

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

FILED BY CLERK

OCT 22 2013

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

JESUS ESQUER CASTILLO,)	2 CA-HC 2013-0001
)	
Petitioner/Appellant,)	
)	
v.)	
)	
THE STATE OF ARIZONA,)	
)	
Respondent/Appellee.)	
_____)	
JESUS ESQUER CASTILLO,)	2 CA-HC 2013-0002
)	(Consolidated)
Petitioner/Appellant,)	DEPARTMENT B
)	
v.)	<u>MEMORANDUM DECISION</u>
)	Not for Publication
THE STATE OF ARIZONA,)	Rule 28, Rules of Civil
)	Appellate Procedure
Respondent/Appellee.)	
_____)	

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause Nos. FW20120225001 and FW20120228001

Honorable Roger Duncan, Hearing Officer

AFFIRMED

Isabel G. Garcia, Pima County Legal Defender
By Joy Athena

Tucson
Attorneys for Petitioner/Appellant

Barbara LaWall, Pima County Attorney

K E L L Y, Presiding Judge.

¶1 In this consolidated appeal from the trial court’s orders denying appellant Jesus Esquer Castillo’s petition for writ of habeas corpus, Castillo argues the state failed to comply with A.R.S. § 13-3845 sufficiently to justify his extradition to the State of Texas. We will not disturb the trial court’s decision whether to issue a writ of habeas corpus absent an abuse of discretion. *State v. Cowles*, 207 Ariz. 8, ¶ 3, 82 P.3d 369, 370 (App. 2004).

¶2 Castillo was arrested pursuant to two outstanding warrants from Texas. The governor of this state issued a Governor’s Warrant on Extradition (“Governor’s Warrant”) stating Castillo had been charged in Texas of “Indecency with Child Sexual Contact” and “Aggravated Sexual Assault Child.” Seeking to avoid extradition, Castillo filed a petition for writ of habeas corpus. As to the first arrest warrant, Castillo argued the photo affidavit did not comply with the requirement in § 13-3845(B)(1) that it identify “the accused as the fugitive charged with the offense” because the affiant “had no first-hand knowledge of anything about the [included] photo.” He additionally claimed the included fingerprints did not comply with § 13-3845(B)(2) because they were “of poor quality” and were not certified by the issuing authority. As to the second warrant, Castillo argued the Governor’s Warrant was insufficient because it did not properly describe the charges associated with the arrest warrant and thus did not comply

with § 13-3845(A)(3) by showing the “accused is lawfully charged by indictment.” The trial court denied the writ, concluding the photo affidavit was sufficient and “[t]he identity of Castillo as the fugitive is established . . . by the photographs attached and the affidavit.”

¶3 On appeal, Castillo repeats his claim that “[t]he photo affidavit is insufficient . . . to fulfill the intent and purpose of A.R.S. § 13-3845(B)(1).” An extradition warrant shall not issue unless the requisition documents include a photograph with a photo affidavit “identifying the accused as the fugitive charged with the offense” or “[f]ingerprints certified by the issuing authority that can be used to identify the accused as the fugitive charged with the offense.” § 13-3845(B). The Governor’s Warrant here was accompanied by a photograph identified as “Jesus Esquer Castillo” and an affidavit by Joe Ashton, an investigator for the district attorney of Montgomery County, Texas, stating that “[t]he attached photograph and fingerprints are those of the defendant, Jesus Esquer Castillo, who is a fugitive from justice from the State of Texas. I know this of my own knowledge because they were personally obtained by personnel of the Montgomery County District Attorney’s Office and labeled as such.”

¶4 Castillo seizes on the second sentence of Ashton’s affidavit, arguing Ashton did not “aver[] first-hand knowledge of anything about the photo,” such as when it had been taken, and also did not have “direct knowledge that the alleged Jesus Castillo in the photograph is the same Jesus Castillo who is wanted” for the offenses listed in the Governor’s Warrant. But Castillo cites no authority, and we find none, suggesting that a

photo affidavit is insufficient because it does not adequately establish a foundation for the affiant's claims. Although it is not a model of clarity, at worst, Ashton's affidavit is based in part on hearsay—that is, statements made by others that the photograph is of the person sought by the arrest warrant. *Cf.* Ariz. R. Evid. 801(c). But Castillo does not argue that the presence of hearsay in a photo affidavit renders it ineffective if the photograph and affidavit nonetheless identify “the accused as the fugitive charged with the offense,” which they do here.

¶5 In any event, even if the affidavit were faulty, any error plainly was harmless. *See* Ariz. Const. art. VI, § 27 (“No cause shall be reversed for technical error in pleadings or proceedings when upon the whole case it shall appear that substantial justice has been done.”); Ariz. R. Civ. P. 61 (“The court at every stage of the proceeding must disregard any error or defect in the proceeding which does not affect the substantial rights of the parties.”). The court found the photograph was of Castillo. And the included information matches the person described in the arrest warrant—the same height, date of birth, and consistent physical descriptors.¹ *Cf. Applications of Oppenheimer*, 95 Ariz. 292, 298, 389 P.2d 696, 700 (1964) (concluding “the affidavit of . . . [the] deputy sheriff . . . accompanying the requisition papers, photographs of John

¹Because we have determined the information accompanying the Governor's Warrant adequately identified Castillo as the individual for whom the arrest warrant had been issued, we need not address Castillo's claims that the fingerprints provided did not comply with § 13-3845(B)(2) or that the second arrest warrant did not pertain to the offenses described in the Governor's Warrant.

G. Oppenheimer, the defendant in the California proceedings . . . together with the similarity of names, was sufficient to establish identity by the Governor of Arizona.”).

¶6 For the foregoing reasons, the trial court’s denial of Castillo’s petition for writ of habeas corpus is affirmed.

/s/ Virginia C. Kelly
VIRGINIA C. KELLY, Presiding Judge

CONCURRING:

/s/ Philip G. Espinosa
PHILIP G. ESPINOSA, Judge

/s/ Peter J. Eckerstrom
PETER J. ECKERSTROM, Judge