execution and prescribes the conditions under which we may do so. It is controlling. While the Oklahoma Supreme Court has authority to deem an issue civil and so within its jurisdiction, it does not have the power to supersede a statute and manufacture jurisdiction in this Court for Appellants' stay request by merely transferring it here. Therefore, Appellants' application for stays of execution is **DENIED**.

¶5 **IT IS SO ORDERED.**

¶6 **WITNESS OUR HANDS AND THE SEAL OF THIS COURT** this 18th
day of April, 2014.



DAVID LEWIS, Presiding Judge

Clancy Smith - Dissent

CLANCY SMITH, Vice Presiding Judge

Gary L. Lumpkin Specially Concur

GARY L. LUMPKIN, Judge

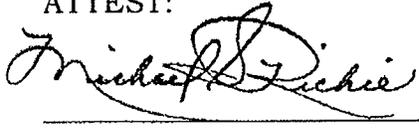
Charles A. Johnson Dissent

CHARLES A. JOHNSON, Judge

Arlene Johnson

ARLENE JOHNSON, Judge

ATTEST:

A handwritten signature in cursive script, appearing to read "Michael D. Dickie". The signature is written in black ink and is positioned above a horizontal line.

Clerk

SMITH, VICE PRESIDING JUDGE, DISSENTING:

¶1 The majority has set forth an erudite and accurate analysis of this Court's jurisdictional restraints. However, I find that whether or not a stay is an appropriate exercise of this Court's authority under 22 O.S.2011, § 1001.1., I would grant a stay to avoid irreparable harm as the appellants face imminent execution. I would do so in consideration of the appellants' rights, to avoid the possibility of a miscarriage of justice, and in comity with the Supreme Court's request for time to resolve the issues pending before it.

¶2 I am authorized to state that Judge Charles Johnson joins me in this dissent.

Lumpkin, J., Specially Concurring:

¶1 I join in the order entered by the Court but write separately to point out Appellants' repeated failure to invoke the jurisdiction of this Court prevents the Court from reaching any other result.

¶2 On March 13, 2014, the Oklahoma Supreme Court determined only the Court of Criminal Appeals has jurisdiction to enter a stay of execution in a death penalty case and transferred to this Court part of the matter pending in Oklahoma Supreme Court Case No. 112,639. That portion transferred addressed the issue of whether a stay should be issued prior to the District Court of Oklahoma County considering the pleadings that have been filed in the above cited civil matter. This Court ordered the Appellants and the State to provide this Court with supplemental briefs and directed the parties to this Court's controlling precedent in *Malicoat v. State*, 2006 OK CR 25, 137 P.3d 1234 and 22 O.S.2011, § 1001.1. Appellants refused the opportunity to lawfully file an application for post-conviction relief and proceeded with their "civil" claim. Within its supplemental brief, the State acknowledged that it did not possess the drugs needed to carry out the lawful sentence of death for Appellants. On March 18, 2014, this Court vacated and reset the scheduled executions for both Appellants. Appellant Lockett's execution was reset to April 22, 2014, and Appellant Warner's execution was reset to April 29, 2014.

¶3 On April 7, 2014, Appellants filed their joint Emergency Application for Stay of Execution Pending The Appeal From The District Court's Decision with this Court but did not file an action challenging their convictions, death

sentences, or the constitutionality of the execution protocol. Instead, they continued to only raise “civil” claims. The State filed a response that same day and attested that it had the necessary drugs to lawfully carry out Appellants’ execution and had advised Appellants concerning the Department of Corrections’ new execution protocol. On April 9, 2014, we denied Appellants’ request for a stay and explicitly informed Appellants that this Court was without authority to issue a stay without an action pending in this Court.

¶4 Despite this Court’s notice to the Appellants of the need to invoke the jurisdiction of this Court by filing the appropriate pleadings, and the Oklahoma Supreme Court’s opinion that only the Court of Criminal Appeals has jurisdiction to enter a stay of execution in a death penalty case, on April 14, 2014, Appellants, again, sought a stay of execution before the Oklahoma Supreme Court in Oklahoma Supreme Court Case No. 112,741. Appellants’ appeal only involves “civil” claims. On April 17, 2014, the Oklahoma Supreme Court transferred to this Court that portion of the issue of whether a stay of execution should be issued for both Appellants during the pendency of their appeal before the Oklahoma Supreme Court.

¶5 Counsel for Appellants are members of the Oklahoma Bar licensed to practice in the state. They are well aware that Oklahoma has a bifurcated civil-criminal system of justice. *Carder v. Court of Criminal Appeals*, 1978 OK 130, ¶ 1, 595 P.2d 416, 417. The jurisdiction of the Oklahoma Court of Criminal Appeals is set forth in Article VII, § 4 of the Oklahoma Constitution. The Court of Criminal Appeals has exclusive appellate jurisdiction in criminal cases and

may exercise such other and further jurisdiction as may be conferred by statute. *Id.*; 20 O.S.2011, § 40 (“The Court of Criminal Appeals shall have exclusive appellate jurisdiction, coextensive with the limits of the state, in all criminal cases appealed from the district, superior and county courts, and such other courts of record as may be established by law.”). This Court has the authority to determine when it has the power to proceed. *Duvall v. State*, 871 P.2d 1386, 1387-88; 20 O.S.2011, § 42 (“Said Court shall have power, upon affidavit or otherwise, to ascertain such matters of fact as may be necessary to the exercise of its jurisdiction.”); 22 O.S.2011, § 1051 (“The procedure for the filing of an appeal in the Court of Criminal Appeals shall be as provided in the Rules of the Court of Criminal Appeals . . . which will have the force of statute . . .”). It is the exclusive province of the Oklahoma Court of Criminal Appeals to construe state criminal statutes. *State v. Tolle*, 1997 OK CR 52, ¶ 5, 945 P.2d 503, 504. The Court of Criminal Appeals decisions are governed by the United States Constitution, the Constitution of the State of Oklahoma, duly enacted statutes, and controlling precedent concerning these authorities. *See Carder*, 1978 OK 130, ¶ 20, 595 P.2d at 420 (“There is no appeal or proceeding in error from the Court of Criminal Appeals to this Court.”). The Court of Criminal Appeals is respectful of the Oklahoma Supreme Court’s well-reasoned opinions, in all instances, but as the state appellate court with exclusive jurisdiction in criminal matters, the Court of Criminal Appeals must announce and apply principled rules to guide the

state's citizens, trial courts, and criminal litigators as to criminal matters. *Young v. State*, 1999 OK CR 14, ¶ 17, 989 P.2d 949, 953.

¶6 Appellants' litigation is intended to take advantage of our bifurcated system of justice. However, I note that the Justices of the Oklahoma Supreme Court work hand-in-hand with the Judges that serve on this Court. Over 35 years ago, Justice Simms writing for the Oklahoma Supreme Court noted the relationship between the two courts:

It speaks well of our bifurcated civil-criminal appellate system that there has not been a jurisdictional conflict between this Court and the Court of Criminal Appeals for more than fifty years. This scarcity of conflict is a testament to both the clarity of jurisdictional boundaries between the two Courts and the constant willingness of the members of each Court to observe and comply with their jurisdictional restrictions.

Carder, 1978 OK 130, ¶ 1, 595 P.2d at 417-18.

¶7 Both the Court of Criminal Appeals and the Oklahoma Supreme Court have determined how issues like these should proceed. As a general rule, a civil order will neither interfere to prevent the enforcement of a valid criminal judgment of conviction nor restrain or relieve the execution of a valid criminal sentence. *Maynard v. Layden*, 1992 OK CR 31, ¶¶ 7-10, 830 P.2d 581, 583. In *Maynard*, this Court stated:

Brewer has the right to file a civil rights action and, if his complaints are valid, to obtain an injunction in such an action. However, the breadth of such an action, including the remedies available thereunder, is not unlimited and, as a general rule, cannot affect or apply to criminal actions, including the imposition of criminal punishment. *See Rogers v. Douglas*, 72 P.2d 823, 825 (Okla.1937) Such is true especially where the criminal law provides a statutory remedy to prohibit the wrong or injury for which

redress is sought by injunction. *See Id.*; *Independent School District No. 9 of Tulsa County v. Glass*, 639 P.2d 1233, 1237 (Okla.1982).

Id., 1992 OK CR 31, ¶ 7, 830 P.2d at 583. In *Rogers*, the Oklahoma Supreme Court held that a district judge was without jurisdiction to issue a temporary restraining order enjoining enforcement of a criminal statute that had not been shown to be invalid. *Maynard*, 1992 OK CR 31, ¶ 7 n.1, 830 P.2d at 583 n.1, *citing Rogers v. Douglas*, 1937 OK 569, 72 P.2d 823. Where there is a forum and a remedy for a capital defendant to prohibit the execution of a judgment of death, an injunction emanating from an alternative forum is not necessary to effectuate such relief and is an impermissible intrusion upon criminal proceedings. *Maynard*, 1992 OK CR 31, ¶ 8, 830 P.2d at 583.

¶8 Appellants have a forum to challenge the validity of their convictions, sentences and the execution protocol. In no way, have Appellants been denied access to the courts. Excluding a timely direct appeal, any challenge to a sentence of death is governed by the Capital Post-Conviction Procedure Act, 22 O.S.2011, § 1089. *See* 22 O.S.2011, § 1080. This Court has previously determined that the proper method to object to the setting of an execution date or request a stay of execution is to file an application for post-conviction relief with the Court of Criminal Appeals. *Malicoat v. State*, 2006 OK CR 25, 137 P.3d 1234; *Torres v. State*, 2002 OK CR 35, 58 P.3d 214; *Valdez v. State*, 2002 OK CR 20, 46 P.3d 703. This includes any challenge to the execution protocol. *Id.* The Rules of the Court of Criminal Appeals apply to all appeals and proceedings before the Oklahoma Court of Criminal Appeals. Rule 1.0(A),

Rules of the Oklahoma Court of Criminal Appeals, Title 22, Ch. 18, App. (2014). Both § 1089 and Rule 9.7, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch. 18, App. (2014), set forth the requirements for a properly filed application for post-conviction relief. Our rules and decisions permit discovery in capital post-conviction proceedings. *Bland v. State*, 1999 OK CR 45, ¶ 3, 991 P.2d 1039, 1040. The Court of Criminal Appeals has the authority to grant a stay of execution of a sentence of death pursuant to 22 O.S.2011, § 1001.1.

¶9 However, Appellants have repeatedly refused to invoke the jurisdiction and power of the Court to act. It is a fundamental axiom of jurisprudence that a party must first file an action to have access to the court. *Buis v. State*, 1990 OK CR 28, ¶ 4, 792 P.2d 427, 429 (holding court may only exercise jurisdiction of justiciable matter through filing of pleadings sufficient to invoke power of the court to act). Despite repeated invitations from this Court for Appellants to file pleadings to invoke the jurisdiction of this Court, Appellants have failed to do so.

¶10 I have the utmost faith that if Appellants had a meritorious challenge to their convictions, sentences of death or the execution protocol, that the Oklahoma Indigent Defense System would ably represent them pursuant to § 1089(B). I note that in each of the Appellants' cases, the District Court appointed the Oklahoma Indigent Defense System to represent them in seeking post-conviction relief. Attorneys from the Oklahoma Indigent Defense System have previously appeared in each of the Appellants' post-conviction

proceedings. *Lockett v. State*, unpub. dispo. PCD-2002-631, (Okl. Cr. October 22, 2002); *Warner v. State*, unpub. dispo. PCD-2003-897 (Okl. Cr. December 20, 2006). Those attorneys understand and follow the procedure the Oklahoma Legislature has established for the review of sentences involving the death penalty. The District Courts' orders appointing the Oklahoma Indigent Defense System remain valid. In light of Appellants' repeated refusals to file an action in this Court I am forced to conclude that Appellants' "civil" pleadings are nothing more than an attempt to cause a delay in their lawful execution. Since the jurisdiction of this Court has not been properly invoked, this Court cannot issue a stay of execution.