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This memorandum is uncorrected and subject to revision before
publication in the New York Reports.

No. 57 SSM 57
The People &c., ex rel. Howard
Glenn Blake, alleged to be Larry
Wayne Barnett,
 Appellant,
 v.
George E. Pataki, etc.
 Respondent.

Harry H. Kutner, Jr., for appellant.
Michael Blakey, for respondent.

MEMORANDUM:

The order of the Appellate Division should be affirmed,
without costs. The certified question should not be answered
upon the ground that it is unnecessary.

Once a governor of an asylum state has granted
extradition, a court considering release on habeas corpus must

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" (Michigan v Doran, 439 US 282, 289 [1978]). A fugitive is one who, "having committed a crime in a demanding State, is present in an asylum State when a demanding State seeks to prosecute the offense" (People ex rel. Strachan v Colon, 77 NY2d 499, 502-503 [1991]). Relator is a fugitive because he was convicted of a crime in South Carolina and escaped from incarceration. If, in 1993 or thereafter, South Carolina determined that it no longer sought to classify relator as a fugitive, it could have granted relator a pardon. Hence, relator's equitable arguments are more appropriately posited to South Carolina.

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On review of submissions pursuant to section 500.11 of the Rules, order affirmed, without costs, and certified question not answered upon the ground that it is unnecessary, in a memorandum. Chief Judge Lippman and Judges Ciparick, Graffeo, Read, Smith, Pigott and Jones concur.

Decided January 12, 2010