

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

SALVADOR SANCHEZ,
Petitioner/Appellant,

v.

DAVID SHINN, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS,
Respondent/Appellee.

No. 2 CA-HC 2021-0001
Filed August 31, 2021

Appeal from the Superior Court in Pima County
No. FW20200137001
The Honorable Lee Ann Roads, Judge Pro Tempore

APPEAL DISMISSED

COUNSEL

James Fullin, Pima County Legal Defender
By Robb P. Holmes, Assistant Legal Defender, Tucson
Counsel for Petitioner/Appellant

Laura Conover, Pima County Attorney
By Amy S. Ruskin, Deputy County Attorney, Tucson
Counsel for Respondent/Appellee

SANCHEZ v. SHINN
Opinion of the Court

OPINION

Presiding Judge Espinosa authored the opinion of the Court, in which Vice Chief Judge Staring and Judge Eckerstrom concurred.

ESPINOSA, Presiding Judge:

¶1 Appellant Salvador Sanchez challenges the trial court's order denying his petition for a writ of habeas corpus during his extradition proceedings. For the following reasons, we conclude his appeal is moot and must be dismissed.

Extradition Proceedings

¶2 Sanchez was arrested in Arizona on September 10, 2020, pursuant to a warrant that had been initiated in Texas. On November 10, 2020, the governor of this state issued a Governor's Warrant on Extradition (the warrant), stating Sanchez had been charged in Texas with aggravated kidnapping, aggravated assault with a deadly weapon, and unlawful restraint. Seeking to avoid extradition, in January 2021, Sanchez filed a petition for a writ of habeas corpus challenging the legal sufficiency of the warrant and asserting he was not the same individual it described.

¶3 The trial court conducted a hearing on the petition in February 2021. At the conclusion of that hearing, the court denied Sanchez's habeas corpus petition, finding that, based on the documents, arguments, and pleadings, Sanchez was, in fact, the person that Texas was requesting, and ordering Texas authorities to "pick up the defendant forthwith." The court denied Sanchez's motion to stay his extradition, and he was returned to Texas in February 2021. He has appealed from the court's denial of his habeas corpus petition. We have jurisdiction pursuant to A.R.S. §§ 12-120.21(A)(1) and 12-2101(A)(11).

Discussion

¶4 On appeal, Sanchez again challenges the legal sufficiency of the warrant. The state provides a detailed response to those arguments, which we need not address for the reasons set forth below. Notably, the state additionally argues that Sanchez's appeal, and concomitantly, the habeas matter, are moot because Arizona no longer has jurisdiction over

SANCHEZ v. SHINN
Opinion of the Court

him.¹ Citing *Walsh v. State ex rel. Eyman*, 104 Ariz. 202, 207 (1969), the state asserts “[h]abeas corpus is only available when the applicant is entitled to immediate release.”²

¶5 In his reply brief, Sanchez contends that Arizona retains jurisdiction over him. He nonetheless acknowledges that *State v. Barlean*, 121 Ariz. 347 (App. 1978), “appears” to support “the argument that Arizona loses jurisdiction over a case when the defendant has been extradited.” In *Barlean*, this court determined “[t]he rule is that when the requisition from the demanding state has been honored *and the fugitive surrendered*, such surrender will operate as a waiver of jurisdiction,” noting, however, that “[j]urisdiction is not waived before [the defendant] is taken into custody by the agents of the demanding state.”³ *Id.* at 348. Sanchez criticizes our reliance in *Barlean* on *People ex rel. Barrett v. Bartley*, 50 N.E.2d 517 (Ill. 1943) (asylum state could not, “without any reservations,” extradite prisoner then serving sentence in that state, to stand trial, conviction and serve new sentence in demanding state, and then return him to asylum state to serve unexpired sentence).

¶6 Sanchez also cites *State v. White*, 131 Ariz. 228, 229-31 (App. 1981), where another division of this court disagreed with *Barlean* and its reliance on *Barrett*, finding that, by extraditing White to another state, Arizona was not divested of jurisdiction to try him for criminal charges that were pending in this state when the governor of Arizona had signed the warrant of extradition. However, unlike the defendants in *Barlean* and

¹In Sanchez’s motion to stay extradition pending appeal below, he likewise asserted that once he was extradited to Texas, this court would be deprived of personal jurisdiction over him, “forcibly moot[ing] his appeal.”

²To the extent Sanchez asserts *Walsh* is not dispositive here because it addressed the extradition of prisoners to another state prior to the completion of their sentences in Arizona, rather than addressing a fugitive, like Sanchez, we agree. *Id.* at 205. That case does, however, stand for the proposition that habeas corpus relief is available only when the defendant is entitled to immediate release, *id.* at 207, a remedy that is unavailable in this case.

³In *Barlean*, we determined the trial court in Arizona had not lost jurisdiction to enter a judgment of guilt and impose sentence once the governor of Arizona had signed a warrant to extradite Barlean to another state, but before he had been extradited. *Id.* at 348.

SANCHEZ v. SHINN
Opinion of the Court

White, it does not appear from the record, nor do the parties assert, that Sanchez had any pending criminal charges in Arizona when the warrant issued, nor do they assert he currently has any such charges. It thus appears that Sanchez has no legal obligation to return to Arizona, nor does this state have any legal basis upon which to demand his return. *Cf. State v. Canady*, 124 Ariz. 599, 601 (1980) (absent intentional waiver by surrendering state, bare fact of extradition does not operate to waive that state's power to seek satisfaction of *obligations* owed to it).⁴

¶7 Importantly, as we previously noted, Sanchez has already been remanded to Texas.⁵ And, although he requests that we “reverse” the trial court’s denial of his habeas corpus petition, he has not asserted that we have the authority to order Texas to release him, which is the relief he is presumably requesting. Nor has Sanchez directed us to any persuasive authority providing a mechanism for doing so based on the facts here. *See Long v. Ariz. Bd. of Pardons & Parole*, 180 Ariz. 490, 494 (App. 1994) (habeas corpus “is not the appropriate means to order something less than ‘absolute release.’” (quoting *Escalanti v. Dep’t of Corr.*, 174 Ariz. 526, 527 n.1 (App. 1993))). Instead, once Sanchez was extradited to Texas, Arizona’s ability to grant the requested relief was eliminated. *See Watson v. Dupnik*, 128 Ariz. 458, 459 (App. 1981) (after fugitive delivered into jurisdiction of demanding state, extradition proceedings may not be challenged); *see also Brown v. Kester*, 39 Ariz. 545, 546-47 (1932) (appellant who files writ of habeas corpus protesting imprisonment for failure to pay court-ordered attorney fees barred from appealing contempt order after paying fees because he no longer has anything “to appeal from”).

⁴In *Canady*, our supreme court also stated, “Assuming without deciding that extradition waives the surrendering state’s right to thereafter demand the individual’s return as a fugitive from justice if released in the demanding jurisdiction, it does not necessarily follow that the surrendering jurisdiction waives all claims it holds against that person.” *Id.*

⁵Insofar as Sanchez cites *Essary v. State*, No. 2 CA-HC 2007-0003 (Ariz. App. Apr. 15, 2008) (mem. decision), for the proposition that “this court has reached the merits on similar claims,” we note that, unlike here, where the trial court ordered Texas to take custody of Sanchez “forthwith,” the court in *Essary* ordered the defendant to remain in Arizona “until further order of the Court.”

SANCHEZ v. SHINN
Opinion of the Court

Disposition

¶8 Sanchez's appeal is dismissed as moot.