

AUG 20 2002

PATRICK FISHER
Clerk

PUBLISH

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

ROBERT G. LILE,
Plaintiff-Appellee/Cross-
Appellant,

v.

Nos. 98-3292 & 98-3294

DAVID R. McKUNE and CHARLES
SIMMONS,

Defendants-Appellants/Cross-
Appellees.

**OPINION ON REMAND FROM THE
UNITED STATES SUPREME COURT**

Timothy G. Madden, Kansas Department of Corrections, Topeka, Kansas, for
Defendants-Appellants/Cross-Appellees.

Matt Wiltanger (David J. Waxse and Paul W. Rebein with him on the briefs) of
Shook, Hardy & Bacon L.L.P., Overland Park, Kansas, for Plaintiff-
Appellee/Cross-Appellant.

Before **SEYMOUR**, **McKAY**, and **EBEL**, Circuit Judges.

McKAY, Circuit Judge.

On remand from the United States Supreme Court’s plurality opinion in McKune v. Lile, 536 U.S. ___, 122 S. Ct. 2017 (2002), we vacate our prior opinion, order and mandate to the district court and remand with direction to dismiss the complaint in its entirety. Petitioners-Appellants’ claims pursuant to the Fourth and Fifth Amendments to the Constitution do not rise to the level of compulsion contemplated by Justice O’Connor’s concurring opinion. Id. at 2032-35 (O’Connor, J., concurring); see Marks v. United States, 430 U.S. 188, 193 (1977) (when no single rationale explains the result of a fragmented Supreme Court, the holding is the “position taken by those Members who concurred in the judgments on the narrowest grounds” (quoting Gregg v. Georgia, 428 U.S. 153, 169 n.15 (1976))).

REMANDED.