

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT KNOXVILLE

NOVEMBER SESSION, 1999

FILED

February 10, 2000

Cecil Crowson, Jr.
Appellate Court Clerk

HUGH DONALD RITCHEY, JR,)

Appellee,)

VS.)

STATE OF TENNESSEE,)

Appellant.)

C.C.A. NO. 03C01-9905-CR-00200

HAMILTON COUNTY

HON. DOUGLAS A. MEYER
JUDGE

(Habeas Corpus-Extradition)

FOR THE APPELLANT:

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OPINION FILED _____

REVERSED
PETITION FOR WRIT OF HABEAS CORPUS DISMISSED
BAIL REVOKED

JERRY L. SMITH, JUDGE

OPINION

On January 5, 1999, Hugh Donald Ritchey, the appellee, was arrested in Hamilton County, Tennessee upon a rendition warrant issued by the Governor of Tennessee for the appellee's extradition to Washington State, where he had been charged with first degree custodial interference. The appellee filed a motion to be released on bail and a petition for the writ of habeas corpus in a Hamilton County, Tennessee trial court. The trial court granted the appellee's motion for bail, and he was released from custody. Subsequently, following a hearing, the trial court granted the appellee's habeas corpus petition. On appeal, the state raises the following issues:

- (1) whether the trial court erred in granting the appellee's petition for the writ of habeas corpus; and
- (2) whether the trial court erred in granting the appellee's request for bail.

Because we find that the trial court improperly considered the merits of the prosecution in Washington, erroneously found the appellee was not subject to extradition, and because the trial court under the facts presented by this case acted outside the scope of its authority in granting bail, we reverse the judgment of the trial court and revoke the appellee's bail.

FACTUAL BACKGROUND

While living in Colorado, the appellee had been married, and subsequently divorced, to Ms. Koskie. Their marriage produced one daughter. After the

couple divorced in Colorado, the appellee moved to Tennessee, and Ms. Koskie and the couple's daughter moved to Washington. During the summer of 1998, the appellee and Ms. Koskie agreed that their daughter would visit the appellee for about a month at his home in Tennessee. They agreed that the child would arrive in Tennessee on July 30, 1998, and return on August 23, 1998. Some time after the child arrived in Tennessee, she told the appellee that she had been neglected by Ms. Koskie and abused by Ms. Koskie's boyfriend. On August 22, 1998, the day before the child was supposed to return to Washington, the appellee informed Ms. Koskie, by telephone, that the child would not return. The child stayed with the appellee in Tennessee.

On August 24, 1998, the day after the child was supposed to return, a warrant was issued for the appellee's arrest in Washington on a charge of first-degree custodial interference. Ms. Koskie flew to Tennessee to retrieve her daughter and delivered the warrant to authorities here. The Hamilton County Sheriff's Department executed a fugitive warrant against the appellee later that day, and Ms. Koskie took custody of the child. The appellee was later released on \$20,000 bail.

On November 19, 1998, the Governor of Washington made an extradition demand to the Governor of Tennessee. On December 10, 1998, the Governor of Tennessee issued a rendition warrant for the appellee's arrest, and the appellee was arrested shortly thereafter. On January 7, 1999, the appellee petitioned the trial court for habeas corpus relief and requested bail. Later that day, the trial court allowed the appellee to be released on the same bail that he had posted earlier for the fugitive warrant.

On January 15, 1999, the court held a hearing to determine whether the appellee was entitled to habeas corpus relief. The appellee denied ever having been to Washington and explained his reasons for refusing to return the child to Washington. The court agreed with the appellee that the charges in Washington were without merit, and granted the appellee's petition for the writ of habeas corpus.

EXTRADITION

The state first asserts that the trial court should not have granted the appellee's petition for the writ of habeas corpus after the Governor of Tennessee signed a rendition warrant based on a legitimate demand from the Governor of Washington. We agree.

Interstate extradition derives from the language of Art. IV, § 2, cl. 2, of the United States Constitution, which states:

A person charged in any state with treason, felony, or other crime, who shall flee from justice, and be found in another state, shall on demand of the executive authority of the state from which he fled, be delivered up, to be removed to the state having jurisdiction of the crime.

"[This clause] articulate[s], in mandatory language, the concepts of comity and full faith and credit found in the immediately preceding clause of Article IV." Michigan v. Doran, 439 U.S. 282, 287-88, 99 S. Ct. 534-35, 58 L. Ed. 2d 521 (1978). For those reasons, once the governor of the asylum state has acceded to an extradition demand, a court in the asylum state considering release on habeas corpus may only decide (a) whether the extradition documents on their face are in order; (b) whether the petitioner has been charged with a crime in the demanding state; (c) whether the petitioner is the person named in the request for extradition; and (d) whether the petitioner is a fugitive. Doran, 439 U.S. at 288-89; State ex rel. Sneed v. Long, 871 S.W.2d 148, 150-51 (Tenn. 1994). The asylum state is "bound to accept the demanding state's judicial determination since the proceedings of the demanding state are clothed with the traditional presumption of regularity." Doran, 439 U.S. at 290. Plenary review in the asylum state of the merits of the criminal prosecution in the demanding state is not permitted. Id.; Tenn. Code Ann. § 40-9-114.

Nevertheless, in this case the court examined the merits of the case against the appellee in Washington:

[I]f the State of Washington is doing something wrong, I'm not going to send [the appellee] all the way back to the State of Washington to answer out there. Somewhere somebody has to stop something that's improper, and so we're going to inquire to see if there's anything improper.

After analyzing the accusation against the appellee, the court apparently found the allegations against him unpersuasive:

that D.A. [in Washington] – he needs to reexamine his case, from what I've heard so far. He needs to seriously reexamine his case, or he shouldn't pass through the state of Tennessee on his way to anywhere.

The appellee did not assert that he was not the person named in the charging instrument, that he had not been charged with a crime, or that the extradition documents were not in order. Thus, any grant of habeas corpus relief based on the merits of Washington's case against the appellee constitutes error.

The trial court also erred when it determined that, because the appellee had never been to Washington, he was not subject to extradition to Washington. Historically, in order to prove that the accused was a fugitive, "it was long held that the accused must be shown to be actually and not merely constructively present within the demanding state at the time the offense was committed." Earhart v. Hicks, 656 S.W.2d 873, 875 (Tenn. Crim. App. 1983) (citations omitted). In 1951, however, Tennessee adopted the Uniform Criminal Extradition Act, which was codified in Tenn. Code Ann. 40-9-101 et seq. Now, Tenn. Code Ann. § 40-9-112 provides:

A warrant of extradition must not be issued unless the documents presented by the executive authority making the demand show that:

- (1) Except in cases arising under § 40-9-113, the accused was present in the demanding state at the time of the commission of the alleged crime, and thereafter fled from the state;
- (2) The accused is now in this state; and
- (3) The accused is lawfully charged by indictment found or by information filed by a prosecuting officer and supported by affidavit to the facts, or by affidavit made before a

magistrate in that state, with having committed a crime under the laws of that state, or that the accused has been convicted of a crime in that state and has escaped from confinement or broken parole.

Tenn. Code Ann. § 40-9-113 states:

The governor of this state may also surrender, on demand of the executive authority of any other state, any person in this state charged in such other state in the manner provided in § 40-9-112 with committing an act in this state, or in a third state, intentionally resulting in crime in the state whose executive authority is making the demand. The provisions of this chapter not otherwise inconsistent shall apply to such cases, notwithstanding that the accused was not in that state at the time of the commission of the crime, and has not fled therefrom.

Thus, section 40-9-112 requires that the demanding state show that the accused was in the demanding state at the time a crime was committed in order to show the asylum state that the accused is a fugitive from the demanding state. If, for example, the demanding state alleges that an accused is a fugitive because he committed a crime in the demanding state and subsequently fled, but the evidence at a habeas corpus hearing proves, beyond a reasonable doubt, that the accused was never in the demanding state, then the accused is entitled to habeas corpus relief from Tennessee under section 40-9-112, because he is not a fugitive. See Earhart, 656 S.W.2d at 877-78. However, because one can commit an act in one state that is a crime in another,¹ section 40-9-113 provides an exception to the fugitivity requirement of section 40-9-112. Ratliff v. Thomas, 652 S.W.2d 919, 922 (Tenn. Crim. App. 1983). To determine whether the appellee is subject to extradition in those exceptional cases, Tennessee allows the reviewing court to examine all of the extradition documents to determine whether the demanding state alleges that the accused was absent from the demanding state when he committed the crime and is thus a fugitive. Id.

In this case, the trial court found that the appellee should not be extradited because the appellee had never been to Washington:

¹See, e.g., State ex rel. Bradford v. Thomas, 653 S.W.2d 755 (Tenn. Crim. App. 1983); Ratliff v. Thomas, 652 S.W.2d 919 (Tenn. Crim. App. 1983).

If you send a man from Tennessee all the way back to Washington, State of Washington, he's never even been there before, then that is, that is not fair to the man, It's not fair at all I don't care what the law is

Not only does this finding impermissibly ignore the plain language of section 40-9-113, but it ignores the import of all of the extradition documents as well. Although the arrest warrant, issued in Washington, states that the appellee committed the crime of custodial interference “in the State of Washington,” all of the extradition documents read together make it clear that the charges arose from acts committed in Tennessee, not Washington. For example, the extradition demand, issued by the Governor of Washington, requests that the appellee be extradicted because he committed “an act outside the State of Washington intentionally resulting in commission of [a] crime in the State of Washington.” Furthermore, the rendition warrant, issued by the Governor of Tennessee, states that “[the appellee] stands charged by information, affidavit made before a magistrate, and warrant of arrest [in Washington] with having committed the crime of First Degree Custodial Interference outside the State of Washington which resulted in a crime in the State of Washington” Finally, the affidavits of the prosecuting attorney, upon which the Washington arrest warrant was based, detail the allegations that the appellee committed the crime by not returning his daughter to her mother on the date agreed upon. Thus, the appellee is subject to extradition to Washington based on acts he committed in Tennessee. Tenn. Code Ann. § 40-9-113.

BAIL

The state also claims that the trial court erred when it allowed the appellee to remain free on bail after the governor's rendition warrant had been served. “[The Extradition Clause] of the United States Constitution places a positive duty on the governor of the asylum state to return fugitives from justice upon proper demand of the executive authority of the state in which the fugitive is charged.” Mandina v. State, 749 S.W.2d 472, 474 (Tenn. Crim.

App.1985). For that reason, Tennessee does not authorize bail for a prisoner after his or her arrest upon a rendition warrant of the Governor of Tennessee. Elliott v. Johnson, 816 S.W.2d 332, 337 (Tenn. Crim. App. 1991); Tenn. Code Ann. §§ 40-9-106, 40-9-108. Thus, the trial court erred when it allowed the appellee to remain free on bail after the appellee had been arrested pursuant to the Governor's rendition warrant.

Accordingly, the judgment of the trial court is reversed and the petition for the writ of habeas corpus is dismissed. Furthermore, the appellee's bail is revoked and he is to be returned to custody to await extradition to the state of Washington.

JERRY L. SMITH, JUDGE

CONCUR:

JOSEPH M. TIPTON, JUDGE

THOMAS T. WOODALL, JUDGE