

**STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS**

**William Nesbitt, Petitioner
Below, Petitioner**

vs) **No. 11-0829** (Gilmer County 11-C-5)

**Shannon Markle, Administrator,
Respondent Below, Respondent**

FILED
February 13, 2012
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

MEMORANDUM DECISION

Petitioner William Nesbitt appeals the circuit court order denying his habeas corpus petition wherein he argued against extradition to Alabama. This appeal was timely perfected by counsel, with petitioner's appendix accompanying the petition. The State has filed its response.

This Court has considered the parties' briefs and the appendix on appeal. The facts and legal arguments are adequately presented in the parties' written briefs and the appendix on appeal, and the decisional process would not be significantly aided by oral argument. Upon consideration of the standard of review, the briefs, and the appendix presented, the Court finds no substantial question of law and no prejudicial error. For these reasons, a memorandum decision is appropriate under Rule 21 of the Revised Rules.

On appeal, petitioner argues the same assignments of error in support of habeas relief that he argued before the circuit court. Specifically, he argues that the circuit court erred in determining that the warrant issued was supported by sufficient information; that the original warrant was sufficient on its face; that the original warrant issued by Alabama was valid; that the information provided by Alabama established petitioner did in fact violate his parole; and that the court had no jurisdiction.

The State responds, arguing that the warrant was supported by sufficient information, including an affidavit from a Gilmer County Deputy Sheriff. The State also argues that the warrant was sufficient on its face, as probable cause is not required to authorize extradition, and the warrant was authorized by the Alabama State Pardons and Paroles Board. Furthermore, the State argues that the original Alabama warrant was valid, because although an accompanying letter indicated that the warrant should be returned if not executed within

sixty days, nothing on the face of the warrant invalidated said warrant if it was not executed within the sixty day time period. Finally, the State argues that petitioner failed to meet his burden in showing that he did not violate his parole, as he failed to show that Alabama did not have probable cause to find such parole violation. The State argues that the circuit court did not err in denying habeas relief.

As to the first four assignments of error, this Court notes that petitioner argued these same grounds before the circuit court. Upon a review of the arguments and record on appeal, we conclude that the circuit court's order is not contrary to law or written policy, clearly wrong, arbitrary or capricious, or characterized by an abuse of discretion. We attach and incorporate by reference the circuit court's well-reasoned "Order Denying Habeas Corpus Petition" entered on April 15, 2011.

As to the final assignment of error, wherein petitioner argues that the circuit court erred by finding that it had no jurisdiction, petitioner requests that this Court adopt a "special circumstances doctrine" akin to the federal courts. Petitioner argues that it is unfair to send him back to Alabama because his sentences in Alabama are illegal and not in conformity with the sentencing statutes, and he has no relief, as he has previously exhausted his state court remedies. If this Court chooses not to enact a special circumstances doctrine, petitioner argues that he will be extradited to Alabama to serve an illegal sentence.

The State responds to this argument, stating that no such special circumstances exception exists, and that a West Virginia court cannot interpret Alabama state law nor invalidate a sentence imposed by the State of Alabama. Further, this type of review is not allowed in a habeas corpus proceeding relating to extradition.

This Court has stated:

In habeas corpus proceedings instituted to determine the validity of custody where petitioners are being held in connection with extradition proceedings, the asylum state is limited to considering whether the extradition papers are in proper form; whether there is a criminal charge pending in the demanding state; whether the petitioner was present in the demanding state at the time the criminal offense was committed; and whether the petitioner is the person named in the extradition papers.

Syl. Pt. 2, *State ex rel. Mitchell v. Allen*, 155 W.Va. 530, 185 S.E.2d 355 (1971). Petitioner has previously appealed his convictions in Alabama and has been unsuccessful. Further review of the Alabama sentences is not allowed in a West Virginia habeas corpus proceeding, and this Court declines to adopt a "special circumstances" doctrine under the facts of this case.

For the foregoing reasons, we affirm.

Affirmed.

ISSUED: February 13, 2012

CONCURRED IN BY:

Chief Justice Menis E. Ketchum

Justice Robin Jean Davis

Justice Brent D. Benjamin

Justice Margaret L. Workman

Justice Thomas E. McHugh

FILED

IN THE CIRCUIT COURT OF GILMER COUNTY, WEST VIRGINIA

2011 APR 19 AM 9:08

WILLIAM NESBITT,
Petitioner,

KAREN ELKIN
CIRCUIT CLERK
GILMER COUNTY, WV

v.

Case No.: 11-C-5
Honorable Judge Jack Alsop

SHANNON MARKLE, Administrator,
Central Regional Jail,
Respondent.

ORDER DENYING HABEAS CORPUS PETITION

This matter came before this Court on the Petition for habeas corpus relief filed by Christina C. Flanigan on February 14, 2011, challenging Petitioner's extradition to the State of Alabama. On the 17th day of February, 2011, Gerald B. Hough, Prosecuting Attorney of Gilmer County, West Virginia, on behalf of the Respondent, filed a Response to the Petition for Habeas Corpus.

Upon the conclusion of all preliminary matters, an Evidentiary Hearing was held before this Court on 3rd day of March, 2011, as to Petitioner's extradition. The Petitioner appeared in person and with his counsel, Christina Flanigan, and the Respondent, State of West Virginia, appeared, by and through her counsel, Gerald B. Hough, Prosecuting Attorney of Gilmer County, West Virginia. After carefully considering the evidence, the arguments presented by each party, the parties' briefs, and pertinent legal authority, the Court has concluded Petitioner has failed to establish a basis for the relief requested in his Habeas Petition. The findings and conclusions for this decision are set forth below.

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I. FINDINGS OF FACT

1. The Court takes judicial notice of all proceedings and the record in the underlying case, to wit: 10-P-40.
2. The Circuit Court of Gilmer County, West Virginia, has proper jurisdiction in this matter pursuant to W.Va. Code §5-1-7 – 13 et. seq.
3. The Petitioner was being detained at the Federal Correctional Facility in Gilmer County, West Virginia, pursuant to his convictions for violations of federal law.
4. The State of Alabama placed a detainer upon the Petitioner and upon his discharge from federal custody, the State authorities in Gilmer County, West Virginia, were notified.
5. Petitioner was arrested on the 9th day of September, 2010, in Gilmer County, West Virginia, pursuant to a Fugitive from Justice Warrant issued by a magistrate for Gilmer County, West Virginia, upon written affidavit of a law enforcement officer.
6. Petitioner appeared before the Circuit Court of Gilmer County, West Virginia, on September 13, 2010, for arraignment upon the Fugitive from Justice Warrant. During the arraignment, Petitioner refused to waive extradition. The Court then ordered the State to proceed with the statutory procedure for obtaining a governor's warrant.
7. On the 13th day of December, 2010, a Status Hearing was held and counsel for the Petitioner received a copy of a warrant, dated the 21st day of October, from the Governor of the State of West Virginia, issued upon the request of the Governor of Alabama.
8. This Habeas Corpus Petition was filed on the 17th day of February, 2011, challenging the Petitioner's extradition.

9. The Petitioner asserts that he should be returned to the State of Alabama, alleging that his life sentence in the State of Alabama, under their recidivist sentence, is an illegal sentence.

10. The Petitioner acknowledges that he has previously challenged the validity of the State of Alabama's conviction and sentence, in the state courts of Alabama, and such challenges were fully adjudicated and Petitioner was unsuccessful in such challenges.

11. This Court is without jurisdiction to determine the validity of the Alabama conviction.

II. LEGAL AUTHORITY

In extradition habeas corpus claims, guilt or innocence of the underlying crime in the demanding state is irrelevant and is not a matter open to inquiry in habeas corpus proceedings. *Lott v. Bechtold*, 169 W.Va. 578, 289 S.E. 210 (1982). Extradition provides that any person charged with a crime in one state and found in another and who is a fugitive from justice should be returned by the State in which he is found to the state where he is charged with the crime to be either tried, or if already tried and convicted, to complete the serving of his sentence. *Article IV* § 2, United States Constitution. A person may only be extradited as a fugitive from justice if he or she falls within one of the five requirements as set forth in W.Va.Code § 5-1-7. The relevant provisions regarding extradition in this case include Petitioner is convicted of a felony in the demanding state and has broken the terms of bail, probation, or parole. *Id.* Therefore, the Petitioner is eligible for extradition under W. Va. Code §5-1-7. However, Petitioner has the constitutional right to contest extradition and in such case may procure counsel and file a habeas

corpus petition alleging the reasons he or she should not be returned to the demanding state. Petitioner has filed such a petition in this case.

In habeas corpus proceedings, the asylum state is limited in its inquiry to: (1) whether the extradition papers are in proper form; (2) whether there is a criminal charge pending in the demanding state; (3) whether the Petitioner was present in the demanding state at the time of the criminal offense was committed; and (4) whether the Petitioner is the person named in the extradition papers. *Syl. Pt. 2, State ex. rel. Mitchell v. Allen*, 155 W.Va. 530, 185 S.E. 2d 355 (1971), *cert. denied*, 406 U.S 946, 92 S. Ct. 2048, 32 L.Ed.2d 333 (1972). In this case, Petitioner alleges grounds that fall within the above categories.

Accordingly, this Court proceeded to consider the merits of the claims alleged in Petitioner's Petition for Writ of Habeas Corpus.

III. DISCUSSION

PETITIONER'S GROUNDS FOR RELIEF

The Petitioner raises two main issues, set forth as six separate grounds, in his writ of habeas corpus: 1) the extradition papers are not in proper form; and 2) there was not a criminal charge pending in Alabama, the demanding state. Petitioner advances these arguments under both the United States Constitution and the West Virginia Constitution. This Court will address each of these issues, and any sub-issues that may arise, in turn.

A. EXTRADITION PAPERS NOT IN PROPER FORM

Petitioner alleges three grounds in which the extradition papers were not in proper form. These allegations can be reviewed by this Court as this issue is one which the asylum state can review. *Syl. Pt. 2, State ex. rel. Mitchell v. Allen*, 155 W.Va. 530, 185 S.E. 2d 355 (1971), *cert.*

denied, 406 U.S. 946, 92 S. Ct. 2048, 32 L.Ed.2d 333 (1972). The Court finds each of Petitioner's allegations to be without merit and will address each ground for relief below.

Ground One: Insufficient Affidavit

Petitioner contends there was no information supported either by the affidavit from the state having jurisdiction of the crime, or by a copy of an affidavit made before a magistrate or justice in the asylum state that would have been sufficient for the issuance of a warrant. The record reflects that Carol Wolfe, Magistrate for Gilmer County, West Virginia, did sign on the 3rd day of August, 2010, a Warrant for Arrest for Petitioner upon the written affidavit of Larry Gerwig, Chief Deputy Sheriff of Gilmer County, West Virginia. On that same date Magistrate Wolfe also signified that the information provided was sufficient to issue such warrant. After reviewing the record the Court finds the information provided was sufficient to issue a warrant for Petitioner's arrest as the information provided to obtain a warrant for Petitioner's arrest alleged the violation for which Petitioner was sought, the name of the demanding state, and Petitioner's identity.

Accordingly, after reviewing the record in this case, this Court is of the opinion Petitioner failed to show that the warrant issued in this case was not supported by sufficient information. As such, Petitioner's argument with regard to Ground One fails.

Ground Two: Insufficient Warrant

Petitioner alleges the original Fugitive from Justice Warrant from Alabama was not issued by a magistrate and therefore was not valid. Petitioner further alleges the Department of Corrections cannot issue a warrant unless directed to do so by the Board of Pardons and Paroles, and in this case the Board of Pardons and Paroles did not request the warrant for Petitioner be issued. After reviewing the record, it appears Petitioner is correct in that a magistrate did not

issue the Fugitive Warrant against Petitioner in the state of Alabama. The Fugitive Warrant issued in the state of Alabama was done so by the Commissioner of the Alabama Department of Corrections. This Court finds no authority which states that in Alabama, the Commissioner does not have the authority to execute said warrant. Therefore, Petitioner's claim that the Fugitive Warrant is not valid because it was not issued by a magistrate is without merit.

Further, Petitioner claims that the Department of Corrections can only issue a warrant if directed to so by the Board of Pardons and Paroles and that did not occur in this case. However, the record indicates, pursuant to the Fugitive Warrant dated August 6, 2004, issued by the State of Alabama, that "On the 4th day of Aug, 2004, the State Pardons and Paroles Board, having reasonable cause to believe that said prisoner has lapsed, or is about to lapse, into criminal ways or company or has violated conditions of his parole in an important respect, ordered said parolee arrested and returned to the confine of the penitentiary to appear before the State Board of Pardons and Paroles who will determine the parole status of said parolee." Therefore, the State Board of Pardons and Paroles did request the Department of Corrections issue a Fugitive Warrant for Petitioner and Petitioner's argument is without merit.

Accordingly, this Court finds Petitioner's argument lacks any merit as the record indicates the original Fugitive Warrant issued by Alabama is sufficient on its face. As such Petitioner's argument as to Ground Two fails.

Ground Three: Invalid Warrant

Petitioner claims that the original warrant issued on the 6th day of August, 2004, was no longer valid at the time he was arrested in West Virginia because the warrant stated that if it was not executed within sixty (60) days, it was to be returned. After reviewing the Fugitive Warrant from Alabama, dated August 6, 2004, this Court finds Petitioner's argument to be without merit

as the Warrant does not state there is a sixty (60) day limitation. Accordingly, Petitioner's argument with regard to Ground Three fails.

B. CRIMINAL CHARGE PENDING IN THE DEMANDING STATE

Petitioner alleges one ground in which the demanding state failed to prove that there was a criminal charge pending in that state. This allegation can be reviewed by this Court as this issue is one which the asylum state can review. Syl. Pt. 2, *State ex. rel. Mitchell v. Allen*, 155 W.Va. 530, 185 S.E. 2d 355 (1971), *cert. denied*, 406 U.S. 946, 92 S. Ct. 2048, 32 L.Ed.2d 333 (1972). The Court finds Petitioner's allegation to be without merit and will address this below.

Ground One: Failure to Establish a Parole Violation

Petitioner claims the information provided by the State of Alabama failed to establish probable cause that the Petitioner violated parole. The Court finds this argument to be without merit as the Fugitive Warrant specifically states Petitioner violated parole and was to appear before the Alabama Board of Pardons and Paroles. Further, the accused carries the burden of proving his absence from the demanding state at the time the alleged offense was committed by clear and convincing evidence. *Lott v. Bechtold*, 169 W.Va. 578, 289 S.E. 210 (1982). Petitioner advances no information on the record to indicate that Alabama did not have probable cause to establish he violated his parole.

Further, the record reflects a Governor's warrant was issued in Petitioner's case on October 21, 2010. The record shows that the State of Alabama provided a copy of Petitioner's criminal record from the State of Alabama in conjunction with its request for the Governor's Warrant from the State of West Virginia, and that information established Petitioner did in fact violate his parole.

Accordingly this Court finds the State of Alabama provided sufficient evidence to show Petitioner did in fact violate his parole. As such, Petitioner's argument as to Ground One fails.

C. IMPROPERLY RAISED ISSUES

In Paragraphs 8 and 9 of Petitioner's Writ of Habeas Corpus, Petitioner alleges extradition to the State of Alabama should be denied as he was improperly sentenced and therefore is being improperly detained. However, as previously stated, "In habeas corpus proceedings, the asylum state is limited in its inquiry to: (1) whether the extradition papers are in proper form; (2) whether there is a criminal charge pending in the demanding state; (3) whether the Petitioner was present in the demanding state at the time of the criminal offense was committed; and (4) whether the Petitioner is the person named in the extradition papers." Syl. Pt. 2, *State ex. rel. Mitchell v. Allen*, 155 W.Va. 530, 185 S.E. 2d 355 (1971), *cert. denied*, 406 U.S. 946, 92 S. Ct. 2048, 32 L.Ed.2d 333 (1972). Guilt or innocence of the underlying crime in the demanding state is irrelevant and is not a matter open to inquiry in habeas corpus proceedings. *Lott v. Bechtold*, 169 W.Va. 578, 289 S.E. 210 (1982).

Accordingly, this Court has no jurisdiction with regard to these issues.

IV. CONCLUSION

It is therefore **ADJUDGED** and **ORDERED** that the Fugitive Warrant issued by the State of Alabama for Petitioner is valid, and that Petitioner is to be extradited to the State of Alabama.

It is further **ADJUDGED** and **ORDERED** that this matter will be stayed for a period of ten (10) days to give Petitioner the opportunity to seek further stay, and if further stay is not

granted, then the Petitioner shall be extradited to the State of Alabama and the State of Alabama shall have twenty (20) days to appear and take custody of the Petitioner; thereafter this matter will be dismissed and stricken from the active docket of this Court.

The Petitioner's objections and exceptions are noted.

The Clerk of this Court shall send certified copies of this Order to counsel of record.

Enter this 15 day of April, 2011.

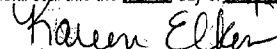


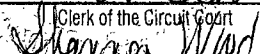
JUDGE JACK ALSOP

STATE OF WV
COUNTY OF GILMER, to-wit;

I, Karen Elkin, Clerk of the Circuit Court and Family Court of Gilmer County, do hereby certify that the foregoing is a true copy of an order entered in the above styled action on the 19 day of April, 2011.

Given under my hand and official seal this the 19 day of April, 2011.



Clerk of the Circuit Court
By 

Deputy Circuit Court Clerk